

Protecting the Rights of Domestic Workers in Vietnam

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Bridging the gap between international commitments and national legislation

Since the 1980s, Vietnam has ratified a number of international human rights instruments and labour standards. However, Vietnam has neither signed nor ratified any instruments or labour standards related to domestic workers, including migrant domestic workers, especially the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and the ILO Convention No. 189 on domestic workers.

Nationally, Vietnam has enacted legislation regarding domestic workers. The definition of domestic workers, employment contracts for domestic workers, employers' obligations, domestic workers' obligations, and acts prohibited for employers are regulated in the Labour Code 2012 and the Labour Code 2019. In 2006, the National Assembly adopted the Law on Vietnamese workers working abroad under contract, but it did not mention migrant domestic workers. That said, the amended version of the Law on Vietnamese workers working abroad under contract in 2020 has made significant progress.

The Ministry of Labour, Invalids, and Social Affairs (MOLISA) [estimated in 2017](#) that the number of people working as domestic workers in Vietnam would increase significantly and was expected to reach about 350,000 people by the year 2020. The majority of domestic workers are female, with low educational attainment. Most domestic workers do not sign labour contracts with employers or enjoy social security policies, such as the right to have their employers' pay a part of health insurance or participate in the social insurance regimes as other workers. Those who migrate to Taiwan, Saudi Arabia, Macao, and Cyprus are usually recruited by Vietnamese broker companies adding another layer of complexity to regulating these processes. During the COVID-19 pandemic, Vietnamese domestic workers working abroad and at home have been at risk of losing their livelihoods.

Defining Domestic Workers and the International Instruments to Protect Their Rights

The International Labour Organization (ILO)'s Convention No. 189 defines domestic work as "work performed in or for a household or households". This work may include tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children or elderly or sick members of a family, gardening, guarding the house, driving for the family, or even taking care of household pets. Additionally, according to Convention 189, a domestic worker is "any person engaged in domestic work within an employment relationship".

A domestic worker may work on full-time or part-time basis, may be employed by a single household or by multiple employers, may reside in the employer's household (live-in worker) or may live in his or her own residence (live-out worker). A domestic worker may work in a country of which he or she is not a national. The employer of a domestic worker may be a member of the household for which the work is performed or an agency or enterprise that employs domestic workers and make them

available to households.

Under ILO Convention No.189, domestic workers are entitled to the same basic rights as those available to other workers in their countries, including weekly days off, limits to working hours, minimum wage coverage, over-time compensation, social security, and clear information on the terms and conditions of employment.

Human rights of domestic workers, including their right to decent work are not only covered in the ILO Convention No. 189, but also a number of other international human rights instruments and international labour standards adopted by the General Assembly and ILO. Those international instruments and labour standards include:

1. International Covenant on Civil and Political Rights (ICCPR)
2. International Covenant on Economic, Social and Cultural Rights (ICESCR)
3. Convention on the Elimination of All Forms of Discrimination Against Women
4. Convention on the Rights of Persons with Disabilities (CRPD)
5. International Convention on Elimination of Racial Discrimination (ICERD)
6. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)
7. ILO Convention No. 29 on Forced Labour
8. ILO Convention No. 105 on Abolition of Forced Labour
9. ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize
10. ILO Convention No. 98 on the Right to Organize and Collective Bargaining
11. ILO Convention No. 100 on Equal Remuneration
12. ILO Convention No. 97 on Migration for Employment
13. ILO Convention No. 143 on Migrant Workers

Of those [international human rights instruments](#) and [labour standards](#), Vietnam has ratified ICCPR, ICESCR, CEDAW, ICERD, ICRPD, ILO Convention No. 29, ILO Convention No. 98, ILO Convention No. 100, and ILO Convention No.111. Vietnam has [neither signed nor ratified](#) other instruments and labour standards related to domestic workers, including migrant domestic workers, especially the CMW and the ILO Convention No. 189.

