



Strengthening practices in the Vietnamese cashew nut industry

A due diligence study on labour practices and sustainability



Photo: IEH-member



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Abbreviations

VGCL	Vietnam General Confederation of Labour
MOLISA	Ministry of Labour, Invalids and Social Affairs
ILO	International Labour Organisation
VINACAS	Vietnam Cashew Association
FOL	Federation of Labour
MARD	Ministry of Agricultural and Rural Development
CDI	Center for Development and Integration
ERC	Research Center for Employment Relations
IAS	Institute of Agricultural Science for Southern Vietnam
ETI	Ethical Trading Initiative
IEH	Ethical Trading Initiative Norway
CBA	Collective Bargaining Agreement
RCN	Raw cashew nuts



Executive summary

This study was commissioned by the Ethical Trading Initiative Norway and its members to investigate the sustainability of the cashew supply chain in Vietnam. The study used a combination of research methods including a comprehensive literature review, in-depth interviews with stakeholders from European retailers, national agencies, provincial and sectoral authorities and organisations as well as empirical research at 10 farms and 5 cashew processors. The key findings of the research are:

- **Gaps between the Vietnamese legislation and the ETI Base Code are found in the areas of freedom of association and sexual harassment in the workplace:** the risks of violations of most standards lie in the weak enforcement of the law, combined with the large informal sector of Vietnam which is not covered by the labour legislation.
- **Domestic production shrinking and increasing dependence on imported materials:** the cashew farming area in Vietnam continues to shrink as it is replaced with other more lucrative industrial crops such as rubber, coffee and pepper. Productivity fluctuates depending on the weather and the farmer households' cultivation capacity. As a result, Vietnam has quickly increased its imports of raw cashew nuts (RCN) from Africa and Cambodia to over 70% of export value in 2017.
- **Farmer households operate mainly individually, lack knowledge and skills and are vulnerable to manipulation by middlemen:** most farmers do not have access to trainings on good agricultural practices as well as low-cost credits for investment into intensive cultivation. This has resulted in fluctuating productivity. Cashew prices fluctuate by 60% between the beginning and end of the harvest season, leaving many farmers indebted to creditors and middlemen.
- **Cooperatives offer a good mechanism to link farmers and processors:** cashew cooperatives provide trainings for farmers on good agricultural practices and international

sustainability standards. The cooperatives contract directly with processors to sell cashew at stable prices. However, small farmers face various challenges to join cooperatives such as long-term commitment to improvement of farming practices and access to low-cost credits.

- **Cashew processors in Vietnam include a small number of big players, a lot of small and medium-sized exporters and a large number of household businesses:** while the top exporters have developed a full production system from RCN to final products; the smaller exporters sub-contract to household businesses, creating a complex supply chain. The smaller processors are in the most vulnerable position as they export via intermediaries and are exposed to market fluctuations.
- **Considerable disparity in terms of labour practices between exporters and sub-contractors:** management and workers at export companies have higher awareness of and compliance with the labour regulations due to monitoring by labour inspectors and social auditors. The lack of monitoring is the main reason for the low awareness and poor compliance among sub-contractors. In particular:
 - While all workers at export companies have employment contracts, very few workers at sub-contractors have contracts with their employers. Consequently, the workers at sub-contractors are not covered by the compulsory social and health insurance schemes.
 - Workers at sub-contractors work for long hours on piece-rate arrangement to increase their income.
 - Piece-rate workers at both export companies and sub-contractors have a higher tendency to work overtime. Their income may drop below the minimum wage level during the low seasons.
 - Labour shortage has resulted in competition in wages between processors and sub-contractors. The sub-contractors evade social insurance and extend working hours so as to pay workers higher wages than the formal processors.
 - Sub-contractors were not unionised while all processors were unionised, with all regular workers as members.



Drying of cashew nuts

- Enterprise unions were led by managers in two processors, resulting in workers' loss of confidence in the unions as a channel for communication and grievance handling.
- Cases of children working alongside their parents were found at both farms and sub-contractors. The local farmers and sub-contractors do not consider this a problem.
- Higher awareness among exporters and an increasing level of mechanisation have diminished the use of detainees in drug addiction centres for cashew processing.

- **Good practices are found in both farming and processing but improvement requires the concerted efforts of the Government, processors and their associations as well as buyers:** the study found a number of good practices such as direct linkage between farmers and processors leading to improved traceability of RCN by the exporters, elimination of risks of labour abuses in sub-contractors, and models of social dialogue. However, these good practices remain piecemeal and difficult to replicate. To replicate the good practices, a coordinated effort is required, involving international buyers, processors, social partners and the Government to change the approach to improve the sustainability of the Vietnamese cashew supply chain.



Photo: IEH-member

Removing remainders of cashew nut shells



Introduction

Contents part I

I-1 Rationale and Objectives

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I-1 Rationale and Objectives

The cashew industry of Vietnam has grown at a remarkable speed over the past two decades. Between 2000 and 2007, the country nearly doubled its cashew farming area and grew to become a major cashew exporting country by successfully mechanizing its processing factories with shelling and peeling machines. Since 2006, Vietnam has become the biggest exporter of cashew kernels in the world with a total cashew export value of USD 3.5bn in 2017. Vietnam is also the biggest exporter of cashew to Europe, accounting for nearly 60 % of cashew kernels imported.¹ The cashew industry of Vietnam employs over one million people working in 200 000 farmer households and over 500 processing companies all over the country.²

However, the cashew supply chain is highly complex. With its fast-growing processing capacity and the fluctuations of cashew production at home, Vietnam has become increasingly dependent on imported crude cashew from Africa and Cambodia. Nearly 90 % of the cashew processors in Vietnam participate in the global supply chain in the model of 'Processor-Trader-Wholesaler-Retailer-Consumer', which includes a number of intermediary layers between the processors and the retailers in the consumption markets. Such complexities in the supply chain from farms to processors and retailers lead to high risks of labour abuses.

In an effort to improve the sustainability of the cashew supply chains of European brands, the Ethical Trading Initiative Norway (IEH) has commissioned this baseline research to the Research Center for Employment Relations (ERC) in Vietnam as the first step of a due diligence project. The overall objective of this baseline research is to make a comprehensive assessment of the human rights, labour rights and environmental issues of the cashew nut industry (both farming and processing) of Vietnam, using the ETI's Due Diligence Framework, and in line with the UN Guiding Principles on Business and Human Rights. This baseline study will also point out the root causes of the issues, if any, in the cashew supply chain in Vietnam and the available mechanisms and good practices that can contribute to the development of possible mitigation measures.

With full awareness of and respect for the socio-economic and political context of Vietnam, this baseline research attempts to provide constructive input for the local processors, stakeholders and the IEH Project Team members to develop a feasible and effective framework for collaboration within the upcoming project.

I-2 Methodology

The research team worked closely with the support of and under the supervision of IEH. The research employed the following methods:

1. Literature Review: the research team conducted a thorough review of existing literature, including the national legislation, reports, studies and articles in the public domain with regards to the cashew industry, reports on labour practices, wage statistics and union activities.

2. Semi-structured Interviews: overall the research team conducted 88 semi-structured interviews at 4 different levels including European retailers sourcing from Vietnam (3), national stakeholders (7), local and sectoral stakeholders (4), processors and farms (farm owners in 10 farms together with local inhabitants in Binh Phuoc, managers, workers and union leaders in 5 processors) (see Table 1).

Level of research	Interviewees/organisations	Issues covered
European retailers (3)	CSR managers of 3 European retailers (3)	Sustainability policy and practice in the cashew supply chain; priority issues in CSR approach; relationship between CSR and procurement; expectations for the IEH Project
National stakeholders (7)	<ul style="list-style-type: none"> - Ministry of Labour, Invalids and Social Affairs (2) - Labour NGOs (3) - Vietnam General Confederation of Labour (1) - Vietnam Chamber of Commerce and Industry (1) 	Changes in the national context for labour and human rights; debate on the Labour Code revision; labour issues in the global supply chains; perspectives of the national stakeholders on possible solutions
Provincial and sectoral stakeholders (4)	<ul style="list-style-type: none"> - The Vietnam Cashew Association (1) - Dong Nai Legal Aid Center (1) - Binh Phuoc Agricultural Promotion Department (1) - Binh Phuoc Farmers' Association (1) 	Developments of the cashew processing and farming sector; challenges facing processors and farmers; available mechanisms for mitigation for workers and farmers
Farms (15)	10 farms in Binh Phuoc:	Developments of the cashew processing and farming sector; challenges facing processors and farmers; available mechanisms for mitigation for workers and farmers
Processors (59)	5 processing companies in HCMC, Binh Duong, Binh Phuoc, and Long An	Developments of the cashew processing and farming sector; challenges facing processors and farmers; available mechanisms for mitigation for workers and farmers

The survey of cashew farms focused on Binh Phuoc as this is the largest cashew farming region of Vietnam. The research team interviewed farmers in the four districts of Dong Xoai, Bu Dang, Bu Gia Map, and Phu Rieng. The farms surveyed included a mixture of small and medium-sized farms (from 0.5 to 4 hectares), farms cultivated by the owners and contractors, and farms owned by the Kinh majority and the Stieng minority group. However, as the time of research was after the harvest season, we were not able to interview the workers hired to work on farms.

The processors were invited to participate in this study on a voluntary basis. Although the number of processors studied is not large, it includes different types of companies including large, medium and small-sized as well as exporting firms

and small processing suppliers. The processors interviewed include both formal enterprises and household businesses.

It should be emphasized that the findings of this qualitative study are not meant to be representative of all farms and processors in the cashew industry in Vietnam. Also, due to its limited scope and the lack of information from any other large-scale surveys on environmental and labour issues in the cashew industry in Vietnam, the study does not have sufficient statistics to make assessment of the scale of the risks identified here. Instead, the study should be treated as an insight into the Vietnam cashew supply chain to Norway³ to identify the possible risks, good practices and provide inputs for the formation of the IEH Due Diligence Project.

I-3 Structure of the Report

After the Introduction, Chapter 2 of the Report examines the gaps between the national labour legislation of Vietnam and the international standards included in the ETI Base Code. Apart from the legislation, Chapter 2 also discusses each of the labour standards in the local context and common violations, if any.

Chapter 3 provides a mapping of the cashew supply chain in Vietnam, covering both the farming and processing sections. Chapter 3 also identifies the key stakeholders in terms of labour rights in the cashew industry in Vietnam.

Chapter 4 presents the findings from the empirical research in cashew farms and with processors. The analysis in this chapter focuses mainly on risks for farmers and workers as well as the root causes. At the end of the chapter, a ranking of the risks in terms of severity, scale and responsibility is provided.

Chapter 5 discusses the good practices and available mechanisms that can be used to develop solutions to the risks mentioned in the previous chapters. Good practices will include both those at the national, sectoral and grass root levels.

Chapter 6 concludes the study and presents concrete recommendations to the IEH Due Diligence Project.

Depending on background, needs and intent, readers may read the report in its entirety or target the chapter(s) which are most relevant to them.



Sorting of cashew nuts

Photo: IEH-member



Photo: IEL-member

Sorting of cashew nuts



Analysis of gaps between Vietnamese law and practices and ETI base code

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By the end of 2017, Vietnam had ratified 5 out of 8 ILO core conventions; the three core conventions that remain unratified include Convention 87 (Freedom of Association); Convention 98 (Right to Collective Bargaining); and Convention 105 (Elimination of Forced Labour). As explained in the following sections, these are also the three key areas where there remain gaps between the national legislation and the international labour standards included in the ETI base code.

As a commitment to the Europe-Vietnam Free Trade Agreement (EVFTA), which was signed in 2015 and is

scheduled to be ratified by the Vietnamese and European parliaments by 2019⁴, the Vietnamese Government is planning to ratify the remaining core labour conventions by 2023.⁵ In preparation for such ratification, the upcoming revision of the Labour Code which is scheduled to be submitted to the National Assembly in 2019 is supposed to include important changes in the areas of freedom of association, right to collective bargaining and elimination of the worst forms of forced labour.⁶ However, as these changes remain unclear, this gap analysis is only based upon the effective labour legislation at the time of research.

II-1 Freely Chosen Employment

1

Vietnam Labour Code's Provisions on Forced Labour

Article 5.1a: The employees are entitled to work, independently choose work and vocations, participate in vocational training and improve occupational skills without discrimination.

Article 8.3: Coercive labour is prohibited.

Article 20.1: The employer is prohibited from keeping original identity papers, certificates and qualifications of the employee.

Article 20.2: The employer is prohibited from requesting the employee to mortgage cash or property.

Article 37.1c: The employee has the right to terminate the labour contract if he/she suffers from maltreatment, sexual harassment or coercive labour.

Article 96: The employee is entitled to be paid directly, fully and in a timely manner.

Article 106.2: The employer has the right to request an employee to work overtime when all of the following conditions are met:

- a. Obtaining the employee's consent
- b. Ensuring the number of overtime hours does not exceed 50% of the normal working hours in 1 day

The 2012 Labour Code of Vietnam has a number of articles to prohibit acts of forced and compulsory labour in enterprise settings, including: mortgage for labour contract, retention of compensation and/or identity papers, and forced overtime (see Box 1). The Labour Code also grants workers the right to unilaterally terminate the labour contract if s/he is a victim of sexual harassment or forced labour.

