



THE ROLE OF TRADE UNIONS IN SAFEGUARDING THE RIGHTS OF MIGRANT WORKERS IN VIETNAM

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Abstract:

This article scrutinises the *status quo* regarding the protection of migrant workers' rights within Vietnam, set against the backdrop of accelerated industrialisation and urbanisation. Notwithstanding the fact that the current legal framework (inter alia, the Labour Code, the Law on Trade Unions) has enshrined the principle of equality, in practice, the migrant workforce continues to confront a plethora of perils regarding legal status, social security, and working conditions. This research delves into the pivotal role of Trade Unions, whilst simultaneously identifying the challenges posed to the Trade Union organisation in guaranteeing the rights of migrant workers. Consequently, the article proposes a comprehensive set of holistic measures aimed at perfecting the legal mechanism, enhancing the capacity of trade unionists, and fortifying international network linkages to safeguard the rights of migrant workers in an effective and sustainable manner.

Keywords: trade unions, right of migrant workers, Labour Code, Law on Trade Unions, Vietnam, social security

1. Introduction

Vietnam is undergoing significant socio-economic changes due to rapid globalization and international integration, marked by strong industrialization and fast urbanization. This has led to a large increase in labor movement, making migrant workers a vital part of the national workforce. These workers have greatly contributed to Vietnam's economy and to the development of other countries that employ them. However, despite their key economic role, migrant workers are often vulnerable in the labor market. They frequently face unstable legal status, limited social security, and poor working conditions. Although

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Vietnam's laws, including the Labour Code and the Law on Trade Unions, guarantee equality and non-discrimination, there's a big difference between what the law intends and what happens in practice. Migrant workers often face barriers like lack of information, broken social support systems, and poor access to public services. This situation challenges how well social protection systems work, making it crucial for representative organizations to step in.

In this situation, the Vietnam Trade Union, which represents workers, plays a crucial role. It not only represents workers in industrial relations but also protects the legal rights of migrant workers. Therefore, this article will thoroughly examine the Trade Union's role in protecting migrant workers' rights in Vietnam. First, the study will define "migrant workers" according to international standards and Vietnamese practice, explain why they need protection, and look at the Trade Union's main functions. Additionally, the article will identify the main challenges facing the Trade Union and suggest comprehensive recommendations to improve legal frameworks and strengthen the skills of union members. This aims to ensure migrant workers' rights are effectively and sustainably protected, in line with Vietnam's international labor commitments.

2. Background and Context

2.1. The Concept of Migrant Workers

At the international level, the conceptualisation of migrant workers enshrined in the ICRMW is widely recognised by numerous nations as a universal definition. Specifically, pursuant to Article 2 of the ICRMW: A migrant worker is a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. Consequently, the ICRMW definition explicitly excludes instances of internal labour migration (which, in the instruments of international organisations, is frequently denoted by a distinct terminology, namely "domestic migrant").

However, it is imperative to note that, under the aegis of the ICRMW, not every individual engaging in remunerated activity in a foreign state is classified as a migrant worker. In accordance with Article 2 of the ICRMW, only the following specific categories are deemed to constitute migrant workers, comprising: frontier workers, seasonal workers, itinerant workers, workers on an offshore installation, project-tied workers, specified-employment workers, and self-employed workers.

While the ICRMW provides a universal definition, the legal conceptualisation of "migrant workers" varies significantly across national jurisdictions, contingent upon the socio-political characteristics of each state. (Ryan & Mantouvalou, 2014) A comparative analysis of major labour jurisdictions reveals diverse approaches to defining this specific workforce:

In China, the concept of migrant workers is intrinsically linked to the household registration system (*Hukou*). Legally and socially, they are referred to as *Nongmingong* (peasant workers) — individuals holding rural *Hukou* who migrate to urban areas for non-agricultural employment. Although they move within national borders, their lack of local urban residency rights renders their legal status precarious, akin to that of cross-

border migrants (Vendryes & Zhan, 2023). Conversely, the European Union's legal framework often distinguishes between various migrant typologies, including seasonal, temporary, and highly-skilled workers, reflecting different aspects of their migration experience and employment conditions (Radka *et al.*, 2024).