National Legislation to Protect Domestic Workers' Human Rights

Despite Vietnam having neither signed nor ratified treaties or standards that are directly relevant to domestic workers, including migrant domestic workers, Vietnam is one of the countries that has enacted legislations regarding domestic workers. The 2013 Constitution approved by the 13th National Assembly on 28 November 2013 stipulates that Vietnamese citizens shall enjoy freedom of movement and of residence within the country; and can freely travel abroad and return home from abroad, and Vietnamese citizens residing abroad shall be protected by the Socialist Republic of Vietnam. Article 16 provides that all citizens are equal before the law, and no one shall be discriminated against in his or her political, civic, economic, cultural, and social life. Clause 2 of Article 26 strictly prohibits discrimination on grounds of sex. With regard to employment, the Constitution stipulates that citizens have the right to work and to select their career, job, and workplace. All workers shall be provided equal and safe conditions of work and shall be paid a salary and enjoy a break policy. Discrimination, forced labour, and employing workers under the minimum age of labour are strictly prohibited. Although the Constitution does not directly mention the rights of women migrant workers working abroad, the aforementioned articles and Clauses as well as other provisions indirectly refer to the rights to select jobs and workplaces, in addition to political, civil, economic, social, and cultural rights, and prohibit discrimination against women migrant workers both under contract and without contract.

Articles No. 179, 180, 181, 182 and 183 of the Labour Code 2012 (hereinafter referred to as Law No. 10), which was adopted by the National Assembly of on 18 June 2012 and went into effect on 1 May 2013, define domestic workers, employment contracts for domestic workers, obligations of employers, obligations of domestic workers, and prohibited acts of employers. Article 168 of the Law No. 10 regulates Vietnamese workers working abroad under contract. Such contents are confirmed by Articles No. 150, 161, 162, 163, 164 and 165 of the Labour Code 2019, adopted by the National Assembly on 20 November 2019.

The Labour Code approved by the 14th National Assembly on 20 November 2019 that came into effect on 1 January 2021 contains a number of provisions which prevent discrimination and protect women workers, including migrant domestic workers working abroad. The Code introduced clear concepts of employment discrimination and sexual harassment at the workplace as two of the prohibited behaviours. Accordingly, employment discrimination is defined as an act of discrimination, exclusion, or preference based on race, colour, national or social origin, ethnicity, sex, age, maternity status, marital status, religion, beliefs, political beliefs, disability, family responsibility, HIV status, or for the reason of establishing, joining, and participating in activities of trade unions and workers' representative organizations that have an impact on equality of employment or work opportunity. Distinction, exclusion, or priority arising from the specific requirements of the job and the acts of maintaining and protecting employment for vulnerable workers shall not be regarded as discrimination. *Sexual harassment at the workplace* refers to any person's behaviour of a sexual nature towards another person at work that is not expected or accepted by that person. The workplace is defined as any place where the employee de facto works according to the agreement or assignment of the employer.

Article 4 Clause 7 of the 2019 Labour Code ensures gender equality by stipulating labour and social policies to protect female workers, workers with disabilities, elderly workers, and underage workers. Article 37 Clause 3 stipulates that the employer shall not conduct his or her right to unilaterally terminate an employment contract with an employee who is pregnant, on an annual leave or rearing small children under 12 months old. Ensuring gender equality, protecting maternity and annual leave, preventing violence and sexual harassment at the workplace are some of the contents of collective bargaining as specified in Article 67 Clause 7. Article 90 Clause 3 stipulates that employers must ensure equal wages, regardless of gender, to the employees doing work of equal value.

Article 150 of the 2019 Labour Code includes stipulations about Vietnamese workers working abroad. Accordingly, Clause 1 of this Article provides that Vietnamese employees working abroad must comply with the law of Vietnam and the law of the destination state except where an international convention to which Vietnam is a signatory provides differently.

Chapter XIII of the 2019 Labour Code contains nine articles related to representative organizations of employees. These regulations are considered progressive in order to meet one of the requirements for when the EU-Vietnam Free Trade Agreement comes into effect for both sides. However, Vietnam has neither developed a decree guiding the implementation of these provisions nor amended the Law on Trade Unions to promote and protect freedom of association of labour, including domestic workers. In addition, Vietnam has not yet enacted a law on freedom of association that is compatible with ICCPR and ILO Convention 87.

The Law on Vietnamese workers working abroad under contract 2006 (hereinafter referred to as Law No. 72), adopted by the 11th National Assembly on 29 November 2006, provides for activities of sending workers abroad under contract, rights and obligations of workers working abroad under contract, rights and obligations of enterprises and state-owned non-profit organizations sending workers abroad under contract, and of organizations and individuals concerned. Nonetheless, this

law does not stipulate the principle of non-discrimination on different bases, including gender, sexual orientation, and gender identity, and lacks provisions on measures to support reproductive health care for women migrant workers in the case of pregnancy, raising children in the destination country, or preventing gender-based violence against migrant workers working abroad. This law fails to regulate temporary special measures to assist women migrant workers after the expiration or termination of their labour contracts and returning to their country of origin.

