

Ensuring the Rights of Vietnamese Migrant Workers in the Context of the Covid-19 Pandemic: Challenges and Solutions

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Abstract

Broke out since December of 2019, the COVID-19 pandemic has become a global challenge that seriously affected the development of various economies in the world, including Vietnam. According to the Ministry of Labour, War Invalids and Social Affairs of Vietnam (MOLISA), more than 5,000 migrant workers must return home and risk losing their jobs and income. In addition, the migrant workers who still stay abroad are also subject to myriad difficulties in their lives and health situation, underemployment and reduced income, discrimination, prejudice and xenophobia etc. To clarify the legal and practices issues regarding protecting the rights of Vietnamese migrant workers in the context of COVID-19, the article focuses on analysing (i) the status of Vietnamese migrant workers and the impacts of the Covid-19 pandemic on this group; (ii) the regulations of Vietnam related to the rights of migrant workers; (iii) the Vietnamese Government has adopted the policies to protect the rights of Vietnamese migrant workers during the pandemic, and (iv) recommendations for implementation of policies and laws to ensure the rights of Vietnamese migrant workers in similar circumstances.

Keywords: Human Rights, Migrant's Rights, Covid-19 pandemic, Vietnamese migrant worker, Labourer's rights.



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I. INTRODUCTION

1.1. *The Status of Vietnamese Migrant Workers until 2021*

According to The ILO's 2019 report *Global Estimates of Labor Migration: Results and Methodology*, migrant workers accounted for nearly 5% of the global workforce demand, making them an integral part of the world economy. Also, the report states that the COVID-19 crisis increases these risks, especially for female migrant workers because they are overwhelmingly in low-paying, low-skilled jobs, have less access to social security regimes, and have less choice for support services.²

According to the ILO report titled *Asia-Pacific Employment and Social Outlook Report 2020: overcoming the crisis, towards a people-centred future of work*: estimates the economic consequences that The Covid-19 pandemic caused the loss of about 81 million jobs in 2020. The problem has had a far-reaching impact, with underemployment growing as millions of workers are asked to cut their working hours or even not work at all. The report also provides an initial estimate of the regional unemployment rate, according to which the unemployment rate could increase from 4.4% in 2019 to 5.2% - 5.7% in 2020. Due to social distancing orders and quarantine measures, many workers cannot move to their workplace or perform their jobs, significantly affecting their income levels.

For migrant workers, the COVID-19 pandemic has essentially frozen migration. Workers in sending countries with little or no access to the receiving countries can move to the receiving countries due to the social distancing and flight stoppage orders. Dramatically try affects countries' production activities and economic growth, including sending and receiving countries.

In 2020, the COVID-19 pandemic had spread in Vietnam and seriously affected economic and social activities globally, including sending Vietnamese workers to work abroad according to the contract. The receiving countries have issued many regulations restricting the entry of foreign nationals, the suspension of regular commercial flights between Vietnam and some countries receiving the workers, etc. So that, the number of Vietnamese guest workers in 2002 was only 78,641 people, reaching 60.5% of the plan set by the Government.³ By 2021, Vietnam aims to send 90,000 Vietnamese people to work abroad under contracts. Accordingly, in the first three months of 2021, Vietnam sent nearly 30,000 guest workers, reaching 38.82% of the expected plan, equivalent to 92.13% over the same period last year. Japan is the market that receives the most Vietnamese workers with 18,178 workers, followed by Taiwan with 10,333 employees, followed by China (265), Romania (187), Hungary (183), South Korea (135 female

² ILO, "Global migrant workers increased by five million people, (Lao động di cư toàn cầu tăng thêm năm triệu người)," 29 Juni 2021, https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_808937/lang--vi/index.htm.

³ Minh Phuong, 'Vietnamese Guest Workers Get Vaccinated against COVID-19, Look Forward to Visiting Their Hometown during Tet (Lao Động Việt Nam ở Nước Ngoài Tiêm Vaccine COVID-19, Mong Tết về Thăm Quê)', *Labour Magazine Online*, 6 September 2021, <https://laodong.vn/cong-doan/lao-dong-viet-nam-o-nuoc-ngoai-tiem-vaccine-covid-19-mong-tet-ve-tham-que-950217.ldo>.

employees) and Singapore (81).⁴ The Ministry of Labour, Invalids and Social Affairs (MOLISA) has requested labour export enterprises to notify Vietnamese workers of disease prevention measures taken by the host country and report cases of Vietnamese workers being infected with the disease for the authorities to work and live to coordinate smoothly. At the same time, labour export businesses must work with foreign partners to ensure that Vietnamese guest workers receive appropriate treatment if they are infected with COVID-19 abroad.

Thus, it can be seen that, despite many difficulties, Vietnam still tries to send Vietnamese workers to work abroad to create jobs with good incomes for people, and at the same time, develop cooperative relationships with other countries. However, it cannot be denied that the COVID-19 pandemic still strongly impacts Vietnamese guest workers. As of January 2021, more than 26,000 Vietnamese guest workers had to return home. However, they could not return due to no flights due to the pandemic. Only 8,000 Vietnamese guest workers have been safely brought home on commercial flights and special flights to bring Vietnamese citizens home⁵ (mainly from Korea, China, Taiwan, Saudi Arabia, UAE, Japan, Equatorial Guinea).⁶

1.2. The Impacts of Covid-19 Pandemic on Vietnamese Migrant Workers

Due to the effects of the pandemic, Vietnam's legal migrant workers can now be divided into two groups: migrant workers who have returned to Vietnam and migrant workers who continue to stay and work in foreign. Due to their different characteristics, each group has difficulties settling down and living. Specifically:

For the Vietnamese workers who have returned to Vietnam, they often have to replace forced circumstances. Out of 183 migrants interviewed from Ha Tinh, Nghe An and Quang Binh provinces who returned to Vietnam from countries affected by COVID-19, 33% said they did so due to contract termination of employment and 58% due to local jobs in the destination country.⁷ When returned to Vietnam, they encountered difficulties such as:

⁴ Kim Anh, 'MOLISA Protects Vietnamese Guest Workers during Pandemic Time', *Online Newspaper of the Government*, 11 May 2021, <http://news.chinhphu.vn/Home/MOLISA-protects-Vietnamese-guest-workers-during-pandemic-time/20215/43729.vgp>.

