

Members of the United States Congress
Washington, DC 20500

June 11, 2015

To the Members of the United States Congress:

We are the representatives of three independent Vietnamese civil society organizations concerned with negotiations that are going on between the United States and Vietnam regarding our country's eventual joining of the TPP (Trans-Pacific Partnership).

Let us be clear. Members of the U.S. Congress who wish to assist us in ending Vietnam's systematic labor rights violations should **NOT** grant Fast Track authority for the TPP until the Vietnamese government has reversed its ban on independent labor unions; has ended widespread workplace abuse and unsafe working conditions; has increased our abysmal wages; has halted its repression of workers and organizers who are trying to promote basic labor rights; and has released all labor rights activists from prison who have been convicted for simply speaking up for workers.

The U.S. Congress should not cast away its leverage to push for such reforms by passing fast track. Promises of future reforms by the Vietnamese government should not be trusted. If fast track were passed before the above abuses are actually stopped, the hope of any real reprieve for Vietnam's oppressed workers would fade.

So that you may have a better understanding of the current state of labor in Vietnam, please take the following into consideration.

Independent Labor Unions in Vietnam

As of today, Vietnam only has one General Confederation of Labor (VGCL), which is a Communist Party instrument. Throughout its 70 years of existence, a Central Committee member of the Communist Party of Vietnam (CPV) has led the VGCL and every leading member in it must be a CPV member. The VGCL is in fact defined as an extension of the CPV since its founding in 1946.

The By-laws of the VGCL clearly state: "The VGCL is a member of the political system operating under the leadership of the Communist Party of Vietnam." Its mission is to carry out all directives of the Party concerning the situation of the Vietnamese laborers.

It has been estimated that well over five thousand strikes have taken place in the last couple of decades in Vietnam and each one of them has been considered illegal.

Instead of helping the workers defend their rights and interests, the VGCL sides with the employers and the authorities to break up or limit these strikes.

On January 30, 2008, Premier Nguyen Tan Dung issued Decree No. 11/2008 ND-CP, which was expressly meant to forbid worker strikes.

On June 17, 2011, VGCL Chairman Dang Ngoc Tung met with CPV Secretary -General Nguyen Phu Trong to suggest that the government instruct the Ministry of Public Security to get the word out to its province and city level officers that they should monitor, uncover and deal with those suspected of helping the workers - people who they characterized as "gang members."

Concerned with this kind of unfair treatment of the workers that had gone on for years, on October 20, 2006, a number of labor activists founded the Independent Labor Union of Vietnam with the express purpose of defending workers rights. They were immediately met with severe repression by the government authorities. The leaders were arrested and given heavy prison sentences. The leaders included: Le Thi Cong Nhan, Do Thi Minh Hanh, Doan Huy Chuong, Nguyen Hoang Quoc Hung. The Vice Chairman of the group, Le Tri Tue, was kidnapped in 2007 and was subsequently disappeared.

Worker Wages in Vietnam

Vietnamese workers are living in extreme conditions because their labor is pitilessly exploited without fair compensation. The average monthly salary for workers ranges from 3.000.000 - 5.000.000VND (US\$138-\$229) a month. To put this in context, a 2012 VGCL study documented that a family of three needs \$220 per month to cover *food expenses alone*.

For a single adult, here is a sample breakdown of monthly expenses:

Room rental = 900.000VND
Utilities = 200.000VND
Propane gas for cooking = 100.000VND
Meals = 960.000VND
Drinking water = 50.000VND
Gasoline for a motorbike = 400.000VND

Total expenses above = 2.610.000VND

Note that the above expenses do not include daily incidentals (toothpaste, soap, etc.), nor do they include telephone, a backpack to carry things to work, clothes, shoes, etc.

It is also important to consider that if workers have children, the cost to care for babies and young children ranges from 800,000 to 1.500.000VND per month per child. The sad reality is that many factory workers cannot afford to keep their children with them and are forced to send them back to home villages to be cared for and if they are lucky, only see them a few times a year.

The payment of such poverty wages is the reason why most workers have to work excessive overtime. While this allows them to earn more, in the process workers' quality of life and their health is put at significant risk. It is not unusual to find workers collapsing on the job from exhaustion.

To combat having to pay workers seniority pay, workers with years of experience tend to be fired so that the employers can take in new workers and pay them entry-level wages or they force the recently fired senior workers to reapply for their former jobs and accept an entry-level rate of compensation.

Human and Labor Rights in Vietnam

With the Communists in power, Vietnam does not have any real democracy and the population of 90 million does not enjoy any basic human rights – even though the government has signed on and pledged to respect all the rights found in the *UN Convention on Civil and Political Rights*.

