

**How do Vietnamese policies designed to protect the rights
of migrant worker need to be changed to enhance their
effectiveness?**

By

Nguyen Phuong Trang

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Supervisor: Dr. Kate McMillan

**School of History, Philosophy, Political Science &
International Relations
Victoria University of Wellington**

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ABBREVIATION

Association of Southeast Asian Nations	ASEAN
Code of Conduct	CoC
Department of Labour, Invalids and Social Affairs	DOLISA
ILO Convention No.143 - Migrant Workers (Supplementary Provisions) Convention	ILO Convention No.143
ILO Convention No.97 - Migration for Employment Convention (Revised), 1949	ILO Convention No.97
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	ICRMW
International Labour Organisation	ILO
International Organisation for Migration	IOM
Law on Vietnamese workers working overseas under contract 2006	VNLMW
Memorandums of Understanding	MOUs
Migrant Resource Centre	MRC
Ministry of Foreign Affairs	MOFA
Ministry of Labour Invalids and Social Affairs	MOLISA
The Department of Overseas Labour	DOLAB
United Nations	UN
Vietnam Association of Manpower Supply	VAMAS
Vietnam Centre for Overseas Labour	COLAB

ABSTRACT

The thesis focuses on analysing the Vietnam's responsibilities as a worker - sending country (sending country) in protecting the rights of its migrant workers in accordance with international conventions adopted by the United Nations and the International Labour Organisation. The conventions used in the thesis to build up the analytical framework are: C097 - Migration for Employment Convention (Revised), 1949 (No. 97), C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

This thesis evaluates the policies of protecting Vietnamese workers working overseas since 1980. Accordingly, it presents an analysis of Vietnam's policies on labour migration by putting Vietnam's laws in comparison with international conventions. The thesis indicates that although Vietnam has not ratified relevant international conventions to protect the rights of migrant workers, its national policies, legal system and practices have gradually approached these requirements in accordance with the actual situation of the country. In addition to the achievements of the policies, the thesis also pinpoints constraints in the policy and the reasons for those constraints through an analysis of the policy implementation process. Thereby, the thesis suggests several implications to improve relevant policies and practices in Vietnam to better protect the rights of its migrant workers.

CHAPTER I. INTRODUCTION

1. Background

International economic integration through open domestic markets for trade and resource development has created deeper linkages among economies in the world and led to the development of regional and even global economic markets. Under this context, along with issues like increasing gaps between the rich and the poor, population imbalance, the relationship between growth and migration, the relationship between labour receiving and sending countries, recruitment, and employment network, a trend of forming a global labour market has been developing.¹ Migrant workers, who have been growing rapidly in numbers, are considered an important resource contributing to economic development, particularly in developing countries.²

However, the role of migrant workers, in many cases, is underestimated. Their rights and interests are relatively vulnerable.³ Actions to protect the rights of migrant workers have posed a number of issues related to the relationships between countries involved in the migration chain. Both worker - sending countries (sending countries) and worker - receiving countries (receiving countries) determine unilaterally their own labour policy with different interests over socio-economic, political, and cultural issues. Sending countries aim at securing overseas employment opportunities for their workers as well as ensuring respect for their workers' human rights. Meanwhile, receiving countries prioritise protecting their domestic labour in some certain industries and seek to maintain territorial and border integrity, as well as their cultural identity.⁴ In addition, the responsibility of protecting the rights of migrant workers is not properly recognized by different sides. In most cases, protecting the rights of migrant workers is considered the responsibility of receiving countries

¹Stalker, P. (1994). *The work of strangers: A survey of international labour migration*. International Labour Office, Geneva, p.21.

²Ninna Nyberg-Sørensen, Nicholas Van Hear & Poul Engberg-Pedersen. (2002). The Migration-Development Nexus: Evidence and Policy Options State-of-the-Art Overview. *International Migration Quarterly Review*. Special Issue: The Migration Development Nexus. Volume 40, Issue 5, pages 3–47, p.14.