⁵ Ha Dung, 'Workers in Korea Re-Register Their Desire to Return Home According to Supported Flights (Lao Động Tại Hàn Quốc Đăng Ký Lại Nguyên Vọng về Nước Theo Các Chuyến Bay Được Hỗ Trợ)', *Nhan Dan*, 5 April 2021, <https://nhandan.vn/tin-tuc-xa-hoi/lao-dong-tai-han-quoc-dang-ky-lai-nguyen-vong-ve-nuoc-theo-cac-chuyen-bay-duoc-ho-tro-640984/>.

⁶ Hong Kieu, 'More than 3,000 Vietnamese Workers Working Abroad Have Been Brought Back Home (Đã Đưa Được Hơn 3.000 Lao Động Việt Nam Làm Việc ở Nước Ngoài về Nước)', *Vietnam Plus*, 3 September 2020, <https://www.vietnamplus.vn/da-dua-duoc-hon-3000-lao-dong-viet-nam-lam-viec-o-nuoc-ngoai-ve-nuoc/660951.vnp>.

⁷ United Nations Vietnam, 'UN Analysis of the Social Impact of the COVID-19 Pandemic on Vietnam and Strategic Policy Recommendations (Phân Tích Của LHQ về Tác Động Xã Hội Của Đại Dịch COVID-19)' (Hanoi, Vietnam, 2020), <https://www.unicef.org/vietnam/media/6006/file/Ph%C3%A2n%20t%C3%ADch%20c%E1%BB%A7a%20LHQ%20v%E1%BB%81%20t%C3%A1c%20%C4%91%E1%BB%99ng%20x%C3%A3%20h%E1%BB%99i%20c%E1%BB%A7a%20%C4%91%E1%BA%A1i%20d%E1%BB%8Bch%20COVID-19.pdf>.

- *The Covid-19 epidemic has pushed many workers into unemployment and forced many of them to become informal workers:* This is the reality for Vietnamese guest workers after returning home in the context of the pandemic in Vietnam. Domestic enterprises have also suffered severe consequences due to the pandemic. According to statistics of MOLISA, Covid-19 has forced businesses to withdraw from the market and stop doing business in large numbers. The formal sector's labour market tends to shrink. The informal labour force has lost jobs and has to stop working, accounting for a significant proportion temporarily; employed workers decreased, the unemployment rate and underemployment increased. In 2021, the pandemic situation was longer and more complicated than in 2020, causing millions of people to lose their jobs. The number of jobs in industries has continued to decrease, especially in the service sector. Unemployment in industry and construction was 16.3 million people, down 254.2 thousand people compared to year.⁸ The number of businesses having to suspend or dissolve temporarily has increased rapidly.⁹ Businesses that are still operating will also have to cut staff or reduce employee hours.¹⁰ It is very rare for companies to recruit new employees in the current situation. Therefore, for Vietnamese guest workers returning home at this time, finding jobs is difficult.

In many cases, they have to accept a lower-paying job, either out of work or at home waiting for a job. It leads to them having no or reduced income, significantly affecting their lives. Some cases have had to borrow money to cover expenses for going abroad, but if they have not paid off this debt while working abroad, they will now return to their home country and couldn't find a job, the financial burden is even heavier. It is also happening with Vietnamese workers who are waiting to export labour. They are looking for temporary jobs while waiting to work abroad and still have to pay off loans from banks or relatives, family to attend training or deposit.¹¹

- *Difficulties in reintegration into the community:* Vietnamese guest workers are often highly skilled (because they have to meet the requirements of foreign employers), good foreign languages, so when they return home, they often find high-paying jobs that match the position's capacity. However, in the current context, this is quite difficult. In addition, in the 4th pandemic in Viet Nam (from April 2021), many provinces and

⁸ Hoang Manh, 'Covid-19 "Storm" with Implications for the Labour Market ("Bão" COVID-19 Với Ảnh Hưởng Tới Thị Trường Lao Động)', *Dantri News*, 2 February 2022, <https://dantri.com.vn/lao-dong-viec-lam/bao-covid19-voi-nhung-he-luy-toi-thi-truong-lao-dong-20220130213753655.htm>.

⁹ According to the data of the Ministry of Industry and Trade, in the first 6 months of 2021, 70,209 enterprises withdrew from the market, of which the number of enterprises suspending business in the first 6 months of the year was 35,607, up 22.1% compared to the previous year. with the same period in 2020. There were 9,942 enterprises dissolved in the first 6 months of 2021, up 33.8% over the same period in 2020. Read more at: <https://moit.gov.vn/tin-tuc/bo-cong-thuong-voi-doanh-nghiep/thay-gi-tu-70.209-doanh-nghiep-rut-lui-khoi-thi-truong.html> accessed 10 September 2021

¹⁰ Duc Thien, '40% of Small and Medium Enterprises in Vietnam Have to Cut Staff (40% Doanh Nghiệp Vừa và Nhỏ Tại Việt Nam Phải Cắt Giảm Nhân Sự)', *Tuoi Tre Online*, 7 May 2021, <https://tuoitre.vn/40-doanh-nghiep-vua-va-nho-tai-viet-nam-phai-cat-giam-nhan-su-2021050715481811.htm>.

