

Policy brief - May 2018

## Improving minimum wage fixing and strengthening collective bargaining in non-State sector

1. In market sector, wages are usually determined by voluntary negotiation, individually or collectively, between employers and employees. Due to a need for protecting workers at the bottom of the labour market who are vulnerable to extreme low wages and exploitation, mandatory minimum wage policy instruments have been developed and applied in most countries. At the same time, voluntary negotiation (collective bargaining) between employers and trade unions, whether at enterprise or sectoral level, has become a main institution to jointly determine wages and working conditions in market economies, as there is an inherent imbalance of bargaining power between individual employee and employer.

2. International experiences show that when well designed, minimum wage (MW) provides effective protection for workers against unduly low pay, without negative impact on employment. Also international evidences show that collective bargaining contribute to social stability by channeling conflicts between employers and workers into orderly process of joint determination of wages and working conditions, suitable for individual enterprises and/or specific economic sectors, while allowing workers to enjoy equitable share of productivity and economic growth. Combined together, MW and collective bargaining contribute to social justice and economic equity, which helps societies to move towards inclusive growth with political and social stability.

3. The establishment of National Wage Council (NWC) in 2013 is a major progress in Viet Nam's wage fixing policy and practice since Doi Moi (renewal process), for following reasons:

- Before 2013, MW fixing was done by the Government on ad hoc basis, without full participation of representatives of trade unions

and employers' organizations, with two different MW rates, one for foreign direct investment (FDI) and another for all other companies.

- With establishment of NWC, MW fixing has become 1) tripartite process (with the participation of representatives of the Government, workers and employers' organizations), 2) on regular basis (with clear annual timetable for MW adjustment), 3) through institutional process of NWC. The NWC fixes MW rates for four different regions.

### Minimum wages and global supply chains

The effects of MW can be different on different groups of employers and workers. In particular, businesses at lower end of global supply chains may feel their price competitiveness is being squeezed because minimum wage and wages have kept going up in recent years. But we must remember the other side of the equation. The assembly price (or Cut-Make-Trim price), for example, for a shirt or jeans, which Vietnamese suppliers can get from multinational buyers, has remained largely unchanged for almost a decade – in some cases even lowered. That is why employers in the export industries have been under constant pressure to improve the factory efficiency and reduce production costs, with strong desire to keep labour cost low to keep their profit margin which is squeezed between higher minimum wage and low assembly price.

It indicates a need for multinational buyers to have engaging dialogue with Vietnamese suppliers and trade unions to ensure fair share of economic gains and social responsibilities. We all know that many multinational brands and companies made public commitment, through their corporate social responsibility (CSR), to ensuring full compliance with national minimum wages and respecting freedom of association and collective bargaining.

4. MW has risen rather rapidly in 2013-2016 (between 13 – 15 per cent), before slowing down to 7 per cent (2017) and 6.5 per cent (2018). While high MW growth in 2013-2016 can be seen as a catch up of very low MW before 2012, the rapid rise of MW rate has caused concerns about erosion of Viet Nam's export industries' competitiveness, particularly, among employers of low-wage and labour intensive export industries, such as textile, garment, shoes and others.

5. The recent discussions on how to improve or modify minimum wage fixing arrangement has taken place in the above context. How to ensure price competitiveness of Viet Nam's labour intensive export industries, while ensuring basic living standards of workers and their families has become concerns of the Government, employers, workers and their organizations.

6. Formula of MW fixing: When adjusting MW, a number of factors are usually considered. 1) GDP growth rate, which is taken as a proxy measure for productivity growth, 2) Consumer Price Index (CPI) to ensure purchasing power of workers and their families. In addition, ratio of MW to median wages of entire workers (so-called Kaitz index) is often considered to measure impacts of MW on wage distribution of entire workforce, while regional variations of living costs are also considered for regional MWs. The weight given to each factor changes over time and in different countries, depending on national context and stages of economic development. In some countries (such as Belgium), there is a sophisticated formula for MW fixing which minimizes conflicts between tripartite partners, while increasing predictability for economic actors – Government, businesses and workers. There is a need for the Government and social partners to develop a long term policy vision on the roles of MW and build consensus on MW fixing formula.