³International Labour Organisation's statistics identified eleven indicators of forced labour, including: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual abuse, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, excessive overtime. Cited from: ILO Indicators of Forced Labour, Special Action Programme to Combat Forced Labour. Retrieved from:

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

⁴Nguyen Binh Giang. (2011). *Di chuyển lao động quốc tế - International Labour Migration*. Nhà xuất bản Khoa học Xã hội - Social Sciences Publishing house. p.23.

where migrant workers are directly employed. However, the importance of sending countries' responsibilities is partly neglected. This area therefore requires further detailed studies.⁵

As the rights of migrant workers have become an increasing concern on the global scale, countries are paying more attention to effectively addressing migration issues in order to ensure the interests of both sending and receiving countries while maintaining the rights and dignity of workers. Protecting the rights of migrant workers is no longer a matter of a single country. Addressing this issue requires bilateral, regional and international cooperation among countries.

At the global level, the United Nations (UN) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) 1990, and several conventions of the International Labour Organisation (ILO) on protecting the rights of migrant workers have set out a legal framework for the protection of migrant workers. The Asian and European regions also have implemented a number of initiatives and programs to protect the rights of migrant workers, namely the Declaration of ASEAN leaders on the Protection and Promotion of the Rights of Migrant Workers,⁶ Policy Dialogues between Asian sending countries and the European Union within the framework of Colombo Process⁷, and Dialogues between sending and receiving countries in Asia within the framework of Abu Dhabi Dialogue⁸. These initiatives and programs aim at promoting the labour management responsibilities of both sending and receiving countries in protecting the rights of migrant workers. The application of international cooperation mechanisms helps countries harmonize their interests, reduce risks from the flow of migrant workers, and ensure the fundamental rights and interests of migrant workers.

As a country having the second largest number of migrant workers in Southeast Asia,⁹ Vietnam has a system of legal instruments issued by the central government, ministries and

⁵Raluca Dimitriu. (2009). Responsibilities of the Origin State in the Protection of Migrant Workers - The Case of Romania. *Cahiers de l'Urmis*, No.12. Retrieved from <http://urmis.revues.org/815>

⁶ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. For full text: <http://www.asean.org/communities/asean-political-security-community/item/asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers-3>

⁷Background of Colombo Process. For full text: http://www.colomboprocess.org/About_the_Colombo_Process_Background-5a-2.html

⁸Background of Abu Dhabi Dialogue. For full text: http://www.colomboprocess.org/Other_RCPs_Abu_Dhabi_Dialogue-5a-12.html

⁹ASEAN. (2014). ASEAN Community 2015: Managing Integration for better Jobs and share prosperity. The joint study of the Asian Development Bank and the International Labour Organisation, p.8. Retrieve from: <http://www.adb.org/publications/asean-community-2015-managing-integration-better-jobs-and-shared-prosperity>.

provincial agencies to protect legitimate rights and interests of migrant workers. Particularly, the protection of the rights and interests of migrant workers has been legalised in a number of important laws, namely the Law on Vietnamese Workers Working Overseas Under Contract 2006 (VNLMW),¹⁰ and other relevant laws such as the Vietnamese Labour Code in 2012,¹¹ Vietnamese Law on Employment issued in 2013,¹² Vietnamese Law on Vocational Training in 2014¹³ and Vietnamese Law on Conclusion, Accession and Implementation of Treaties¹⁴.

Vietnam has also ratified a number of international commitments in the region and the world, including treaties, agreements, Memorandums of Understanding (MOUs), and bilateral joint statements on labour cooperation and protection of the rights of migrant workers. In addition, all the UN Conventions on human rights and ILO Conventions which Vietnam has ratified make significant contribution to the protection of the rights of migrant workers. So far Vietnam has ratified 21 out of 189 ILO conventions including five out of eight fundamental ILO conventions,¹⁵ namely Convention No. 29 on Forced Labour,¹⁶ Convention No. 100 on Equal Remuneration,¹⁷ Convention No. 111 on Discrimination (Employment and Occupation),¹⁸ Convention No. 138 on Minimum Age,¹⁹ and Convention No. 182 on Worst Forms of Child Labour.²⁰ Moreover, Vietnam has established relatively close partnership with international organisations such as the ILO, International Organisation for Migration (IOM), and United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) in order to promote and protect labourers working overseas.²¹

¹⁰This law provides provisions governing the sending of Vietnamese workers to work overseas under contract; rights and obligations of government, employees, enterprises, individuals who responsibilities in sending labour abroad.