¹¹ Nguyen Khanh, 'Labor Exports Stalled Due to the COVID-19 Epidemic (Xuất Khẩu Lao Động Đình Trệ về Dịch COVID-19)', *Vinh Phuc Online*, 10 June 2021, <http://baovinhphuc.com.vn/xa-hoi/63228/xuat-khau-lao-dong-dinh-tre-vi-dich-covid-19.html>.

cities implemented long-term social distancing, which means that all people have to stay at home more.¹² For Vietnamese workers abroad for a long time, the lifestyle and habits may change a lot (in accordance with the country where they work), this may lead to conflicts in the family, increasing domestic violence, increasing divorce rate.

- *Impact of COVID-19 on migration decision-making:* In partnership with the Vietnam Women's Union, IOM Viet Nam has conducted the Knowledge, Attitude and Practices survey on Safe Migration and Counter Trafficking Awareness among 2,000 Vietnamese migrants, including returnees and migrants planning to work abroad. In the survey, nearly 82 per cent of respondents reported their migration decision was affected by the pandemic. Among those affected, 85 per cent would delay the migration until the pandemic ends or is under control. Uncertainty about continuing the spread of the COVID-19, getting sick from the virus at the destination, and lacking adequate medical support might make migrants reluctant to migrate again.¹³

For Vietnamese guest workers who are still abroad, they face difficulties such as:

- *Losing jobs, reducing incomes:* According to the ILO, it is very clear that almost every country is going through a challenging time as the whole world is facing a severe unprecedented crisis, the worst crisis since World War II. With lockdown and social distancing measures being applied in different ways, the global health crisis is rapidly turning into a worldwide socio-economic crisis. The ILO estimates that the COVID-19 crisis could push the global unemployment rate to 200 million by 2022. The regions hardest hit in the first half of 2021 are Latin America & the Caribbean, Europe and Central Asia.¹⁴ In countries with many Vietnamese people going to work such as Japan,

¹² Since the first months of 2020, when Vietnam began to appear cases of covid-19, Vietnam has taken many measures to prevent and control the spread of corona virus, including social isolation measures or social distancing. On April 1, 2020, Vietnam applied social isolation in accordance with the Prime Minister's Directive No. 16/CT-TTg on the implementation of urgent measures to prevent and control the COVID-19 epidemic. Families are isolated from families, villages are isolated from villages, communes are isolated from communes, districts are isolated from districts, provinces are isolated from provinces, workshops and production plants must maintain a safe distance, wear masks, site, disinfect and disinfect according to regulations. Ask everyone to stay at home, only going out in case of absolute necessity such as buying food, food, medicine, emergency, working at factories, production facilities, business and service establishments. , essential goods are not subject to closures, shutdowns and other emergencies; strictly implement the minimum distance of 2m when communicating; do not gather more than 2 people outside of offices, schools, hospitals and in public places. Since then, each outbreak of an epidemic, Vietnam has implemented distance in each province (depending on the extent of the spread of each wave). From July 2021 to present, Vietnam is implementing social distancing under Directive 16 with 19 southern provinces, Hanoi, Da Nang... Read more at: https://moh.gov.vn/hoat-dong-cua-lanh-dao-bo/-/asset_publisher/TW6LTp1ZtwaN/content/thu-tuong-chi-thi-cach-ly-toan-xa-hoi-tu-0-gio-1-4-tren-pham-vi-toan-quoc; https://moh.gov.vn/hoat-dong-cua-lanh-dao-bo/-/asset_publisher/TW6LTp1ZtwaN/content/thu-tuong-chinh-phu-ong-y-thuc-hien-gian-cach-xa-hoi-19-tinh-thanh-pho-theo-chi-thi-16; <https://covid19.gov.vn/gian-cach-xa-hoi-toan-thanh-pho-ha-noi-tu-6h-ngay-24-7-1717421114.htm>; <https://dangcongsan.vn/y-te/da-nang-tu-18-gio-00-phut-ngay-31-7-thuc-hien-gian-cach-xa-hoi-toan-thanh-pho-586880.html> accessed 15 September 2021

¹³ IOM UN Migration, 'IOM Vietnam COVID-19 Response', October 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/iom_viet_nam_sitrep_edited_final.pdf.

¹⁴ UN News, 'COVID Crisis to Push Global Unemployment over 200 Million Marks in 2022', 2021, <https://news.un.org/en/story/2021/06/1093182>.

Korea, and Thailand, the number of unemployed people also recorded a rapid increase. Specifically, in Japan, the unemployment rate in May 2021 increased to 3%.¹⁵ Thailand also recorded the highest unemployment rate in the first quarter of 2021 in the past 12 years,¹⁶ or Korea also recorded the highest unemployment rate in the past ten years.¹⁷ With the unemployment rate increasing in most countries, it can be seen that the loss of jobs for Vietnamese workers abroad is also increasing. Even after being vaccinated, getting a job is still very difficult. When working hours are cut or laid off, living abroad is difficult due to the high cost of living. Meanwhile, returning to the country is not easy because of the high price, the number of people registering to return home is large while the number of flights is small.

- *Facing discrimination, prejudice and xenophobia*: Prior to the pandemic, female migrant workers faced various forms of discrimination and stigmatization.¹⁸ The public health crisis worsens it by fueling social stigma against some groups subjects, communities or nationalities such as certain racial and ethnic groups, including Asian Americans, Pacific Islanders, Blacks or African Americans; a person who has tested positive for COVID-19 has recovered from COVID or has finished quarantine with COVID; people in the emergency services or medical personnel... Discrimination against these groups of people can take the form of being avoided or refused help by others, being denied health care, education, housing or employment, verbal abuse or violence.¹⁹ When infected with COVID, Vietnamese guest workers will likely face discrimination and discrimination in the receiving country. If not treated and supported in time, it will endanger their lives. For groups of Vietnamese workers working abroad under contracts, they can still find help and support from the Embassy or labor export enterprises, but with the group of illegal workers, it is difficult to find help.