In India, the statutory framework focuses on the recruitment mechanism. Under the *Inter-State Migrant Workmen Act 1979*, a migrant workman is defined as any person who is recruited by or through a contractor in one State under an agreement for employment in an establishment in another State. This definition emphasises the element of third-party recruitment and interstate mobility.

In major labour-sending nations such as the Philippines and Indonesia, the definition focuses on the extraterritorial nature of employment. The Philippines' *Migrant Workers and Overseas Filipinos Act* (RA 8042) defines an "Overseas Filipino Worker" as a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a citizen. Similarly, Indonesia's Law No. 18 of 2017 defines "Indonesian Migrant Workers" based on the principle of working abroad for wages.

Conversely, in receiving jurisdictions like the United States, the legal terminology is often fragmented. While immigration statutes use broader terms like "alien workers", specific labour protection laws such as the *Migrant and Seasonal Agricultural Worker Protection Act* (MSPA) adopt a narrower scope, defining "migrant agricultural worker" specifically as an individual employed in agricultural employment of a seasonal or other temporary nature, who is required to be absent overnight from his permanent place of residence (Darçın *et al.*, 2018).

According to the prevailing consensus, migrant workers are characterised by the following four common attributes: (1) Vulnerability; (2) Individuals in precarious circumstances; predominantly young people with limited educational attainment and low vocational skills; (3) Belonging to a demographic at high risk of discrimination, exploitation, and abuse prior to, during, and subsequent to the labour migration process; prone to falling into irregular status; (4) Making significant contributions to the economies of the country of origin and the country of destination, as well as to themselves and their families. This comprehensive definition encompasses all economically active migrants, irrespective of their immigration status or the legality of their presence, and notably extends protection to their immediate family members ([Ryan & Mantouvalou, 2014](#)) ([Karatani, 2014](#)).

2.2. The Necessity for the Protection of Migrant Workers

Cross-border labour mobility (collectively referred to as migrant workers) has evolved into a global trend. According to statistics from the Department of Employment, Ministry of Labour, Invalids and Social Affairs, as of the end of 2023, there were over 91,600 foreign nationals employed in foreign-invested enterprises or Vietnamese enterprises. According to the Ministry of Foreign Affairs, during the period of 2017–2023, Vietnam dispatched nearly 860,000 Vietnamese workers to work abroad under contracts, with an annual average exceeding 100,000 individuals (Consular Department, Ministry of Foreign

Affairs, 2024). Holistically considered, migrant workers have made significant contributions to global economic growth in general, and to the development of numerous nations in particular, encompassing both destination countries and countries of origin (sending countries). These contributions often manifest as remittances that bolster national economies, alongside filling labor shortages in host countries and acquiring new skills that benefit their home nations upon return ([Bortnyk et al., 2018](#)).

From an occupational perspective, the aforementioned ILO report indicates that the service sector attracts the largest volume of migrant labour, accounting for 66.2%; followed by the industrial sector (occupying 26.7%) and agriculture (7.1%)[6]. The prevalence of female migrant workers is notably higher within the service sector, a phenomenon which may be partially attributed to the escalating demand for labour within the care economy, encompassing both healthcare and domestic work. These sub-sectors possess a predominantly female workforce and are heavily reliant upon female migrant labour.

However, in stark contrast to the upward trajectory of this demographic is the limited capacity for the protection of these very workers. Migrant workers currently confront a plethora of barriers, particularly during the initial phase in the destination country. The ILO report further reveals that a significant proportion of migrant workers worldwide are engaged in temporary employment within informal establishments; consequently, they fall into a state of precariousness, are liable to dismissal at any given moment, and are frequently subjected to labour exploitation. The COVID-19 pandemic, commencing in early 2020, has further exacerbated and exposed this predicament in numerous countries receiving migrant labour. Furthermore, many migrant workers across the globe have encountered, and continue to encounter, substantial impediments in accessing essential health services, stemming from causes such as: linguistic barriers; and a deficit of health and social policies allocated for migrant workers in the destination country.