Article 19 of that Convention has provisions guaranteeing the freedom of opinion, viewpoints and thought. But anyone trying to exercise these freedoms is harassed, repressed, or in the cases of lawyer Nguyen Van Dai and journalist Truong Minh Duc, savagely beaten.

Article 20 of the Convention guarantees the right of association and the right of individuals to participate in associations, but the Vietnamese authorities find every way to impede and repress such activity, including the arrest and detention of people participating in independent associations, such as the cases of Mrs. Le Thi Phuong Anh, Mr. Pham Minh Vu and Mr. Do Nam Trung.

Chapter 2 of the 2013 Vietnamese Constitution is devoted to human and labor rights, just as earlier Constitutions were. However these rights are never implemented and their inclusion in the Constitution is simply to avert critical analysis by foreign governments and international civil society. The Constitution lists a wide range of human and labor rights, but government regulations nullify these rights as in the case of Articles 79, 88, and 258 of the Vietnamese Penal Code.

Using these provisions, the government has arrested and tried many people. As of May 31, 2015 there are at least 95 people incarcerated in Vietnamese jails for exercising their rights under the Vietnamese Constitution.

Also, workers can be fired on pretext for participating in a strike or taking part in a political rally. For instance, one worker, Le Thanh Tung, lost his job at Bunge, an American foreign investment company, after he joined a rally to protest against China's aggression in the South China Sea in 2011 and 2012.

Inside factories, violations of human and labor rights runs rampant. Humiliation of workers by management is constant, as workers are shouted at, cursed at, and even beaten up for attempting to assert themselves in the most basic of ways. Each and every time workers' rights are violated and complaints are lodged, the plant-level VGCL representatives side with the management. This occurs despite the fact that workers are forced to pay 2% of their salaries for union dues. They are paying for a union that demands no accountability, offers no worker protections, and does nothing to advocate for workers' rights.

Outside of the factories, workers who attempt to exercise their rights are met with verbal and physical threats by hired thugs working in conjunction with factory management and government operatives.

Recommended Actions

In order for human and labor rights that are clearly spelled out in UN Conventions and in the Vietnamese Constitution to be truly respected in Vietnam, we believe that the U.S. Congress must use the opportunity of granting fast track authority as leverage to make immediate transformative changes so that the citizens of Vietnam can enjoy their human rights and basic freedoms, especially the freedom of association and the freedom to establish independent labor unions.

Along with the concerns outlined above, it is imperative that the following demands be met **PRIOR** to the US Congress giving fast-track authority to the President on the TPP.

Actively Help Build Union Capacity

The US Government should immediately and fully fund a multi-year capacity-building aid program to help Vietnam's independent union movement to establish itself. It also must get guarantees from the Vietnamese government that those involved with this program will be allowed to move freely and without government harassment within Vietnam. This is needed because on the one hand there is a lack of pro-union capacity and on the other hand there is a long-established state-funded anti-union infrastructure (VGCL, police, laws, and policies). Established independent US-based labor rights organizations like Educating for Justice, the Worker Rights Consortium, the Institute for Global Labour and Human Rights, the International Labor Rights Forum, etc. along with the AFL-CIO could design this program. The GAO and the

Department of Labor must monitor the program to ensure that only unions independent from state and employer control get the much-needed aid.

Maintain Oversight

For every three months of the first year and biannually in every subsequent year following the TPP taking effect, the US Government (Congress, GAO and Department of Labor) should work in collaboration with the independent NGO community, to fund and support an audit of the effectiveness of the independent unions and how the fledgling union movement is developing in Vietnam. To effectively accomplish this, the US Congress must demand freedom of movement and freedom of programming activity within Vietnam by overseas NGOs to assist the capacity-building without being obstructed by police and regulations.

Take Administration to Task if Inactive on Labor Disputes

In the past, the Administration has not made prompt use of dispute resolution mechanisms for labor matters. Congress could use its various powers (GAO oversight, public hearings, etc.) to take the Administration to task if it does so again.

Utilize Bilateral and Multilateral Aid to Build Workers' Capacity

Employers who run operations using US bilateral aid in any form must pro-actively foster independent unions. That is, Congress should legislate to ensure that the aid program requires companies to allow for the formation and operation of independent trade unions. These companies must also negotiate with the independent unions and to not give higher priority to negotiating with state-controlled unions. For example, if a German company is granted a contract to build an irrigation system and they are using local labor and the funding is coming from USAID, then the German company must allow for the formation and operation of an independent trade union and they must bargain with said union in good faith negotiations.