¹¹The Code stipulates labour standards; rights and obligations in labour relations of the employee, the employer, the organisation representing the employee, and the organisation representing the employer.

¹²This law provides provisions including vocational training, foreign language training, training on Vietnam and receiving countries' laws and policies, and preferential loans (Article 20)

¹³This law provides provisions on the vocational training system, the organisation and operation of vocational training facilities, rights and obligations of organisations and individuals involving in vocational training. This law facilitates the training of human resources who directly involve in the production process in Vietnam as well as in labour export.

¹⁴This law is the basis for Vietnam to accede to a number of international commitments at regional and global levels; to sign a number of treaties, agreements, memorandum of understandings, and bilateral statement on labour cooperation and protection of migrant workers.

¹⁵Ratifications of ILO conventions by Vietnam. For full text:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103004

¹⁶Ratified on 5 March 2007

¹⁷Ratified on 7 October 1997

¹⁸Ratified on 7 October 1997

¹⁹Ratified on 24 June 2003

²⁰Ratified on 19 December 2000

²¹An anonymous interviewee, who is a governmental official working at Vietnam Department of International Cooperation – MOLISA, said.

However, Vietnamese workers have to face a number of challenges and risks to work abroad due to high charges, insufficient information, inability to find adequate support, especially legal assistance services during their work in receiving countries,²² illegal residence after the expiration of labour contracts²³ and difficulties in adapting to the former community after completing the labour contracts. They are also highly prone to being victims of human trafficking. According to the United States' report on human trafficking in 2013²⁴ and 2014,²⁵ Vietnamese labourers suffered the largest amount of debts among Asian workers, and they are likely fall under forced labour, including debt bondage work. This issue raises the question whether or not Vietnam's policies on protecting the rights of their migrant workers abroad are effective.

2. Research question

How do Vietnamese policies designed to protect the rights of migrant worker need to be changed to enhance their effectiveness?

In order to answer this question, the thesis shall answer the following sub-questions:

- (i) What are the responsibilities of sending countries in protecting the rights and interests of migrant workers as stipulated in international conventions?
- (ii) What policies does Vietnam have in place to protect its migrant workers?
- (iii) How effective have these policies been in protecting migrant workers?
- (iv) What changes need to be made to better protect Vietnamese migrant workers?

3. Research methodology

3.1 Subject and scope of study

The initial subject that this thesis focuses on is that of Vietnam's policies related to the protection of Vietnamese migrant workers overseas. Those are the orientation and strategy of the Government of Vietnam shown by the number and content of legal instruments (in form of Circular, Decree, Decision, and Law) issued by the government. The thesis shall critically assess these instruments based on two frames: one is set by the reference to international standards on migration and other set by the codification of international standards in national

²²Ibid.

²³Currently, there are over 16.000 Vietnamese workers illegally residing in South Korea after the expiration of their labour contracts. Thuong Huyen. (2014). Cơ hội đi lao động tại Hàn Quốc đang hẹp dần - The opportunity for labour export in Korea is narrowing. *Bacninhonline*, 08:07. Retrieved from: http://baobacninh.com.vn/news_detail/84977/co-hoi-di-lao-dong-tai-han-quoc-dang-hep-dan.html

²⁴Trafficking in Persons Report 2013. Retrieved from: <http://www.state.gov/j/tip/rls/tiprpt/2013/>

²⁵Trafficking in Persons Report 2014. Retrieved from: <http://www.state.gov/j/tip/rls/tiprpt/2014/>

laws. Comparing Vietnam's policies with these international conventions shall allow the thesis to evaluate the scope and extent to which Vietnamese migrant workers are protected by the government of Vietnam compared with the international conventions. To ensure objective assessments on the policies related to protecting the rights of Vietnamese migrant workers, this thesis shall review these policies in comparison with the overall labour migration-related policies and laws stipulated since 1980 – the milestone when this activity began to be stipulated by law in Vietnam.

