



Spotlight Initiative

To eliminate violence against women and girls

Listening to the voices of women migrant workers:

Gender mainstreaming in the draft Law on Vietnamese Workers Working Abroad under Contract (amended)



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Contents

Acknowledgments	iii
Executive summary	iv
Abbreviations	vi
Terminology.....	vi
1. Introduction.....	1
2. Methodology.....	2
3. Situation of women migrant workers.....	3
4. Law on Vietnamese Workers Working Abroad under Contract	7
5. International standards for gender and migration.....	8
6. Proposed areas for amendment of Law 72.....	9
6.1 Provisions on ensuring transparency and improving conditions for business investment into the sector/businesses providing migrant worker services.....	10
6.2 Provisions on recruitment, training of workers and improving the capacity and skills of workers preparing for overseas employment.....	11
6.3 Provisions on the costs that workers must pay in accordance with market reality, international trends, and ensuring the responsibilities of employment agencies to workers	17
6.4 Provisions on the mechanism for organization of and extension of support scope for the Fund for Overseas Employment Support	21
6.5 Provisions on rights, obligations and liabilities for migrant workers under contracts.....	22
6.6 Other policies	23
7. Additional suggested areas for amendment.....	25
7.1 Contracts	26
7.2 Return and reintegration	32
8. Conclusions and key recommendations	34
Bibliography	38
Appendix I. Distribution of survey sample in Hanoi, Hai Duong and Thanh Hoa	40

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Executive summary

The Law on Vietnamese Workers Working Abroad under Contract (Law 72) was enacted in 2007 to support the deployment and management of Vietnamese migrant workers. It is the primary law in Viet Nam governing the migration process. In 2018, the Vietnamese Government commenced a review of this law with a view to strengthening it.

Vietnamese law stipulates that all legislative reviews must benefit from gender mainstreaming. Gender mainstreaming in law in the context of labour migration is important because women face different challenges and barriers than men in accessing safe, fair and regular migration opportunities into decent work. Migration laws that do not respond to gender (or are gender-blind) can reinforce structural inequalities that put women at a disadvantage and limit their access and opportunity. In the context of providing evidence-based inputs to the revision of Law 72 from a gender perspective, the ILO and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) supported a study conducted by a research team from the Research Centre for Gender, Family and Community Development (GFCD). The study collected stories about the experiences and expectations of women migrant workers in the context of the implementation and impacts of Law 72.

In order to provide recommendations to strengthen Law 72 from a gender-responsive and rights-based perspective, this report considers the Government of Viet Nam's proposed areas for amendment as of December 2019 and the draft revised Law as of 31 March 2020, against international normative standards, in particular, the ILO's Multilateral Framework on Labour Migration and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) – notably CEDAW General Recommendation No. 26 on Women migrant workers. The Multilateral Framework represents a considered response to widespread demands for practice guidance and action on labour migration governance, and draws from principles contained in relevant international instruments, including the relevant ILO Conventions. CEDAW General Recommendation No. 26 provides a strong framework to support the formulation of gender-responsive, rights-based migration policies. It is also grounded in CEDAW, which benefits from having been ratified by Viet Nam. This report uses the qualitative research by GFCD to illustrate the key legal review findings.

The report makes recommendations for suggested amendments to Law 72 with the following intentions:

1. To introduce gender-based **requirements for employment agencies sending migrant workers** to demonstrate the knowledge and the capacity to address and be accountable to gender, discrimination and the specific needs and circumstances of women migrant workers –including in relation to the risks of violence and harassment – before being granted a license.

2. To strengthen the provisions related to employment agencies generally, and pre-departure orientation and training specifically, in order to ensure that **recruitment and training practices** are rights-based and gender-responsive, and incorporate information on identifying and responding to risks of violence and harassment.
3. To strengthen the rights-based and gender-responsive nature of the law by removing obligations to pay certain **costs**.
4. To strengthen the provisions related to the **Fund for Overseas Employment Support**, so that it is used to provide gender-responsive welfare services for migrants in countries of destination, including ensuring support is available for workers who experience violence and harassment.
5. To strengthen the rights of women and men migrant workers to **return home or change employment** in the event of violations of labour or human rights, especially where the worker experiences violence and harassment.
6. To incorporate further obligations in relation to the **State's management of migration**, including related to national and bilateral policymaking, to ensure that it is rights-based, gender responsive, and addresses the prevention of trafficking and forced labour.
7. To ensure that **labour supply, guest worker and employment contracts** are rights-based and gender-responsive and meet international and regional standards.
8. To ensure the provision of **employment support and job creation on return as well as reintegration services** that are rights-based, gender-responsive and equally accessible, and in particular are able to respond to the needs of workers who have experienced violence and harassment.

Abbreviations

ASEAN	Association of Southeast Asian Nations
COLAB	Center for Overseas Labour
DOLAB	Department of Overseas Labour
DOLISA	Department of Labour, Invalids and Social Affairs
GFCD	Research Centre for Gender, Family and Community Development
IOM	International Organization for Migration
MOLISA	Ministry of Labour, Invalids and Social Affairs
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women

Terminology ¹

Discrimination: Any distinction, exclusion, restriction or preference, based on proscribed grounds, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms (Human Rights Committee 1989, para. 6). Direct discrimination refers to unequal treatment. Indirect discrimination refers to rules and practices that appear neutral, but in practice disadvantage people with certain characteristics (ILO 2010).

Gender: Roles, behaviours, activities and attributes that a given society at a given time considers appropriate for women and men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes (UN Women n.d.).

Gender-based violence and harassment: Violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately. ²

Gender equality: Enjoyment of equal rights, opportunities and treatment of all people, with recognition that people of different genders have different needs, priorities and experiences of injustice (UN Women Training Centre n.d.).

¹ This evaluation is based on an English translation of the Law on Vietnamese Workers Working Abroad under Contract (Law 72). As such, where the translated term does not align with international language the international term is used.

² Violence and Harassment Convention, 2019 (No. 190), Art. 1(1)(b).

Gender-responsive: The consistent and systematic attention given to the gendered differences among individuals in society with a view to addressing status quo and structural constraints to gender equality.

Guest worker contract: This term is taken from the language of Viet Nam’s Law on Vietnamese workers working abroad under contract (Law 72). It refers to a written agreement between the migrant worker and the employment agency.

Employment contract: This term is taken from the language of Law 72, and refers to a written agreement between the migrant worker and the employer.

Labour supply contract: This term is taken from the language of Law 72, and refers to an agreement between the recruitment agent and the employer’s agent in the country of destination.

Migrant worker: A “migrant worker” is defined by the ILO as a person who migrates from one country to another with a view to being employed other than on his own account, and includes any person regularly admitted as a migrant for employment.³ There is no internationally recognized definition for “guest worker”, which is the term used in Law 72, however this term commonly refers to a style of temporary labour migration that does not confer full human or labour rights on the workers.

Employment agency: The term used in Law 72 to refer to private recruitment and employment agencies is “enterprises sending workers abroad”. This report uses the internationally recognized language of “employment agency”, defined by the ILO as a person providing labour market services, including services for matching offer of and applications for employment, and other services related to job seeking.⁴

Violence against women: Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Violence against women is manifested in a continuum of multiple, interrelated and sometimes recurring forms, encompassing, but not limited to:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women and girls, non-spousal violence, and violence related to exploitation.
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women and girls; and forced prostitution of women and sexual exploitation of girls.
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs (UN 1993, arts 1–2).

³ Migration for Employment Convention (Revised), 1949 (No. 97), Art. 11.

⁴ Private Employment Agencies Convention, 1997 (No. 181), Art. 1.

Violence and harassment in the world of work: ⁵ A range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment. ⁶

Women's empowerment: Women's empowerment is women's increased participation, power, and decision-making in all aspects of life. It is a necessary element in achieving gender equality. Women's empowerment is usually interpreted as something that must be given to women by others. However, the preference is to see empowerment as a process where women are active agents in transforming power structures and creating the necessary conditions for equality (Napier-Moore 2017, 8).

⁵ For definition of world of work, see the Violence and Harassment Convention, 2019 (No. 190), Art. 3.

⁶ Violence and Harassment Convention, 2019 (No. 190), Art. 1(1)(a).

1. Introduction

The Law on Vietnamese workers working abroad under contract (Law 72) was enacted in 2007 to support the deployment and management of Vietnamese migrant workers. It is the primary law in Viet Nam governing the migration process. The Law regulates a range of issues relating to migrant workers, including the licensing of agencies permitted to send workers abroad, the legal channels for migration, and the rights and obligations of workers and employment agencies. Law 72's operation has been supported by more than 15 sub-laws, as well as guiding policies. In 2018, the Government of Viet Nam commenced a review of the legislation.

The obligation to ensure gender is mainstreamed through all new laws and normative documents was introduced by way of the Law on Gender Equality (2006) and the Law on Promulgation of Normative and Legal Documents (2015). The requirement includes the production of a gender mainstreaming report as part of the dossier for appraisal of legislation projects. At the time of development, Law 72 did not benefit from this process. The review of Law 72 will, however, be subject to the obligation to gender mainstream proposed amendments.

It is widely recognized that women and men face gendered differences in their migration experiences and the circumstances of their migration. Gender can influence the decision to migrate, the information and options available, and the sectors and level of jobs in which migrants work. Recent studies have indicated that women from Viet Nam, for example, are more likely to be recruited for work in low-skilled work in factories, as domestic workers or as farmworkers, and they are more likely to be paid less than men (RLS 2017; Ly 2016; Viet Nam, MOFA 2012; Ruth and Do 2012). Physical and transportation barriers can mean that women in Viet Nam have less opportunity to find reliable information to access fair recruitment and regular migration opportunities (Harkins, Lindgren and Suravoranon 2017). This can mean that Vietnamese women are more at risk of being recruited by unregulated actors, which can in turn mean facing higher costs and less protection. Where women's sexual and reproductive health and rights are not respected, migrant women can face health issues, or high costs in resolving health issues. Restrictions on pregnancy, imposed by destination country laws and regulations, can mean women migrants lose their employment and migration status if they get pregnant. Gender can also influence labour conditions and the type of exploitation and abuse that migrants face, as well as the socio-economic situation for migrants on return. Restrictions on labour mobility, the pressure of recruitment-related debt, and low levels of in-country support can mean that when women migrant workers experience exploitation or violence their only options are to stay in the abusive environment or to leave their employment and become an irregular migrant. For women migrant workers who do experience exploitation or violence, services (including those provided by embassies) may not be well equipped to meet their needs, and may be challenging to reach. On return, women also face stigma related to their migration and their employment, which can make reintegration difficult (ILO, IOM and UN Women 2015). This can include stigma related to the sector of work, in particular domestic work, which can be considered to be

low-quality work, as well as stigma (including from public officials) against women who have experienced violence.