The Vietnamese Government does not publish statistics on forced labour (CNVInternational2016). A decade ago, Vietnam was accused by international human rights organisations of using prisoners and detainees in drug detention centres for compulsory labour, including processing cashew nuts (Human Rights Watch 2012). Under international pressure, the Vietnamese Government issued Decree 136 in 2016 to adjust the requirements for labour and working conditions of detainees in the drug detention centres. In particular, Art. 27 of Decree 136 defines labour by detainees as *'therapy labour used to help detainees to*

understand the value of labour, practise (labour) skills and recover their work capacity which has been damaged by drug addiction'. For therapy labour, the detainees work 4 hours per day, 5 days per week. In addition to 'therapy labour', the detainees can work for pay if they wish to. For such paid employment, the working conditions are regulated by the national labour standards (as any other jobs). However, there has not been any recent report on the working conditions of the drug detainees in these centres.

Another prominent issue related to compulsory labour in Vietnam is forced and excessive overtime which has been found in many labour-intensive manufacturing industries such as garment, electronics, and food processing (Better Work Vietnam 2017; CNVInternational2016). The Labour Code provides that overtime should be based on workers' consent and kept below a monthly limit of 30 hours and annual limit of 200 hours. It has been found, however, that workers, in the garment industry for instance, have been forced to work overtime and their toilet breaks are limited or even denied (Fair Wear Foundation2015).

In summary, with regards to 'forced and compulsory labour', **the risk for Vietnam lies in the lack of enforcement rather than in the law.**

II-2 Freedom of Association

2

Vietnam Labour Code's Provisions on Freedom of Association and the Right to Collective Bargaining

Article 5.1c: The employees are entitled to establish, join and participate in activities of the Union, professional organizations and other organizations as prescribed by law; request and participate in discussions with the employer, exercise the democratic rights and get advice in the workplace in order to protect their rights and interests; participate in management in line with the rights of the employer.

Article 190: Prohibited acts for the employer related to the establishment, joining and operation of trade unions.

Article 191: Rights of grassroot trade union officials in the employment relationship.

Article 192: Responsibilities of employers to trade unions.

The only national trade union organisation of Vietnam is the Vietnam General Confederation of Labour (VGCL). The VGCL has 63 provincial and 22 sectoral branches. In 2016, the VGCL had 9.6 million members (VGCL 2017). Vietnamese employees have the right to form and join enterprise unions (Labour Code, Art. 189). All enterprise unions must be affiliated to the VGCL.

The 1995 Labour Code and the 1990 Law on Trade Unions grant the right to collective bargaining to workers in unionised workplaces. Only the workplace unions are entitled to represent workers in collective bargaining with employers and to sign the collective bargaining agreement (CBA). The 2012 Labour Code (Art. 3 and 69) revision extends the right to collective bargaining to unorganised workplaces by granting the immediate upper-level unions the right to represent non-unionised workers.

A collective labour agreement shall not include or govern the working conditions of the following categories of workers:

1. Foreign workers (these workers are governed by separate labour/service contracts with the employer)
2. Workers not included in the wage bill of the company but who perform periodic work without signing labour contracts with the employer
3. Part-time workers who are not included in the wage bill of the company
4. Service providers who work on service contracts not labour contracts
5. Workers who have an employment relationship with the company but sign labour contracts with a third-party agency (for instance: security guards, cleaners, drivers, cooks)

The Labour Code and Trade Union Law prohibit employers from intervening with the union elections and union activities. However, this is the area of most pervasive violations in Vietnam:

Employers' interference with union activities is common. Better Work Vietnam⁸ found that a significant number of its member companies manipulated union activities. It is common for high-ranking managers such as HR managers or deputy directors, to serve as union leaders, even union chair people. It was estimated that 60 % of enterprise union leaders were managers in 2012 (Trinh 2014). According to the informants from the Ministry of Labour, Invalids and Social Affairs (MOLISA) and VGCL, the management sometimes kept union funds and required the enterprise union officials to secure the executives' signatures in order to withdraw from the union fund (Do 2017).

The collective bargaining agreement (CBA) coverage in Vietnam is high, 67 % of unionised establishments having CBAs. However, the general quality of the CBAs registered

has been low. According to a survey by the Friedrich Ebert Stiftung (FES) and VGCL in 2015, 56 % of the CBAs are copied from the law and only 15 % showed any sign of workers' participation in the collective bargaining⁹. Collective bargaining is widely regarded as a formality rather than the outcome of real negotiations between workers and employers.

Freedom of association and collective bargaining has been a difficult area for Vietnam. The fact that the VGCL is the only legally accepted representative organisation of workers has affected the workers' right to form and join unions of their choice. As a commitment to the Comprehensive and Progress Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Vietnam Fair Trade Agreement (EVFTA), the Vietnamese Government has pledged to ratify Convention 87 and 98 by 2023 and allow for worker representative organisations outside of the VGCL. However, before such changes are made, **the risk of breaches of labour rights in the area of freedom of association and collective bargaining remains high in Vietnam, with gaps both in legislation and enforcement.**



Quality control

II-3 No Exploitation of Child Labour

3

Vietnam Labour Code's Provisions on Child Labour

Article 164: The employers are only entitled to employ persons from 13 to 15 years of age to perform light work under the list prescribed by the Ministry of Labour - Invalids and Social Affairs.

Article 163: Principles for employing under-aged employees

1. Do not employ underage employee to perform heavy, hazardous and dangerous jobs or jobs negatively affecting their personality under the list issued by the Ministry of Labour, Invalids and Social Affairs in coordination with the Ministry of Health.
2. The working hours of young employees from 15 to 18 years of age must not exceed 8 hours in 1 day and 40 hours in 1 week. The working hours of persons under 15 years must not exceed 4 hours in 1 day and 20 hours in 1 week without working overtime and at night.
3. Persons of 15 to 18 years of age are permitted to work overtime and at night in some occupations and jobs in accordance with the Ministry of Labour, Invalids and Social Affairs.
4. Do not employ underage employees to produce and trade in alcohol, wine, beer, tobacco, substances affecting the mind and other drugs,
5. The employer must provide opportunities for underage employees and persons under 15 years to take part in labour and cultural learning.

Children between 15 and 18 years are allowed to work but under special conditions (see Box 3) and only in occupations that are not harmful for them. According to the ILO-MOLISA survey of child labour in 2017, there were over 1.7 million child labourers in agriculture, half of which were under the age of 15 (ILO-MOLISA, 2017). Most children employed in agricultural work were supporting their families and for the most part not paid. In the formal enterprise sector, however, cases of child labour have been rare.

Therefore, for this international standard, *the risk for Vietnam is low in terms of legislation but potentially high in enforcement in the agricultural sector.*

II-4 No Discrimination in Employment

4

Vietnam Labour Code's Provisions on Non-discrimination

Article 8.1: The employers are prohibited from discriminating by sex, race, social class, marital status, belief, religion, discrimination against HIV sufferers, disabled people or against workers who establish, join and participate in union activities.

Article 90.3: The employer must guarantee equal pay without discrimination by gender for employees performing work of equal value.

Age discrimination

It should be noted that the Labour Code of Vietnam does not prohibit discrimination by age which is included in the ETI Base Code. There have been reports of companies laying off low-skilled workers older than 35 years old as the older workers tend to have diminishing productivity and a higher labour cost.¹¹

Gender discrimination

Vietnam has made progress in closing the gender gap in employment in recent years. In fact, Vietnam was ranked higher than other garment-producing countries such as China, India, Bangladesh or Cambodia in terms of gender equality in employment (see Table 2).

Table 2: Gender Equality Indicators of Vietnam, China and Bangladesh, 2014

Indicators	Vietnam	China	Bangladesh
Global Gender Gap Index, 2014 ¹²	76	87	68
Wage Equality for Similar Work Rank, 2014	79	77	105
Gender Inequality Index	58	37	115

Source: Global Gender Gap Report 2014 and World Economic Forum, Global Gender Gap Report 2013 & 2014 (The higher the index, the worse the situation)

The 2012 Labour Code has one chapter (Chapter 10) on female employees. Female employees have equal labour rights and it is the responsibility of an employer to create favourable working conditions for female employees (Art. 153&154). However, employment of women in 79 occupations is prohibited, 45 of which are applicable to all female employees

while the remaining 34 are applicable to pregnant and breastfeeding workers.

With regards to the international standard on discrimination, the risk for Vietnam is low in terms of legislation but potentially high in the enforcement among certain disadvantaged groups.

II-5 Safe and Healthy Working Conditions

5

Vietnam Legislation on Occupational Safety and Health

Law on Fire Fighting: Written Fire Safety Plan should be approved by the local fire police. Practice of the Fire Plan should be conducted at least once a year.

Circular 11/2014/TT-BCA: The grass root firefighting team should be trained and certified by the fire police and receive refresher training every year.

Labour Code, Article 138: The working environment should be checked at least once a year.

Labour Code, Article 138.1d: There must be instruction tables on labour safety and hygiene for the machinery, equipment and workplaces and they should be legible and be placed so that they are visible;

Labour Code, Article 139: The employer should assign a full time safety officer, who is properly trained on occupational health and safety.

Labour Code, Article 142: All cases of labour accidents should be investigated and reported. The employer is responsible for paying salary and treatment fees in the case of labour accidents. Compensation or allowance should be paid if the employee's labour ability is reduced due to accident.

Labour Code, Article 147: Equipment with strict safety requirements should be inspected by an authorized agency.

Labour Code, Article 150: Workers should be trained on occupational health and safety prior to starting their job and on an annual basis.

Labour Code, Article 152: The employer should provide annual or bi-annual health checks for the employees.

Labour Code, Article 37.c: Employees subjected to abuse, sexual harassment, or forced labour have the right to unilaterally terminate the labour contract.

The Labour Code has comprehensive provisions on occupational safety and health in the workplace (see Box 5). According to MOLISA, the number of occupational accidents has been on the rise. In 2017, there were 7 749 workplace accidents which affected 7 907 people. Construction is the industry with the highest incidence of workplace accidents (20.8 % of cases) while agriculture and forestry accounted for 3.8 % of accidents.¹³ **The risks in terms of occupational safety and health lie more in enforcement and implementation than in the law.**

Sanctions for harsh and inhumane treatment that results in serious consequences are provided in the 2015 Civil Code

(Art. 155). The Labour Code does not specifically cover acts of harsh and inhumane treatment in the workplace, except for Article 37 which allows employees who are victims of abuse, sexual harassment or forced labour to unilaterally terminate their labour contracts. The Labour Code does not have definitions of abuse, sexual harassment and other harsh and inhumane acts.

The gap in terms of both legal provisions and enforcement on harsh and inhumane treatment, especially sexual harassment, in the workplace remains high for Vietnam.

II-6 Living Wage

6

Vietnam Labour Code's Provisions on Wages

Article 90.1: The salary rate of the employee must not be lower than the minimal salary rate as prescribed by the Government.

Article 91.1: The minimal salary rate is the lowest rate that is paid to the employees who perform the simplest work in normal working conditions and must ensure the minimal living needs of the employees and their families.

Article 93.1: On the basis of the principles of developing the salary scale, payroll and labour norms prescribed by the Government, the employer is responsible for

developing the salary scale, payroll and labour norm as a basis for labour recruitment and employment, salary agreement in the labour contract and salary payment to the employee.

Article 101.1: The employer is only entitled to deduct from the salary of the employee compensation for damages of tools and equipment of the employer as prescribed in Article 130 of this Code.

Article 128.2: The employers are prohibited from applying cuts to employees' salary as a form of labour discipline.

Vietnam is one of the few countries in Asia that links minimum wage to living wage. Minimum wage is defined in Article 91 of the 2012 Labour Code as *'the lowest payment for an employee who performs the simplest work in normal working conditions and must ensure the minimum living needs of the employee and his/her family'*.

Since 2012, Vietnam has applied 4 regional minimum wages. Payment below the minimum wage is not pervasive in the formal sector in Vietnam. The share of workers in general paid below the minimum wage is around 10 % (see Table 3).

Table 3: The share of workers paid below the minimum wage 2011-13, by gender (%)

	2011	2012	2013	Average
Female	6,5	13,7	15,5	11,0
Male	3,7	8,2	10,0	6,6

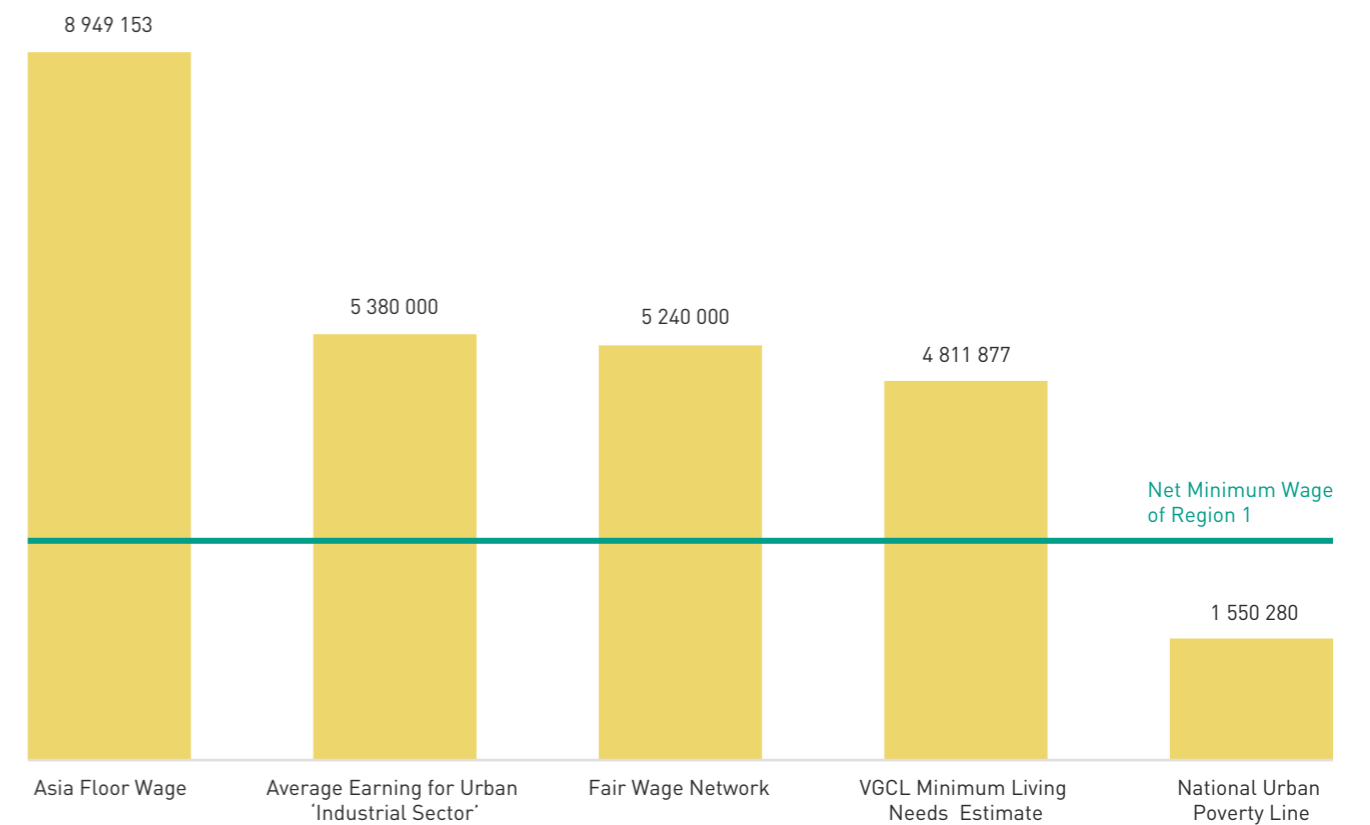
Source: Do and Torm (2015)