7. On question of productivity and wage growth: If wage growth keeps surpassing productivity growth, it will erode competitiveness of export industries in the global markets. At the same time, if wage growth keeps lagging behind productivity growth, it will aggravate income distributions between employers and workers, and lead to shrinking wage share of GDP, with a

potentially negative effects on boosting domestic consumptions and inclusive growth. Therefore, it is important to take a balanced approach to productivity and wage growth. That is why in some countries such as Japan and Singapore, tripartite partners agree on a set of principles on productivity (see boxes below).

### Three guiding principles of productivity movement in Japan (1955)

1. The improvement of productivity ultimately will lead to an increase of employment. With regard to transitional surplus labour, the Government and the private sector shall cooperate to adopt appropriate measures to prevent unemployment by, for example, redistributing labour as far as possible from the perspective of the national economy.

2. Regarding specific methods of improving productivity, labour and management shall cooperate in studies and consultations in accordance with the actual conditions of the company concerned.

3. The fruits of the productivity improvement shall be distributed fairly among management, labour unions, and consumers in accordance with the actual condition of the national economy.

### Principles on productivity and wage growth in China

In early days of China's market economy reform, at the 14th Communist Party National Congress in 1992, China adopted a principle which stated wage growth should not be higher than productivity growth. However, as imbalances of China's economy became a major challenge, China modified its principle on productivity-wage at the 18th China's Communist Party National Congress in 2012: wage and productivity growth should go hand in hand, and wages should be jointly determined by management and workers (through collective bargaining).

## Wages and domestic demands

There is a need to see what positive effects new minimum wage can have in boosting domestic demands. Minimum wage affects not only workers whose salary is around that bottom line, but those with higher salaries through adjustment of wage scales within firms. It means higher minimum wage is likely to improve wage incomes of the majority of workers, which can boost domestic consumption and contribute to higher GDP growth.

So, when fixing minimum wage, we should look at different possible effects that this change could have on different sectors, companies with low and high productivity, and the entire national economy.

**8. Regularity of MW adjustment and predictability:** ILO's standard recommendation is that MW adjustment should be made regularly. Irregular adjustments of MW have three main problems: 1) it undermines predictability of MW fixing, and unpredictability tend to create unfavorable environment for enterprise planning and development; 2) if MW adjustment are made after a few years of no adjustments, it requires abrupt and large adjustments, which creates shock for enterprises, and; 3) as a result, the decision to make adjustment more difficult. Combined together, it makes MW fixing institutions irrelevant and less effective. That is why ILO strongly recommend its member states to have regular adjustment of MW. NWC may decide not to increase MW in certain years, but it should be the decision of tripartite parties, which should be announced in accordance with defined time table for MW fixing.

- **Risk of destabilizing industrial relations:** The number of wildcat strikes in Viet Nam have significantly decreased since 2012 and remained stable until 2017. While price stability is the most important factor behind relative stability of industrial relations, there is a high likelihood that the regular MW adjustment since 2014 may have also contributed to the relative stability, as it somehow ensures wage increases for low paid workers in regular and predictable manner. If MW

fixing becomes irregular and unpredictable, it may cause rising number of wildcat strikes.

**9. Legal effects of MW decision:** At present, once NWC makes a decision on MW adjustments for the following year, the new MW rates are enforced through a Government decree. In the world, there are many different practices of giving legal effects to minimum wage adjustments. In some countries, MWs are decided by collective agreements through collective bargaining, without Government intervention, and collective agreements creates binding effects in given sector or regions, which can be enforced by labour inspection. This practice is very rare in Asia. In other countries (such as the US), it is the Congress which decides federal MW with enforceable legal effects. In other countries, it is either President or Prime Minister or Labour Minister who will give legally binding effects by the notification of their official decision, upon receiving recommendation of the MW setting body. Usually, the President, Prime Minister or Labour Minister is expected to fully respect the recommendations of the MW setting body, without making any changes. Viet Nam may also consider making it as the Prime Minister's decision, based on recommendation of the National Wage Council, instead of the decree which is time consuming.