¹⁵ Dao Thanh Tung, 'Japan, the Unemployment Rate Increased Sharply Due to the Fourth Wave of COVID-19 Infections (Nhật Bản, Tỷ Lệ Thất Nghiệp Tăng Mạnh Do Làn Sóng Lây Nhiễm COVID-19 Thứ Tư)', *Vietnam News Agency*, 29 June 2021, <https://ncov.vnnet.vn/tin-tuc/nhat-ban-ty-le-that-nghiep-tang-manh-do-lan-song-lay-nhiem-covid-19-thu-4/7f23c567-16fc-4ffb-bbb9-f58e724e8848>.

¹⁶ Thao Nguyen, 'The COVID-19 Epidemic Caused the Unemployment Rate in Thailand to Reach a Record High (Dịch COVID-19 Khiến Tỷ Lệ Thất Nghiệp ở Thái Lan Cao Kỳ Lục)', *Nhan Dan Online*, 24 May 2021, <https://nhandan.vn/tin-tuc/the-gioi/dich-covid-19-khien-ty-le-that-nghiep-o-thai-lan-cau-ky-luc-647611/>.

¹⁷ Binh Minh, 'The Unemployment Rate in South Korea Hit a 10-Year High Due to COVID (Tỷ Lệ Thất Nghiệp ở Hàn Quốc Lên Cao Nhất 10 Năm Do COVID)', *VnEconomy*, 13 January 2021, <https://vneconomy.vn/ty-le-that-nghiep-o-han-quoc-len-cau-nhat-10-nam-do-covid.htm>.

¹⁸ Hyunggun Kim et al., 'A Study on Legislative Strategies for Ensuring Gender Equality on the Viet Nam's Law on Vietnamese Guest Workers' (Korea Legislation Research Institute and Institute of State and Law, 2018).

¹⁹ CDC, 'Reducing Stigma', accessed 13 September 2021, <https://www.cdc.gov/mentalhealth/stress-coping/reduce-stigma/index.html>.

II. THE REGULATIONS OF VIETNAM RELATED TO THE RIGHTS OF MIGRANT WORKERS

From the 1980s of the last centuries up to now, the Party and the State of Vietnam have had guidelines, policies, and legal regulations to encourage, support and create conditions for workers to work abroad under the law in line with the country's socio-economic development situation, as well as the cooperation relationship between Vietnam and other countries and regions in the world.

Right from the 1992 Constitution to the 2001 amended and supplemented Constitution and the 2013 Constitution, Vietnam has always determined that Vietnamese citizens have the right to freedom of movement, the right to go abroad, and when abroad, Vietnamese citizens are protected by the State of the Socialist Republic of Vietnam.²⁰ Accordingly, the Labour Code 1994 also began to recognize the sending of Vietnamese workers to work abroad for a definite term in Articles 18, 134, 184. These terms have been specified in more detail in the Government's Decree No. 07/CP dated January 20, 1995, detailing some articles of the Labour Code sending Vietnamese workers to work term employment abroad.

Since then, based on international treaties to which Vietnam is a member and socio-economic realities, Vietnam has relatively fully and comprehensively codified the rights of Vietnamese migrant workers. The regulations clearly state the rights, obligations, and prohibited acts of related parties, including enterprises, organizations sending workers for work abroad, guarantors for workers working abroad and organizations and individuals related to the laborer's going to work overseas under contracts to ensure the rights of Vietnamese guest workers. In addition to the general provisions on workers' rights in the Vietnam Labor Code 2019 (enter into force in January 2021), the rights of migrant workers are also regulated in more detail and specificity in the Law on Vietnamese guest workers 2020.

The Law on Vietnamese guest workers 2020 will enter into force in January 2022. Therefore, the Law on Vietnamese guest workers 2006 has remained in effect. The provisions of the law 2006 are concretized in two documents: Decree No. 38/2020/ND-CP of the Government dated April 3, 2020, detailing the implementation of many articles of the law on Vietnamese guest workers and Decree No. 28/2020/ND-CP of the Government dated March 1, 2020, stipulating penalties for administrative violations in the fields of labor, social insurance, employment Vietnamese guest workers.²¹ In addition

²⁰ Article 68 of the 1992 Constitution (amended through 2001), Article 17 of the 2013 Constitution.

²¹ In addition to the above documents, the rights of migrant workers are guaranteed through many other legal documents in different fields, for example: Law on Gender Equality in 2006, Law on Marriage and Family 2014, Criminal Code 2015 (amended in 2017); Civil Code 2015, Law on Children 2016, Law on exit and entry of Vietnamese citizens in 2019, etc. These documents will be evaluated in different aspects related to ensuring the rights of guest workers.

to the provisions of Vietnamese law, the rights of migrant workers are guaranteed on the basis of international treaties to which Vietnam is a member.²²

The rights of Vietnamese guest workers working are part of human rights in general, so it is also guaranteed to be enforced and protected by the policies and laws of the State of Vietnam. For migrant workers, before emigrating, workers are guaranteed the following rights: (i) Right to be provided with information about Vietnam's policies and laws about Vietnamese guest workers; policies, laws and customs and practices of the host country related to the employees²³; (ii) the right to be consulted and supported to exercise rights, perform obligations and enjoy benefits in labor contracts and vocational training contracts²⁴; (iii) the right to be consulted and supported in job creation, starting a business after returning home, and accessing voluntary psychosocial counselling services²⁵; (iv) To have their rights and legitimate interests protected by Vietnamese diplomatic agency in accordance with Vietnamese law, the law of the country where the employee works, international laws and practices during the working period. In another country, receive advice and support to exercise rights obligations and enjoy benefits in the labor contract.²⁶