In order to respond to the specific needs and circumstances of women, labour migration legislation (such as Law 72) needs to be gender-responsive, meaning that it identifies and proactively addresses gendered barriers. The current review of Law 72 provides an opportunity to ensure that it is gender-responsive and proactively protects the rights of women migrant workers. The Ministry of Labour, Invalids and Social Affairs (MOLISA) produced a draft Gender Mainstreaming Report for the revision of Law 72 in February 2020. The ILO and UN Women Safe and Fair programme has provided technical feedback to the Ministry on this document.

This report builds on that technical feedback, using international human rights and labour standards to provide further recommendations to strengthen the gender responsiveness of the revised law. This paper also incorporates findings from qualitative research by the Research Centre for Gender, Family and Community Development (GFCD) on the experiences of women migrant workers, which are used to illustrate the recommendations. As identified in General Recommendation No. 26 of the Committee on the Elimination of Discrimination against Women, this approach ensures that that policy advocacy is rooted in an analysis of the problems and needs faced by women and migrant workers in every phase of the migration process (Para. 23I).

2. Methodology

This report is based on a gendered legal analysis of the Government of Viet Nam's proposed amendments to Law 72, illustrated by the qualitative research undertaken by the GFCD.

The aim of the GFCD research was to collect stories about the experiences and expectations of women migrant workers in the context of the impacts and implementation of Law No. 72. The study was conducted through fieldwork in Yen Hung commune, Yen Dinh district, Thanh Hoa province and in Dong Ky commune, Tu Ky district, Hai Duong province in 2019. In-depth interviews were conducted to collect the stories and experiences of women migrant workers during the entire migration cycle: pre-departure, in destination and on return. Snowball sampling was used to find women migrant workers for in-depth interviews. In total, the research team conducted 14 in-depth interviews with returned women migrant workers (seven from Saudi Arabia and seven from Taiwan (China) and Malaysia). In addition, four in-depth interviews were conducted with potential women migrant workers (two setting out on their first migration journey abroad, and two intending to re-migrate), and two in-depth interviews were held with representatives of two women migrant workers' families.

The research team also conducted nine in-depth interviews with leaders of the Department of Overseas Labour (DOLAB); the provincial Departments of Labour, Invalids and Social

Affairs (DOLISAs) of Thanh Hoa and Hai Duong; local authorities; and employment agencies to learn more about their activities related to the management, support and protection of women migrant workers (see Appendix I for details).

Ethical issues were carefully considered and addressed in this study. The team clearly informed women migrant workers about the objectives of the research; how the research outputs would be used; their rights to participate in the research or not; their right to refuse to answer any questions they did not want to answer; and that their personal information will not be stated or mentioned in any research documents. The interviews were organized in private spaces, and women migrant workers were asked for verbal or written agreement on their participation in the interviews.

The qualitative study has a narrow focus on the experience of a limited number of Vietnamese women migrant workers who returned from Malaysia, Saudi Arabia and Taiwan (China). The qualitative data cannot be extrapolated as evidence of the experiences of all women migrant workers in all destination countries. It can, however, be used, as here, for illustrative purposes.

The gendered legal analysis was conducted against the Government of Viet Nam's proposed areas for amendment of Law 72. This legal analysis is grounded in the Government of Viet Nam's commitment to gender equality under the Constitution, as well as international gender and labour standards as elaborated in the ILO's labour rights Conventions, the ILO's Multilateral Framework on Labour Migration, and the Convention on the Elimination of All Discrimination Against Women (CEDAW).

The gendered legal analysis is presented here, alongside excerpts from the qualitative research, used to illustrate the recommendations.

3. Situation of women migrant workers

The number (and proportion) of migrant workers from Viet Nam who are women has increased steadily over the past 30 years. Whereas in the 1990s around 10 per cent of migrants were women, in 2018 this figure had risen to 35 per cent. Labour migration has formed part of the Government of Viet Nam's development policy in this time, with the Government recognizing the beneficial role that migration can play in growth through both skills development and remittances.

According to statistics by the Government of Viet Nam, there were 540,000 Vietnamese workers overseas in 2018, with 142,860 migrant workers leaving Viet Nam through regular

channels in 2018 alone.⁷ Among the key destinations for regular workers, the majority of women migrated to Japan and Taiwan (China) (see table 1 below).

Table 1. Gender-disaggregated data for 2018 on number of regular migrant workers by destination country

Destination	Total	Women	Men	% Women
Japan	68 737	27 610	41 127	40
Taiwan, China	60 369	19 273	41 096	32
Republic of Korea	6 538	736	5 802	11
Saudi Arabia	1 920	1 679	241	87
Malaysia	1 102	634	468	58

Source: Figures provided by the MOLISA, Department of Overseas Labour (DOLAB).

The primary means for labour migration from Viet Nam is through private and/or state-owned employment agencies (as of 5 November 2018 there were 341 employment agencies authorized to send workers abroad). It is estimated that a significant number of Vietnamese migrate irregularly through unofficial channels and/or with incorrect documentation. A joint ILO and International Organization for Migration (IOM) study from 2018 that focused on migration to Malaysia and Thailand found that 48 per cent of the 450 interviewed returned Vietnamese migrant workers had migrated through irregular channels (Harkins, Lindgren and Suravoranon 2017).

Women migrant workers are more likely than men to work in low-skilled jobs, such as factory workers, caregivers, domestic workers and farm workers. Though they also migrate as skilled nurses under a state-run scheme.⁸

According to the findings of an ILO study into migration in Malaysia and Thailand, during their employment 76 per cent of Vietnamese migrant workers experienced some form of labour rights violation and had very limited access to legal remedies (Harkins, Lindgren and Suravoranon 2017). This situation is likely compounded for women migrant workers.

For Vietnamese women, labour migration is largely seen in the frame of an opportunity to earn more money. Despite there being a number of policies introduced to address gender inequality and discrimination in Viet Nam.⁹ The 2017 Labour Force Survey in Viet Nam found

⁷ Figures provided by MOLISA, Department of Overseas Labour (DOLAB).

⁸ The Center for Overseas Labour runs a migration programme for qualified nurses to work in Germany. About 90 per cent of programme participants are women.

⁹ Including the:

1. Law on Gender Equality (2006), which stipulates equal recruitment, wages, pay, social insurance, and training and promotion.

a considerable gender wage gap across multiple skill levels, and especially in rural areas (Viet Nam, General Statistics Office, 2017). Women in Viet Nam earn on average 12 per cent less than men with the same education, partially because women are concentrated in low-paying sectors (ILO 2018 and World Bank 2018b, as cited in Miller 2019). The difference in monthly wages for migrant women can be as much as five times more than they can make before migration, with women workers reporting earning up to 21 million Vietnamese dong per month (Miller 2019).

Women also face gendered bias that limits their ownership of land and resources, while placing on them the primary burden for unpaid domestic and care work. It is estimated that 14.5 per cent of women are outside of the labour force due to unpaid care, compared with 5.5 per cent of men (ILO 2018b). According to the Government of Viet Nam (General Statistics Office, 2018), up to 66 per cent of unpaid contributing family work is performed by women, with one study finding that women perform five hours of unpaid care work a day – two more hours than men (ActionAid 2016). Unpaid work, such as family care and work on family farms, is a barrier to accessing skills and decent work opportunities for many women (UN Women 2016).

“After witnessing my friends working abroad becoming well-off, while we could not have enough to eat when doing farm work, I discussed with my husband and my mother-in-law about my intention to go to work abroad.”

Factory worker returned from Malaysia, Thanh Hoa province.

“I decided to work abroad because of the hard farm work [I was doing] without earning any money. Then my home town was very poor with food shortages, natural calamities, crop loss etc. Because of debts, I had to work abroad to earn money to make repayments.”

Domestic worker returned from Taiwan (China), Hai Duong province.

“I worked at a factory in the past, but the wage was too low, not enough to cover family expenses. My only expectation was to change our life and improve my family’s economic situation. My younger brother-in-law who was working in Taiwan[, China] recommended that I go to work there.”

Factory worker returned from Taiwan (China), Hai Duong province.

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2. National Strategy on Gender Equality (2011–2020), which aims for an equal share of new jobs for men and women, and the reduction of the burden of family responsibilities on women.
 3. 2012 Labour Code, which protects “the female employees’ right to work on the basis of equality” with regard to equality in recruitment, employment, training, working hours, and rest periods, and established labour rights for domestic workers;
 4. State Budget Law (2015), which sets gender equality as a budgetary priority.
 5. 1995 Plan of Action for the Advancement of Women, and the 2000 National Committee for the Advancement of Women.

For women with families, labour migration is often identified as the only option for making ends meet, especially where women are raising a family on their own or have a family with specific health or care needs.

“My son has been ill since his birth. He has to be taken to the hospital often, leading to the family being indebted. At 3 years old my son could not speak a word. The doctor said he suffered from stress. He only watched TV, not looking at anything else around. As he could not speak, when he wanted something, we did not know what to offer him, and he felt repressed and shouted. My husband and I sent him to a special class for slow-speaking children in the city. Every day he learned for two hours, costing 100,000 dong per hour. He learned in this class continuously for two years. His father had to rent a room close to the school to take him to school and care for him. Because of this, he could not do any work. We had to borrow money. Thus, I had to decide to work overseas to earn money to repay our debts and cover his continued medical treatment.”

Factory worker returned from Malaysia, Thanh Hoa province.

“[I left] due to great economic difficulties, with many children who are now at school.”

Factory worker returned from Malaysia, Thanh Hoa province.

“I was born in 1968 and finished lower secondary school. My husband died early, and I had to bring up my two children (a boy and a girl) all by myself. I only had a 1.3 sào [468 m²] of farmland for our subsistence; therefore, I decided to go out to work.”

Domestic worker returned from Taiwan (China), Hai Duong province.

Though bettering their livelihoods serves as the primary driver for migration, many women are excited to learn about the world outside Viet Nam, travel by air, meet new people and learn new skills.

I went to work abroad without any worry. I liked it because I could enjoy air travel. I was very excited and happy because I could meet more people and learn many new things. Upon arrival at Taoyuen Airport, I felt so excited. It is very clean and large and is very modern – very different from my home country!

Caregiver returned from Taiwan (China), Hai Duong province.

I want to go to a civilized country to learn and make progress. There, I will be able to work in a professional environment. I can travel to a faraway foreign country and can learn a foreign language. Back home, [this will be an] advantage for me.

Potential worker, recruited to Japan, Hai Duong province.