In addition, the thesis shall analyse these policies through analysing and conducting a statistical count of legal instruments related to protecting the rights and interests of migrant workers issued from 1991 onwards, when Vietnam started to reform its economy after the U.S. lifted its embargo on the country. Based on the findings, the thesis shall identify points that need improving to better protect the rights of Vietnamese migrant workers and discuss measures to improve them.

To analyse the domestic legislation, this study will take the international conventions of the ILO and the UN on protecting the rights of migrant workers as an analytical framework. According to this, the thesis shall analyse three relevant conventions in order to clarify the role of sending countries, including ILO Convention No.97 - C097 - Migration for Employment Convention (Revised) (ILO Convention No.97), 1949; ILO Convention No.143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (ILO Convention No.143) and ICRMW.

3.2 Research methodology

The thesis was conducted using primarily a qualitative approach as explained below.

On the basis of studying primary and secondary materials related to Vietnam's policies on labour migration (Appendix 1), in comparison with relevant international conventions, the thesis has obtained references, comparisons, and statistical assessment on changes in Vietnam's policies on protecting the legitimate rights and interests of Vietnamese migrant workers. Also, the thesis evaluates the level at which the international conventions were incorporated into domestic law', and the level to which Vietnam's policies could protect workers working outside the country.

To assess the level of Vietnamese domestication of international standards, and the level of the Vietnamese government's concern in protecting the rights of migrant workers at all levels

(from local to central level), the thesis has applied Statistical Package for the Social Sciences (SPSS) software for statistics of legal instruments issued by time, by authority level (central, ministerial, and local), and by stage of labour export process.

In addition to legal instruments as mentioned above, inputs for the thesis are also taken from in-depth interviews²⁶ within one month (scheduled 1 month prior to the interview time) with some of the key persons of legislative and executive bodies related to labour migration of Vietnam, and labour recruiting agencies authorized to send Vietnamese workers to work overseas by the government. The interviewees answered questions around the current situation and challenges of Vietnamese migrant workers overseas, and the policies to protect the rights and interests of Vietnamese migrant workers, including the development and implementation, the strengths and good practices, the challenges, the application and reference to international conventions in the process of developing the policies. The interviews helped identify and further clarify reasons for the questions arisen from assessing the above policies. The interviews were given ethics approval by the Victoria University of Wellington Human Ethics Committee.

4. Theoretical framework and concepts

4.1 Theoretical framework

The following part will present three main theories in international labour migration which form a framework that can point out the reasons why Vietnam should review and adjust its policies on protecting the rights of migrant workers.

According to neo-economic theory of migrant workers of Stark and Bloom,²⁷ labour migration is caused not only by individuals, but also by social entities. Households tend to avoid risks as their income increases due to remittances from family members working overseas. As a result, remittances have a positive impact on the economy.²⁸ This theory lays foundation to explain (i) the growing number of Vietnamese migrant workers, (ii) why

²⁶International labour migration experts and leadership are from related state management agencies, namely the Vietnamese Ministry of Labour Invalids and Social Affairs (MOLISA), International Cooperation, Department of MOLISA (ICD), Labour Inspection of MOLISA, Department of ASEAN of Ministry of Foreign Affairs, Employers' representative of Vietnam General Confederation of Labour, Chamber of Commerce and Industry of Vietnam (VCCI), Vietnam Cooperatives Association (VCA), international organisations related to labour migration in Vietnam: ASEAN Task force on Migrant Workers; and centres/ enterprises operating in labour export business in Hanoi, Bac Ninh, and Phu Tho.

²⁷Stark, O. & Bloom, D. E. (1985). The new economics of labour migration. *American Economic Review*, 75 (2), 173–178.

²⁸Taylor, J. Edward. (1999). The New Economics of Labour Migration and the role of remittances in the migration process. *International Migration*, Vol. 37, No. 1, pp. 63–88.

Vietnamese migrant workers accept high fee for employment overseas, and (iii) the tendency of continuing to seek for employment overseas of returning migrant workers instead of finding jobs in Vietnam.