In the destination country, Vietnamese law recognizes that Vietnamese migrant workers have the following rights: (i) Right to salary, remuneration, medical examination and treatment regime, social insurance, labor accident insurance activities and other benefits and regimes; repatriation, wages, income and other lawful properties of individuals in accordance with the provisions of Vietnamese law and the law of the receiving country²⁷; (ii) The right to protection of lawful and legitimate rights and interests while working abroad in accordance with Vietnamese law, the law of the destination country, international laws²⁸; (iii) The right to unilaterally terminate the contract when the employer is abusive, forced to work or has a clear and direct threat to life, health or is sexually harassed while working in the country outside²⁹; (iv) The right to receive support policies on labor, employment and benefits from the Overseas Employment Support Fund as prescribed by law³⁰; (v) The right to complain, denounce

²² Vietnam signed many bilateral international treaties such as the Agreement on Prevention of Trafficking in Women and Children with Cambodia in 2005 and Thailand in 2008, the Agreement on Prevention of Trafficking in Persons with Laos in 2010 and China in 2010; and multilateral international treaties such as the C105 - Abolition of Forced Labour Convention 1957 (Convention concerning the Abolition of Forced Labour), the C111 - Discrimination (Employment and Occupation) Convention 1958 (Convention concerning Discrimination in Respect of Employment and Occupation), and C100 - Equal Remuneration Convention 1951 (Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value), C122 - Employment Policy Convention 1964, Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW), Convention on the Rights of the Child 1989, C182 - Worst Forms of Child Labour Convention 1999, Convention against Transnational Organized Crime 2000.

²³ National Assembly of Vietnam, 'Law No. 69/2020/QH14 on Vietnamese Guest Workers 2020', Pub. L. No. Law No. 69/2020/QH14 (2020), Point a, Clause 1, Article 6.

²⁴ National Assembly of Vietnam, Point a, Clause 1, Article 6.

²⁵ National Assembly of Vietnam, Point i, Clause 1, Article 6.

²⁶ National Assembly of Vietnam, Point b, Clause 1, Article 6.

²⁷ National Assembly of Vietnam, Point c, Clause 1, Article 6.

²⁸ National Assembly of Vietnam, Point d, Clause 1, Article 6.

²⁹ National Assembly of Vietnam, Point đ, Clause 1, Article 6.

³⁰ National Assembly of Vietnam, Point g, Clause 1, Article 6.

and initiate lawsuits about violations of the law in the field of Vietnamese workers working abroad under contracts³¹;

In addition to the rights mentioned earlier, Vietnamese guest workers are also entitled to rights corresponding to contracts sending them to work abroad and protected by the Vietnam State.³² In addition, Vietnam has also developed a Code of Conduct to ensure responsible and ethical recruitment developed by the Vietnam Labor Export Association in 2010 (updated in 2018). At the same time, the establishment of Consulting Centers to support Vietnamese guest workers has helped to enhance access to information and justice for workers. The role of trade unions in monitoring the implementation of the law and protecting workers' rights is also promoted through cooperation with trade unions in the countries of destination.

Especially for vulnerable migrant workers, Vietnamese law has specific provisions for protecting their human rights. Specifically, Vietnamese law emphasizes the principle of gender equality and non-discrimination treatment in the selection, fostering vocational skills, foreign languages, orientation education for Vietnamese guest workers, taking measures to support and protect Vietnamese migrant workers consistent with gender characteristics.³³ For migrant workers who are the poor and ethnic minorities, the law also recognizes the support and priority regimes in vocational training, foreign languages, and necessary knowledge training, including Vocational training tuition fees, foreign languages, fostering necessary knowledge; Meals during the actual study period; Travel expenses; Housing and essential personal belongings; Support the cost of a passport, visa, health check, criminal record before going to work abroad under the law; Support to deal with risks while working abroad in accordance with the law; Support training costs, improve skills in case the receiving country requires. Employees of poor households and ethnic minorities are supported by the Vietnam Bank for Social Policies to get loans to work abroad.³⁴

After returning home, Vietnamese guest workers will be supported to create jobs, start a business, support social integration, and access voluntary psychosocial counselling services.³⁵

In addition, the Vietnamese law has established a coordination mechanism among three ministries, including the Ministry of Labor, Invalids and Social Affairs, the Ministry of Foreign Affairs and the Ministry of Public Security. In particular, the Ministry of Labor, Invalids and Social Affairs has established the Department of Overseas Labor (DOLAB) - a unit competent to license and manage companies opening labor export services. DOLAB holds the responsibility on behalf of the Ministry of Labor,

³¹ National Assembly of Vietnam, Point h, Clause 1, Article 6.

³² National Assembly of Vietnam, 'The Constitution Of The Socialist Republic Of Vietnam 2013' (2013), Article 17; National Assembly of Vietnam, Law No. 69/2020/QH14 on Vietnamese guest workers 2020, Article 4.

³³ National Assembly of Vietnam, Law No. 69/2020/QH14 on Vietnamese guest workers 2020, Article 4, 6.

³⁴ National Assembly of Vietnam, 'Decree No. 61/2015/ND-CP on Job Creation Policies and the National Employment Fund' (2015), <http://vbpl.vn/TW/Pages/vbpq-van-ban-goc.aspx?ItemID=70173>.

³⁵ National Assembly of Vietnam, Law No. 69/2020/QH14 on Vietnamese guest workers 2020, Article 60, 61.

Invalids and Social Affairs of Vietnam to cooperate with other countries worldwide.³⁶ This means that DOLAB will have the right to negotiate and sign agreements with countries and regions around the world. After that, DOLAB will allocate responsibilities and benefits to domestic corporations and companies. These companies will recruit qualified workers to work abroad. The quantity and quality of skilled workers must be following the signed agreements. In addition, the Ministry of Foreign Affairs has established labor-management Boards at diplomatic missions where there are many Vietnamese guest workers to perform several managements, monitoring, inspection and supervision, and timely support for workers and businesses while working abroad.³⁷ There are officers in charge of labor management in markets where there are few workers at diplomatic missions such as in the UAE and Saudi Arabia.