Accordingly, safeguarding the rights of migrant workers is not merely a matter of human rights but also constitutes a linchpin for maintaining sustainable economic development and social stability. In practice, within the relationship between migrant workers and employers in certain localities (both domestic and overseas), conflicts and labour disputes have arisen. Consequently, migrant workers require representation to better care for and safeguard their interests, particularly during the process of migration to the destination country. This is especially pertinent given the pervasive vulnerabilities faced by migrant workers, particularly women in the care and domestic sectors, who often experience severe exploitation and inadequate protection under national and international labor laws ([Degani, 2022](#)) ([Benach et al., 2011](#)).

3. The Role of Trade Unions in Safeguarding the Rights of Migrant Workers

Despite the critical role of trade unions in advocating for workers' rights, several challenges impede their effectiveness in protecting migrant workers, including high labor turnover, management resistance, and the inherently precarious nature of migrant

employment ([Rydzik & Anitha, 2019](#)). The Vietnam Trade Union constitutes a broad socio-political organisation, playing a pillaring role within the national political system under the leadership of the Communist Party of Vietnam, formed upon the voluntary principle of the working class and labourers. It serves as a crucial representative body for the rights and legitimate interests of Vietnamese workers, encompassing both domestic and migrant populations.

Since the entry into force of the *Law on Vietnamese Workers Working Abroad under Contract* (July 2007), the protection of workers' rights has been accorded significant emphasis. This also demonstrates the Government's solicitude regarding the safeguarding of migrant workers' interests within the context of integration. However, the efficacy of these protections is often compromised by the absence of robust legal frameworks that specifically address the unique vulnerabilities of migrant workers, and by limitations in enforcement mechanisms ([Venturi, 2018](#)).

The Law on Trade Unions further underscores the role of the Trade Union in providing counsel to labourers (including migrant workers) regarding employment contracts and dispute resolution, as well as representing labourers in initiating lawsuits and participating in litigation in labour cases; furthermore, this is regarded as a legal instrument manifesting Vietnam's robust commitment to international labour standards. Therein, it implicitly stipulates that lawful Vietnamese migrant workers are entitled to participate in Vietnam Trade Union activities, encompassing Vietnamese labourers working abroad under contracts (Article 5, *Law on Trade Unions 2024*) and foreign labourers working in Vietnam. Foreign workers are defined as individuals possessing foreign nationality entering Vietnam for employment (Article 3, *Decree No. 152/2020/ND-CP on foreign workers working in Vietnam and recruitment and management of Vietnamese workers working for foreign organisations and individuals in Vietnam*) — being individuals holding non-Vietnamese citizenship and currently performing work at enterprises or organisations within the territory of Vietnam. Notwithstanding their foreign nationality, whilst working lawfully in Vietnam, these labourers remain entitled to fundamental rights prescribed by Vietnamese law, *inter alia*, trade union rights. This contributes to ensuring equity in labour relations and enhancing Vietnam's stature within Free Trade Agreements.

The core function of the Trade Union is to represent, care for, and comprehensively protect the lawful and legitimate rights and interests of labourers, which encompasses Vietnamese migrant workers. The core activities of the Vietnam Trade Union comprise:

Firstly, representation and collective bargaining activities. This function constitutes the legal pillar of the Trade Union's role, established upon the basis of the provisions of the Labour Code and the Law on Trade Unions. The Trade Union exercises the exclusive right of representation, possessing binding legal character, acting on behalf of the entirety or a specific segment of the workforce to promote social dialogue, proceeding towards the conclusion and supervision of the implementation of the Collective Labour Agreement. Upon conclusion, the Collective Labour Agreement becomes an internal source of law within the enterprise, possessing superior validity to individual employment contracts, establishing more favourable standards for labourers

regarding wages, working hours, rest periods, and social security. Through this robust negotiation mechanism, the Trade Union critically safeguards the rights of migrant workers, who are often disproportionately vulnerable to precarious employment, exploitation, and inadequate legal protection ([Degani, 2022](#)) ([Benach et al., 2011](#)). Furthermore, it proactively prevents collective labour disputes, thereby ensuring stability and harmony in labour relations by transforming potential conflicts into predetermined, legally binding commitments.