According to the systems framework of international migration theory of Fawcett, Arnold²⁹, and Massey et al³⁰, the two components of the international migration system are receiving countries and sending countries. These two groups are related through migrants and immigrants. Countries in an international migration system are not only connected by individuals, but also by social and cultural factors that these individuals bring forth.³¹ The approach of this theoretical framework requires us to consider the promotion and protection of the rights of migrant workers in the light of the relationship between receiving and sending countries, taking into full account of socio-cultural factors of migrant workers, their roles, and challenges they may face while working overseas.

According to institutional theory, international labour migration, whether legal or illegal, is related to transport activities, labour contracts, housing and legal counselling.³² Based on this theory, it is obvious that there need be detailed and concrete policies to protect the rights and interests of migrant workers. Thereby, all stages starting with employment selection consultancy, labour contract signing, and skill training in Vietnam for working in receiving countries, and ending with returning to Vietnam of migrant workers will be strictly administered. As a result, the role of the managing bodies involved in the labour export chain is of great significance. That is the reason why the evaluation of these bodies' operation is necessary in this thesis.

4.2 The approaches to policies to protect and promote the rights of migrant workers

For the purpose of this thesis, the policies of protecting the rights of Vietnamese migrant workers are defined as the system of policies, plans, and measures issued by the State of Vietnam to protect and enhance the rights of overseas Vietnamese employees.³³ These policies to protect and promote the rights of Vietnamese migrant workers include guidelines

²⁹Fawcett, James T. & Fred Arnold. (1987). The Role of Surveys in the Study of International Migration: An Appraisal. *International Migration Review*, 21(4), 1523-40.

³⁰Massey, Douglas S., Joaquín Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino & J. Edward Taylor. (1998). *Worlds in Motion: Understanding International Migration at the End of the Millennium*. Oxford: Clarendon Press.

³¹Fawcett, J.T. (1989). Networks, linkages, and migration systems'. *International Migration Review*. 23(3): 671-80.

³²Op.cit.note 30 (Massey et al. 1998).

³³Resolution No.22 issued by the Politburo of Vietnam on international integration dated 10/4/2013.

of the Communist Party and laws and regulations by the government.³⁴ The policies come from the tasks of the State to: (i) execute the responsibility to protect Vietnamese migrant workers as citizens of the country; (ii) manage labour export activities of enterprises; (iii) provide guidelines for enterprises to manage and protect the rights of migrant workers; (iv) negotiate and sign agreements related to the protection of Vietnamese migrant workers in receiving countries; and (v) provide detailed provisions on contract conditions for migrant workers at workplaces. These tasks have been institutionalized by a system of policies, laws and national programs on employment to target the goal of creating jobs,³⁵ reducing poverty and supporting the poor to participate in the labour market by sending workers overseas.³⁶ This thesis shall concentrate on evaluating the policies and the implementation of these policies to protect the rights of Vietnamese migrant workers.

5. Literature review

5.1 Studies related to the protection of the rights of migrant workers and responsibilities of sending countries in accordance with international conventions

Studies related to the protection of the rights of migrant workers as stipulated by the conventions of the UN and the ILO³⁷ have presented the positive impacts of these conventions on protecting migrant workers' rights, especially the ICRMW of the UN. James A. R. Nafziger and Barry C. Bartel³⁸ claimed that ICRMW had uniformly compiled different laws governing the protection of the rights of migrant workers into a convention that could be applied in all countries. This convention has contributed to the finalisation of a system of conventions governing human rights of the UN. As a result, ICRMW has repeated and extended fundamental rights of migrant workers stated in previous conventions of the UN.³⁹

³⁴According to the Constitution of Vietnam adopted in 2013, State agencies include the National Assembly, the President, the Government, People's Court and People's Procuracy, and Local governments. The State is led by the Communist Party of Vietnam. The Communist Party of Vietnam shall lead the State of Vietnam by approving directions and policies, and by introducing its members to hold important positions in the State.

³⁵Decision No.1201/QĐ-TTg on approving the national program on employment for the period 2012 – 2015 dated 31/08/2012.

³⁶Decision No.1489/QĐ-TTg on approving the national program on poverty reduction for the period 2012-2015 dated 31/10/ 2012.

³⁷The three conventions include Migration for Employment Convention (revised) No.97, 1949; Migrant Workers (supplementary provisions) Conventions No.143, 1975 and ICRMW.