Before 2013, the minimum wage was set by the Government in consultation with trade unions and employers' organisations. However, since 2013, the new minimum wage is set by the National Wage Council (NWC) at the end of the year. The National Wage Council is a tripartite body with equal representation of MOLISA, VGCL and Vietnam Chamber of Commerce and Industry (VCCI). Each party consults its own members and develops its own proposal for the new minimum wage. Then, at the annual meeting of the NWC, each party defends their proposal while negotiating for the new minimum wage which takes effect at the beginning of the next year. The debate on minimum wages at the NWC has become increasingly heated over the years, especially when

the issue of whether or not the minimum wage should equal the minimum living needs was taken into account.

On the one hand, the VGCL and the civil society argue that the current minimum still lags far behind the minimum living expenses. As seen in Figure 1, the minimum wage of region 1, which is also the most industrialised area, is higher than the national urban poverty line but it is significantly lower than all living wage benchmarks including the Asia Floor Wage, Fair Wage Network and the estimate of the VGCL of minimum living needs of workers.

Figure 1: Monthly minimum wage of Region 1 vs. Living Wage benchmarks, 2015 (Unit: VND)



Source: FWF (2015)

II-7 No Excessive Working Hours

7

Vietnam Labour Code's Provisions on Working Hours

Article 106.2b: Overtime shall not exceed 50 % of the normal working hours in 1 day, 30 hours in 1 month, and 200 hours or 300 hours in 1 year.

Article 106.2c: After a number of consecutive days of overtime work during one month the employer must arrange for compensatory leave for the duration in which the employee has not taken the leave.

Article 108: 30 minutes paid break when working consecutive 8 hours, 45 minutes paid break for night shift.

Article 109: The employee who works by shift is entitled to a break at least 12 hours before starting another shift.

Article 110.1: In every week, each employee shall be entitled to rest at least 24 consecutive hours. In special cases, if due to the work cycle, the employee cannot take the weekly rest, then the employer shall ensure that the employee is entitled to at least 4 days/ 1 month on average.

Article 111: Employees are entitled to 12 to 14 days annual leave, based on their job condition.

The Labour Code of Vietnam provides for not only weekly but also monthly and annual limits to overtime. The ETI base code only sets a weekly overtime limit of 12 hours (or 48 hours per month). In other words, the current provisions of the Vietnam legislation on overtime hours are stricter than the ETI base code. However, exceeding the overtime limits is one of the most pervasive violations of labour standards by companies in Vietnam. According to the 2013 national survey on Labour and Employment of the General Statistics Office, 36.1 % of workers were working more than 48 hours per week¹⁴. The latest Better Work Vietnam assessments¹⁵ showed that there is a 93 % non-compliance rate with regard to overtime regulations, in particular exceeding the national legal limit of 200 overtime hours per year. Excessive overtime has also been found in electronics, wood processing and food processing (ILO 2016; Do 2017).

For this standard, *the Vietnamese law is stricter than the ETI base code. The risk lies in the enforcement of the law.*

II-8 Legally-Binding Employment Relationship

8

Vietnam legislation on employment contracts

Labour Code, Article 22: an employment contract shall be one of the following types:

- (i) Indefinite-term contract
- (ii) Short-term contract of more than 12 months
- (iii) Seasonal/temporary contract of less than 12 months

The employer is not allowed to sign a temporary contract with a worker who performs long-term work (which lasts for more than 12 months). After signing two short-term contracts with the worker, the employer has the obligation to sign an indefinite-term contract if she/he wants to continue to employ the worker.

Decision 595/QD-BHXH issued on 1 May 2017: Upon signing a labour contract of at least 3 months, an employee is eligible to join the compulsory social and health insurance schemes to which the employer has the obligation to contribute 21.5 % and the employee contributes 10.5% of the base salary.

Vietnam has a large informal economy: 64 % of the total employment is in family farming and (informal) household businesses; only 22 % of the total labour force is employed with labour contracts¹⁶. While the employees with labour contracts are eligible to join the compulsory social and health insurance schemes, those working in agriculture and household businesses can join the voluntary health insurance and pension schemes.

The Vietnamese law on employment contracts and social insurance in the formal enterprise sector matches with the ETI base code (see Box 7); however, the fact that Vietnam has a large informal sector, especially household businesses, poses *a high potential risk for informal workers who are not covered by the national labour law.*



Sorting by size and removal of broken nuts



Photo: IGH-member

Raw cashew nuts



Mapping of the Vietnamese cashew supply chain

Contents Part III

- III-1 Cashew Farming
- III-2 Import and Export
- III-3 Cashew Nut Supply Chain in Vietnam
- III-4 Stakeholders in the Cashew Nut Industry of Vietnam



III-1 Cashew Farming

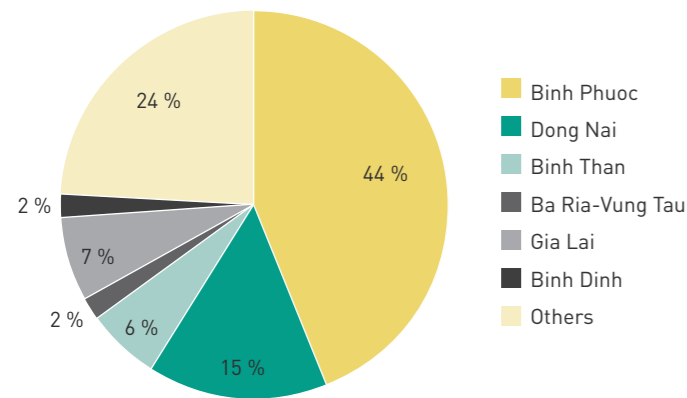
Cashew was introduced in Vietnam in the 19th century. Originally grown in home gardens as a shade tree, the crop was recognized by the Government as an industrial crop in 1989. Since 1990, Vietnam has emerged as a main producer of cashew nut in Asia. In 1988, the country started to process cashew nut for exports. Thanks to the emergence of the cashew markets, the farming area of cashew in Vietnam grew quickly from nearly 200 000 hectares in 2000 to a peak of 440 000 hectares in 2007 (see Table 4). However, the cashew farming area started to shrink in 2008 due to the drop of cashew prices and the emergence of other industrial crops such as rubber, cinnamon, coffee, and pepper. In 2016, the cashew farming area was 300 000 hectares concentrated mainly in the Southeastern region of Vietnam. The two biggest cashew-farming regions are Binh Phuoc (44 %) and Dong Nai (15 %) (see Figure 2).

Table 4: Growth of cashew farming area and productivity

Year	Hectares (thousand ha)	Productivity (kg/ha)
2000	199	640
2001	214	740
2002	241	830
2003	261	910
2004	298	990
2005	350	1070
2006	433	1000
2007	440	1030
2008	407	960
2009	391	860
2010	373	850
2011	363	910
2012	340	850
2013	324	800
2014	289	1200
2015	292	1400
2016	300	1100

Source: Vietnam National Statistical Book

Figure 2: Cashew Farming Regions in Vietnam by Proportion of Area



Source: Department of Plantation, MARD¹⁷

In addition to the reduction of farming area, the fluctuation of cashew productivity is another concern of the cashew industry¹⁸. The Ministry of Agriculture and Rural Development (MARD) estimated that around 30% of the cashew trees in Vietnam are too old (over 20 years old) to achieve the best productivity; not to mention other factors such as climate change and the cashew farmers' lack of effective farming techniques that influence the cashew farms' production. As a result, the overall productivity of cashew farming dropped to 800 kg/ha in 2013 before increasing to 1,4 ton/ha in 2015.

Binh Phuoc Cashew Farming Region

Binh Phuoc, the centre of the Vietnam cashew industry, has 179 000 hectares of cashew, among which 21.8 % are state owned and administered by the forest rangers, whereas the rest are small-sized farms owned by 77 600 farming households in the three districts of Bu Dang, Bu Gia Map and PhuRieng¹⁹. The cashew farmers include both the Kinh majority and Stieng, an ethnic minority in Binh Phuoc. As the average size of a cashew farm is only 2,5 ha²⁰, it is difficult to use intensive farming techniques. Many small-sized farmers do not consider cashew as an industrial crop, they use it to shade trees; therefore, only 45 % of the cashew farmers in Binh Phuoc have invested into grafted seedling, fertilizers, pesticides and machines²¹, resulting in low productivity. 15 % of the farming trees in Binh Phuoc are old and need replacing.²²

In 2017, Binh Phuoc produced 150 000 tonnes of crude cashew (raw cashew nuts), an estimated drop of nearly 50 % of the province's usual production²³ due to bad weather. Overall, the province accounts for nearly 60 % of the national crude cashew harvest.

Binh Phuoc has 286 cashew processing enterprises and 328 household processors. However, only a few processors are able to export cashew kernels while the rest remains at simple processing. In 2015, Binh Phuoc accounted for only 14% of the total cashew export of Vietnam.

In short, although Binh Phuoc is the biggest cashew farming region of Vietnam, the province is facing a lot of challenges in maintaining its productivity, including: ageing cashew trees, poor farming techniques, difficulty in applying techniques for intensive farming due to small farming area, and shrinking cashew farming area.

To solve the problem of lower domestic production, the Vietnam Cashew Association (VINACAS) is implementing 4 initiatives for the period of 2016-2020:

1. Cooperation between companies and cashew farmers in a "re-cultivating and intensively cultivating" programme, aiming to reach 600 000 tonnes in 2020, double the number of 2016.
2. The launch of a "Cleaner and Greener Cashew" programme, with the objective of supplying safe and high quality products. VINACAS commits to 100 % of its members' products meeting food safety requirements.
3. Raising the value of cashew products and focusing on processing and product diversification. VINACAS will carry out activities to stimulate local consumption, which is planned to reach 30 000 tonnes of cashew nuts by 2020.
4. Building a Vietnam National Food Brand for cashew products, increasing and expanding trade and export promotion activities.

In parallel with these domestic programs, VINACAS is also collaborating with Cambodia and Laos to extend cashew farming area and increase productivity. In 2017, VINACAS signed with Cambodia an agreement to enlarge Cambodian cashew farming area to 500,000 hectares so as to produce 1 million tonnes of crude cashew in the near future.²⁴



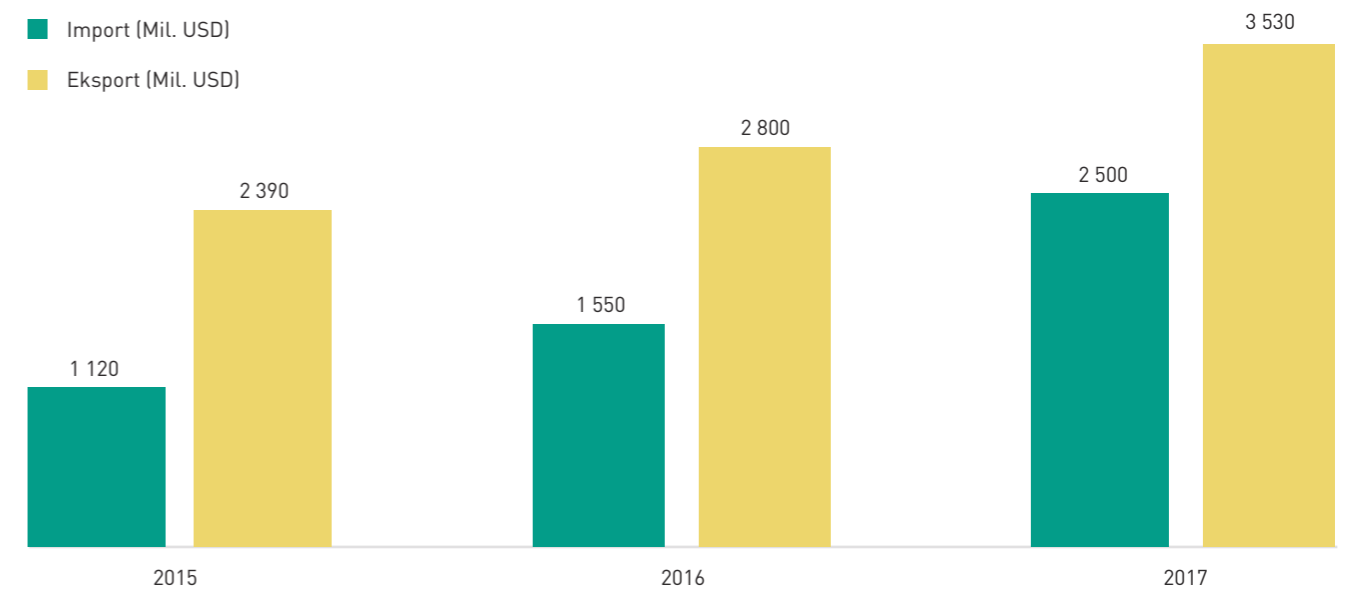
Picture 1: Binh Phuoc Province

III-2 Import and Export

In 2006, Vietnam surpassed India and became the biggest exporter of cashew nuts. The cashew export value has been increasing at the double-digit rate since then. In 2017, Vietnam exported USD 3,53 billions of cashew kernels (see Figure 3). However, due to the reduction of local cashew

production, Vietnam has been increasingly dependent on the imports of crude cashew, mostly from Africa and Cambodia. As shown in Figure 3, the import value accounted for 47 % of export value in 2015 but the proportion rose quickly to 71 % in 2017.