4. Law on Vietnamese Workers Working Abroad under Contract

Enacted in 2007, the Law on Vietnamese Workers Working Abroad under Contract (Law 72) was introduced to support the deployment and management of Vietnamese migrant workers, and is the primary law governing the labour migration process. Law 72 regulates a range of issues relating to migrant workers, including the licensing of agencies (known as “enterprises” in the Law) permitted to send workers abroad, the legal channels for migration, and the rights and obligations of workers and employment agencies. The operation of Law 72 has been supported by multiple legal instruments, including laws, decisions, decrees and circulars, which address a range of operational issues such as regulations and guidelines on costs, fees, dispute resolution, and the form and content of contracts.

The Ministry of Labour, Invalids and Social Affairs (MOLISA) is the state agency assigned with the task of managing labour migration. The Department of Overseas Labour (DOLAB) was established by MOLISA to regulate labour migration-related businesses, and to work with Vietnamese embassies and consulates in labour-receiving countries in the management and protection of migrant workers.

There are two primary methods of labour migration in Viet Nam that are regulated under Law 72. The first is through private employment agencies regulated by DOLAB. The second is through the state-run (not-for-profit) Center for Overseas Labour (COLAB). In addition, workers migrate through direct recruitment by contract-winning or offshore-investing Vietnamese companies. Law 72 sets out the rights and obligations of parties related to labour migration.

When Law 72 was developed, however, it was not subject to gender mainstreaming, which was introduced as an obligation for legislative development by the Law on Gender Equality (2006) and the Law on Promulgation of Normative and Legal Documents (2015). As such, the provisions of the law are largely gender-blind (that is, they do not take gendered differences or de facto inequalities into account), nor are there provisions that either address or prohibit discrimination. Neither does the law provide for labour migration practice to be gender-responsive with specific attention given to women to ensure their rights are safeguarded (that is, giving systematic attention to gendered differences with a view to addressing structural constraints to gender equality – see box below).

After more than ten years of operation, DOLAB has commenced a review of Law 72. The review includes a consideration of gender and will seek to ensure that the revised Law addresses gender concerns.

Box 1

What makes a law gender-responsive?

Women who migrate for work may face different challenges and barriers than men, in accessing fair recruitment; safe and effective training; and regular migration into decent work. Gender-responsive migration law is that which identifies and proactively addresses gendered barriers. This includes addressing structural inequalities that place women at a disadvantage – including gender-based discrimination and violence – towards equitable and positive migration outcomes (UN Women 2018).

5. International standards for gender and migration

Viet Nam has ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No. 26 addresses women migrant workers, setting out responsibilities of states to include formulation of “gender-sensitive, rights-based policy on the basis of equality and non-discrimination to regulate and administer all aspects and stages of migration, to facilitate access of women migrant workers to work opportunities abroad, promoting safe migration and ensuring the protection of the rights of women migrant workers” (para. 23(a)).

CEDAW also recommends that States parties take a multi-stakeholder approach to policy formulation and that policy be based on quantitative and qualitative research. Furthermore, the CEDAW Committee’s General Recommendation No. 35 on gender-based violence is also important in the context of world of work and labour migration, stating that “gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated. ... Such violence is a critical obstacle to the achievement of substantive equality between women and men” (para. 10).

In addition to CEDAW, Viet Nam has ratified six out of eight ILO fundamental Conventions:

- Forced Labour Convention, 1930 (No. 29)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

It has not yet ratified the Abolition of Forced Labour Convention, 1957 (No. 105) or the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Further international standards include the ILO's Multilateral Framework on Labour Migration.¹⁰ These non-binding principles and guidelines provide a comprehensive rights-based approach for labour migration. The Framework has been drawn from principles contained in relevant international instruments and international and regional policy guidelines.

The ILO's 2019 General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs¹¹ are also key to informing the promotion of fair recruitment. These principles and operational guidelines are particularly pertinent to migration, as they define fees and related costs, recognizing the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment.

The ILO's Violence and Harassment Convention, 2019 (No. 190), while not ratified by Viet Nam, has introduced a new level of accountability for States in addressing violence and harassment in the workplace, in particular through encouraging the adoption of laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.

6. Proposed areas for amendment of Law 72

At the time of drafting, MOLISA had proposed seven areas for suggested amendment of Law 72.

1. Provisions on the addition of contract types for working abroad on the basis of the arrangement for working abroad as per the current law, adding province-to-province cross-border labour supply agreements
2. Provisions on ensuring transparency and improving conditions for business investment into sector/businesses providing migrant worker services
3. Provisions on recruitment, training of workers and standardization of labour resources for overseas employment¹²
4. Provisions on the costs that workers must pay in accordance with market reality, international trends, and ensuring the responsibilities of employment agencies to workers

¹⁰ Available at: https://www.ilo.org/global/topics/labour-migration/publications/WCMS_178672/lang--en/index.htm.

¹¹ Available at: https://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm.

¹² The term "standardization of labour resources" has been literally translated, and refers to improving the capacity and skills of workers preparing for overseas employment.

5. Provisions on the mechanism for organization of and extension of support scope for the Fund for Overseas Employment Support
6. Provisions on rights, obligations and liabilities for migrant workers under contracts
7. Other policies.

This chapter identifies some key gender issues related to six of the proposed areas for amendment, illustrated with quotes from the qualitative research. Following the discussion of each of the proposed areas, a text box is included with suggested language that can be inserted to strengthen gender responsiveness. This suggested language is in red, underlined text.

The first area for proposed amendment listed above is not included in this chapter, as it merely seeks to add a new type of arrangement to the existing list of permitted arrangements for working abroad. The recommendations made in this report apply to all of these arrangements, whether existing or proposed.

6.1 Provisions on ensuring transparency and improving conditions for business investment into the sector/businesses providing migrant worker services

The objective of this proposed area for amendment is to facilitate access to formal, authorized information to enhance opportunities for protection of workers' rights – including those of women migrant workers – during their overseas employment.

The articles subject to this amendment include those setting out the business and licensing conditions for employment agencies sending workers abroad.

CEDAW General Recommendation No. 26 provides that employment agencies should have the capacity to address the specific needs and circumstances of women migrant workers. This includes, at paragraph 24(b)(iv), requiring employment agencies to participate in awareness-raising and training programmes to sensitize them on the rights of women, forms of sex and gender-based discrimination, and the responsibilities of agencies towards women.

The amendments suggested in red below are intended to apply an obligation on employment agencies to demonstrate that they have the knowledge and capacity to address gender and the specific needs and circumstances of women migrant workers, before being granted a license.

Article 9. Contents of the service to dispatch Vietnamese workers for overseas employment under contracts

...

5. To provide vocational and language training for workers; to provide pre-departure orientation for workers prior to their departure for overseas employment. **This must be**

done in a manner that is cognizant of the specific needs and circumstances of women migrants (including but not limited to: sexual and reproductive health rights; family responsibilities; limited or different access to resources; and prevention and response to violence, harassment and discrimination).

Article 10. Conditions to provide the service of dispatching Vietnamese workers for overseas employment service under contracts

4. Having specialized staff performing service activities for Vietnamese workers for overseas employment under contracts, with a particular focus on the specific needs and circumstances of women migrant workers, including but not limited to: sexual and reproductive health rights; family responsibilities; limited or different access to resources; and prevention and response to violence, harassment and discrimination. Officials and machinery should uphold the equal rights of women and men enshrined in the Constitution.

5. Having facilities for providing necessary knowledge for workers on overseas employment and having in place measures to support workers should they face problems. Such support measures must uphold the equal rights of women and men enshrined in the Constitution.

Employment agencies must have specific provisions to: ensure non-discrimination when recruiting (i.e. not hire for jobs based on a person's gender); prevent violence against women; and support women workers in case they face abuse, exploitation or violence.

Article 12. Licensing dossier, procedures and fees

1...

d) A signed statement committing to practices that promote the labour and human rights of migrant workers, in particular equality between women and men.

Article 13. Renewal of license

...

2. A dossier for renewal of a license comprises:

...

d) having no complaints against it by migrant workers.

6.2 Provisions on recruitment, training of workers and improving the capacity and skills of workers preparing for overseas employment

The objective of the proposals under this area is to enable both men and women workers to have access to an environment providing foreign language training, vocational training and necessary knowledge before their departure. The objectives of the amendments are to ensure that migrant workers are prepared and able to meet the needs of employers abroad, but also to ensure that workers are not recruited through intermediaries.

The ILO Multilateral Framework on Labour Migration provides that an orderly and equitable process of labour migration should be promoted, “to guide men and women migrant workers through all stages of migration, in particular, planning and preparing for labour migration, transit, arrival and reception, return and reintegration” (para. 12).

CEDAW General Recommendation No. 26 provides obligations that States should provide a list of authentic, reliable employment agencies and create a unified information system on available jobs abroad. Further it provides that States parties should deliver or facilitate affordable or free gender- and rights-based pre-departure information and training programmes.

While the intention of Law 72 is that labour migration is facilitated by regulated agencies, the reality is that many workers find out about labour migration opportunities and secure their employment through unregulated actors. A 2012 study found that about 22 per cent of Vietnamese migrant workers found out about their foreign work opportunity through recruitment agents, 19 per cent found out through the local steering committee on labour dispatch,¹³ and about 50 per cent of workers obtained information through friends, relatives and unlicensed brokers (unconnected with agents) (ILSSA 2012). In the absence of readily available access to information about approved labour supply contracts, there are few opportunities for prospective migrants – in particular those in low-paid sectors – to find out about the various options available. A 2017 ILO and IOM study found that Vietnamese women migrant workers reported not seeking information pre-departure, as the DOLISA offices were too far away and they had limited access to counselling on employment opportunities, a service that required travel and physical attendance. Instead they relied on information from family, friends and brokers (Harkins, Lindgren and Suravoranon 2017).

“It is best to go through brokers as they live in the village and so whatever questions we have we can ask them easily and directly. For those who go through employment agencies, they have to travel to the city or to Hanoi. As I have low education, I did not know anything, and needed help from local brokers. Even after leaving to the destination, if anything happens, we can easily call them.”

Factory worker returned from Malaysia, Thanh Hoa province.

“The T. family who works as brokers for a company did everything for me. I did not complete any paperwork; I just gave money to them, and they took care of everything. Because we are ignorant, we have to pay money for them to do all the procedures for us.”

Factory worker returned from Malaysia, Thanh Hoa.

¹³ Steering committees on labour dispatch have increasingly been convened at the district and commune levels, featuring representatives from the unions and the labour representative.

An ILO evaluation of the implementation of Law 72 found discriminatory practices related to the selection of workers for particular positions. Selection of the worker by the employer's agent can involve inspection of the prospective workers' physical ability to lift weights and to ensure that they have a desired appearance (for example, no tattoos, etc.). In the case of recruitment through COLAB, the Employment Permit System of the Republic of Korea allows the employer to pre-determine the gender of the worker; the result being that they recruit about 90 per cent men (ILO, unpublished). Law 72 does not currently address recruitment practices that discriminate by gender (or any other characteristics), and as such, these practices are not prohibited under this law.