³⁸James A. R. Nafziger & Barry C. Bartel . (1991). The Migrant Workers Convention: Its Place in Human Rights Law. *International Migration Review*. Vol. 25, No. 4, Special Issue: U.N. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. pp. 771-799.

³⁹Including the following conventions: The Universal Declaration of Human Rights (UDHR), The International Covenant on Economic, Social and Cultural Rights (ICESCR), The International Covenant on Civil and Political Rights (ICCPR), The International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD), The Convention on the Elimination of All Forms of Discrimination Against Women (CEAFDAW), The Convention on the Rights of the Child (CRC).

Patrick A. Taran⁴⁰ pointed out that this convention had enhanced the position of migrant workers, and emphasized their vulnerability due to lack of protection. According to Taran, ICRMW provided a complete definition of migrant worker, and established an international standard for protecting migrant workers and their families. Particularly, illegal migrant workers are also entitled to minimum basic rights in accordance with the convention.

Supplementing the above view, Shirley Hune argues that the ICRMW partly provides support for female migrant workers in anti-discrimination and equal treatment, as well as support for females being members of migrant workers' families – those who are often neglected.⁴¹ Reducing illegal migration and human trafficking, protecting migrant workers under irregular situations, and providing support for their families are the fundamental objectives of this convention, which are frequently mentioned by several scholars.⁴²

Assessing the impact of ICRMW on migration management, Antoine Pécoud⁴³ claimed the fact that this Convention was adopted by the UN indicated the internationalisation trend in labour migration. According to Pécoud, provisions stated in this convention showed that the protection of the rights of migrant workers could not be solved by one country alone, but required coordinated negotiations. As a result, organised migration would be a better option than controlling migration. Through this convention, migration should be approached comprehensively on every possible aspect ranging from security, economic, development, human rights to health and so on. The involvement of non-state actors like the private sector, civil society organisations, non-governmental organisation, and international organisations and so on, will effectively support countries in protecting the rights of migrant workers. Agreeing with this view, Ryan⁴⁴ supposed that the ICRMW was a comprehensive international standard which received support and appreciation from NGOs and the pro-

⁴⁰Patrick A. Taran, Human Rights of Migrants: Challenges of the New Decade, *International Migration Vol. 38* (6) SI 2/2000 ISSN 0020-7985.

⁴¹Shirley Hune, (1991). Migrant Women in the Context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. *International Migration Review*, Vol. 25, No. 4, pp. 800-817.

⁴²James A. R. Nafziger & Barry C. Bartel . (1991). The Migrant Workers Convention: Its Place in Human Rights Law. *International Migration Review*. Vol. 25, No. 4, Special Issue: U.N. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. pp. 771-799; Hune, S., & Niessen, J. (1994). Ratifying the UN migrant workers' convention: Current difficulties and prospects. *Netherlands Quarterly of Human Rights*, 12(4), 393-404; Patrick A. Taran. (2002). Human Rights of Migrants: Challenges of the New Decade. *International Migration*. Volume 38, Issue 6, pages 7–51, Special Issue 2 2001.

⁴³Antoine Pécoud. (2009). The UN Convention on Migrant Workers' Rights and International Migration Management. *Global Society*. 23:3, 333-350. p338, 339.

⁴⁴Ryan, B. (2009). Policy on the ICRMW in the United Kingdom. In P. de Guchteneire, A. Pécoud, & R. Cholewinski (Eds.), *Migration and human rights*. Cambridge, UK: Cambridge University Press. pp. 278-294.

immigration. Piper⁴⁵ also said that ICRMW was a tool supporting civil society organisations to enhance awareness on protecting migrant workers and to undertake more aggressive actions on this issue.

Although the Convention has resulted in a positive impact on human rights in general, and on protecting the rights of migrant workers in particular, the Convention has been ratified by very few countries. Compared with other international conventions adopted by the UN and the ILO, the ratification rate of this convention is relatively low.⁴⁶ To explain this issue, Martin Ruhs⁴⁷ claimed that the conventions, particularly ICRMW had not been widely publicised and properly interpreted. In addition, he said that the timeframe for ratification and codification of the convention into domestic law was long. Meanwhile, there has been a significant amount of overlapping content between some parts of the convention and national laws. A number of countries have faced difficulties in codification of this convention. Particularly, Ruhs emphasized the most important factor for low ratification rate was the national interest. For example, the protection of migrant workers' rights does not bring about economic benefits for countries, and even goes against their wish to reduce illegal immigration.