Figure 3: Cashew import vs. export, 2015-2017



Source: Vietnam Customs Office

Imports from Africa

Africa is the biggest cashew farming region of the world, accounting for more than half of global production, but only 10% is processed locally. Vietnam has been importing crude cashew from African countries such as the Ivory Coast, Tanzania, Guinea, Ghana and Nigeria. In 2017, the value of imported cashew from these 5 African countries accounted for 77 % of total import value in the Vietnam cashew industry (VINACAS 2018).

Our interviews with VINACAS and the cashew processors, however, revealed that Africa is not a reliable source of crude cashew for Vietnam, both in terms of cashew quality and traceability. First, there have been a number of cases in which the imported cashew from Africa fell short of the expected quality which resulted in big loss for the Vietnamese importers. Second, some African countries such as the Ivory Coast, Ghana, and Benin have limited the export volume of crude cashew while trying to promote

their own processing capacity. According to VINACAS and the interviewed processors, the Ivory Coast has been trying to purchase cashew processing machinery and technology from Vietnam, which may potentially become a competitive threat to Vietnamese exporters. VINACAS has been strongly opposed to selling cashew shelling and peeling machines produced in Vietnam to African companies in fear of losing its comparative advantage.

Imports from Cambodia

Cambodia with 140 000 hectare of cashew farms which produce 100 000 tonnes of RCN (raw cashew nuts) per year is the second biggest area for importing RCN to Vietnam. In 2017, VINACAS concluded an agreement with the Cambodian Government to extend the cashew farming area to 500 000 hectares and raise the capacity to 1 million tonnes of crude cashew by 2023²⁵. VINACAS will provide both investment and technology to support the Cambodian cashew sector.

With the fluctuations of the African import markets and the difficulty with increasing the production capacity of Vietnam cashew farms, VINACAS is planning to extend their supply of crude cashew to Cambodia which offers both geographical proximity and sustainable cooperation.

Exports

Since 2008, Vietnam has been able to produce its own shelling and peeling machines which are 40-50 % cheaper than those produced by other countries. Thanks to this achievement, the processing sector has grown quickly with the number of processing firms²⁶ almost tripled from 160 in 2014 to 450 in 2017, with a total processing capacity of 1,4 million tonnes of crude cashew per year. However, just a small number of processors have been able to develop their own brands or produce the final cashew products (roasting and coating). The majority of processing firms only produce cashew kernels. According to VINACAS statistics, only 256 companies, approximately 25 %, have been able to export cashew kernels.²⁷

In 2016 and 2017, Vietnam exported cashew nuts to 23 countries. The United States is the biggest export market, accounting for 32 % of the total export value in 2016, followed by Europe (29 %) and China (15 %).²⁸ Among the European countries, the Netherlands is the biggest importer, accounting for 13% of the total export value of cashew from Vietnam (VINACAS 2017).

The continuous growth of cashew export up until 2017 has resulted in the booming of the cashew processing industry. At the same time as new companies have entered the market, the existing ones have invested into expanding their production capacity, which has resulted in harsh competition among the Vietnamese processors and therefore lower export prices in the first half of 2018. For instance, the export price dropped from USD 10,5/kg to USD 9/kg (14.2 %) between January and June 2018. According to VINACAS, 80 % of cashew processors, mostly the small-sized ones, had to suspend production by June 2018 due to decreasing export prices and increasing import prices of African cashew.²⁹

Farmer Households

There are around 200 000 cashew farming households (with 40 % of them located in Binh Phuoc). Most farming households operate separately with family members helping during the harvest season (one to three months). For farms over 5 hectares, the farmers may recruit temporary labour (for a few weeks) to help with harvesting. The farming households sell their harvest to the small collectors/agents who later sell to the bigger middlemen/agents. At the end of each day, the bigger agents sell the cashew they have gathered to the processing firms. From the farms to the processing plant, the raw cashew nuts can be traded by up to 7 different collectors and purchasing agents. Because of this arrangement of selling and gathering, it is difficult to trace the products to the farm or district level except when the processors have established a procurement contract with the farms or cooperatives.

The prices of crude cashew fluctuate throughout the harvest season, usually the highest at the start of the season and from then on gradually declining. For the 2018 season, for example, the price of crude cashew from Binh Phuoc farms dropped by 60 % between the beginning and the end of the season. According to the farmers, the drop in price could be attributed both to the lower quality of cashew nuts harvested towards the end of the season and the pressure of the middlemen to bring the prices down.³⁰

There have been various attempts by the processors/exporters to eliminate the middlemen. Bigger processors such as Olam and Long Son, among others, have sent their procurement teams to the farming regions to buy directly from the farmers. Another initiative is for the processors/exporters to work with cashew cooperatives. The cooperatives often cooperate with the exporting processing firms to ensure the full purchase of their cashew. The processors also support the cooperatives with machineries and planting techniques to improve the productivity and quality of the cashew. Some of the cooperatives in the Binh Phuoc province³¹ now grow organic cashew and sell directly to the exporting processors. Only in these cases can the processors trace the products to the farms.

Processors

There are nearly 1 000 processing sites, both formal enterprises and household businesses, which employ around 1 million workers in Vietnam. The vast majority of cashew processors in Vietnam are small and medium-sized enterprises (SMEs) and household businesses (see Table 5). In recent years, due to the high rate of mechanization in shelling, peeling, and sorting, the labour force size of

cashew processors has reduced significantly. According to the processors in this survey, for instance, the labour force has reduced by up to 70 % in the sorting section. This trend of automation and reduction of low-skilled labour is expected to grow in the future.

Table 5: Overview of the Cashew Processors and Farms

No. of cashew processing enterprises	450 (50 % SMEs)
No. of cashew processing households	500
% of Vietnamese firms	90%
% of foreign-owned firms	10%
No. of exporting firms (2017)	256
No. of workers in processors	1 million

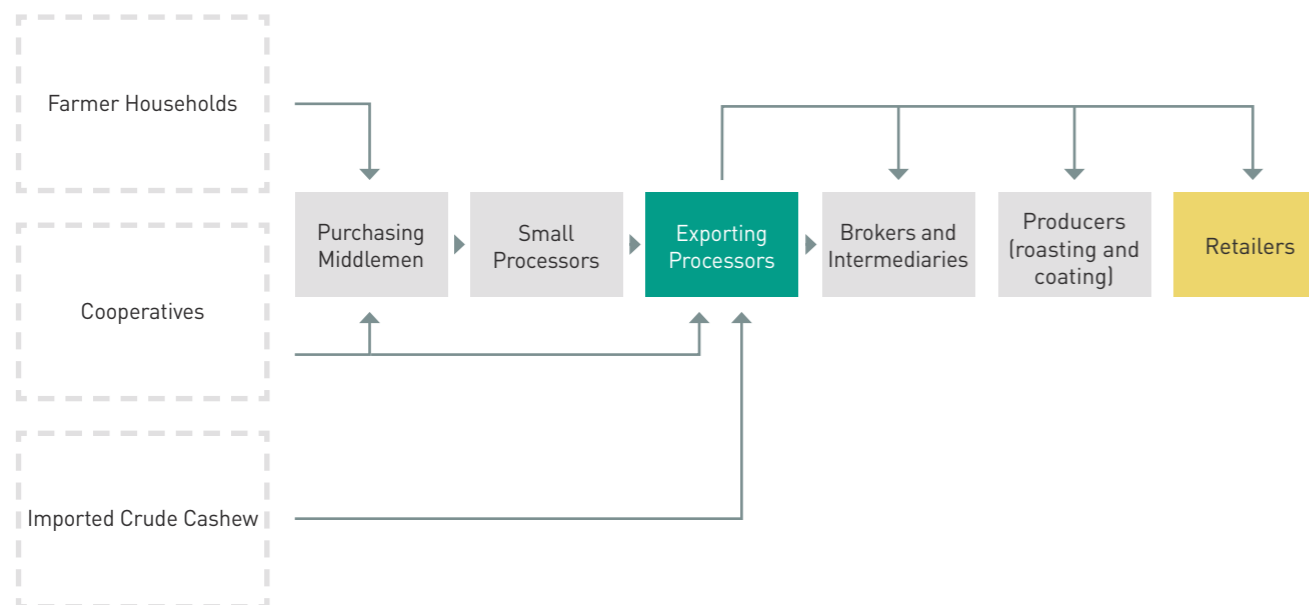
Source: VINACAS 2017

The cashew processors in Vietnam can be categorized into 3 groups:

- Group 1 includes the top exporting companies such as Olam, Long Son, Hoang Son 1, Thao Nguyen, Minh Huy among others that are not only able to export but also develop their own brands and sell directly to retailers in the export markets. There are about 10 companies in this group.
- Group 2 includes the medium-sized processors that are able to export cashew kernels, normally through the intermediaries. There are around 250-300 companies in this group³².
- Group 3 includes the remaining small-sized processors (both registered companies and household businesses) that sub-contract to the exporting companies. There are around 600-700 processors in this group.

III-3 Cashew Nut Supply Chain in Vietnam

Figure 4: Vietnam Cashew Supply Chain



Source: Developed by the author based on interviews with stakeholders

The companies in these 3 groups are linked in various ways:

First, the processors in Group 3 purchase crude cashew from the middlemen (some import from overseas), process into cashew kernels and sell to companies in Group 2. The companies in Group 2 sort, clean and package the cashew kernels before exporting.

Second, the processors in Group 2 and 1 import crude cashew from Africa and/or Cambodia for processing and packaging before exporting. The companies in Group 1 and 2 may outsource some parts of the processing work to companies in Group 3.

Third, a small number of the processors in Group 1 purchase crude cashew locally or import from overseas and carry out the whole processing and packaging process before exporting. In this case, the companies in Group 1 are in control of the whole process.

The cashew processing industry in Vietnam has been facing some noteworthy trends:

- **Merger and acquisition:** according to VINACAS, there has been a trend of foreign-owned cashew firms that acquire or merge with the larger Vietnamese cashew processors, which means that the foreign investors have been growing their influence and share in the Vietnam cashew processing industry.
- **Reduction of labour and improved efficiency:** cashew processing machines produced in Vietnam cost 30-80% less than imported machines with similar quality. This has enabled the processors to cut down on labour, reduce costs and increase efficiency. According to one processor in this survey, they have been able to cut down 70 % of labour in the sorting section over the past 3 years.
- **Concerns about food safety and traceability:** according to Fairtrade, only 22 out of 400 processors are able to maintain ISO and HACCP standard³³. Traceability of crude cashew, especially that imported from Africa, has been challenging.

Intermediaries

Apart from the companies in Group 1 that are able to sell directly to retailers in the consumption markets, processors have to work through a number of intermediaries. For the cashew supply chain to Norway, for instance, there are up to four layers of intermediaries between the processors in Vietnam and the retailers in Norway.³⁴ The barriers to the Vietnamese processors in selling directly to the retailers include:

First, the processors lack market information and marketing skills to approach the retailers. Therefore, the Vietnamese processors have to rely on the agents as a bridge to the retailers. At the same time, the lack of market information prevents the Vietnamese processors from understanding the market trends so as to produce a final product that meets the market demands. Most of Vietnamese processors, therefore, export cashew kernels to producers in Europe who coat the kernels into final products.

Second, the smaller processors lack the necessary capital to guarantee direct contracts with the retailers. A processor in this study admitted that they had to withdraw from a contract to sell directly to an American supermarket because the financial requirements and risks were too high for the company. Consequently, working through the agents releases the financial burden for the smaller processors.

Third, the local processors with a limited number of processing sites and capacity may not be able to respond to the retailers' need for flexibility in sourcing whereas the agents with a number of processing sites both in Vietnam and other countries may satisfy this need.³⁵

Unless the small and medium-sized processors join forces to create larger financial and marketing capacity, it will be difficult to improve their position in the supply chain so as to reduce the number of intermediaries.



Photo: IEH-member

III-4 Stakeholders in the Cashew Nut Industry of Vietnam

The stakeholders below are presented in order to give an understanding of their current role and activities within the cashew industry, or role in promoting decent labour practices or sustainability. This information serves to assist the IEH project and industry stakeholders in exploring activities and collaboration that may strengthen practices within the industry.



Vietnam Cashew Association (VINACAS)

VINACAS was established in 1990 by the Ministry of Agriculture and Rural Development (MARD) as a social and occupational association. VINACAS has over 500 members including processors, traders, brokers, machine producers, research institutes, farmers' associations and individuals. Over 90% of VINACAS member companies are domestic firms including both private and state-owned companies. VINACAS' membership also includes major companies into which foreign companies have invested.