Law No. 72 states that disputes between workers and licensed enterprises or state-owned non-profit organizations sending workers abroad shall be settled on the basis of contracts signed between the parties and the provisions of Vietnamese law. Disputes between workers working abroad and foreign employers shall be settled on the basis of agreements signed between the parties and the legal provisions of receiving countries, treaties to which the SRV is a contracting party, and international agreements reached between Vietnamese ministries, ministerial-level agencies, or government-affiliated agencies and foreign parties. Disputes between licensed enterprises or state-owned non-profit organizations sending workers abroad and foreign employers or brokers shall be settled on the basis of agreements signed between the parties and the provisions of Vietnamese law, the laws of receiving countries, treaties to which the SRV is a contracting party and international agreements reached between Vietnamese ministries, ministerial-level agencies, or government-attached agencies and foreign parties. However, there are no specific provisions regulating domestic workers overseas.

Decree No. 38/2020/ND-CP dated 3 April 2020, replacing Decree No. 126/2007/ND-CP dated 1 August 2007, requires specialized facilities to provide workers with the necessary knowledge prior to working abroad and for organization of guest worker programs of service providers to include specific departments and facilities. The Decree also enhances the provisions on the responsibilities of MOLISA, the Ministry of Foreign Affairs, the Ministry of Public Security, the Ministry of Health, the People's Committees of provinces and cities, and other agencies and organizations.

[Circular No. 22/2013/TT-BLDTBXH](#) provides the models and contents of labour supply contract and guest worker contracts. In addition to the contents mentioned in Article 17 of Law No. 72, Circular No. 22/2013/TT-BLDTBXH also requires contracts to specify the method of wage payments, the responsibilities of the parties to pay travel expenses upon entry and arrival to work, or in cases of returning home before the expiration of labour contract (Clause 2 Article 8). Nonetheless, this Circular fails to mention enterprises' responsibilities for clearly stating the right to maternity leave for workers working abroad under contracts in both types of contracts.

The 2020 Law on Vietnamese workers working abroad under contract (hereinafter referred to as Law No. 69), adopted on 13 November 2020, has made significant progress. The principles of gender equality and non-discrimination are mentioned in numerous articles. Ensuring gender equality in the activities of Vietnamese workers working abroad under contracts, taking gender-sensitive measures to support the protection of female workers working abroad in jobs and workplaces, as the state policy on Vietnamese workers working abroad under contract, are mentioned in Article 4 Clause 5 of the Law. Prohibition of discrimination and forced labour in the activities of Vietnamese workers working abroad under contracts was added to Article 7. The issue of forced labour and human trafficking, basic knowledge about gender, and skills to prevent and respond to violence were included in the content of orientation education for workers, added to Article 65. Article 6 Clause 1 of Law 69 was also amended to address the problem of double contributions.

Accordingly, domestic workers are better protected, including their right to form trade unions and collective bargaining. Law 72 and Law 69 also provide significant measures for protecting Vietnamese workers working abroad under contracts, including domestic workers.

Zooming In On Vietnamese Domestic Workers

According to the [Ministry of Labour, Invalids and Social Affairs](#) (MOLISA) at the 10th ASEAN Forum On Migrant Workers in 2017, the number of domestic workers in general, and migrant domestic workers in particular, would increase significantly in the coming time, expecting there to be approximately 350,000 domestic workers in Vietnam by 2020. [Data](#) released by the Overseas Labour Management Bureau (MOLISA) at the national meeting to prepare for the ASEAN Labour Migration Forum shows that the main markets currently accepting Vietnamese domestic workers are Taiwan, Saudi Arabia, Macao, and Cyprus. The findings of a survey conducted by the International Labour Organization (ILO) revealed that approximately 30 percent of the 23,047 Vietnamese migrant workers overseas were women and domestic work was their most common occupation.

The majority of domestic workers are female, with low levels of educational attainment. [1] Survey results in Hanoi and Ho Chi Minh City by the [Institute for Family and Gender Studies](#) (IFGS) in 2012 showed that 84.6 percent of domestic workers have lower secondary education or less. 22 percent of workers have a primary education or less. Many young workers, most of whom are women, also work in this sector. IFGS survey results show that out of 371 female workers, 3 percent are aged 16-18. The regulation of the employer's obligations to create opportunities for domestic workers to participate in cultural education and vocational training has made an important contribution to creating development opportunities for young female workers.