Agreeing with Ruhs's view, Hune, S., & Niessen, J.⁴⁸ said that receiving countries virtually neglected the families of migrants and illegal migrants. These two scholars also pointed out other reasons why countries, particularly labour receiving countries hesitated to participate in protecting migrant workers. These reasons stemmed from economic difficulties and welfare reduction, which led labour receiving countries to focus more on their domestic enterprises than foreign migrant workers. Antoine Pécoud also added that the costs for health and education services as stipulated by the convention were significantly large for countries. Robyn Iredale and Nicola Piper⁴⁹ supposed that labour receiving countries did not want to

⁴⁵Piper, N. (2009). Obstacles to, and opportunities for, ratification of the ICRMW in Asia. In P. de Guchteneire, A. Pécoud, & R. Cholewinski (Eds.), *Migration and human rights*. Cambridge, UK: Cambridge University Press. pp. 171-192.

⁴⁶Robyn Iredale and Nicola Piper. (2003). Identification of the obstacles to the Signing and Ratification of The UN Convention on the Protection of the Rights of All Migrant Workers – The Asia Pacific Perspective. International Migration and Multicultural Policies Section, Report under the authorisation of the UNESCO.

⁴⁷Martin Ruhs. (2012). The Human rights of migrant workers: why do so few countries care?, *American Behavioural Scientist*. 56: 1277 originally published online 8 May 2015. Retrieved from: <http://abs.sagepub.com/content/56/9/1277>.

⁴⁸Hune, S., & Niessen, J. (1994). Ratifying the UN migrant workers' convention: Current difficulties and prospects. *Netherlands Quarterly of Human Rights*, 12(4), 393-404.

⁴⁹Robyn Iredale & Nicola Piper. (2003). Identification of the obstacles to the Signing and Ratification of The UN Convention on the Protection of the Rights of All Migrant Workers – The Asia Pacific Perspective. International Migration and Multicultural Policies Section, Report under the authorisation of the UNESCO.

ratify the convention because they did not meet the requirements of providing transparent policy on migration stated in the convention. Labour receiving countries only tried to protect the rights of migrant workers at workplace, but paid almost no attention to their civil, political, economic, and social rights as stated in the convention. With respect to labour sending countries, these two scholars said that sending countries were hesitant to ratify the convention for fear of the large costs incurred from ratification compared with their tight budget.

The greatest challenge faced by labour sending country in ratification of the convention is the risk of losing large labour markets. This is understandable as the Convention stipulates a great number of responsibilities for labour receiving countries that these countries do not wish to be bound to the Convention by sending countries.⁵⁰ Patrick A. Taran also agreed with this view, and claimed that international conventions and the protection of the rights of migrant workers were too ambitious and too detailed for both labour sending and receiving countries; therefore, the conventions were ratified by very few countries.⁵¹

It is agreeable that the international conventions of the ILO and the UN related to protecting the rights of migrant workers form an important legal framework to protect this highly vulnerable group.⁵² These are the international standards on protecting the rights of migrant workers for countries to refer to when developing and implementing their policies regardless of whether or not they have ratified the conventions. These conventions share an admirable philosophy that the protection of migrant workers must essentially be placed in the aspiration of countries as good will and good faith. A worker should be viewed as a human who brings in benefits for both labour receiving and labour sending countries, instead of a type of goods for countries to benefit from and to exploit. The regulations on legal and illegal migrant groups, fundamental human rights, and family reunification support showcase the humanity of the convention. As per Sen's explanation, the protection of the rights of workers is an ethics-related issue.⁵³

⁵⁰ Ibid.

⁵¹ Op.cit.note 40 (Patrick 2002).