At the provincial level, VINACAS also has 5 associates including the cashew associations of Dong Nai, Binh Phuoc and Long An, and the Farmers' Associations of Dong Nai and Binh Phuoc. VINACAS has formed four clubs including the club of top cashew exporters (G20-VCS), the club of cashew processing technology (CPTEC), the club of best cashew farmers, HCMC cashew club, and the institute of cashew research and development.

VINACAS provides support to its members in 4 different aspects:

- Representing its members' voices in dialogues with the national government to push for policy incentives for the cashew industry.
- Supporting its members in trade promotion and market development. The association frequently organises cashew conferences and festivals to promote the industry. VINACAS has also signed an MOU with the Ivory Coast.
- Providing trainings for its members on the latest technology. A prominent example was Project KC7 in 2011 through which cashew shelling machines were developed and adopted by 90 % of VINACAS member processors.
- Providing up-to-date information about cashew exports,

markets, prices and relevant legislation. The Association updates its members on a regular basis about the cashew kernel prices through newsletters so as to support the member companies in negotiations with the buyers.

The members of VINACAS account for 50 % of cashew processors in the country, mainly the larger-sized companies. The smaller processors which often sub-contract to the exporting firms are scattered in the Southern provinces and do not associate with one another. This will pose a difficulty for the IEH project because, as the research will show, the labour conditions in the smaller processors are much poorer than those in the larger companies.



Trade Unions

The national trade union organisation of Vietnam is the Vietnam General Confederation of Labour (VGCL). The VGCL has 63 provincial and 22 sectoral branches with a membership of over 9 million³⁶. The unionisation rate is 44% in the formal sector and 18% for the whole labour force. There is no sectoral union for the cashew industry; therefore, the unions of cashew processing companies are affiliated with the Federation of Labour (FOL) in their provinces.

Among the provinces where most cashew processors are located, Dong Nai, Binh Duong, Ho Chi Minh City (HCMC) and Long An have stronger labour movements. The trade unions of these four provinces have engaged in several initiatives to strengthen the enterprise unions and provide better support for the workers, such as:

- *ILO's Union Pilots in Dong Nai, Binh Duong, HCMC and Long An:* these pilots are supported by the ILO Vietnam and carried out by the provincial and industrial zone unions to strengthen the capacity of the enterprise unions in collective bargaining and conflict resolution. The pilots also promote social dialogue both at the enterprise and regional levels.³⁷
- *Network of Unions' Legal Aid Centers in industrialized provinces including Dong Nai, Binh Duong, HCMC and Long An:* the VGCL is attempting to develop a strong network of legal aid centres to support workers in resolving individual and collective labour disputes and representing workers in court. The legal aid centre in Dong Nai, for instance, has counselled nearly 150 000 workers and represented over 11 000 workers in court.³⁸



Governmental Agencies

Ministry of Labour, Invalids and Social Affairs (MOLISA): The Ministry is in charge of regulating and enforcing labour standards, labour inspections, labour market policies, labour migration policies, vocational training, and social security policies.

Website: www.molisa.gov.vn

Department of Legal Affairs: the department is in charge of drafting legal documents such as ministerial circulars, governmental decrees on labour issues and labour legislation. At the time of research, the Department is in charge of the revision of the 2012 Labour Code.

Department of Wage and Industrial Relations: the Department is in charge of developing and monitoring the implementation of policies on wages and industrial relations. The Department also acts as the secretariat for the National Minimum Wage Council.

Labour Inspectorate: the labour inspectorate is responsible for monitoring nearly 500 000 enterprises and 35 million workers with regards to 4 areas of (i) occupational safety and health; (ii) wages and employment; (iii) social problems, and (iv) children's issues. The total number of labour inspectors is only 500 in 2015.³⁹ Only one third of the labour inspectors are trained to conduct safety inspections. Due to the shortage of labour inspectors, the Labour Inspectorate has taken a number of initiatives such as:

- Develop provincial networks of safety officers at enterprise levels to collaborate with the labour inspectorates;
- Organise industry-focused inspection campaigns. For instance: Campaign of inspection in garment industry in 2016, electronic industry in 2017 and mining in 2018;
- Encourage enterprises to join self-monitoring surveys administered by the labour inspectorate.

Website: <http://thanhtralaodong.gov.vn/>



Ministry of Agricultural and Rural Development (MARD): apart from making policies and legislation on agricultural and rural development, the Ministry is also responsible for planning of farm land, crop development, prevention of land erosion as well as administration of fertilizers, pesticides and seedlings.

Website: <https://www.mard.gov.vn/Pages/default.aspx>

Institute of Agricultural Sciences for Southern Vietnam (IAS): The research institute is the research arm of MARD in the South of Vietnam. The IAS is responsible for researching new agricultural technologies and seedlings. The IAS has a division of industrial crops including cashew.

Website: <http://iasvn.org/en/>



International Organisations and Civil Society Organisations (CSOs)

International Labour Organisation (ILO) Office in Hanoi: Officially launched in 2002, the ILO Office in Hanoi is the coordinating agency for all the ILO projects and programmes in Vietnam. It mainly focuses on providing technical assistance across a range of key labour market development issues, creating more and better jobs through enterprise development, ensuring basic social services for all, and promoting industrial relations and social dialogue. Additionally, the ILO Office in Hanoi works closely with the tripartite constituents including the Ministry of Labour, Invalids and Social Affairs (Government), the Vietnam General Confederation of Labour (trade union), and the Vietnam Chamber of Commerce and Industry and Vietnam Collaborative Alliances (employers) to provide technical assistance to law-making projects related to labour and social issues.

Website: <http://www.ilo.org/hanoi/lang--en/index.htm>

ILO New Industrial Relations Framework Project (2016-2019): the project aims at supporting the sustainable and inclusive economic growth of Vietnam by building effective industrial relations institutions and practices based on freedom of association and effective recognition of the right to collective bargaining. In particular, the project has the following specific objectives:

- Strengthen the industrial relations legal and institutional framework to conform to the ILO Declaration on Fundamental Principles and Rights at Work.
- Facilitate the Government's introduction of necessary institutional changes to administer the legal framework in line with Vietnam's international obligations as an ILO member State.
- Strengthen the capacity of labour inspection to enforce national and international labour standards.
- Strengthen rights to freedom of association and the right to organize as well as the capacity of trade unions to represent workers at all levels, especially in relation to collective bargaining and social dialogue.
- Enhance employers' capacity to engage in the development of new labour laws and comply with them, as well as VCCI's members' compliance.
- Strengthen public support and industrial relations practitioners' capacity for better compliance with a new industrial relations framework.

Website: https://www.ilo.org/global/topics/collective-bargaining-labour-relations/projects/WCMS_541622/lang--en/index.htm



Friedrich Ebert Stiftung (FES) Vietnam: the German political foundation established its office in Vietnam in 1990. Ever since, FES Vietnam has been active in supporting the VGCL and its branches through training and technical assistance projects.

Website: <https://www.fes-vietnam.org/>

FES/CDI Project on UNGP on Business and Human Rights (2018-2020): The project is funded by the European Union and is part of the EU programme entitled "European Instrument for Democracy and Human Rights" (EIDHR). The project is jointly conducted by FES Vietnam and the Center for Development and Integration, a local NGO and aims to:

- Advocate for the continuation of the labour law revision and ensure access to remedies for victims of corporate abuses.
- Raise awareness and build capacity on EU-Vietnam Fair Trade Agreement trade and sustainable development committee (TSDC) mechanisms among the public and civil society and support their engagement in the implementation and monitoring process.
- Considering the absence of the United Nation Guiding Principles on Business and Human Rights (UNGP) in

public and political discourses in Vietnam the project also aims to promote the UNGP as a tool to ensure compliance with labour and human rights standards in export-oriented industries.



Oxfam Vietnam: Oxfam is an international NGO specialising in rural development and poverty reduction. Since the 2000s, Oxfam has also worked with the VGCL, the only national trade union centre in Vietnam, and Provincial and City Federations of Labour (FOLs), to provide training for union officials. Since 2011, Oxfam Great Britain has joined in this effort by cooperating with European corporations to improve labour standards, especially for rural migrant workers, in their factories and suppliers in Vietnam.

Website: <https://www.oxfam.org/en/countries/vietnam>



Centre for Development Integration (CDI): CDI was established in April 2005 as a non-profit and non-government organization with the objective of promoting sustainable socio-economic development and good governance. The CDI provides consultancy and research services in the areas of gender equality and women's rights, migration, labour and corporate social responsibility.

Website: <http://cdivietnam.org/cdi/>



Research Center for Employment Relations (ERC): is an independent research and training organisation. ERC was established in 2007, focusing on studying labour practices in manufacturing industries and providing labour relations training for export-oriented manufacturing companies.

Website: <http://www.quanhelaodong.com>



Photo: IHH-member

Drying of raw cashew nuts

IV

Labour practices and sustainability in the Vietnamese cashew supply chain

Contents Part

- IV-1 Labour Practices and Sustainability in Cashew Farms in Binh Phuoc
- IV-2 Labour Practices in Cashew Processors



IV-1 Labour Practices and Sustainability in Cashew Farms in Binh Phuoc

The research team carried out interviews at ten farms located in four districts in Binh Phuoc including Dong Xoai, Bu Gia Map, Phu Rieng and Bu Dang (see Table 6). The time of the empirical research was May 2018 when the harvest season was already over. Therefore, we were only able to talk to the farm owners and were unable to reach the workers hired for harvesting on these farms. The farms we visited were of small and medium sizes, ranging from 0,5 to 4,0 hectares. There are two types of cashew farms: the farms that are cultivated by the owners themselves and those that are contracted out to other people (also farmers) for a certain period of time. For the first type of farming, the owners earn from all that their farms produce. In the second type of

farm, the owners will be paid a fixed amount of money (for instance: USD 1 500 for one hectare per year) for the contract period (normally 3-5 years), and the contractors will take the rest of the yield from the contracted farms. Compared to the farm owners, the contractors tend to invest more into fertilizers and pesticides for the farms to make sure they get the highest yield possible. The productivity of the surveyed farms varied, ranging from 1.3 to 2.5 tonnes/ha. According to the farmers, cashew productivity depends on the age and quality of the cashew trees and the appropriate use of fertilizers. The older cashew farms (over 20 years old) have high risks of stem borers and low productivity.

Table 6: Attributes of the surveyed cashew farms in Binh Phuoc

Farms	Location	Type of Farm	Size (ha)	Productivity (tonnes/ha)
Farm 1	Dong Xoai, Binh Phuoc	Household farm (4 families)	4,0	2,5
Farm 2	Dong Xoai, Binh Phuoc	Household farm	1,0	2,0
Farm 3	Bu Gia Map, Binh Phuoc	Household farm (contracted)	2,7	2,3
Farm 4	Bu Gia Map, Binh Phuoc	Household farm	0,5	2,0
Farm 5	Bu Gia Map, Binh Phuoc	Household farm	3,5	1,5
Farm 6	Bu Gia Map, Binh Phuoc	Household farm (Stieng minority)	1,5	1,3
Farm 7	Bu Dang, Binh Phuoc	Household farm (contracted)	3,0	2,5
Farm 8	Bu Dang, Binh Phuoc	Household farm	1,0	2,3
Farm 9	PhuRieng, Binh Phuoc	Household farm	3,0	2,5
Farm 10	PhuRieng, Binh Phuoc	Household farm	3,0	1,7

In the 1980s and 1990s when the cashew trees in Binh Phuoc were not considered an industrial crop and cashew was not exported, the provincial authority granted farming land to encourage migrants from other areas to settle down in Binh Phuoc. These migrants included families from cities who were encouraged by the Government to migrate to develop the remote regions. The second group was the trainees of drug detention centres in Binh Phuoc, who were given pieces of farming land to start a new life in Binh Phuoc after treatment. The local Stieng people, an ethnic minority, used to own large areas of cashew trees but they regarded cashew as shade trees and invested little effort into farming.

In recent years, the area of cashew farming in Binh Phuoc has gradually been replaced by rubber, pepper and other industrial crops. According to the farmers, the decreasing prices and productivity of cashew in the past two years and the higher prices of rubber and pepper have urged them to replace cashew by other more lucrative crops.⁴⁰

Labour in Cashew Farms

Cashew farming is not as labour-intensive as other industrial crops such as rubber or coffee. However, that is not to say that most parts of cashew farming such as placing fertilizers, spraying pesticides, harvesting, and watering cannot be mechanized. Although the level of automation in small-sized farms remains limited, the vast majority of farmers rely

on household labour for cashew farming and only recruit temporary labour for harvesting.

A cashew farm of up to 5 hectares requires 1-2 people for cultivation. Other members of the family are summoned to help out during the harvest season (from February to April). According to the local people, children over the age of 10 occasionally participate in harvesting together with adults in the family. If a worker is hired to support harvesting, she or he is paid based on the quantity of cashew nuts harvested. In the 2018 cashew season, the harvesting workers are paid VND 3 000 per kilo of cashew nuts, which means that each person can earn VND 300 000 to 400 000/day (USD13-17), which is twice the daily minimum wage. The harvesting workers normally work for a few days or a few weeks at most on the basis of oral contracts with the farm owners.

Use of Fertilizers and Pesticides

According to the Deputy Director of Binh Phuoc Agricultural Promotion Department, the local farmers are not using sufficient fertilizers to optimize the productivity of cashew trees. He estimated that only 45 % of cashew farms in Binh Phuoc were using fertilizers, and the level of fertilizers still remains lower than what is needed. In order to achieve high productivity, the farmers have to invest into the best NPK fertilizer which costs VND 8-13 million per hectare per year. However, according to the local agricultural promotion

authority, this level of investment remains lower than necessary to achieve the optimum productivity⁴¹ which can reach 5 tonnes/ha.