In relation to training, CEDAW General Recommendation No. 26 specifically recommends that trainings cover:

recommended contents of labour contracts, legal rights and entitlements in countries of employment, procedures for invoking formal and informal redress mechanisms, processes by which to obtain information about employers, cultural conditions in countries of destination, stress management, first aid and emergency measures, including emergency telephone numbers of home embassy, and services; information about safety in transit, including airport and airline orientations and information on general and reproductive health, including HIV/AIDS prevention. Such training programmes should be targeted to women who are prospective migrant workers through an effective outreach programme and held in decentralized training venues so that they are accessible to women (para. 24(b)(1)).

The GFCD qualitative study carried out for this current gender analysis of Law 72 found the pre-departure training women had received did not often produce the intended output of preparing the worker, especially in relation to language training. In addition to the agencies themselves having poor provisions for quality training, the interviewed women workers reported that they required more investment (in terms of time and teaching) in order to learn the skills and languages. In addition, the time devoted to training also commonly overlaps with the period of time that migrants have to prepare to leave the country. As such, many women may have to spend that time at home attending to their homes and families and preparing them for their departure, rather than attending training. As such, the training that women did attend was often considered a formality for the paperwork, rather than key to their preparation.

“I was not trained in the Malay language, only some English before my departure. I spent two months attending the training in Cau Giay district, but I learned nothing.”
Factory worker returned from Malaysia, Thanh Hoa province.

“I stayed in the company for a week to make all necessary preparations for my departure, including learning Taiwanese language – just a few simple sentences, caring skills for sick people such as feeding, bathing, cleaning etc. After one full week, I was sent to Taiwan, [China] to work at an elderly nursing home in Kaohsiung.”
Caregiver returned from Taiwan (China), Hai Duong.

“I learned English, but it was not used. [In Malaysia,] people speak Malay. We mostly communicated with Vietnamese, thus did not need to learn the local language [Malay]. It cost me 700,000 dong for that two-month English language training, but I have not used any of the English words, except the word “hello”. All the words taught to me are returned to the teacher [laughed]. It was just for filling in the requirement of training; in reality we learned no words. If we don’t attend the training, the training fees are not given back to us.”

Factory worker returned from Malaysia, Hai Duong.

The suggested amendments below are made with the intention of making Law 72 more gender-responsive and rights-based in terms of the obligations of employment agencies generally, and in relation to pre-departure orientation and training specifically.

Article 19. Labor resource preparation in advance

1. The establishment of labour resources is for the employment agencies to organize directly or in cooperation with vocational education institutions, training institutions, and employment service organizations to provide information, counseling, and to prepare suitable vocational and foreign skills for workers to be able to satisfy recruitment requirements set by **employers the terms of the contract.**

...

3. Employment agencies must not collect any fees from workers during their establishment of labour resources **or at any point during the training.**

Article 29. Rights and obligations of licensed employment agencies

1.

a) To exercise provisions under Article 9 of this Law;

To provide the service of sending workers for overseas employment **while ensuring the human rights of all workers are protected and ensuring services are implemented bearing in mind the specific needs and circumstances of women migrant workers (including but not limited to: sexual and reproductive health rights; family responsibilities; limited or different access to resources; and prevention and response to violence, harassment and discrimination).**

...

c) To sign labour supply contracts with foreign parties, migrant worker contracts with workers, **fully explaining to workers the terms of the contracts, including in a manner responsive to the specific needs and circumstances of women migrants (including but not limited to: sexual and reproductive health rights; family responsibilities; limited or different access to resources; and prevention and response to violence, harassment and discrimination),** and guarantee contracts with guarantors before workers go on overseas employment, **ensuring said contracts respect and protect the human rights of workers in accordance with the international commitments of Viet Nam;**

...

e) To unilaterally liquidate guest worker contracts after the employment agency has sent three written notices by registered mail during the period of 150 days from the date the workers labour contracts terminate but the workers or their lawfully authorized representatives fail to show up to liquidate those contracts; or from the date that the workers have the contract extended but fail to perform their rights and obligations as set out in the guest worker contracts. **Such a provision should not apply to women or men who have faced violence, or abuse at the hands of employment agencies.**

2. A employment agency has the following obligations:

...

c) Make public announcement and publicly provide sufficient information to applicants on the number, recruitment criteria and conditions of guest worker contract; directly recruit workers through recruitment assessment or examination, not through authorizing or using other organizations and individuals to recruit workers and do not collect recruitment fees from workers; publicly announce recruitment results and the list of successful candidates. **Outreach to women migrant workers must be undertaken to provide information responsive to their needs, especially for those women migrant workers from rural areas and from marginalized groups.**

d) To organize the provision of necessary knowledge or through links with vocational training establishments or education institutions, job service centres are to improve the professional skills, foreign language skills of workers in accordance with the requirements of each labour market. **Necessary knowledge of rights and responsibilities, as well as support and other services available in Viet Nam and the country of destination must also be provided, keeping in mind the special needs and circumstances of women (including but not limited to: sexual and reproductive health rights; family responsibilities; limited or different access to resources; and prevention and response to violence, harassment and discrimination).**

...

h) To coordinate with foreign parties in dealing with matters arising when workers die, have occupational accidents or risks, are infected with occupational diseases, or have their life, health, honor or dignity or property infringed upon, and to settle disputes related to workers, **ensuring all of this done in a manner respectful of the specific needs and circumstances of women (including but not limited to: sexual and reproductive health rights; family responsibilities; limited or different access to resources; and prevention and response to violence, harassment and discrimination) and taking into account the human rights and dignity of women and men workers;**

...

k) To pay compensation to workers and guarantors for damages caused by the employment agency in accordance with the law, **and to ensure legal aid is provided when workers may seek justice (for instance, including in cases of violence, harassment, and discrimination faced by women);**

...

o) To be alert to, and report, any practices within the recruitment and placement of migrant workers, that may indicate the practice of trafficking or exploitation (in line with The Law on the Prevention and Combatting of Human Trafficking 2011 (No. 66/2011/QH12)).

p) To ensure that recruitment and placement of workers is free from gender discrimination or any other type of discrimination;

q) To ensure that the workers recruited are suitable and ready for the overseas employment opportunity and have received all reasonable training and orientation to ensure their preparedness;

r) To ensure that the overseas employer will provide employment in line with the Labour Supply and Employment contracts, including ensuring that places of work are safe and that the labour and human rights of the workers are fully protected;

s) To provide a service that provides reasonable and timely responses to the queries and gendered needs of migrant workers throughout the migration process.

Article 64. Responsibilities of workers in learning vocational skills, foreign languages and acquiring pre-departure orientation

1. Workers wishing to work abroad must take the initiative in learning **the skills necessary for their employment, including learning** foreign languages, learn about relevant laws and participate in pre-departure orientation courses organized by licensed employment agencies, State-owned non-profit organizations, or offshore-investing organizations or individuals that send them abroad, **free of charge**.

2. The State shall adopt policies to support all workers, **without discrimination based on gender or status, as** social policy beneficiaries; to have access to learn vocational skills, foreign languages and acquire pre-departure orientation; to have supportive policies for vocational and foreign language training for workers working at developed countries and with high salaries in a number of sectors, fields requiring techniques of high demand for training and developing human resources in domestic country.

Article 65. Vocational training, foreign language training for Vietnamese workers working abroad under contracts

1. Service enterprises, state-owned, non-profit entities that send workers abroad under contracts shall agree with workers on vocational skill and language training for workers to meet with the requirements of foreign parties receiving workers. **Such bodies shall put policies in place to ensure equitable access to training for men and women, as well as to ensure an absence of discrimination in any other form. Training shall be gender-responsive, including information on gendered risks of migration, in particular in relation to risks of violence against women; information on rights specific to the country context; information on how to access services and justice, in particular where the worker is experiencing or at risk of violence; and information on sexual and reproductive health and rights.**

Article 66. Policies applicable to vocational training institutions

The State shall adopt investment policies for vocational training institutions to develop labor resource working abroad; set up vocational training providers with adequate, **gender-responsive** training equipment, facilities, programs, curricula and staff in order to train workers with professional, technical, and foreign language skills as required by the labor markets.

6.3 Provisions on the costs that workers must pay in accordance with market reality, international trends, and ensuring the responsibilities of employment agencies to workers

The intention of this proposed area for amendment is to enhance the responsibilities of employment agencies in ensuring the lawful rights and interests of workers when problems arise.

Many of the articles covered by the proposed area of amendments relate, however, to costs and fees. In 2019, the ILO's General Principles and Operational Guidelines for Fair Recruitment (2016) were updated to include the Definition of Recruitment Fees and Related Costs. The General Principles and Operational Guidelines provide that recruitment fees and related costs (as defined in table 2 below) should not be charged to workers. Where women have to return home before their contract expires (due to health risks, dismissal without reason, employer bankruptcy), the worker and their family can become trapped in the debt.

“For those who suffer risks, the State and enterprises only provide emotional encouragement and pay visits. There is no policy to provide specific support for them.”

Official, DOLISA, Hai Duong province.

A 2017 study found that Vietnamese migrant workers paid the most in migration costs; had to borrow the largest amounts; and took the longest time to pay back their loans (compared to workers originating from Cambodia, the Lao People's Democratic Republic, and Myanmar) (Harkins, Lindgren and Suravoranon 2017). For multiple reasons, women can face a higher burden when it comes to costs and fees. Women are often less likely to have the resources to secure a loan (for instance, as a result of perhaps not having property in their name), and lack of access to reliable information on regulated agents and the caps on costs and fees can mean women are charged more. Even after migration, women often end up in lower-paid employment, which means it may take longer to repay fees or loans. In addition, research indicates that the countries offering opportunities that are more likely to provide decent work are the most expensive destinations in terms of migration-related fees and costs. Because women may have less access to resources, this can leave them excluded from these opportunities, having to opt for migration into work that may offer poorer conditions and a lower wage. This effectively becomes a systemic cycle that restricts women to low-

paid employment and excludes them from decent work opportunities (Miller 2019). Debt stemming from migration costs can also result in women remaining in violent or exploitative working environments.

“It costs me 25 million dong for my labour migration. I had to borrow 15 million dong from the bank with monthly interest payments, as well as borrow 10 million [dong] from relatives.”

Factory worker returned from Malaysia, Thanh Hoa province.

While chargeable fees and costs are capped under Law 72, in practice migrants are charged more, without knowing what the extra is for (per evidence collected in the qualitative research for this study).

“In 2014, I registered to work as a caregiver in Taiwan, [China]. The cost was about 90 million dong. On paper, it was written [US] \$3,300 [about 60 million dong], but in reality, I had to pay nearly 90 million dong.”

Caregiver returned from Taiwan (China), Hai Duong.