Secondly, free legal consultancy and legal aid activities. This serves as a direct and timely intervention mechanism aimed at safeguarding the interests of labourers, particularly the vulnerable migrant demographic. Nevertheless, the practical effectiveness of such mechanisms is often challenged by limited awareness among migrant workers regarding their entitlements, language barriers, fear of employer retaliation, and the finite capacity of legal aid services, which can collectively impede their ability to consistently reach and adequately protect the most vulnerable. Deployed through a network of Legal Consultancy Centres and Legal Aid Offices, this function provides gratuitous legal services, which are particularly vital for migrant workers who often face significant barriers to accessing justice, such as language difficulties and fear of reprisal. These services range from addressing inquiries regarding labour law and social insurance to drafting documents and acting as authorised representatives in litigation at courts or labour arbitration. This comprehensive support serves as a critical first line of legal defence for migrant workers whose individual rights are infringed upon, directly combating the aforementioned challenges of limited awareness and access. By offering such robust, free assistance, the Trade Union not only fortifies the legal position of the vulnerable migrant labourer vis-à-vis the employer but also crucially ensures fairness and legal compliance during the dispute resolution process. This direct intervention effectively mitigates the inherent inequalities concerning information and legal resources that disproportionately affect migrant workers, thereby promoting a more equitable application of labour law. Additionally, the Trade Union's involvement in legal aid extends to collective conflict resolution, where it leverages its administrative resources to mediate disputes and avert social unrest, often preventing minor disagreements from escalating into significant threats to social order ([Wu, 2010](#)).

Thirdly, social security support activities. This is a supplementary welfare mechanism, extending beyond the minimum legal obligations of the employer, aimed at consolidating the social safety net for migrant workers. However, it is argued that the inherent supplementary nature of such provisions, while beneficial, might not always translate into universal accessibility or sufficiently robust support for all migrant workers, particularly when compared to comprehensive, legally mandated social security frameworks. The Trade Union executes this function through the deployment of mutual assistance funds and socialisation programmes such as "Trade Union Shelter" (*Mái ấm Công đoàn* - housing support), "Reunion Tet" (*Tết Sum vầy* - material and spiritual support during holidays), and emergency support packages. Legally speaking, these activities indirectly promote the right to residence and the right to enjoy social security of migrant labourers by alleviating the socio-economic burden (housing, healthcare,

education for children), thereby creating conditions for migrant workers to stabilise their lives, enhancing the consciousness of legal compliance, and actively participating in formal labour relations, thus ensuring the sustainability of human resources.

4. Challenges Facing Trade Unions in Safeguarding the Rights of Migrant Workers

In the context of Vietnam's robust transition towards a market economy and urbanisation, the issue of safeguarding the lawful rights and interests of migrant workers—characterised as the most vulnerable demographic due to the disruption of social networks and information deficits—has evolved into a legal and practical *litmus test* regarding the operational efficacy of the Vietnam Trade Union. Notwithstanding significant endeavours, the mechanism for safeguarding rights for migrant labour remains plagued by structural bottlenecks, posing multifarious challenges to the Trade Union organisation during the execution of its functions.

Firstly, limitations regarding legal status and autonomy. The primary and most fundamental challenge resides in the limitation of the organisational autonomy of the Trade Union, particularly at the grassroots level. This dependency engenders a potential conflict of interest and erodes representative independence when the Trade Union is confronted with grave disputes. From a jurisprudential perspective, representativeness is only guaranteed when the representative entity possesses sufficient competence to exert bargaining pressure and engage in dialogue. When grassroots Trade Union officials lack this competence due to organisational constraints, their function of supervision and protection of interests vis-à-vis migrant labour becomes passive, particularly in cases pertaining to employment contracts, wages, or working conditions.