The interviewed farmers mainly rely on their own experience and the recommendations of the owners of agricultural supply stores to decide upon which fertilizers and pesticides to use. The agricultural promotion authority organises annual information briefings for the farmers, but according to the farmers, these techniques do not result in high productivity. The farmers we talked to did not have high confidence in the agricultural promotion agency. A farmer said: *‘The agricultural promotion department annually organises showcases of farming techniques for the cashew farmers but I don’t attend anymore because there is nothing new. Their techniques do not work at all. I once applied them and the productivity dropped to 0,7 tonnes/ha only.’*⁴² The reputation of the agricultural promotion authority has further been tainted by a recent incident in which the wrong pesticides provided by this agency to the farmers in Bu Dang district led to serious harms to the cashew farms.⁴³

The agricultural supply stores have grown to be the most popular source of supplies and advice for the farmers. The store keepers are required to undergo a training by the local agricultural department so as to receive a license to sell agricultural supplies. According to the owner of an agricultural supply shop in PhuRieng district, Binh Phuoc, she sold pesticides, herbicides and fertilizers produced by domestic companies and advised the farmers based on her experience.

Environmental Impacts

Our interviews with the local people showed that one of their major concerns is the impact of pesticides and herbicides on the water sources in the province. Although only 45 % of the cashew farms in Binh Phuoc have used pesticides and herbicides which remain at the safe level, according to the Provincial Agricultural Promotion Department and the Farmers’ Union, the lack of appropriate discharge of pesticide bottles, causing spills into lakes or water ways, by some farmers has raised concerns among the local people. When we visited a few local houses, the local people showed us wells which were turbid and smelled. As a result, many local families have to purchase clean water in bottles instead of using water from wells.

Trainings for farmers on how to use pesticides appropriately and safely are rare. Only the farmers who join organic and Fairtrade cashew cooperatives are provided with such trainings so as to comply with the international standards.

Access to credits

A difficulty for the cashew farmers is their limited access to low-cost credits. The procedure and requirements to acquire loans from the banks are cumbersome and difficult for the small farmers. The banks also apply a ceiling rate on agricultural loans which is insufficient for the farmers to sustain their crops. As a result, according to the Ministry of Agricultural and Rural Development (MARD), 63 % of farming households had to resort to informal sources of credits such as families, friends or black market creditors.⁴⁴ The black market creditors are normally the middlemen who purchase cashew from the farmers. With a high interest rate of 30-50 %/year, the farmers have to pay back a large sum of money at the end of the season or sell cashew at much lower prices to the middlemen, which further pushes them into poverty.

Root Causes

The research has identified some causes of the risks in the cashew farming region:

- The small-sized farms lack direct linkage with the processors to secure both technical support and stable prices;
- The current support system by the local government for farmers remains weak and ineffective. Consequently, the farmers lack awareness of good agricultural practices to improve their productivity and prevent adverse environmental impacts.
- The association of farmer households through cooperatives, for instance, remains rare. The case of a cashew organic cooperative in Binh Phuoc is an example of good practice in which the farmers have access to advanced agricultural techniques and knowledge about labour and environmental standards;
- The national labour legislation does not cover the farmer households, which results in the absence of monitoring of labour practices in the agricultural farms.

IV-2 Labour Practices in Cashew Processors

The research team studied 5 processors: 3 processors have been exporting to Europe (both via intermediaries and directly to retailers) and the other two processors are sub-contractors to the exporting firms. The three exporting companies are of different labour force sizes: P2 is a large firm with 18 processing sites and over 4 000 workers; P3 is medium-sized with over 200 workers and P1 is a small enterprise of 70 workers. S1 and S2 are micro businesses that operate as household companies and are managed by the owner couples. There is no foreign-owned company included in this survey.

There is a notable difference between the labour practices of the exporting firms (P1, P2 and P3 in this survey) and the sub-contractors (S2 and S1). The exporting firms that are constantly placed under the scrutiny of the international buyers via social audits tend to comply better with the labour standards, especially in terms of labour contracts, minimum wage, social insurance, OSH, working hours, and union rights. Meanwhile, the small processors have little knowledge of the national labour standards and they are not aware of the legal requirements.

Table 7: Attributes of the Surveyed Processing Factories

Processors	S2	S1	P1	P2	P3
Type of business	Vietnamese private enterprise	Household business	Vietnamese joint-stock exporting enterprise	Joint-stock exporting enterprise	Former SOE (exporting)
No. of processing sites	1	1	01 (one more in construction)	18 (10 more in construction)	1
Labour	50	50	70	4 000	210
Female workers (%)	30 %	60 %	44 %	35 %	75 %
Union	No	No	Yes	Yes	Yes

Processor type 'P' export to Europe. Processor type 'S' are subcontractors that supply to the exporting companies.

Regular Employment

Finding 1: Workers employed by sub-contractors are hired on temporary contracts or have no contracts

The work in the cashew processing factories has the nature of being seasonal and low-skilled. Yet, while the bigger companies secure a large amount of crude cashew that is sufficient for year-long production, the small processors with limited financial and storage capacity tend to produce intensely for 6-8 months and suspend production for the rest of the year. The difference between the two types of processors is demonstrated in the proportion of workers that signed labour contracts with the companies. According to P1, P2 and P3, after a probation period of 3 months, their workers will sign a one-year contract with the company. Our interviews with the workers also prove that 100 % of the workers in these three companies have employment contracts of either one year or indefinite term while over 50 % of the workers in the small processors have no contracts at all. S2, for instance, signed employment contracts with only 10 % of

their employees and many workers in S1 had no idea what an employment contract is. The manager of a small processor explained: *'We sign contracts with the team leaders only. Other workers work on seasonal basis. For instance: some of them worked for us for a few weeks then suddenly quit to return to work in their family's farms for one or two months. After the harvest season, they came back to work for us again. Because of all these (labour) fluctuations, it is difficult to sign employment contracts with them'*⁴⁵

Finding 2: Workers employed by sub-contractors are not covered by the compulsory social and health insurance schemes

In accordance with the 2014 Social Insurance Law, an employer has the responsibility to contribute compulsory social and health insurance for a worker that has an employment contract of at least 3 months (and compulsory social insurance contribution for workers on 1-3 month contracts). In our survey, while all of the interviewed workers from the exporting firms were covered by compulsory social

and health insurance, none of the workers from the small processors (S2 and S1) were.

Finding 3: All processors face labour shortages and high labour turnover rate

All of the companies in this survey, including the biggest firms and the household businesses, have been facing labour shortages. Therefore, while all of the interviewed workers said that it is easy for them to quit the jobs if they want to, the managers complained that the workers often quit without notice or with very short notice.⁴⁶ As a result, all of the surveyed companies have high labour turnover, especially among the rank-and-file work force, which ranges from 30-50 % per year.

Working Hours

Finding 1: Piece-rate workers have a higher tendency to work overtime than workers paid on monthly basis

In the cashew processing firms, the workers paid on piece rate tend to favour overtime work more than those paid on hourly basis. The workers who have secured a monthly income from their regular salary are less likely to work longer hours although most of them are willing to work overtime if required. The workers who are on temporary contracts (or no contracts) and are paid at piece rate try to work as long as they can because they do not have a secured income. The piece-rate workers at some of the surveyed processors tried to cut their one hour lunch break short, in order to work and earn more. One processor had to reduce the light during lunch breaks to prevent workers from resuming work too early.

Finding 2: Exporting firms comply better with the working hour regulations and their workers have higher awareness of the legal provisions

The exporting firms, under the CSR requirements of the buyers, are well aware of the need to comply with the overtime limits. Also, with the high level of automation in the larger cashew processing factories, working overtime has become less necessary than before. During high seasons, which is usually from April to July, the exporting firms will arrange for workers to work 2 shifts (6am-2pm and 2pm-10pm) instead of the usual working time from 7am-5pm (2 hours of lunch break). According to the workers in the exporting firms, they work around 10 hours/day during high seasons, but not on a regular basis, and they have Sundays off. As much as 70 % of the workers in the exporting firms who responded to the survey claimed that they know about the legal provisions on overtime hours.

In the smaller processors, the situation is very different. First, the awareness of the legal standards on working hours is low.

Only one interviewed worker knew about the legal provision on overtime. Second, there is no fixed rule about the working hours in these processors. In one processing site, the machine operators started working at around 2-3am and continued until 1-2pm because 'it is too hot to work during the day' whereas the workers in the checking-grading section worked from 7am until their work was finished which could be from 4-6pm. In another processor, the workers worked all days of the week on a regular basis.

Third, despite the long working hours, the workers in the small processors enjoyed a high level of flexibility with regards to working time. A female worker in the checking-grading section told us: 'I like working here because the [working] time is flexible. I have two children so in the morning I take them to school, then go to work around 8 am and I pick them up around 5 pm. I can come back here to continue working after that if I want to. I also work on Sundays because otherwise, I will waste time staying at home. If my children get sick, I will ask to leave for a few days. If the boss does not have enough work for us during low seasons, I will work for other processors. Then when the boss needs me again, I will come back'. A female worker of 65 years said: 'I like working here as I feel more active working rather than staying at home. If I feel tired, I will leave early. The manager is flexible'. The management of these household processors (who are usually married couples) do not keep record of the working hours of their staff and are not aware of the legal provisions on working hours.

Wages

Finding 1: Higher net pay in sub-contractors than in exporting firms due to the lack of social insurance contribution and long working hours

The processors divide their labour force into two groups: core workers and supporting workers. The core workers are technicians and machine operators who are key to the operation of the factories. The supporting workers are mostly those employed in checking, grading, cleaning and packaging. The core workers are paid on a monthly basis while the supporting workers are paid piece rate.

For workers paid on an hourly basis, the compensation scheme includes the basic salary (which is used as the basis for contribution to the compulsory social and health insurance schemes) and a number of allowances such as attendance allowance, transport allowance, accommodation allowance, allowance for children under 6 years old, among others. Overtime pay fluctuates depending on the production seasons. As seen in Table 8 below, the net basic salary of machine operators and technicians in the three exporting

companies ranges from VND 4,9 to 6 million/month⁴⁸ (USD 213-260/month) compared to the rates of VND 7 to 9 million in the sub-contractors.

Due to the labour shortage, the cashew processors have to compete for workers. The small processors tend to evade social and health insurance and prolong working hours while paying workers more. The exporting firms have to strictly comply with the law and as such, they are not paying as much as the small processors. Such competition may result in two trends: on the one hand, the exporting firms try to increase automation so as to reduce the number of piece-rate workers; on the other hand, the exporting firms tend to outsource the checking-grading work to homeworkers or smaller processors.

Finding 2: Piece-rate workers' earnings may drop below the minimum wage in certain months

We asked the piece-rate workers their highest and lowest monthly income in the first half of 2018 and the differences were considerable: the biggest differences are found among the workers of the small processors (S1 and S2) while those in the exporting firms observed smaller fluctuations. It should be noted, however, that the compensation of the piece-rate workers in the lowest-paid months fell below the regional minimum wages. In particular, the minimum wage (MW) applicable for S1 and S2 in 2018 is VND 3 090 000/month⁴⁹, MW for P3 is VND 3 530 000/month and the MW for P1 and P2 is VND 3 980 000/month. This means that a group of piece-rate workers in S2, P3 and P1 were paid less than the applicable MWs in certain months.

Table 8: Wage Structure of Workers in Cashew Processors, 2018

Wage Structure of Machine Operators and Technicians, May 2018 (Unit: VND)					
Processors	S1	S2	P3	P2	P1
Net basic salary	7 000 000	9 000 000	6 000 000	4 900 000	5 000 000
Overtime	500 000	1 000 000	0	800 000	2 000 000
Allowances	0	0	100 000	1 350 000	400 000
Lunch	No	Yes	No	Yes	Yes
Total	7 500 000	10 000 000	6 000 000	7 050 000	7 400 000

Wage Structure of Piece-rate Workers (Piece-rate), 2018 (Unit: VND)					
Processors	S1	S2	P3	P2	P1
Lowest monthly income (net)	4 500 000	2 500 000	3 400 000	4 500 000	3 000 000
Average monthly income (net)	8 000 000	7 300 000	6 500 000	6 610 000	6 350 000
Highest monthly income (net)	9 000 000	12 000 000	6 600 000	8 000 000	11 800 000

Processor type 'P' export to Europe. Processor type 'S' are subcontractors that supply to the exporting companies.
Source: In-depth interviews with workers, May 2018

According to the management of P1, if a piece-rate worker cannot achieve the MW level, they would talk to the worker, suggesting that he/she considers moving to another company. If the worker insists on working with P1, he/she either needs to try harder to achieve the MW level or accept the pay.

The basic wages paid by the exporting firms in this survey middle range for manufacturing industries in HCMC,

Binh Duong and Dong Nai; yet, without overtime pay, this compensation level lags behind the payment in garment, footwear and electronics (GSO 2017). This is one of the reasons why the exporting firms have found it difficult to recruit and retain workers. P2, for instance, has been recruiting for half a year but still does not have enough workers for its new factory in HCMC (Interview with P2, May 2018).

Occupational Safety and Health and Disciplinary Actions

Finding 1: Mechanisation has reduced the risk of occupational accidents. However, the subcontractors have rarely conducted safety trainings

A cashew has two layers of hard shell between which are caustic substances – cardol and anacardic acid – which can cause vicious burns. As a result, the shelling section used to be highly risky for manual workers. However, with the high rate of automation among the cashew processors in Vietnam, cashew shelling is now carried out by machines with cover, which is safe for the workers. We did not receive any report about burns among the five processors.