“To have money to cover the migration cost, I had to borrow from my parents and my elder sister. My husband’s family is poor and is far away. They only gave me encouragement, not money. At home my husband could care for our children and took them to medical check-ups and treatments.”

Factory worker returned from Malaysia, Thanh Hoa province.

“My family is not well-off, just having enough to eat. When my parents decided to send me to work abroad, they had to borrow 200 million dong from the Bank for Agriculture and Rural Development with interest paid monthly to cover all my labour migration costs. I paid 100 million dong to the company, and before departure, I had to pay a deposit of 10 million dong.”

Factory worker returned from Japan, Hai Duong.

Table 2. Definition of recruitment fees and related costs ¹

Recruitment fees	Related costs (include) ²
a. Payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment;	i. Medical costs: payments for medical examinations, tests or vaccinations;
b. payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;	ii. Insurance costs: costs to insure the lives, health and safety of workers, including enrolment in migrant welfare funds;
	iii. Costs for skills and qualification tests;
	iv. Costs for training and orientation: expenses for required trainings;
	v. Equipment costs;

- c. payments made in the case of direct recruitment by the employer; or
- d. payments required to recover recruitment fees from workers.
- vi. Travel and lodging costs: expenses incurred for travel, lodging and subsistence
- vii. within or across national borders in the recruitment process;
- viii. Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process.

¹ “It is recognized that the competent authority has flexibility to determine exceptions to their applicability, consistent with relevant international labour standards, through national regulations, and after consulting the most representative organizations of workers and employers. Such exceptions should be considered subject, but not limited, to the following conditions:

- i. they are in the interest of the workers concerned; and
- ii. they are limited to certain categories of workers and specified types of services; and
- iii. the corresponding related costs are disclosed to the worker before the job is accepted” (ILO 2019, para. 11).

² “When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process” (ILO 2019, para. 12). These cost categories could be further developed by the Government and the social partners at the national level.

Many recruitment agents will expect payment of fees or costs up front (ILO, unpublished). In situations where the worker decides not to leave, or comes back early due to the work being inappropriate or exploitative or due sickness or injury, it is very difficult for the worker to claim the money back.

“If we pay an advance and could not go, they [employment agencies] will not repay it. My younger brother could not get back the advanced money, though he tried asking for it. He lost 6–7 million dong.”

Factory worker returned from Taiwan (China), Thanh Hoa.

While the draft revision of Law 72 apparently prohibits passing on any “brokerage costs” to the migrant worker, it does provide for subordinate legislation to set the ceiling for brokerage costs, which risks undermining the prohibition. “Brokerage costs” are the amount the recruitment agent pays to the employment agent or broker in the destination country to carry out the labour supply contract. In reality, however, brokers may request further money ad hoc in the destination, as seen in the examples below:

“Workers pay a health insurance premium to the company. This money goes to the brokers [in Taiwan, China] who set a regulation that when the workers fall ill, they are to contact the brokers who are to take them to have a health check-up. The brokers will charge [an additional] interpretation fee when taking the workers to these health check-ups and medical treatments. However, in reality, when we felt ill, we called the brokers, and they did not come. ... If the employers are good and kind, we

workers can get their help. If not, we have to pay an additional amount of money to Taiwanese brokers [for them to take us to see a doctor].”

Factory worker returned from Taiwan (China), Thanh Hoa.

“I informed the broker [of a breach of contract], but the [broker] told me to keep silent, threatening that [I would have to pay additional cost for] changing employers.”

Domestic worker returned from Taiwan (China). Hai Duong province.

In addition to the brokerage commission, Law 72 allows for the worker to pay a “service charge” to the recruitment agent. Law 72 does not provide much detail on what services the service charge covers. The presumption is that the charge covers the recruitment agent’s costs to provide support and services to the worker in the country of destination – for example, advice on remittances; negotiations regarding employment conditions or living arrangements, if needed; interpretation; alternative accommodation or legal support if violence or abuse occurs; arrangements for return to Viet Nam, and so on. Reports indicate, however, that workers receive very little support from agents when in the country of employment (ILO, unpublished).

“In case we faced any difficulty, we reported to the embassy. I did not know any other Vietnamese labour management agencies in Malaysia. The employment agency, after sending us to work, had no relations with us. I did not know its address or telephone for contact.”

Factory worker returned from Malaysia, Thanh Hoa province.

In Law 72, workers are also obliged to pay deposits to the recruitment agents to compensate the recruitment agent in the event the migrant worker breaches the contract at the agent’s expense. The law provides little detail on the circumstances that may bring rise to the right of the employment agency to use the deposit, or the standard against which the worker’s actions are to be judged in considering whether they have breached the contract or broken the law (ILO, unpublished). In practice, it can be very challenging for a worker to recover their deposit upon return.

Per the ILO’s technical note on the Draft Law 72,¹⁴ brokerage commission, service fee, deposits¹⁵ and guarantees all remain within the law, and create significant concerns about

¹⁴ ILO, “Technical Note on the Draft Law on Vietnamese workers working abroad under contract (amended)”, Version 27 March 2020, second preliminary set of comments (2020).

¹⁵ Per the ILO’s revised technical note: “The Office reiterates that deposits paid by workers are contrary to international standards and good practice. Deposits paid by workers will serve to increase costs for the worker or family members. Moreover it may serve the policy objectives for introducing such a deposit. It may have to be examined whether deposit taking from workers has actually reduced overstay or illegal employment. The Office recommends that this provision be removed. If payment of a deposit by the worker is maintained against the Office’s recommendation, the Office strongly suggests that an additional provision be inserted in Article 26, which could read as follows:

the ongoing high fees and related costs for outbound Vietnamese migrant workers – especially women, who may have lesser access to financial resources. These costs and fees do not align with ILO Private Employment Agencies Convention, 1997 (No. 181) or the ILO General Principles and Operational Guidelines for Fair Recruitment and the Definition of Recruitment Fees and Related Costs. One goal of Law 72 should be to realize Sustainable Development Goal indicator 10.7.1 to reduce the fees and related costs associated with migration. Fees and costs were highlighted strongly in the Independent Evaluation of the implementation of the Law on Vietnamese Workers Working Abroad under Contract (Law 72) 2007. Payment schedules are not considered throughout the law, and would be crucial to worker protection.

“[After a breach of contract and returning home] I only got back several million dong of deposit. Before departure, I had to pay 20 million dong in all, including training and departure procedures. I sold several tons of rice, but only got more than 1 million dong. I had to borrow from my brothers and sisters and relatives and also asked someone to borrow from the bank for me because I was not a member of the Farmers’ Union! Having no money, I could not even register to get the red book for my house to give as collateral for a bank loan. I also lost several million dong after being deceived by someone [who said they would take care of] my ID and passport application procedures.”

Domestic worker returned from Taiwan (China), Hai Duong province.

The suggested amendments below are made with the intention of making Law 72 more gender responsive and rights-based.

Article 25. Service charge [Recommend removal]

...

Article 27. Deposits of workers [Recommend removal]

...

6.4 Provisions on the mechanism for organization of and extension of support scope for the Fund for Overseas Employment Support

The objective of this proposed area of amendment is to improve the operation of the Fund for Overseas Employment Support so that it better supports migrant workers with their employment.

‘In the event of a dispute over non-repayment of the deposit, the worker shall have the right to refer their claim for repayment to the Ministry of Labor, War Invalids and Social Affairs who will make a decision and instruct the enterprise to repay within thirty days of referral’.

If not removed, it is suggested that further processes for deposit liquidation be outlined here and detailed in subordinate legislation, given the complexity of the issue (including determination of fault)”.

The ILO’s Multilateral Framework on Labour Migration provides that States should establish a welfare fund “to assist migrant workers and their families, for example, in the case of illness, injury, repatriation, abuse or death” (para. 12.10).

CEDAW General Recommendation No. 26 provides, under paragraph 24(j) that States parties should train and supervise diplomatic and consular staff to ensure that they provide quality support services to women migrants. Services should include provision of interpreters, medical care, counselling, legal aid and shelter.

A 2015 MOLISA review of the implementation of Law 72 found that about 66 per cent of the Fund’s spending was spent on repatriation of workers, with much of the balance being spent on generalized promotion of migration in the media (MOLISA 2015). There is currently no framework for using the Fund to provide welfare services to workers in countries of destination.

The suggested amendments below are made with the intention of making Law 72 more gender-responsive and rights-based in terms of the overseas employment support services provided under the Fund.

Article 69. Objectives and tasks of the Fund for Overseas Employment Support

1. The objectives of the Fund for Overseas Employment Support is to support the development, stability and expansion of the overseas labor markets, improve the **skills quality** of labor resources, and support the prevention and settlement of risks for workers and enterprises. **Policies shall be developed to ensure that that the income and expenditures of the Fund are fully transparent and that the majority of the fund is spent on providing rights-based and gender-responsive welfare services to migrant workers, in particular those who have experienced violence or exploitation, and in particular through the support of consular and diplomatic staff.**

6.5 Provisions on rights, obligations and liabilities for migrant workers under contracts

The objective of this proposed area of amendment is to address the situation of workers violating contracts or not returning home after contract expiration. The focus of the amendments is the inclusion of a requirement that the worker registers their return home.

Many factors can influence a workers’ decision to overstay their visa and/or leave the employment linked to their regular migration status. One factor is the competitive labour market for irregular migrants in some countries of destination. Another significant factor, however, is workers who are experiencing exploitative or violent conditions at work, with no recourse to seek support or change employment.

CEDAW General Recommendation No. 26 provides at paragraph 26 that countries of destination: introduce flexibility into the process of changing employers without deportation in cases where workers complain of abuse; provide temporary shelters for workers who wish to leave abusive employers; and provide legal protection for workers' freedom of movement and right to keep travel and identity documents. It also provides that migrant workers should have independent residency status, with provisions that permit the legal stay of women who flee an abusive employer, or for women who are fired due to complaining about abuse.

“In Malaysia, I stayed in a dormitory for workers, so was not free to move around or go shopping. We were controlled, and were picked up and sent back to the dormitory every day. The most difficulty we faced was not being allowed to go shopping outside; we had to buy things inside the dormitory area. If we went out to buy things, we were prohibited and beaten by the guards.”

Factory worker returned from Taiwan (China), Hai Duong province

The Government of Viet Nam can advocate with countries of destination to strengthen provisions for changing employers, accessing shelter in cases of abuse, freedom of movement, and the right to keep travel and identity documents. In any event, Law 72 can ensure that workers have the right to receive support to change employment or return home, with minimal financial loss, in the event that their labour or human rights are being, or have been, violated – especially where workers have experienced violence.