Secondly, the scope of access and coverage remains replete with voids. Despite numerous efforts, in reality, the vast majority of migrant workers have yet to access the trade union organisation. This constitutes a formidable challenge for the Vietnam Trade Union. The operations of the Vietnam Trade Union tend to be predominantly concentrated at a domestic scale, mostly within large enterprises, industrial zones, and export processing zones, where there exists a high density of workers and clear labour organisation. This results in a severe service gap for three vulnerable migrant labour groups: Vietnamese labourers working abroad; foreign labourers working in Vietnam within small and micro-enterprises; and foreign labourers working in Vietnam within the informal sector (e.g., seasonal labour). This hiatus renders millions of migrant workers unable to enjoy legal consultancy services, legal aid, and participation in the social security network provided by the Trade Union. This contravenes the principle of universal coverage of a labour representative organisation.

Thirdly, the lack of trust and proactivity of migrant workers in the Vietnam Trade Union. When the Trade Union is unable to intervene effectively in instances of violation, or when intervention is delayed, migrant workers tend to resolve matters themselves with a spirit of accepting disadvantage to compromise with the employer in order to avert the risk of job loss. Furthermore, migrant workers may exhibit an additional tendency of reluctance to cooperate with the Trade Union, which is manifested through

the failure to provide timely information or non-participation in the monitoring activities of the Trade Union.

5. Strategies and Recommendations for Enhancing Union Effectiveness

In light of the aforementioned challenges amidst the burgeoning volume of migrant workers, the Vietnam Trade Union is required to deploy the following breakthrough reformative measures:

Firstly, the Vietnam Trade Union must intensify legal integration within the realm of labour migration. To ensure the maximal protection of migrant workers' rights, it is incumbent upon Vietnam to take further strides in legal integration within this sphere, effectuated through specific undertakings such as the conclusion of Memoranda of Understanding (MoUs) with receiving countries, whilst simultaneously preparing the requisite conditions to proceed towards accession to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990). Accordingly, the Trade Union organisation must actively propose amendments and supplements to perfect the legal system, creating a legal corridor for the protection of the lawful rights and interests of migrant workers. Furthermore, to ensure comprehensive and proactive protection, it is imperative to bolster cooperation programmes between the Vietnam Trade Union and the trade unions of receiving countries. Such collaboration would facilitate the exchange of crucial information, enable joint monitoring of working conditions, and establish effective channels for mutual assistance, thereby allowing for a more timely and robust safeguarding of migrant workers' rights against exploitation and precarious employment in host nations. This bilateral approach strengthens advocacy efforts and ensures a more responsive support system for Vietnamese migrant workers abroad.

Secondly, expanding the scope of coverage to the informal sector. The Vietnam Trade Union needs to implement a system of bilingual documentation and communication to assist foreign workers in comprehending Trade Union regulations as well as Vietnamese labour law. While undoubtedly crucial, such a system might not fully overcome challenges such as varying literacy levels, the inherent complexity of legal jargon, or the dynamic nature of regulations, which could potentially lead to partial comprehension or persistent difficulties in access for some workers. Documents such as the Trade Union Charter, internal regulations, and the rights and duties of members must be translated into English or other prevalent languages, contingent upon the nationality structure of the migrant workforce within each enterprise. Crucially, the Vietnam Trade Union must establish flexible and responsive grassroots trade union modalities. These should encompass dedicated specialised or part-time divisions staffed by union officials proficient in foreign languages, working collaboratively with representatives of foreign labour within enterprises, agencies, and organisations employing migrant workers. This strategic restructuring is essential to dismantle existing barriers and significantly enhance access to vital legal aid and social security services directly at the migrant worker's residence and workplace. Furthermore, to address the unique challenges faced by

migrant workers in the informal sector and micro-enterprises, the establishment of "Regional Trade Union Focal Points" is imperative. These focal points will serve as accessible hubs for receiving critical information and addressing complaints, thereby ensuring that no migrant worker is left without comprehensive support and representation. Finally, improving grievance mechanisms and access to justice is crucial, as migrant workers often face significant hurdles, including ignorance of the legal system, lack of education, and inadequate representation, which impede their ability to file complaints and receive legal advice ([Schwarzer et al., 2016](#)).