All workers in the exporting firms have been trained on OSH while most workers in the small processors have never taken these trainings. Two workers in S2 said they were trained briefly on safety issues by the owner himself.

Finding 2: No serious case of violence was found but remediation procedures for victims are not clearly defined

There were no cases of corporal punishment or harassment found among the interviewed workers in the surveyed companies. When asked if they dare to voice up if they are harassed by the supervisors, 35 % of the workers replied positively while 50 % kept silent and the rest saw no potential risk of harassment in their working environment. There are no formal procedure for victims of sexual harassment to report. For the workers claiming that they would speak up in cases of harassment, they all chose to report to the top management of the companies. It should be noted that none of them said that they would refer to the enterprise union leaders or the local authority in these cases.

Shouting and insults occasionally took place (there were two complaints in S1, one in P1 and one in S1) especially by the supervisors/team leaders when the workers failed to accomplish the production target or made mistakes. In these cases, the workers often kept silent because 'it does not happen too often and we understand that the supervisor was under pressure of an urgent order', a female worker explained.

Freedom of Association and the Right to Collective Bargaining

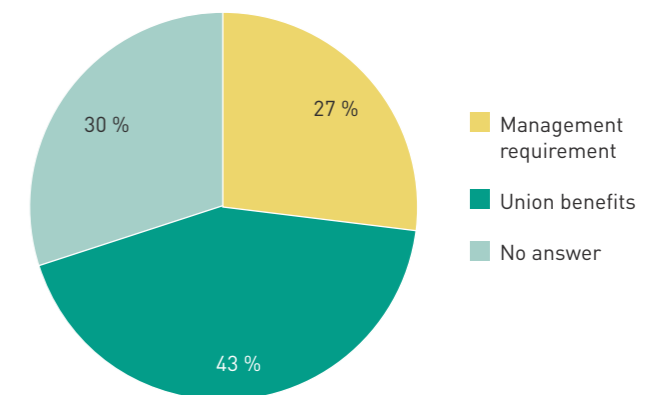
Finding 1: Enterprise unions which are led by managers focus more on welfare management than representing workers' voice

The three exporting firms are unionised while the two subcontractors are not. The union leaders of two exporting companies are department-level managers. These enterprise unions resemble the unions in the state-owned enterprises of Vietnam in which the union chairperson is considered a part

of the management and takes responsibility for managing welfare benefits for the workers (Collins 2013; Clarke et al. 2005). The unions in state owned enterprises (SOEs) act largely as the 'transmission belt' of the management rather than the representative organisation of workers. According to a study by the VGCL, around 60% of enterprise unions in Vietnam are headed by managers (Trinh 2013).

The workers who have signed at least a short-term contract with the exporting firms are eligible to join the enterprise unions. When asked about the reasons for them to join the enterprise unions, 43 % of the interviewed workers in the three exporting firms claimed that they thought the unions would bring benefits such as welfare benefits and grievance-handling. Interestingly, 27 % of the interviewees said that they were required by the management to join the union whereas 30% did not specify their reasons (see Figure 5). In other words, more than half of the interviewed workers were not willing to join the unions.

Figure 5: Why did you join the enterprise union?



Source: In-depth interviews with workers, May 2018

Interviews with the management and union leaders of the three companies shed light on their approach to labour-management relations. The top management of three companies share similar backgrounds: they were managers in state-owned companies or governmental agencies before starting the current businesses. Therefore, they brought with them the paternalistic approach to labour relations, which is typical of the SOEs in the command economy: the union is a component of the management in charge of caring for workers' welfare benefits. The idea of unions that are adversarial to management and represent workers in bargaining and strike organisation is alien to these managers and business owners. Consequently, the fact that an HR manager acts as the union leader presents no conflict of interest as the union leader is supposed to be a managerial position.



Photo: ERC Research Team

Old cashew trees attacked by stem borers

This paternalistic approach is reflected in all union activities in the three companies. When asked what the enterprise unions do for them, the workers claimed that the unions mostly organise annual holiday trips (34 %) and team-building activities (23 %). Surprisingly, 33 % of the workers were not aware of any union activity which reflects the low visibility of the unions in these companies (see Figure 6).

Figure 6: What Unions Do?

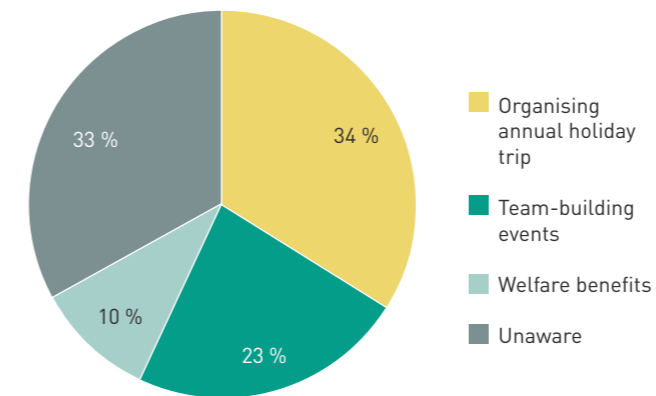
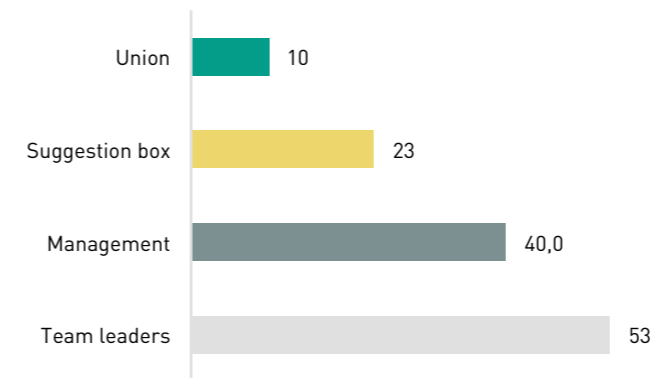


Figure 7: Channels for Workers' Grievances (%)



Source: Interviews with workers, May 2018

Finding 2: When unions are led by managers, workers tend to rely more on their team leaders for handling grievances than the enterprise unionists

When asked through which channel they prefer to handle grievances, the majority of workers answered their team leaders (53 %). The enterprise union officials were the least popular channel⁵⁰ (see Figure 8). A worker explained: 'The team leaders are close to us so it is convenient to tell them our questions. If they cannot respond, they will ask the upper-level managers for us. The union officials are also managers.

If they come to visit our workshops, we can also ask them questions.'

According to the union leaders, the workers occasionally demanded an increased piece rate or improved shift meals. The union leaders would act as an intermediary: talking to the workers and then discussing solutions with the management. According to the union leaders, they were able to satisfy workers' demands most of the time; if not, they would explain the workers why the company was not able to.

The small processors are managed as family businesses with the owner couple managing all issues, ranging from production, workers' welfare to grievance management. According to the workers interviewed, talking to the owners is the only way to raise their questions and grievances.

Finding 3: When management intervention in the union is minimized, the union emerges as an effective channel for grievance-handling

One exporting firm in this study has diverged from the common trend of management unions. According to the deputy director, the company minimized intervention into union activities and let workers elect their own representatives. The enterprise union is led by the safety officer and two team leaders. Although the union has limited voice in negotiating higher wages and working conditions with the employers, it proves to be much more effective than the unions in the other processors in terms of handling workers' grievances. According to our survey, nine out of ten workers interviewed would choose to handle their grievances through the union and six of them found the union effective.

Children and Young Workers

The exporting firms are fully aware that using child labour is a 'zero-tolerance' issue for the buyers; therefore, they always check if the workers recruited are above 18 years old. In the small processors, the situation is more difficult. In one of the sub-contractors, the workers' families were living close to the processing sites. The researchers saw a few children of 10-12 years old checking cashew kernels along with their parents after they returned from school. We asked the owners and were explained that the children did not work regularly as they had to go to school but they would come down to help their parents in their free time to earn some petty money. The owners reassured us that they would only let the children work for one or two hours as they need to do homework.

Our interviews with the local people in Binh Phuoc revealed that it is not uncommon to have children working along

with their parents, often in checking and peeling sections, in household processing sites, usually owned by their parents or cousins, during their free time. The local people did not regard this phenomenon as problematic but as children doing extra work to help their parents out. However, this situation also shows the lack of awareness of the owners of small processors about the legal provisions and international standards. It will be useful for the IEH project to reach out to the small processors which may not directly export to the international buyers but sub-contract to other exporting firms so as to raise their awareness about the need to abide by the core labour standards, including the elimination of child labour.

Freedom to Choose and Leave Employment

Finding 1: Higher awareness and mechanisation help abolishing the use of forced labour in cashew processing

As discussed in Chapter 3, the international media's condemnation of Vietnam for using forced labour for cashew processing in the drug detention centres a decade ago did have substantial impact on the cashew processors and the local government. The Government issued Decree 136 in 2016 to provide for strict conditions of 'therapy labour' in drug detention centres. The Vietnamese cashew exporters, at the warning of the international buyers, have become more cautious so as not to source from drug detention centres.⁵¹

In our interview with Binh Phuoc agricultural authority, they confirmed that the processing sites inside the 3 drug detention centres in the province had been removed although these centres still cultivate a large area of cashew and rubber trees. There are three reasons for these changes: first, the international pressure on abolition of forced labour in the cashew supply chain has resulted in less demand for processed cashew from the drug detention centres; second, with the growing level of automation in cashew processing, using labour in the drug detention centres for cashew processing is no longer a good alternative due to their much lower productivity and quality; third, as the economic benefits of cashew have degraded due to older trees and fluctuating prices, the drug detention centres have replaced large areas of cashew trees with rubber and other industrial crops (see Pictures 2 and 3).

Root Causes

The research found a notable disparity in terms of awareness and compliance between the exporting processors and the sub-contractors in almost all standards. Such differences can be attributed to the following factors:

- The exporting processors are constantly subject to the scrutiny of both local labour inspectors and social auditors. Their ability to export products to the developed markets depends substantially on their compliance with local and international labour standards. Such pressure has improved their awareness and labour practices over the years. On the contrary, the sub-contractors which are mainly household businesses are not exposed to labour inspection or social audits. The sub-contractors' awareness of the law and the pressure to comply with the labour standards remains limited.
- The sub-contractors are fragmented and lack association. As a result, they tend to compete with one another on prices and become highly vulnerable to market fluctuations. Recently, the Chairman of VINACAS reported that over 70 % of cashew processors had to close down during the first half of 2018 due to the decrease of the cashew kernel export price and cost competition among the domestic processors.⁵²
- The complexity of the cashew supply chain poses a challenge for the retailers to ensure monitoring of sustainability issues in the sub-contractors. The retailers often rely on the agents to monitor the compliance of their suppliers and in turn, the agents rely on their immediate suppliers to monitor the sustainability issues in their sub-contractors. The transparency between these layers is not necessarily guaranteed. As a comparative example, in the supply chains of garment and footwear, the first-tier suppliers are required to publicise the sub-contractors they work with and these sub-contractors are only accepted by the buyers if they satisfy the buyers' social audit requirements.

The solutions to these issues need to be developed gradually with careful consideration of the local context. The next chapter, therefore, will look at some of the good practices that already exist to make suggestions for remedies to the risks discussed in this chapter.



Picture 2&3: Cut down trees in a cashew farming area owned by Binh Phuoc Drug Detention Centre in Bu Gia Map district

Source: ERC Research Team, May 2018



Photo: IGH-member

Steaming of cashew nuts for shell removal

V

Good practices and suggested solutions

Contents Part V

- V-1 Good Practices in Cashew Farming: Cashew Cooperatives and Direct Linkage between Farmers and Processors
- V-2 Good Practices in Ensuring Traceability of Cashew Nut Flows
- V-3 Good Practices in Improving Labour Practices in the Supply Chain
- V-4 Good Practices in Social Dialogue and Remedies for Workers



V-1 Good Practices in Cashew Farming: Cashew Cooperatives and Direct Linkage between Farmers and Processors

Training the cashew farmers on good agricultural practices to improve productivity and meet the international quality standards is key to reduce the risks mentioned earlier. Towards this goal, Binh Phuoc set up an alliance of cashew cooperatives with 670 farmer households. The cooperative alliance has obtained the FLO (International Fair Trade standards) certificate. The member farms received intensive trainings on good agricultural practices, chemical safety, and labour standards. The cooperatives also signed direct procurement contracts with exporting processors securing better prices for the farmers.

The success of the cashew cooperatives has encouraged Binh Phuoc to extend the model. However, this process has come with a number of challenges that need concerted efforts to be overcome:

- *Small farmer households' reluctance to join the cooperatives:* when joining the cooperatives, the farmers have to commit to complying with international farming, quality,

environmental and labour standards. It often takes a few years for the cooperative members to be able to satisfy requirements for certification. The smaller farmers, therefore, may not have sufficient resources to commit to this process.

- *Access to low-cost credits for the small farmer households is limited:* to meet the international standards, the small farmers need low-cost and long-term loans to improve their farming conditions. However, small farmers' access to credits from the banks has been limited due to the mortgage requirement and the cumbersome administrative procedures⁵³

While there has not been a comprehensive solution to the issue of access to low-cost credits from the bank, a good practice in overcoming these difficulties was found among the surveyed exporting processors. This company established the direct supply linkage with an organic cashew cooperative in Binh Phuoc. To ensure that the cooperative members meet the international organic farming standards, the company sent their technicians to train and coach the farmers throughout the year until the cashew nuts were harvested. All cashew nuts from the organic cashew cooperative are purchased by the processor at a fixed price. The processor also provided low-cost loans to the poor farmers in the

cooperatives, which they could pay back after harvesting.