Article 6. Rights and obligations of workers working abroad of workers working abroad

1. A worker working abroad has the following rights:

...

c. To have his/her legitimate rights and interests protected while working abroad in accordance with the Vietnamese law, the law of the host country as well as international law and practice. **This includes the right to support from such bodies to change employment or return home, with minimal financial loss, in the event that a worker's labour or human rights are being, or have been, violated – especially where the worker has experienced violence.**

6.6 Other policies

The objective of this proposed area of amendment, is to strengthen the supervision and monitoring of Vietnamese employment agencies providing migrant worker services, as well as the responsibilities of offshore-contract-winning and receiving employment agencies, or offshore-investing organizations or individuals providing migrant worker services; thereby contributing to the protection of the legitimate rights and interests of migrant workers and ensuring conditions that prevent and address violence faced by women migrant workers in the course of migration.

The ILO's Multilateral Framework on Labour Migration includes provision that governments formulate and implement – in consultation with the social partners – measures to prevent abusive practices, migrant smuggling and trafficking in persons. States should also work towards preventing irregular labour migration. The Multilateral Framework also provides that States give due consideration to licensing and supervising recruitment and placement services, and engage in international cooperation to promote managed migration for employment purposes.

Further, CEDAW General Recommendation No. 26 provides that States should enter into bilateral or regional agreements to protect the rights of women migrant workers.

The suggested amendments below are made with the intention of making Law 72 more gender-responsive and rights-based in terms of the obligations of the state management of migration.

Article 3:

“Discrimination” is any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation

“Gender Responsive” is an approach to policy and practice that identifies and proactively addresses gender-based barriers.

Article 4

Include policy on prevention of trafficking and forced labour.

5. Broaden the statement to “support preparation of workers for migration, including...”

Article 7. Prohibited acts in the dispatch of Vietnamese workers for overseas employment under contracts

Include as a prohibited act: “Recruitment, placement and training practices that discriminates against any migrant worker or group of migrant workers on the basis of individual characteristics, including gender”

...

9. Failing to work or fleeing from workplaces as stated in contracts after entering the receiving country (with the exception of cases where a worker has been subject to violence, harassment or abuse).

Article 71. State management of workers on overseas employment under contracts

1. Elaborating, and organizing the implementation of, strategies, plans and policies on workers working abroad in accordance with the labour and human rights of men and women migrant workers.

...

4. Managing, directing and guiding the management of **women and men** workers working abroad; organizing the **gender-responsive and rights-based** apparatus to manage workers working abroad; providing professional training for management of personnel in charge of sending workers abroad by granting certificates/permits, specially prioritizing recruitment staff/ contract consultants and trainers, teachers; studying the code-based management of workers working abroad.

5. Promoting international cooperation on sending workers abroad; negotiating and signing **gender-responsive and rights-based** treaties or agreements on workers working abroad, **based on minimum terms established in policy**.

Article 72. Responsibilities for state management of Vietnamese workers working abroad under contracts

1. The Government shall perform the state management of workers working abroad.

2. The Ministry of Labour, War Invalids and Social Affairs shall take responsibility to the Government for performing the state management of workers working abroad, set out conditions for markets, sectors, areas for licensed employment agencies providing overseas employment service. **In performing this responsibility, the Ministry of Labour, War Invalids and Social Affairs is to commit to reviewing and revising policy and practice to ensure that the rights and welfare of migrant workers is maintained as a priority in the implementation of this Law.**

Article 74. Inspection in the dispatch of Vietnamese workers for overseas employment under contracts

1. The Labor, War Invalids and Social Affairs Inspectorate shall conduct specialized inspection on the dispatch of Vietnamese workers for overseas employment under contracts **on a regular basis and has the right to undertake unannounced inspections.**

2. The organization, tasks and powers of the inspectorates in charge of activities of sending workers abroad shall comply with legal provisions on inspection.

7. Additional suggested areas for amendment

In addition to the Government of Viet Nam's proposed areas for amendment, two further areas have been identified for amendment. By addressing the sections on contracts, and on return and reintegration, there are further opportunities to strengthen Law 72 from a gender-responsive and rights-based perspective.

7.1 Contracts

The intention of Law 72 is that the contents of the Labour Supply Contract (the contract between the recruitment agent in Viet Nam and the broker or employer in the country of destination) inform the Guest Worker Contract (the contract between the recruitment agent and the worker) and the Employment Contract (the contract between the worker and the employer). The information required in the Labour Supply and Guest Worker contracts is, however, limited, providing little specific guidance on the content of the employment contract in relation to labour conditions, workplace safety, or the working and living environment of the migrant workers.

The provision and enforcement of rights-based employment contracts is key to ensuring that migrant workers understand and are able to exercise their labour rights. This is as identified in international standards that set out the key features of standard contracts, including the ILO's Migration for Employment Recommendation (Revised) 1949 (No. 86) and the Domestic Workers Convention, 2011 (No. 189) (table 3).

Table 3. Key terms for standard employment contracts in ILO Recommendation No. 86 and Convention No. 189

Key terms	R086	C189
Name and address of worker / employer	✓	✓
Address of workplace	✓	✓
Start date and duration	✓	✓
Type of work to be performed	✓	✓
Remuneration: rate, regularity, method	✓	✓
Overtime provisions	✓	
Permitted deductions	✓	
Normal hours of work and rest	✓	✓
Weekly rest (24 hours)		✓
Annual leave and public holidays	✓	✓
Maternity leave		✓
Social security/insurance; medical provisions		✓
Occupational safety and health (inc. training)	✓	✓
Food and accommodation	✓	✓
Right to join trade unions		✓
Terms of termination	✓	✓
Terms of repatriation	✓	✓
Note: R086 = Migration for Employment Recommendation (Revised) 1949 (No. 86)		
C189 = Domestic Workers Convention, 2011 (No. 189)		

At the regional level, the Association of Southeast Asian Nations (ASEAN) Consensus on the Protection and Promotion of the Rights of Migrant Workers (ASEAN Consensus) provides

the obligations of ASEAN Member States to establish a number of rights for migrant workers. These include, among others, the right to an employment contract with clear and basic terms of employment subject to national laws, regulations and policies. The ASEAN Consensus includes at article 36 a (non-exhaustive) list of suggested contract terms, including: wages; employment benefits; working conditions; health and safety; employment dispute mechanisms; and repatriation. The ASEAN Consensus specifies that the contract be written in a language the migrant worker understands and be provided to the worker.

Contract substitution

The findings of the qualitative research informing this current paper highlight a number of women workers who had signed contracts in Viet Nam, but then found that they were working under different contracts in the country of destination. In some cases, the substituted contract included a completely different job; in others, specific terms had been removed or substituted.

“In 2007, I went to work in Malaysia. Working there I found out that the contract signed in Viet Nam did not match with what the [company in Malaysia] said.”

Factory worker returned from Malaysia, Hai Duong province.

“I was said to work as a domestic worker caring for old people, but when I arrived, I worked as an assistant at a workshop, therefore I failed to meet the work requirements, and so the employer was not satisfied.”

Domestic worker returned from Taiwan (China), Hai Duong province.

Occupational safety and health

The qualitative findings included that women migrant workers were experiencing occupational accidents due to lack of occupational safety and health measures being taken by employers.

CEDAW General Recommendation No. 26 provides at paragraph 26(b) that States should ensure that contracts for women migrants are legal and valid, and ensure that women’s labour is covered by labour laws, including health and safety codes.

“The work at this company was manual. At first, I had to weigh so much squid and cuttlefish – dozens of tonnes – ending in my arms hurting. I also had to sort them into different trays. For small squids, it was easy to weigh 18–20 of them and put them in a tray. For [large squid], it was harder to balance; and I had to substitute one with another, resulting in my arms really tired and hurting. I had to use medicated plasters all the time. Some workers fell unconscious during work. Truc, a young girl from the city fell down because she was so tired. When I left home, I weighed 57 kilograms, but in the destination, I lost weight, to be only 50–51 kilograms.”

Factory worker returned from Malaysia, Thanh Hoa province.

“I sat close to the machine. My gloves were torn, and [one day] the torn parts of my glove got stuck in the machine, injuring my right hand with two open wounds that needed six stitches. I was lucky not to lose my right arm. Someone told me I was sleepy. But the two supervisors – an Indian and an Indonesian – said I had never been sleepy [and that the injury was due to] the torn glove, which was driven into the machine.”

Factory worker returned from Malaysia, Thanh Hoa.

Working hours

The aim of labour migration for many women is to earn as much as possible. Working away from home, and not having family or community commitments, women are able to take on overtime work to maximize their income. The qualitative research for this study found, however, that in many cases, employers exploit this to increase standard working hours up to 12 hours a day, 7 days a week, without any regulated overtime provisions, meaning workers are not getting the full benefit of their extra work.

CEDAW General Recommendation No. 26 provides at paragraph 26(b) that States ensure that women migrant workers’ labour is covered by wage and hour regulations, and holiday and leave regulations.

“We worked all days without rest. We worked even on Sundays and holidays. Every month we had only a day off; and we took the day off because if we worked, we received no pay, not like other companies.”

Factory worker returned from Malaysia, Hai Duong province.

“I had to work every day, including Sundays and holidays. I worked half a month in the daytime shift and the other half in the nighttime shift.”

Factory worker returned from Malaysia, Thanh Hoa province.

Social/health insurance

The qualitative research found that, while social and health insurance may be required in the country of destination (and are required under Law 72), the common impression of the women migrant workers interviewed was that they would need to pay for any healthcare. This was also the reality in practice, with many employers not meeting their obligations to provide insurance, or not communicating how to access supported health services, including sexual and reproductive health services.

CEDAW General Recommendation No. 26 at paragraph 26(i) provides that States should ensure women migrant workers have access to healthcare services. At 26(a) the General Recommendation provides that States should lift bans that prohibit women migrant workers from becoming pregnant, and in the absence of such bans, women should have equal access to maternity benefits.

“[The contract] included some incentives and insurance, but when we arrived there, nothing was given. During illness or flu, we went for checkups at the health centre and bought medicines at our own expense, since we had no health insurance. On days off, we had to go for health check-ups at our own expense. I did not know who [to talk to] related to our health insurance.”

Factory worker returned from Malaysia, Hai Duong province.

“I did not go for medical check-ups when I fell ill, thinking that I would recover by myself. I knew nothing about social insurance and health insurance. Besides wages, I received nothing else.”

Factory worker returned from Malaysia, Thanh Hoa province.

“The company did not buy social insurance for me, only health insurance. When we fell ill, we had to inform the workshop manager and the company would send someone to take us to clinics for check-ups. If we were not seriously sick, we still had to work. Sometimes I had a high fever, but still had to do my work.”

Factory worker returned from Malaysia, Thanh Hoa province.

Restriction of movement

The qualitative research found that for women working in factories it is common that companies restrict the movement of workers to within the factory or the dormitory. It is also common for employers of domestic workers to restrict their movement outside of the house in which they live and work. The reason for such restriction can be linked to an intention to protect the worker, but may also be to prevent the worker from leaving the employment. Without the ability to exercise their right to freedom of movement, women migrant workers are unable to access information or services, socialize with each other or enjoy a full life outside of work.