Thirdly, constructing a foundation of trust through transparency and efficacy. Transparency in the processing procedure shall constitute the linchpin for the restoration of trust. Particularly in the current period, where the demand for outbound labour recruitment is escalating, especially in potential markets such as Japan, the Republic of Korea, and Taiwan, the Vietnam Trade Union must prioritise the construction of a Timely Complaint and Dispute Resolution Mechanism. However, merely establishing such a mechanism may not be sufficient; its efficacy is heavily reliant on migrant workers' awareness of their rights, their trust in the system, and their unhindered access to it, factors often complicated by linguistic barriers, varying literacy levels, and the pervasive fear of employer reprisal. It is recommended to leverage technology to establish a Mobile Application, an Anonymous Reporting Channel, or a "Hotline" managed by the Trade Union, allowing migrant workers to report violations securely and track the progress of resolution. Concurrently, grassroots Trade Unions need to intensify outreach work, providing information to the populace, particularly the young unemployed workforce, to ensure full comprehension of the guidelines and policies of the Party and State regarding labour export. Furthermore, to proactively shield migrant workers from the pervasive risks of exploitation and fraudulent recruitment, the Trade Union must undertake rigorous investigations and widely disseminate a verified list of officially licensed labour export enterprises. This measure is crucial in empowering workers with essential information, thereby significantly reducing their vulnerability to deceptive practices that often lead to debt bondage, unsafe working conditions, and rights violations. Such proactive measures, coupled with stringent oversight of recruitment agencies, are indispensable for mitigating the risks associated with overseas employment and upholding the fundamental human rights of Vietnamese migrant workers ([Hung et al., 2022](#)). Moreover, the Trade Union's role as a neutral and independent body can foster greater transparency and fairness in the digital economy and platform-based work, particularly in an era where algorithmic management dictates many aspects of labor ([Al-Ani & Stumpp, 2016](#)).

Fourthly, enhancing intercultural competence for trade union officials. To effectively operate the multicultural and multilingual trade union model, union members must be equipped with cultural knowledge of the nations related to the migrant workers. However, achieving comprehensive cultural understanding for the myriad of nationalities represented within the migrant workforce presents a significant challenge, potentially leading to superficial engagement rather than deep, effective support. This encompasses training in intercultural communication skills, fundamental knowledge of

customs, practices, and work ethos of workers from diverse cultural backgrounds, as well as situational handling skills within a multi-national environment. This meticulous preparation not only enables union officials to proactively engage with foreign workers but also equips them to flexibly and effectively resolve issues concerning trade union rights, thereby fostering greater trust and ensuring more equitable access to support and justice for migrant workers.

5. Conclusion

The Trade Union is an indispensable pillar in safeguarding migrant workers' rights in Vietnam, leading protection at the workplace through negotiation and legal aid. Yet, maximizing its efficacy demands resolving persistent challenges in legality, resources, and coordination. By strengthening its capacity and forging a robust network, the Trade Union can become an unyielding bulwark, protecting migrant workers' lawful interests and fostering their integration and sustainable development in Vietnam. This necessitates a multi-faceted approach, including legislative reform, enhanced international collaboration, and internal capacity building, to comprehensively protect and integrate this vulnerable population ([Asmorojati et al., 2022](#)). Furthermore, future research must critically assess the efficacy of current legislative frameworks, particularly concerning enforcement mechanisms and migrant workers' access to justice. However, such research should also recognize that the practical effectiveness of these frameworks is often hampered by underlying issues such as migrant workers' limited awareness of their rights, persistent linguistic and cultural barriers, and the pervasive fear of employer reprisal, which collectively impede their ability to seek and receive justice ([Schwarzer et al., 2016](#); [Tran, 2020](#)).

Conflict of Interest Statement

The author declares no conflicts of interest related to the publication of this research study.

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