However, the farmer-processor linkage model has imminent risks for the processors if they cannot guarantee stable contract arrangements with the buyers. Without a long-term commitment from the buyers in terms of procurement and prices, the market fluctuations may lead to huge losses for the processors in these cases. Therefore, to encourage and scale up the farmer-processor linkage model, it requires the buyers' long-term commitment and support.

In short, the lessons learnt from these good practice include:

- Organise small farmer households in cooperatives where they are trained in good agricultural practices and improve their quality, environmental and labour practices
- Help establish direct supply chain linkage between the cashew cooperatives-processors-buyers through long-term contractual arrangement and support in terms of credits and trainings for the farmers
- Collaborate with the local governments and organisations such as the Farmers' Unions and VINACAS to scale up these models while gradually addressing the institutional barriers (such as access to low-cost credits from banks)

V-2 Good Practices in Ensuring Traceability of Cashew Nut Flows

Establishing the supply chain linkage between cooperatives and processors is the optimum measure to ensure traceability. However, this practice has been limited to organic and Fairtrade farms and members of cooperatives only.

To ensure traceability of non-organic cashew nuts, one of the processors sent their procurement team to each of the farms with standard samples. If the cashew nuts of the farms met the sample standards, the company would set the prices and buy directly from the farm owners. This is a good practice to minimize the role of middlemen and trace the origin of cashew nuts to farms.

Traceability is most difficult in the case of imported cashew nuts from African countries. One processor in this study has been active in improving the traceability of imported cashew nuts. The company has seconded their representatives to the Ivory Coast to work closely with the exporters of crude cashew to both check on the quality and verify the traceability information of the products before shipment. This may not be a feasible option for smaller processors due to the high costs involved. Still, if a group of processors associate with one another to share the costs, this practice can effectively improve both the quality and traceability of imported cashew nuts from Africa.

V-3 Good Practices in Improving Labour Practices in the Supply Chain

As discussed in Chapter 4, the biggest risks of labour abuses lie with the small processors that sub-contract to the exporting companies. The exporting firms in this study were aware of these risks and have tried different ways to mitigate the problems. Depending on the strategy and capacity of each firm, the exporting firms have adopted one of the following solutions:

- Coaching and monitoring the core sub-contractors: one of the processors in this study has established a long-term relationship with its core sub-contractors and provides continuous coaching in both quality control and safety issues. The deputy director of the processor travels regularly to the sub-contractor to monitor the production and provides on-the-spot coaching to the management.
- Creating a closed production cycle: another processor eliminates the risks by carrying out all the production in their own factories, from crude cashew to final products. With a large number of processing sites, the company has the capacity to produce a large volume of products without the need for sub-contracting. All processing sites are closely managed by the company in accordance with local and international standards.

Experience from sustainability monitoring in other supply chains in Vietnam proves that to mitigate the risks in the lower tiers of suppliers, transparency plays a key role⁵⁴. In particular, the retailers and the agents should make clear in their policy that:

- The suppliers must inform the buyers in advance before sub-contracting to other processors;
- The sub-contractor should be aware of and commit to the sustainability standards of the buyers;
- The sub-contractor should be audited to make sure that they meet the minimum sustainability requirements.

V-4 Good Practices in Social Dialogue and Remedies for Workers

As proven by one processor in this study, limited management intervention in the enterprise union has significantly improved the confidence of workers in the union as an effective grievance mechanism. However, in companies where the unions are still led by managers, direct labour-management dialogues should be promoted to provide an alternative remedy for workers to voice their concerns.

The 2012 Labour Code (Chapter 5, Section 1) provides the legal framework for labour-management dialogue in the workplace. In accordance with the Labour Code and Decree 60/2013/ND-CP, the employer and worker representatives must organise direct dialogue every three months to share information, develop mutual understanding and address workers' queries and demands. Compared to other forms of internal communication such as suggestion boxes, talking to line managers and union officials, direct labour-management dialogues have been found to be a more effective tool to prevent labour conflicts and improve workers' productivity and commitment among the garment firms in the Better Work Vietnam project and wood processors in the SCORE project⁵⁵. There are different ways to organise direct labour-management dialogues, such as:

- Dialogues between top management and enterprise union officials: this type of dialogue is in line with the Labour Code and Decree 60/2013/ND-CP

- Dialogues between the top management and all workers (in case of a small company): this type of dialogue enables workers to communicate directly with their top managers to address their grievances
- Dialogues between the managers and a group of workers on certain themes (such as safety, social insurance, working hours, among others): this type of dialogue can be conducted at higher frequency (monthly, for instance) to address the most burning issues at that time
- PICC (Performance Improvement Consultative Committee) dialogue model developed by Better Work Vietnam⁵⁶: in an effort to improve participation of rank-and-file workers, the PICC model allows for rank-and-file workers to elect their representatives to join with the enterprise union officials in dialogues with the top management on working conditions.



Photo: IEL-member



Photo: IEH-member

Drying of raw cashew nuts

VI

Conclusion and recommendations for the IEH project

The study has mapped out the cashew supply chain of Vietnam and identified the potential human rights, labour rights and environmental risks both in the farming area in Binh Phuoc and among the five cashew processors. In particular, the risks include:

- Small farmer households face the risk of impoverishment due to lacking knowledge of good agricultural practices, limited access to low-cost credits, high market fluctuations, ineffective governmental support and the intervention of middlemen.
- The environment in the farming region is subject to adverse impacts due to the mishandling of chemicals by untrained farmer households.
- There are occasional cases of children helping parents with cashew harvesting.
- Limited information about the traceability of cashew nuts imported from Africa.
- The workers in sub-contracting processors face the risks of seasonal work, lack of employment contracts, no coverage of social and health insurance, long working hours, lack of safety trainings, and no union representation.
- The workers in the exporting processors enjoy better labour practices than those in the sub-contractors; yet, they still face the risks of unstable income, in particular for piece-rate workers, ineffective union representation, limited channels for dialogue and grievances.

The study has also identified several good practices among the surveyed processors as well as other industries in Vietnam in addressing the root causes of the aforementioned risks. Upon consideration of the risks and good practices available, the IEH Due Diligence Project may consider the following activities to improve the human rights, labour rights and environmental practices in the cashew supply chain in Vietnam.

1. Collaborate with VINACAS and the provincial governments of major cashew farming regions in providing **training tools for farmers** on good agricultural practices, safe handling of chemicals, and compliance with quality and labour standards. ComCashew, a project that supports the cashew farmers and processors in Africa, has developed a wide range of training tools for farmers which can be used as reference for Vietnam. These trainings can be conducted by trainers in the cooperatives, agricultural promotion agencies, and farmers' unions.
2. Encourage the processors exporting to Norway to **develop direct supply chain linkage** with cashew farms and cooperatives through practical incentives such as negotiating with the eligible processors a long-term contract with stable prices.
3. Encourage the Norwegian retailers and their agents to **increase the transparency in the use of sub-contractors** by the processors. The processors should be required to have a thorough review of their sub-contractors to identify the risks. If possible, a **training programme for the sub-contractors** will be very effective in raising their awareness of the labour law and the need to improve their labour practices.
4. Collaborate with VINACAS to **spread the good practices** in terms of traceability and labour rights among its members and build the **business cases** for such good practices, if possible.
5. Collaborate with VINACAS and the ILO Vietnam to consider the possibility of **adopting good social dialogue models** from the Better Work and SCORE projects in cashew processors.



End notes

- ¹ <https://www.cbi.eu/node/2610/pdf/>
- ² <http://shellingmachine.com/application/Vietnam-cashew-nut-processing-industry.html>
- ³ Although the study focuses on the supply chain of Norwegian retailers, it may be of equal interest for buyers from other countries.
- ⁴ Interview with the Legal Affairs Department, MOLISA, July 2018
- ⁵ Interview with the Legal Affairs Department, MOLISA, July 2018
- ⁶ Expert meeting on revision of industrial relations chapter of the Labour Code, July 2018
- ⁷ <https://thuvienphapluat.vn/van-ban/Vi-pham-hanh-chinh/Nghi-dinh-136-2016-ND-CP-sua-doi-221-2013-ND-CP-ap-dung-xu-ly-hanh-chinh-dua-vao-co-so-cai-nghien-321827.aspx>
- ⁸ Better Work is a project funded by IFC and ILO. In Vietnam, Better Work has nearly 400 member companies in the garment sector, covering 20 percent of the total labour force of the garment exporting sector of the country.
- ⁹ VGCL-FES Survey of 1000 collective bargaining agreements, 2015
- ¹⁰ Interview with the Legal Affairs Department, MOLISA, July 2018
- ¹¹ <http://m.english.vietnamnet.vn/fms/business/184884/companies-warned-about-massive-layoffs-of-workers-over-35.html>
- ¹² Link: http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf
- ¹³ MOLISA, 2018, Public announcement on the situation of occupational accidents in 2017 (Link: http://vniosh.vn/chitiet_NCKH/id/7559/Thong-bao-tinh-hinh-tai-nan-lao-dong-nam-2017)
- ¹⁴ Link to the survey report: <htS2://www.gso.gov.vn/default.aspx?tabid=512&idmid=5&ItemID=12540>
- ¹⁵ Link: <htS2://www.betterwork.org/global/?p=4305>
- ¹⁶ General Statistics Office, Survey on Labour and Employment, 2016
- ¹⁷ http://www.nhandan.com.vn/kinhte/thoi_su/item/34788702-phat-trien-ben-vung-nganh-dieu.html
- ¹⁸ Interview with VINACAS, May 2018
- ¹⁹ The Kinh is the majority ethnicity in Vietnam while the Stieng is a minority.
- ²⁰ Interview with Binh Phuoc agricultural promotion department, May 2018
- ²¹ Ibid.
- ²² <http://baoBinhPhuoc.com.vn/Content/nganh-dieu-binh-phuoc-huong-den-san-xuat-lon-hien-dai-67425>
- ²³ <https://baotintuc.vn/kinh-te/bap-benh-thu-phu-dieu-binh-phuoc-20170322092120013.htm>
- ²⁴ <http://danviet.vn/nha-nong/vn-hop-tacxay-dung-vung-nguyen-lieu-1-trieu-tan-dieu-o-campuchia-829230.html>
- ²⁵ Interview with VINACAS, May 2018
- ²⁶ These are the registered processing companies. The processing household businesses, which are not formally registered as enterprises, are not included in this figure.
- ²⁷ Ibid.
- ²⁸ VINACAS yearbook for 2017
- ²⁹ VINACAS mid-year meeting, June 2018 as reported in: <https://vietnambiz.vn/gia-dieu-xuat-khau-lao-doc-kho-khan-tram-be-73020.html>
- ³⁰ Interviews with cashew farmers in Binh Phuoc, May 2018
- ³¹ In 2016, the cooperative alliance of cashew in Binh Phuoc was established, specializing in organic cashew.
- ³² VINACAS 2018 Handbook
- ³³ http://www.befair.be/drupal_files/public/all-files/report-and-impact-studies/Fairname%20Cashews%20Final%20Report.pdf
- ³⁴ Information provided by IEH Norway, April 2018
- ³⁵ Interviews with Norwegian retailers, August 2018
- ³⁶ VGCL Statistics 2017
- ³⁷ Overview of the ILO Union Pilots can be found here: http://www.ilo.org/hanoi/Whatwedo/Publications/WCMS_635360/lang--en/index.htm
- ³⁸ Ibid.
- ³⁹ <https://dantri.com.vn/viec-lam/thieu-nhan-luc-de-thanh-tra-lao-dong-500-000-doanh-nghiep-35-trieu-lao-dong-20151120121857743.htm>
- ⁴⁰ Interviews with cashew farmers, Binh Phuoc, May 2018
- ⁴¹ Interviews with cashew farmers, Binh Phuoc, May 2018
- ⁴² Interview with a cashew farmer, Bu Dang district, Binh Phuoc, May 2018
- ⁴³ <http://www.nhandan.com.vn/xahoi/tin-tuc/item/37086202-sai-pham-trong-ho-tro-nguoi-trong-dieu-o-binh-phuoc.html>
- ⁴⁴ <http://cafef.vn/kho-vay-ngan-hang-nong-dan-phai-vay-tin-dung-den-de-co-von-san-xuat-20160930152823897.chn>
- ⁴⁵ Interview with the deputy director of a small processor, Binh Phuoc, May 2018.
- ⁴⁶ The Labour Code [Art. 37] requires that a worker with a short-term contract of at least 12 months must give the employer one month's notice before they quit the jobs (3 days' notice in case of temporary workers).
- ⁴⁷ Interview with a shelling machine operator, Binh Phuoc, May 2018
- ⁴⁸ The exchange rate is approximately 1USD=23 000VND
- ⁴⁹ In accordance with Decree 141/2017 issued by the Vietnamese Government on the 2018 regional minimum wages.
- ⁵⁰ Workers were asked to choose one or more channels they used to handle their grievances. Therefore, the total is not 100%
- ⁵¹ Interview with VINACAS, May 2018
- ⁵² As reported by the Chairman of Vinacas on Thanh Nien Daily on 18 June 2018 (Link: <https://thanhnien.vn/tai-chinh-kinh-doanh/nganh-dieu-noi-chien-pha-gia-974338.html>)
- ⁵³ <https://baomoi.com/tin-dung-cho-phat-trien-nong-nghiep-van-kho-tiep-can/c/23551417.epi>
- ⁵⁴ See Do, Q. Chi (2017). The missing link in the chain: Trade regimes and labour standards in the supply chains of garment, footwear and electronics in Vietnam. FES Working Paper (Link: <http://library.fes.de/pdf-files/bueros/vietnam/13479.pdf>)
- ⁵⁵ See the details here: https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_533239/lang--en/index.htm



Photo: IEH-member



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