At present, although the demand for housework is very high, it is still not considered a profession and there is little awareness of the need to learn and train, as well as to find domestic workers who have real expertise.

Working as a maid is seen as a spontaneous job. [Most domestic workers](#) come from rural areas, with low levels of educational attainment (some are illiterate), and practice based on their own habits and experience. In fact, the majority of domestic workers are hired to perform housework (51.4 percent), followed by 23.2 percent who are hired to take care of children. The proportion of employees taking care of the sick and/or the elderly was only 2.9 percent. The remainder depends on the employers and have no specific plans.

The labour contracts between the domestic workers and their employers have still [not been strictly implemented](#) in practice. According to Vietnam's Labour Code, an employer is expected to sign a written labour contract with a domestic worker who regularly does housework for one or more families. The duration of a labour contract for a domestic worker may be negotiated by both parties. The two parties shall come to an agreement and clearly include, in writing, the method and time of wage payment, daily working hours, and accommodation. In addition, employers also have to cover compulsory social and medical insurance for domestic workers. However, few employers and domestic workers have followed the set of rules. A number of domestic workers also prefer not to sign a labour contract to avoid binding and deducting part of their wages for insurance payment. The findings from research conducted by the [Research Centre for Gender, Family and Community Development](#) (GFCD) in recent years show that there has been no significant change in signing labour contracts between domestic workers and employers. The data from 2014 shows that only 10.3 percent of domestic workers living in employer's households and only 7.3 percent of hourly domestic workers signed contracts. [2] After six years, the number had not changed. Only 10.2 percent of 200 domestic workers interviewed in 2020 confirmed that they had signed written labour contracts. [3] In addition, up to 98.7 percent of domestic workers do not enjoy social security policies, such as the right to be paid a part of their health insurance and inclusion in social insurance regimes like other workers. The remaining number of domestic workers have social and health insurance because they had worked as retired civil servants or had poor insurance cards.

This is a major gap for the state management agency on labour and employment. MOLISA is in charge of this field, but they do not have enough human resources and professional expertise to monitor the signing of labour contracts between domestic workers and host families. Only employers who wish to stick with domestic workers over the long-term [sign labour contracts](#). Vietnamese domestic workers working abroad are usually recruited by Vietnamese broker companies. Those companies then prepare these women linguistically and professionally before supplying them to the receiving countries.

[Domestic workers enter Saudi Arabia](#) under the sponsorship, or *kafala*, system, which prohibits them from changing jobs or leaving the country without their sponsor's approval. A [report by Amnesty International](#) shows that migrant women domestic workers in Qatar face verbal, physical and sexual abuse. More than half the women Amnesty spoke to reported delayed or unpaid wages, but the very few who felt able to submit claims to the Committees found the process slow and stressful.

As an ASEAN member state, Vietnamese migrant domestic workers have been at risk of losing their income due to COVID-19 pandemic. The ILO has confirmed that more than 55 million domestic workers worldwide are at risk of losing their livelihoods, among whom 37 million are women. [Figures](#) from June 2020 show that the worst affected regions are Southeast Asia and the Pacific, with 76 percent of domestic workers at risk of being affected by the pandemic. The situation of the COVID-19 epidemic in [Saudi Arabia](#) was complicated, widening a social gap, and meaning the brokerage company could not go to the employer to get documents.

That represents the general situation of this market. Although both formal and informal domestic workers have been by affected the pandemic, informal workers account for 76 percent of people at risk for losing their jobs or having their working hours cut. In countries with strict lockdown measures, domestic workers—whether formal or informal—cannot work. While people with formal jobs are still entitled to unemployment insurance, for those who work as informal domestic workers, not working means losing their livelihoods and not being protected by the social protection system, making it difficult to just to [take care of meals](#). This was especially the case as Vietnam's government strictly applied Directive No. 15/CT-TTg and Directive No.16/CT-TTg on social distancing during March and April 2020.

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P.S.

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<https://www.rosalux.de/en/news/id/44473/protecting-the-rights-of-domestic-workers-in-vietnam>

Footnotes

[1] Research Centre for Gender, Family and Community Development, "Research report on

awareness and needs of citizens and society on domestic workers in Nam Dinh, Khanh Hoa and Vinh Long provinces”, 2013.

[2] Research Centre for Gender, Family and Community Development, “Research on Economic Value of Domestic Workers to Families and Society”, 2014.

[3] Research Centre for Gender, Family and Community Development, “Assessment Report on the Implementation of Labour Laws and Policies Related to Domestic Workers”, 2020.