For multilateral programs focused on workers, the US should work to ensure that they also pro-actively foster independent unions. For example, Congress could require the Administration to ensure that factories certified by the *Better Work Vietnam* program must allow independent unions, negotiate with them, and not give higher priority to state-controlled unions. For other multilateral programs, such as UNESCO, the US should work to ensure that their charters and operations foster independent unions to the maximum extent possible.

Prevent US-based Companies from Union-Busting

US-based companies must be held accountable to the same standards under US-law with regard to the rights of workers to form unions in Vietnam. If US-companies and the subcontractors who produce their products, violate the rights of workers in this regard and engage in union-busting they must be punished accordingly under the same standard as US-law. For example, if workers at a Nike factory begin to organize

an independent union and Nike's local managers or subcontracted management teams engage in union-busting activities, then Nike must be held to account under the same standard as if those illegal activities were happening in the United States.

Force US-based Companies to Bargain in Good Faith

US-based companies must enter into tri-party collective bargaining agreements with independent unions in Vietnam. These CBAs will be negotiated by and include the US-based companies, their subcontracted manufacturers/suppliers and the plant or national level independent unions at the factories. These agreements will be legally binding.

Require US-based Companies to Pay Living Wages

Congress should introduce legislation which requires the Administration to pick living-wage numbers for each TPP country (for example, by choosing upper-quartile numbers produced by the various methodologies available), and legislate to ensure that workers directly-hired or in the supply chains of US-registered companies are paid no lower than such levels.

Require US-based Companies to Observe the Higher Standards Among Domestic and International Laws

US-based companies frequently argue that they must only comply with local laws. That is true, but if Vietnam ratifies international instruments which impose higher standards, then the US Congress should also legislate to require these companies to additionally meet these higher standards, whether the standards have been put into local laws or not. Very simply, if the US-based companies are allowed to bring capital and ideas to Vietnam, then they also must bring the United States' commitment to labor rights.

Release Political Prisoners and Stop the Use of Prison/Forced Labor

Congress should demand the immediate release of all labor rights prisoners in Vietnam. Congress should also demand that the Vietnamese government stop using prisoners as forced labor and pay prisoners back pay for work done to date. And Congress should demand that the Vietnamese government stop using individuals in state-run drug rehabilitation centers as forced labor. These facilities should be closed and the patients in these facilities should be paid back pay for work done to date.

Conclusion

We cannot stress enough how imperative it is that the U.S. government maintains its full leverage to push Vietnam to actually and immediately rectify labor abuses. We are asking:

1. That members of Congress **NOT** grant fast track authority for the TPP until there has been meaningful improvement in labor rights in Vietnam.

2. That members of Congress **NOT** grant fast track authority for the TPP until the labor abuses documented above have ended and until the ending of these abuses can be confirmed by the Department of Labor and the independent US-based NGO community.

3. That members of Congress **NOT** grant fast track authority for the TPP until our list of demands above are met and the meeting of these demands can be confirmed by the U.S. Congress.


4. That members of Congress **NOT** grant fast track authority for the TPP until a labor rights monitoring mechanism is established by the GAO to ensure compliance by US-based companies and the Vietnamese government.

Without such interventions the workers in Vietnam will continue to work like slaves as they produce products for US-based companies for the domestic and global markets. Without such interventions, products produced in Vietnam and exported around the world, including to the United States, would be washed in the blood, sweat and tears of Vietnamese workers.

We thank you for your consideration of this matter and we hope you will vote on fast track accordingly on Friday in light of this information.

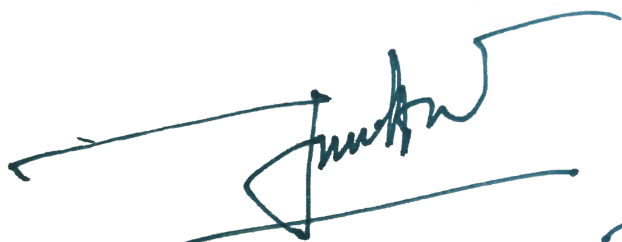
For more background information on the state of labor in Vietnam, we have included a briefing paper on the VGCL prepared by Viet Labor and a joint report on the current living/working conditions for Nike factory workers in Vietnam prepared by Viet Labor and the US-based NGO, Educating for Justice.

Sincerely,




Lê Thanh Tùng

Mr. Lê Thanh Tùng, Committee of Support of Independent Labor Unions



Trương Minh Đức

Mr. Trương Minh Đức, Viet Labor



Phạm Văn Trội

Mr. Phạm Văn Trội, the Brotherhood for Democracy