Researching the provisions of Vietnamese law on the rights of migrant workers, some basic observations can be made as follows:

Vietnamese law stipulates quite comprehensively the rights of migrant workers. However, the concept of "migrant workers" mentioned in Vietnamese law only regulates Vietnamese migrant workers based on contracts to send workers to work abroad signed with public non-business units established under ministries, ministerial-level agencies, and governmental agencies to implement international agreements. Therefore, it does not include all actual Vietnamese migrant workers abroad. Specifically:

- In case Vietnamese people migrate legally but for other purposes such as studying, getting married, being adopted, etc., then find a job in the country of immigration. The lack of regulations on registration and management of this group of migrant workers leads to a difficult situation to control and manage and fails to protect workers' rights while working abroad proactively.
- Illegal migrant workers who go to work abroad through the forms of "self-funded" or "informal" and legal migrant workers but do not comply with labor discipline voluntarily leave the contract to work, or the contract expires and do not return home. This group is not subject to the agreements on the receipt of labor signed between the Government of Vietnam and the governments of the receiving countries and they do not go through service enterprises. This group of workers often must work in unsafe and inhumane conditions and are taken advantage of and driven into trafficking, sexual exploitation, and forced labor. The lack of sufficient information related to workers going through unofficial channels means that there is no clear regulation of the responsibility of any agency in providing support services for these workers. Can ensure their rights and interests are protected when working abroad as well as when returning home.

³⁶ Ministry of Labor, Invalids and Social Affairs -Vietnam, 'Decision No. 1639/QĐ-LĐTBXH Stipulating the Functions, Tasks, Powers and Organizational Structure of the Department of Overseas Labor.' (2017), http://www.dolab.gov.vn/New/DutiesAndResponsibilities.aspx?LIST_ID=247.

³⁷Currently, the Ministry of Foreign Affairs has established 6 Labor Management Committees at diplomatic missions in Malaysia, Japan, Korea, Taiwan (China), United Arab Emirates (UAE), and Saudi Arabia.

In addition, to ensure the illegal migrant workers' rights, the Vietnamese Government has been trying to take active actions to protect better their rights and interests. Vietnam has signed a series of Agreements on the return of Vietnamese citizens who are not allowed to reside abroad³⁸ as well as issued the legal documents regarding the receipt, verification, protection and support of human trafficking crimes' victims like the Law on Prevention and Combat of Human Trafficking in 2011; Decision No. 17/2007/QĐ-TTg of the Prime Minister promulgating regulations on admission and support for community reintegration for trafficked women and children returning from abroad or Criminal Code 2015 (amended 2017)³⁹ etc.

A remarkable achievement of Vietnamese law is that it has detailed the rights and obligations of the parties from state management agencies, enterprises, employees and related subjects in ensuring the rights and obligations of migrant workers. However, the implementation of these regulations revealed many problems such as:

- Lack of a mechanism to control and evaluate the quality of ensuring the right to training and fostering necessary knowledge about culture, customs and laws for employees of enterprises. Vietnamese law states that this obligation belongs to enterprises, the implementation is only a formality in many enterprises. It is not achieving the desired effect, leading to guest workers' lack of information or incomplete and inaccurate information. They are not prepared with necessary conditions before migration (especially foreign languages and skills) and fall into a weaker bargaining position.⁴⁰ As a result, employees may face the risk of leaving their jobs early or having difficulty accessing work and the risk of exploitation and abuse.
- Lack of coordination between service enterprises and diplomatic missions in managing and supporting migrant workers. The results in that the diplomatic missions do not have timely information to ensure the rights and interests of migrant workers.
- Ensuring the rights of illegal migrant workers is a big challenge for Vietnam based on objective and subjective reasons. From the perspective of the law, as analyzed, for legal migrant workers under the contract, their rights and obligations will be guaranteed according to the provisions of the Law on sending Vietnamese to work in Vietnam. For the group of illegal migrant workers, protecting their legitimate rights and interests is based on the provisions of Vietnamese law and international practices on citizen protection. There is a challenge that the illegal Vietnamese migrant worker is

³⁸European Union, Consular Department, Ministry of Foreign Affairs of Viet Nam, and International Organization for Migration, 'Overview Report on the Migration of Vietnamese Citizens Abroad in 2011' (Hanoi, May 2012), https://vietnam.iom.int/sites/vietnam/files/IOM_Files/Projects/MigrationPolicyManagement/Review_Vietnamese_Migration_Abroad_2012_VN.pdf.

³⁹ National Assembly of Vietnam, 'Criminal Code 2015 (Law No. 100/2015/QH13)' (2015), Article 350.

⁴⁰ Ministry of Labor, Invalids and Social Affairs -Vietnam, 'Final Report on the Implementation of the Law on Vietnamese Guest Workers 2006', 2007.

not an object of the Overseas Employment Support Fund.⁴¹ Therefore, when they drop in an emergency case, the Fund will not pay them.

- The legal sanctions are not strong enough, so the compliance with the law is not strict; violations and handling of violations are not fully regulated and suitable to the specific nature of this field.
- With current regulations, it is difficult for Vietnamese diplomatic and consular missions abroad to handle administrative violations for violations of employees occurring abroad.

III. THE POLICIES HAVE ADOPTED BY THE VIETNAMESE GOVERNMENT TO PROTECT THE RIGHTS OF VIETNAMESE MIGRANT WORKERS DURING THE PANDEMIC

According to Manuela Tomei, Director-General of the ILO's Equality and Working Conditions Department, *"The pandemic has exposed their precarious situation. Migrant workers are often the first to be laid off, they have difficulty accessing treatment and are often not included in the COVID-19 response policies"*.⁴² As identified by the ILO, during the covid-19 pandemic, migrant workers are recognised as the most vulnerable group and need to be protected legally and in practice.