CEDAW General Recommendation No. 26 provides at paragraph 26(d) that States should ensure that employers end forced seclusion of women migrant workers.

“When we arrived, the [Anonymized Name] Company was evading tax; therefore, we were not allowed to go out. Before we arrived, the company had previously provided every worker a pass to go out. But we were not given the pass because of the tax evasion by the company. Whenever we had to go out, for example, to transfer money home, we had to borrow the pass from other workers. We were very displeased. After a year of work there, we were also given the pass.”

Factory worker returned from Malaysia, Hai Duong province.

Withholding passport

The qualitative research found that women migrants in factories were having their passports taken away. Many workers reported not knowing where their passports were being kept.

CEDAW General Recommendation No. 26 provides at paragraph 24(e) that States parties should ensure women have independent access to travel documents; and at paragraph 26(d) that States ensure employers and recruiters do not confiscate or destroy travel or identity documents.

“My passport was kept by the company. Upon my arrival, they took my passport and kept it, and only returned it to me when I left the country for home.”

Factory worker returned from Malaysia, Thanh Hoa province.

Accommodation

Women working as domestic workers often live in the house of their employer and employment. These spaces are not generally covered by the labour law or open to inspection as labour sites. As such, including a contractual provision on the minimum standard of accommodation the worker has rights to is key. For women domestic workers, this includes having a private and lockable space. In the case of factories, this includes having gender-segregated areas, including gender-responsive bathroom facilities. The qualitative research found that women in factories reported it was common for dormitories to be crowded. Whereas respondents were told that the accommodation would be gender-segregated, with ten people in a well-furnished room, some found that they ended up in spaces where 40 workers shared a room. Where living spaces are not properly gender-disaggregated and where women do not have access to private and lockable spaces, the risk of sexual harassment and gender-based violence increases. In this regard, safe and appropriate accommodation is not just a right; it is critical to violence prevention.

“The accommodation was rather crowded with 40 people in a room at first, and later 20 people, but with shortage of drinking water.”

Factory worker returned from Malaysia, Thanh Hoa province.

The suggested amendments below are made with the intention of making Law 72 more gender-responsive and rights-based in terms of the contents of the Labour Supply, Guest Worker and Employment contracts.

Article 21. Labour supply contract

2. A labour supply contract shall be in accordance with the laws of Viet Nam and the receiving country; **it shall not include provisions for gender-specific hiring**, and comprises the following principal contents:

- a) Duration of the contract;
- b) Number of workers on overseas employment; the working sector and occupation, **including job descriptions**;
- c) Places of work;
- d) Working conditions and environment;
- e) Working hours **(not exceeding eight hours a day as standard)** and rest hours **(a minimum of 11 hours as standard)**;

- f) Occupational safety and health provisions, including provisions for safe, violence-free and healthy working environment and conditions for all workers, including provisions ensuring pregnant women and nursing mothers are provided appropriate conditions, and that due attention is also provided to the sexual and reproductive health rights of men and women migrant workers;
- g) Wages, remuneration, other benefits and bonuses (if any); overtime pay, method of calculation, regularity of payment (ensuring at least national minimum wage, equal pay for work of equal value, gender-equitable pay, and pay equitable to nationals);
- h) Suitable accommodation conditions and adequate meals (where relevant);
- i) Healthcare scheme including sexual and reproductive health rights of men and women migrant workers (whether national or private and provided by the employer);
- j) Social insurance scheme (gender-equitable and equal to nationals; including maternity and parental leave/pay provisions);
- k) Conditions for premature termination of contract and compensation liability;
- l) Responsibility for the cost of the visa and round-trip transportation between Viet Nam and the workplace (not to be paid by the worker);
- n) Responsibilities of concerned parties for the death of a worker during his/her employment abroad;
- o) Settlement of disputes;
- p) Responsibility for assisting workers in remitting money to Viet Nam, avoiding high transaction costs;
- q) Responsibility for assisting urgently and in a time-bound manner essential services to men and women migrants who face violence and abuse.

33. The Ministry of Labor, War Invalids and Social Affairs shall stipulate minimum conditions for each labor market as a base for relevant parties to agree upon the contents of the labor supply contract.

Additional terms for the employment contract:

- Information about any probation period;
- Clause specifying that the employee will not be expected to work at any other place other than the place of employment specified in the contract;
- Details of any lawfully permitted deductions, as agreed between the employer and employee;
- Clause confirming that the employer will agree the method of payment with the worker, and provide the appropriate documentation to open a bank account where requested;
- Provisions for break times and meal times in the working day;
- Provisions for accommodation for migrant domestic workers.
- Agreement of the timing of weekly rest (at least 24 hours);
- Provisions on pay for annual leave, public holidays and sick leave;

- Provisions for public or private (paid by the employer) healthcare including emergency medical expenses, preventative care, medicines, sexual and reproductive health services, including pregnancy;
- Clause protecting the right of workers to keep hold of their identity and travel documents;
- Clause providing that workers have freedom of movement and are free to choose how to spend their non-work time;
- Details of grievance mechanisms and how workers can access justice in the event of violence, a dispute;
- Details of consular and other services, especially in cases of violence and harassment;
- Specifics of termination, including notice periods;
- Information on services available in case of violence faced by women.

Article 22. Registration of labor supply contract

1. Service enterprises register labor supply contracts with the Ministry of Labor, War Invalids and Social Affairs and shall only exercise the contracts after being approved in writing by the Ministry. **The details of all labour supply contracts must be publicly available.**

7.2 Return and reintegration

On their return, women can face stigma and discrimination, having broken cultural bonds and established greater independence. More returning women than men appear to encounter family disharmony due to the spouse's poor behaviour or infidelity or have to contend with rumours among neighbours that their husband has been "badly behaved" (Bowen and Do 2012). Women may also face gendered challenges in converting their migration experience into new employment opportunities in Viet Nam or overseas. In one study, the women surveyed felt unable to use the skills they had learned abroad after their return, and unemployment was a significant challenge. Where women did secure employment, they also reported that their experience abroad had little impact on the amount they could earn on return (Miller 2019).

While labour migration did not change the amount of power women had over employment or income on return, the money earned did enable them to change their lives and those of their families (Miller 2019). The qualitative research for this current study found that the majority of money saved by women migrants was used to build houses and pay for children's schooling. It also found that those women who were not already single mothers often came home to find that their husband was no longer providing support to the family. These changes in circumstances, in addition to the absence of any effective local authority guidance on the use of financial resources, or support to build on skills and find suitable new employment, mean that many women migrants are not able to fulfil the potential that their income and new skills could provide.

The ILO's Multilateral Framework on Labour Migration provides that, wherever possible, States should facilitate migrant workers' return by "providing information, training, and assistance prior to their departure and on arrival in their home country concerning the return process, the journey and reintegration" (para. 12.2).

CEDAW General Recommendation No. 26 provides that States parties should design or oversee comprehensive socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned.

"On my return, my husband did not care for me. Two years after I returned, I built a house to live separately in my parents' home town. At first, I intended to work abroad for three years, but after coming back, witnessing him having adultery, I decided to go work abroad again with the only aim being to earn money to bring up my children."
Domestic worker returned from Taiwan (China), Hai Duong province.

"On my return, my husband was not as good as I expected. He was corrupted and lazy. I worked to earn money to repay debt, but he remained the same, making no change; thus I feel dissatisfied and want to go back to work. This time I intend to work [abroad] for three years. I am only concerned about my children. In this next labour migration, it will cost me less, about [US] \$3,300."
Factory worker returned from Taiwan (China), Hai Duong province.

"While waiting to go to work in Malaysia, I sold all of my farmland. Now [on return] I do not have any more land to till. I made pancakes for sale for several months, but because I suffer from spinal degradation, I could no longer continue the business. I did different jobs ranging from porter to trader of rice and other jobs."
Factory worker returned from Malaysia, Thanh Hoa province.

The suggested amendments below are made with the intention of making Law 72 more gender-responsive and rights-based in terms of the provisions for employment support and job creation for transitioning returning migrant workers into decent work.

Article 61. Employment support

1. The Ministry of Labor, War Invalids and Social Affairs and the provincial People's Committees shall build an annual forecasting plan of workers returning home, local demand for workers, connect employment information to the returned workers in order to promote their knowledge, skills and professional expertise. **Such a plan will include gender-disaggregated data on the expected returning migrants, and note any gender-specific skills development requirements to ensure that men and women returnees have equal access to opportunities.**

2. Provincial-level People's Committees shall have supportive, **gender-responsive** policies for the workers returning home to participate in short-term training courses, getting them

involved in employment environment and shall guide and introduce them to register to find appropriate jobs in the locality.

3. Service employment agencies shall establish an employment information supportive unit for the workers returning home, **publish on the employment agencies' website** information on employment transactions at localities, maintain websites on employment for the workers to easily access to jobs when they return home, prepare plans for supporting/connecting employment information for the workers returning home.

Article 62. Support on creative start-up

1. The State facilitates and encourages workers returning from overseas employment to invest in production or business activities, create jobs and start-ups.

2. Peoples' Committees of provinces and cities under central administration, based on their local socio-economic context, shall have policies supporting Vietnamese workers returning from overseas employment to find jobs, invest in production and business activities, and establish creative start-up businesses. **Such policies will have specific measures included to ensure that men and women returning migrants are able to equally benefit from the support provided.**

New Article. Reintegration support

1. **The localities shall set up programmes supporting workers returning home who require information and support to assist their reintegration, including gender-responsive services that respond to the needs of migrant workers who have experienced of violence, abuse or exploitation, in particular legal aid, access to justice, and coordinated psychosocial, health and social services.**

8. Conclusions and key recommendations

It is widely recognized that women and men face gendered differences in their migration experiences and the circumstances of their migration. Gender can influence the decision to migrate, the information and options available, and the sectors and level of jobs in which migrants work. Women from Viet Nam, for example, are more likely to be recruited for work in low-skilled occupations and be paid less than men. Women can face barriers to safe and regular migration into decent work. Such barriers can prevent women from accessing information on regular migration opportunities, can include discriminatory recruitment practices that exclude women from particular jobs, and poor living and working conditions that increase women's risk of violence and harassment, or exploitation.

In order to identify and respond to the gendered barriers that women face, laws need to be gender-responsive, addressing the structural inequalities in the migration process that leave women at a disadvantage. With the main labour migration law of Viet Nam being subject to

review and revision, this report takes the opportunity to consider the proposed amendments from a gender perspective. In doing so, the report is informed by the voices of women migrant workers, and the recommendations guided by international normative standards, in particular the ILO's Multilateral Framework on Labour Migration and CEDAW.