**10. Evidence based MW adjustments:** At present, it is not clear on what basis MW adjustments are made. Effective MW fixing system requires a number of key conditions: 1) reliable wage and labour market statistics on regular basis, which makes it possible for policy-makers and social partners in measuring potential impacts of MW on wages and employment, 2) professional capacity of secretariat for MW fixing body (NWC) to collect and analyze wage and employment statistics, and produce a technical report for tripartite decision-makers for their evidence based MW adjustment decisions. Often, the MW fixing body includes experts (academic researchers specialized in labour law, labour economics) who can present their views and recommendations based on professional capacity to examine potential effects of MW adjustments on jobs and wages. Viet Nam can also consider including a number of independent experts in the NWC decision-making process. A good example is the Low Pay

Commission in the UK and the National MW Council in the Republic of Korea.

**11. Monitoring and evaluation of effects of MW:** Effective monitoring and evaluation of MW effects is important for evidence based MW fixing to maximize its positive effects while minimizing its negative effects. To do so, it requires labour market data as following.

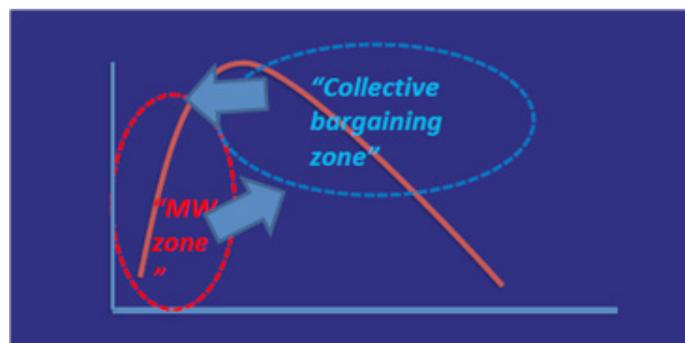
- Effects on employment: Labour force survey
- On wage distribution (by individual workers) to see ripple (spill-over) effects and spike effects: Enterprise wage structure survey
- On income distribution (by household) to see income effects with special reference to working poor family: Household income and expenditure survey
- Non-compliance and effectiveness: Enterprise wage structure survey, labour force survey

**12. How many minimum wages?** Currently NWC fixes four MW rates in four regions. Considering differences in the living costs and prices in four regions, the current system appears to be appropriate. The global trend is to make MW simpler rather than complicated. Too many MW rates by regions and by sectors, particularly when they are not properly coordinated (such as Indonesia), tend to create a number of problems: 1) high level of non-compliance, as enterprises and workers are often not sure which MW rates are applied to them; 2) it crowds out development of collective bargaining.

- **The question of hourly and monthly minimum wages:** In many countries, including China and the Republic of Korea, when new MW rates are decided, it is expressed in both hourly and monthly minimum wage rates. At present, Viet Nam's NWC decides only monthly minimum wages. A serious consideration should be given to setting hourly minimum wage rates, by dividing the monthly minimum wage by number of legal normal working hours a month. Considering diverse working arrangements, including part time work and work in informal economy, hourly minimum wages will provide additional clarity

for MW enforcement. To set up hourly minimum wages, however, there should be authoritative interpretation of Article 104 of the 2012 Labour Code to calculate legal normal monthly working hours, which is not legally clear at the moment.

### Promotion of collective bargaining



13. MW policy is a limited wage policy tool, mainly designed to protect low wage workers from unduly low wage exploitation. There is no statistical research which shows impacts of MW on wage distribution of workers in Viet Nam. However, there are reasons to believe that MW adjustments affect larger number of workers than just low wage workers in Viet Nam. It is because of the regulatory requirements for wage table, with specific requirements for wage differentials between workers at different pay scales within enterprises. This can create larger spill-over effects of MW on entire workforce in private sector.

14. In market economies, it is important to note that wage adjustments are done by voluntary negotiation between workers and employers, particularly collective bargaining between representative organizations of workers and employers (and their organizations, whenever appropriate). The Government refrains from direct interference in wage adjustments in private enterprises. In many advanced market economies, majority of workers' wages are determined by collective agreements, negotiated through collective bargaining. Unlike mandatory minimum wages which apply to all workers concerned regardless of each enterprise or sector's specific economic and social conditions, wage fixing through collective bargaining allows workers' and employers' organization to fully consider specific conditions of enterprises and workers concerned.



## What to do if employers just pay minimum wages or a bit higher than minimum wages?

There are situations where employers may just increase wages a little bit above the minimum wages, while employers may have capacity to pay higher wages. In a way, this is what the Government's Decree 49 on wage (wages scales and table), which is now being revised for improvement, intends to address, by stipulating certain percentage higher wage increase for skilled and experienced workers, than minimum wages. The intention behind the Decree 49 (to avoid a situation where minimum wage or a bit higher than minimum wages becomes actual wages of workers) is good, but the approach of the Decree 49 is questionable in modern market economy.