Implementing the general guidelines and policies of the Party regarding the supportive measures for citizens in the Covid-19 pandemic, the Government of Vietnam has also responded quickly to COVID-19 by implementing policies and response actions that take into account special groups of workers such as women, children, and Vietnamese migrant workers.⁴³

According to the provisions of the Joint Circular No. 16/2007/TTLT-BLDTBXH-BTP dated September 4, 2007, the workers are refunded the brokerage fee. In case a worker has to return home ahead of time due to *force majeure* (natural disaster, war, bankruptcy of the enterprise) or not due to the fault of the worker, the enterprise is responsible for requesting the broker to refund the employee a part of the brokerage paid by the employee according to the principle: if the employee works less than 50% of the contract period, he/she will receive 50% of the paid brokerage fee. Employees who

⁴¹ Regulations of the Overseas Employment Support Fund are prescribed in Prime Minister of Vietnam, 'Decision No. 144/2007/QĐ-TTg on the Establishment, Management and Use of the Overseas Employment Support Fund' (2007), http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=383371.

⁴² ILO, 'Global Migrant Workers Increased by Five Million People, (Lao Động Di Cư Toàn Cầu Tăng Thêm Năm Triệu Người)'.

⁴³ Manh Hung, 'International Human Rights Day 2020: Challenges and Opportunities Posed by the COVID-19 Pandemic (Ngày Nhân Quyền Quốc Tế Năm 2020: Thách Thức và Cơ Hội Đặt Ra Bởi Đại Dịch COVID-19)', *Communist Party of Vietnam Online Newspaper*, 11 December 2020, <https://dangcongsan.vn/thoi-su/ngay-nhan-quyen-quoc-te-nam-2020-thach-thuc-va-co-hoi-dat-ra-boi-dai-dich-covid-19-569691.html>.

worked 50% or more from the contract are not entitled to brokerage fees. If the broker cannot claim it, the enterprise is responsible for refunding the employee according to the above principles and is accounted for in reasonable expenses when calculating taxable income under the Law on Corporate Income Tax.

In addition, employees are also reimbursed for services. The content specified in Clause 3, Section III of the Joint Circular No. 16/2007/TTLT-BLDTBXH-BTP dated September 4, 2007. Specifically, suppose the employee has to return home ahead of time due to force majeure or not due to the employee's fault. In that case, the enterprise is only entitled to collect service fees according to the actual time (number of months) the employee work abroad. In addition, workers going to work overseas in some other objective risk cases will be decided by MOLISA, the maximum support level of 5 million VND (about 220\$)/case. Depending on the epidemic situation, extent and number of affected workers, authorities will support workers and businesses when necessary.⁴⁴

Businesses operating in sending workers to work abroad are also supported in terms of procedures. Accordingly, the Government advocates simplifying administrative processes for companies, reducing pre-inspection, increasing post-inspection; strengthening online settlement for contract registration and licensing for businesses; Temporarily suspending the periodic inspection of enterprises until the end of the second quarter of 2020. The Department of Overseas Labor Management, the Inspector of the Ministry of Labor, Invalids and Social Affairs, only conduct irregular inspections when complaints and inquiries from employees, employees' relatives, news agencies, and press feedback.

In addition, MOLISA is also drafting the Prime Minister's Decision on the Overseas Employment Support Fund, which proposes to support relatives of workers who die or go missing while working abroad. , the level of 30 million VND/case. Thus, the support level increased three times compared to the support level in Decision 144/2007/QĐ-TTg. This level of support can offset the annual price slide in 2007-2020 (about 40%) and ensure it is consistent with the consumer price index of the next period. The level of support is suitable to the current socio-economic reality of Vietnam, contributing to supporting the family of workers to overcome difficulties and ensuring the balance of the Fund. In addition, the draft proposes to help workers who have to return home ahead of time due to occupational accidents, accidents, illnesses, and diseases to the point that they can no longer continue working. The employee has an actual working time less than 1/2 of the contract term of working abroad, the support level is 20 million VND(nearly 900\$)/case, and the employee has the actual working time from 1/2 of the time. Contract term of working abroad or more, the support level of 15

⁴⁴ Tu Giang, 'Support Vietnamese Workers Working Abroad Who Lost Their Jobs Because of COVID-19 (Hỗ Trợ Lao Động Việt Nam Làm Việc ở Nước Ngoài Mất Việc vì COVID-19)', *Communist Party of Vietnam Online Newspaper*, 1 April 2020, <https://dangcongsan.vn/xa-hoi/ho-tro-lao-dong-viet-nam-lam-viec-o-nuoc-ngoai-mat-viec-vi-covid-19-551614.html>.

million VND (about 650\$)/case (equivalent to 67% and 50% of support level for deceased workers).⁴⁵

The draft also proposes to support the settlement of disputes arising related to employees, including Support for employees with meal and accommodation expenses. At the same time, employees wait for dispute resolution with the employer, change the employer according to regulations or have to return home before the deadline without the fault of the employee, the rate is 500,000 VND (more than 20\$)/person/day, not more than 10 million VND (around 440\$)/person. Supporting 50% fee for hiring a lawyer, legal advice in case of a complicated labour dispute between an employee or a group of employees and the employer, up to a maximum of 25 million VND (around 1100\$) for 1 case disputes arise. This content helps to directly and promptly support employees in resolving disputes while abroad.