1. In considering the provisions related to the business and licensing conditions of employment agencies, the report makes the recommendation:
 - a. To introduce gender-based **requirements for employment agencies sending migrant workers** to demonstrate the knowledge and the capacity to address and be accountable to gender, discrimination and the specific needs and circumstances of women migrant workers – including in relation to the risks of violence and harassment – before being granted a license.
 - b. It is recommended that the Government develop a subordinate legislative instrument establishing in detail the gender-responsive requirements of employment agencies in terms of their knowledge and capacity to respond to gender, and detailing what evidence they need to provide in their application for a license.

2. The amended law seeks to strengthen the provisions around pre-departure training and the accountability of employment agencies. This report highlights that many women migrants get their information on migration from unregulated brokers, and do not benefit from comprehensive pre-departure training. In addition, discriminatory recruitment can limit women to low-skilled and low-paid employment. The recommendations focus on increasing the accountability of employment agencies to the circumstances and needs of women migrant workers; and to ensuring that pre-departure training covers all of the information that women migrant workers may need, including information on risks and services. The report makes the recommendation:
 - a. To strengthen the provisions related to employment agencies generally, and pre-departure orientation and training specifically, in order to ensure that **recruitment and training practices** are rights-based and gender-responsive.
 - b. It is recommended that the Government work with the employment agencies to strengthen accountability to gender in their regulations.
 - c. In addition, it is recommended that the Government work to support the development of gender-responsive minimum content for pre-departure training that includes information on identifying and responding to risks of violence and harassment.

3. The proposed amendments seek to enhance the provisions on the costs that workers should pay. This report highlights that workers currently pay particularly high costs and fees, and are often subject to significant loans. The cost of migration can be a particular burden for women, who may have less resources through which to pay for migration, or seek competitive loan conditions. Where women find themselves in significant debt, this can result in their feeling unable to leave violent and exploitative working environments. The report makes the recommendation:
 - a. To strengthen the rights-based and gender-responsive nature of the law by removing obligations to pay certain **costs**.

4. The proposed amendments seek to improve the operation of the Fund for Overseas Employment Support. This report highlights that, at present, there are no provisions related to the use of this fund to provide welfare services to workers in countries of destination. The report makes the recommendation:
 - a. To strengthen the provisions related to the **Fund for Overseas Employment Support**, so that it is used to provide gender-responsive welfare services for migrants in countries of destination.
 - b. This includes developing policies to ensure that the Fund is fully transparent and spent on rights-based and gender-responsive welfare services, in particular for migrants who experience violence and harassment or exploitation.

5. In seeking to address the situation of workers violating contracts or not returning home after the expiration of employment contracts, the proposed amendment seeks to require workers to register on their return home. This report highlights some of the factors that might influence workers to stay overseas, in particular, where workers experience violence or exploitation with no support, and are forced to leave their employment and seek alternatives as an irregular migrant. As such, this report makes the recommendation:
 - a. To strengthen the rights of women and men migrant workers to **return home or change employment** in the event of violations of labour or human rights, especially where the worker experiences violence and harassment.

6. Where the Government's proposals seek to strengthen the supervision and monitoring of employment agencies, this report highlights the need to increase the accountability of the State to eliminating discrimination in the migration process, and developing gender-responsive policy responses, including bilateral agreements. This report makes the recommendation:
 - a. To incorporate further obligations in relation to the **State's management of migration**, including related to national and bilateral policymaking, to ensure that it is rights-based, gender-responsive and addresses the prevention of trafficking, violence and forced labour.
 - b. This includes broadening prohibited acts to include those that discriminate against migrant workers on the basis of gender, and ensuring that State management is at all times in accordance with the labour and human rights of men and women migrant workers.

7. The law as it stands provides guidance on the content of the contract that is made between the recruitment agent in Viet Nam and the broker or employer in the country of destination. The terms of this contract are intended to inform the contract between the worker and the employer. This report highlights the particular importance of clear standard employment contracts for women migrant workers. In particular, the report highlights the risks of: contract substitution; poor occupational safety and health conditions; long working hours; lack of access to social and health insurance; restriction on movement; withholding of passports; and poor and unsafe accommodation. The

report identifies where – without protections – these issues can increase women migrant workers’ risk of violence and exploitation. This report makes the recommendation:

- a. To ensure that **labour supply, guest worker and employment contracts** are rights-based and gender-responsive and meet international and regional standards.
 - b. In particular, this should be achieved by setting out a list of standard terms that should be expressly required in all migrant employment contracts.
8. Recognizing that migrant women can face significant stigma and discrimination upon their return, which in turn can be a barrier to accessing skills development and employment opportunities, this report seeks to strengthen the provisions around return and reintegration. The report makes the recommendation:
- a. To ensure the provision of **employment support and job creation on return as well as reintegration services** that are rights-based, gender responsive and equally accessible;
 - b. In particular, this include ensuring that data on returning migrants is disaggregated by gender and that the necessary practices are put in place to ensure that men and women returnees have equal access to opportunities.
 - c. In addition, the report makes recommendation 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 or exploitation, in particular legal aid, access to justice, and coordinated psychosocial, health and social services.

Bibliography

ActionAid. 2016. “Make a House Become a Home”, Policy Brief. Hanoi.

Bowen, Ruth and Do Van Huong. 2012. *Women in International Labour Migration from Viet Nam: A Situation Analysis*. UN Women and Viet Nam, MOLISA, DOLAB.

CEDAW Committee (Committee on the Elimination of Discrimination against Women). 2008. General Recommendation No. 26 on Women migrant workers, CEDAW/C/2009/WP.1/R.

———. 2017. General Recommendation No. 35 on Gender-based Violence against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35.

Harkins, Benjamin, Daniel Lindgren, and Tarinee Suravoranon. 2017. *Risk and Rewards: Outcomes of Labour Migration in South-East Asia*. Bangkok: ILO and IOM.

Human Rights Committee. 1989. General Comment No. 18, Non-discrimination, HRI/GEN/1/Rev.9.

ILO. 2010. *Gender Mainstreaming Strategies in Decent Work Promotion: Programming Tools*. Bangkok.

———. 2019. *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs*. Geneva.

———. Unpublished. “Independent Evaluation of the Implementation of the Law on Vietnamese Workers Working Abroad under Contract (Law 72) 2007”.

ILO, IOM (International Organization for Migration), and UN Women. 2015. “Making the Return of Migrant Workers Work for Viet Nam: An Issue in Brief”.

ILSSA (Institute of Labour Science and Social Affairs). Unpublished. “Synthesis Report: Returning Migrant Workers in Viet Nam”.

Ly, Trinh Khanh. 2016. “The Insufficient Protection of Vietnamese Domestic Workers in Saudi Arabia”. *Global Labour Column Blog*.

Miller, Jack. 2019. *More Choices, More Power: Opportunities for Women’s Empowerment in Labour Migration from Viet Nam*. Bangkok: ILO.

Napier-Moore, Rebecca. 2017. *Protected or Put in Harm’s Way? Bans and Restrictions on Women’s Labour Migration in ASEAN Countries*. Bangkok: ILO and UN Women.

RLS (Rosa Luxemburg Stiftung). 2017. *Research Paper: Vietnamese Migrant Domestic Workers*. Hanoi.

UN (United Nations). 1993. General Assembly resolution 48/104, Declaration on the Elimination of Violence against Women, A/RES/48/104.

UN Women. 2016. “Unpaid Care and Domestic Work: Issues and Suggestions for Viet Nam”, Discussion Paper. Hanoi.

———. 2018. “Making International Labour Migration Governance Gender-Responsive for Women Migrant Workers from South Asia”, Policy Brief No. 1. Bangkok.

———. n.d. “Gender Mainstreaming – Concepts and Definitions”, available at: <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>.

UN Women Training Centre. n.d. “Gender Equality Glossary”, available at: <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36>.

Viet, Huong. 2018. “South Korea Allows Illegal Vietnamese Workers to Return.” *VN Express*, 11 October.

Viet Nam, General Statistics Office. 2017. *Household Living Standards Survey 2016*. Hanoi: Statistical Publishing House.

———. 2018. *Report on Labour Force Survey Quarter 1 2018*. Hanoi: Statistical Publishing House.

Viet Nam, MOFA (Ministry of Foreign Affairs), Consular Department. 2012. *Review of Vietnamese Migration Abroad*. Hanoi.

Viet Nam, MOLISA (Ministry of Labour, War Invalids and Social Affairs). 2015. *Report on the Proposal to Revise and Supplement the Decision No. 144/2007/QĐ-TTg Dated August 31st, 2007 of the Prime Minister on Establishing, Managing and Using the Overseas Employment Support Fund*.

Appendix I. Distribution of survey sample in Hanoi, Hai Duong and Thanh Hoa

Key informants	Thanh Hoa	Hai Duong	Hanoi	Total
Women migrant workers	9	9	–	18
Returned women migrant workers:	7	7	–	14
7 from Saudi Arabia (5 regular and 2 irregular)				
7 from Taiwan (China)/Malaysia (5 regular and 2 irregular)				
Potential WMWs (2 first time migration; 2 second time migration)	2	2	–	4
Families of women migrant workers who are working in Malaysia, Saudi Arabia, or Taiwan (China)	1	1	–	2
Relevant stakeholders				9
Officials/leaders of DOLISA in Thanh Hoa and Hai Duong	1	1	–	2
Officials/leaders of two districts in Thanh Hoa and Hai Duong	1	1	–	2
DOLAB officials in charge of the Taiwan (China) and Saudi Arabia labour markets; an official from VGCL	–	–	3	3
Leaders from labour supply enterprises (employment agencies)	–	–	2	2
Total				29

– = nil.

VGCL = Viet Nam General Confederation of Labour

Listening to the voices of women migrant workers - Gender mainstreaming in the draft Law on Vietnamese Workers Working Abroad under Contract (amended)

It is widely recognized that women and men face gendered differences in their migration experiences and the circumstances of their migration. Gender can influence the decision to migrate, the information and options available, and the sectors and level of jobs in which migrants work. Women from Viet Nam, for example, are more likely to be recruited for low-skilled work and be paid less than men. Women can face barriers to safe and regular migration into decent work. Such barriers can prevent women from accessing information on regular migration opportunities, can include discriminatory recruitment practices that exclude women from particular jobs, and can involve poor living and working conditions that increase women's risk of violence and exploitation.

In order to identify and respond to the gendered barriers that women face, laws need to be gender-responsive, addressing the structural inequalities in the migration process that leave women at a disadvantage. With Viet Nam's Law on Vietnamese Workers Working Abroad under Contract (Law 72) being subject to review and revision, this report takes the opportunity to consider the proposed amendments from a gender perspective. In doing so, the report is informed by the voices of women migrant workers, and the recommendations provided are guided by international normative standards, in particular the ILO's Multilateral Framework on Labour Migration and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

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