In modern market economies, wage payment system differs from one sector to another, from one occupation to another. Wage payment can be based on seniority (years of work), job contents, skills, productivity (individual and/or collective), sales, profits and others. It is impossible for the Government to regulate, other than minimum wages, the ways wages are increased within enterprises in many different sectors and occupations. There are some employers who raise some questions about Decree 49, as it may deprive enterprises of their flexibility to adjust wages according to industry and company needs and situation. This problem can be addressed mainly by creating enabling environment for workers, through trade unions, and employers to negotiate wages and working conditions, through collective bargaining.

Therefore collective bargaining offers a flexible tool for employers and workers to decide their wages, which are tailored to their conditions.

15. However, collective bargaining is underdeveloped in Viet Nam. Often collective agreements are little more than replication of legal minimum working conditions, which are not a product of real voluntary negotiation between representatives of workers and employers. Among many problems, two problems require attention of policy-makers, lawmakers and social partners.

16. First problem is related to proper protection of grassroots union leaders and/or workers representatives from unfair labour practice: grassroots union leaders and workers' representatives often fear losing their jobs or facing discrimination if they speak out on behalf of workers. There should be much stronger and effective protection of grassroots union leaders and workers' representatives from employers' discriminatory actions against their work on unions and collective bargaining. Otherwise collective bargaining for determining wages and working conditions cannot become effective in Viet Nam.

17. Second problem is related to prevailing practice where grassroots union leaders are middle or senior managers of the enterprises. It is a long established tradition and structure of enterprise labour relations in Viet Nam. In most countries, it is strictly forbidden by law that management interferes or dominates trade unions, because modern labour relations are built upon a principle of separation between management and union functions, as unions are organizations representing voices of workers, union rights are

workers' rights. Under the current situation, effective representation of workers through trade union in the process of collective bargaining is hard, if not entirely impossible. The situation cannot be changed overnight. But systematic efforts, including revision of relevant provisions in the Labour Code and Trade Union Law, would bring gradual but steady changes to the situation which will make modern industrial relations work in Viet Nam, enabling workers and employers negotiate voluntarily to determine wages, working conditions and their relations.

18. One practical way of promoting collective wage negotiation would be through the NWC. If NWC can make a tripartite recommendation advising and encouraging representatives of trade unions and employers at sector, IZ and enterprise levels to negotiate wages, while announcing new minimum wages for following year, it can facilitate wage negotiations at lower levels. It may facilitate trade unions and employers to negotiate wages between the time of minimum wage announcement and a new year, to determine actual wages through voluntary negotiation and dialogue, in consideration of new minimum wages for next year.

19. Effective collective bargaining contributes to social and political stability by creating orderly channels through which workers and employers can find mutually acceptable solutions to wages, working conditions and their relations. Global research also shows countries with higher collective bargaining coverage is likely to ensure inclusive growth where wages are aligned with productivity growth.

20. In this respect, Chapter 5 and 13 of the 2012 Labour Code need to be revised to ensure the separation of management from union affairs and independence of enterprise trade unions from employers' interference. Also, as an ILO member state, Viet Nam is expected to respect and promote ILO's core Conventions, including those Viet Nam has yet to ratify. Two of these remaining conventions are Convention No 98 on Right to Organize and Collective Bargaining, and Convention No 87 on Freedom of Association and Protection of the Right to Organize, which requires ILO member states to ensure protection of trade union against employers' interference and unfair labour practices.

### Effective collective bargaining facilitates more equitable sharing of economic gains

According to ILO Global Wage Report, higher and effective collective bargaining contributes to more equitable sharing of economic gains. When GDP per capita grows by 1 per cent, wages grow by 0.87 per cent in countries where collective bargaining coverage is higher than 30 per cent, while wages grow by 0.65 per cent in countries where collective bargaining coverage is lower than 30 per cent. If this trend continues, countries with lower collective bargaining coverage will experience widening income and wage gaps between workers and employers. Collective bargaining coverage refers to percentage of workers whose wages and working conditions are determined by collective bargaining.

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