Supporting Vietnamese workers who have to return home for objective reasons, The Government will provide direct measures to help employees face risks. If they wish to join the training program to find a new job, they could be supported by the Fund for less than three months, equal to 70% of the actual training cost, but not exceeding 3 million VND (around 130\$)/employee.⁴⁶

In addition to material support, from February 2020, Vietnam will conduct a review of Vietnamese guest workers infected and suspected of being infected with the Covid-19 epidemic.⁴⁷ In particular, the Government also noted that in case it is necessary to leave Vietnam, Vietnamese workers must proactively take measures to prevent the COVID-19 epidemic, strictly complying with the health requirements of the authorities. The capacity of Vietnam and the receiving country.⁴⁸

In addition, from September 2021, DOLAB cooperates with the Employment Service Centers of Bac Ninh and Bac Giang to receive and recruit foreign workers to participate in the EPS program (Korea) and IM Japan program (Japan) who have ended their contracts to return home to work in these two provinces. Other provinces and cities where many Korean and Japanese enterprises have closed are also promoting labour recruitment, prioritising returning workers.⁴⁹

⁴⁵ Ministry of Labor, Invalids and Social Affairs -Vietnam, 'Proposal to Increase the Level of Support for Workers from the Overseas Employment Support Fund (Đề Xuất Tăng Mức Hỗ Trợ Người Lao Động Từ Quỹ Hỗ Trợ Việc Làm Ngoài Nước)', 29 July 2021, <http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=226218>.

⁴⁶ Ministry of Labor, Invalids and Social Affairs -Vietnam.

⁴⁷ Ministry of Labor, Invalids and Social Affairs -Vietnam, 'Dispatch No. 01/CD-LDTBXH on Strengthening Measures to Prevent and Control Acute Respiratory Infections Caused by New Strains of Coronavirus' (2020).

⁴⁸ Ngan Anh, 'No Vietnamese Workers Working Abroad under Contract Have Been Infected with COVID-19 yet (Chưa Có Lao Động Việt Nam Làm Việc ở Nước Ngoài Theo Hợp Đồng Bị Nhiễm COVID-19)', *Nhan Dan Online*, 3 February 2020, <https://nhandan.com.vn/tin-tuc-xa-hoi/chua-co-lao-dong-viet-nam-lam-viec-o-nuoc-ngoai-theo-hop-dong-bi-nhiem-covid-19-449451>.

⁴⁹ Giang Nam, 'Job Opportunities for Workers Returning Home (Cơ Hội Việc Làm Cho Lao Động về Nước)', *Ngươi Lao Dong*, 18 September 2021, <https://nld.com.vn/cong-doan/co-hoi-viec-lam-cho-lao-dong-ve-nuoc-20210917192232709.htm>.

Thus, in the context of complicated developments of COVID-19 in many countries, Vietnam, with very timely policies, has supported Vietnamese guest workers. It is an essential basis for orientation for Vietnamese authorities to continue to carry out citizen protection activities abroad.

IV. CONCLUSION AND RECOMMENDATIONS

Migrant workers are an integral part of the Vietnamese nation and contribute significantly to Vietnam's economy and society. Therefore, to better ensure the rights of migrant workers, especially in the context of the Covid-19 pandemic, the authors make the following recommendations:

Firstly, the Government needs to continue to review the legal system to perfect policies and laws on migrant workers, including legal and illegal migration, to create a legal corridor for the protection of migrant workers and promote the rights of migrant workers abroad. At the same time, consider amending the law related to the management of migrant workers abroad. This is a significant opportunity to improve labour migration's legal framework and make legal migration channels more attractive to people.

Second, promote cooperation between sending, transiting and receiving countries to enhance and secure legitimate migration options, especially for female workers, to ensure employment needs. As noted by ILO, female workers from Vietnam are more likely to be recruited for low-skilled work in factories, as domestic workers or as farmworkers, and they are more likely to be paid less than men. This can mean that Vietnamese women are more at risk of being recruited by unregulated actors, which can face higher costs and less protection.⁵⁰

Third, expand legal accessibility for migrant workers, especially female workers, who often face more difficulties than men at home and abroad. The ability of migrant workers to access grievance mechanisms for abuse during recruitment and employment is critical to ensuring equitable and responsive remedies. There is also a need to expand services to migrant workers and their families to support their return and reintegration into the community, to ensure that migrant workers can successfully reintegrate both physically and mentally. In terms of social and economic aspects, it is not difficult to find a job when returning to Vietnam.

Fourth, to develop specific social security policies for migrant workers, focusing on labour, employment, and community reintegration policies. Need to set up programmes that support returning migrant workers who require information and support to assist their reintegration, including gender-responsive services that respond to the needs of migrant workers who have experienced violence and harassment, abuse

⁵⁰ ILO, 'Listening to the Voice of Women Migrant Workers: Gender Mainstreaming in the Draft Law on Vietnamese Workers Working Abroad under Contract (Amended)', 2020, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo/hanoi/documents/publication/wcms_755200.pdf.

or exploitation, in particular legal aid, access to justice, and coordinated psychosocial health and social services.

Fifth, strengthen support packages for migrant workers who are heavily affected by the covid-19 pandemic, have a policy of prioritising vaccination and treatment so that they can return to work soon, and increase their income. economy. For foreign workers, continue to support the cost of returning home when necessary.

Sixth, carry out propaganda activities and widely disseminate to employees about the epidemic situation and ways to prevent and control disease transmission. Maintain regular connections between workers and competent Vietnamese State agencies abroad to support those in need.

Finally, focus on vocational skills training tailored to the requirements of employers without creating additional time and financial burden on migrant workers. This benefits both employers and migrants, contributing to increased labour productivity, improved wages and working conditions. To improve competitiveness with other countries' workers to work abroad as well as to preserve the image of Vietnamese workers in traditional markets, as well as to build the image of Vietnamese workers in new markets, thereby expanding opportunities for Vietnamese workers, it is extremely necessary to improve the quality of Vietnamese workers to work abroad.

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