⁵² Lesley Wexler. (2007). The non-legal role of international human rights law in addressing immigration. University of Chicago Legal Forum, Forthcoming FSU College of Law, Public Law Research Paper No. 282. Retrieved from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=993526

⁵³ Amartya Sen. (2004). Elements of a theory of human rights. Philosophy & Public Affairs, Vol. 32, No. 4 (Autumn, 2004), pp. 315-356.

Normally, once a country has ratified the convention, it shows its high commitment of that country to protecting migrant workers' rights in both legal and practice aspects. Also, the country is subject to strict monitoring from the international community. Therefore, countries must consider carefully their legal system, capacity, resources, impacts of the ratification, and the benefits gained from the ratification. According to their discussion on the convention, the above scholars may agree that it is not so important for a country to ratify the convention, but what is more important is that its national laws fully reflect the requirements of the convention. The critical issue here is the extent to which countries apply the convention in their policies.

Inspired by the above arguments, this thesis shall study and analyse the responsibilities to protect the rights of migrant workers of labour sending countries stated in the conventions mentioned above. It shall also bring out evidence of the impacts that migrant workers have on sending countries to explain why sending countries need to pay more attention to protecting their migrant citizens with proper policies. Moreover, this thesis shall provide evidence of how sending countries have applied international conventions in designing policies to protect migrant workers.

5.2 Studies on protecting the rights and interests of Vietnamese migrant workers

There have been a great number of studies on migrant workers in Vietnam. However, studies on protecting the rights and interests of Vietnamese migrant workers, which apply the right-based approach, have not been thoroughly carried out in Vietnam.

In several of his works⁵⁴, Dang Nguyen Anh claimed that Vietnam was in the stage of sending low skilled labourers abroad. Vietnamese workers have to deal with a number of difficulties, including high fees and charges for recruitment, debts, and deception. When working in the labour receiving country, Vietnamese migrant workers are usually subject to poor working conditions and unfair treatment. This often results in their fleeing away from

⁵⁴Dang Nguyen Anh. (2002). Vietnam: Emergence of return skilled migration. pp.113–141 in (ed) R. Iredale, Return Skilled and Business Migration and Social Transformation. APMRN, UNESCO-MOST and Ford Foundation; Dang Nguyen Anh (2008). Labour Migration from Vietnam: Issues of Policy and Practice. ILO Asian Regional Programme on Governance of Labour Migration Working Paper No.4; Dang Nguyen Anh, Cecilia Tacoli & Hoang Xuan Thanh. (2003). Migration in Vietnam: A review of information on current trends and patterns, and their policy implications. This paper is prepared for the Regional Conference on Migration, Development and Pro-Poor Policy Choices in Asia, organised by the Refugee and Migratory Movements Research Unit, Bangladesh, and the Department for International Development, UK, and took place on 22–24 June 2003 in Dhaka, Bangladesh; Dang Nguyen Anh (2014). Social welfare of ASEAN and Vietnamese migrant workers. Hanns Seidel – ILSSA International Conference. Press Club Hanoi.

the workplace or illegally terminating their labour contracts. This is the main reason for Vietnamese migrant workers to fall under illegal status.

Dang Nguyen Anh also pointed out inadequacies in the policies of Vietnam. These inadequacies were: (i) lack of effective mechanism to manage labour export agencies; (ii) weak protection mechanisms for Vietnamese migrant workers in Taiwan, Malaysia and South Korea; and (iii) weak social protection. Furthermore, Vietnam lacked a mechanism that allows its workers to make themselves heard, protected and empowered. Also, an effective intervention mechanism in case of unsafe migration was not available. Particularly, Dang emphasized the fact that Vietnam did not ratify the ICRMW showed the unreadiness and lack of determination in protecting the rights of its migrant workers.

Sharing the same view, Futaba Ishizuka⁵⁵ argues that Vietnamese migrant workers have to face many challenges in preparation for migration, such as significantly high fees. Although the government of Vietnam has attempted to support its migrant workers, the efforts made by the government are not sufficient as the proportion of migrant workers illegally terminating labour contracts in South Korea, Japan, Taiwan and Malaysia is considerably large, and a large number of returning migrant workers remain unemployed in Vietnam.

Phung Quang Huy⁵⁶ suggests that labour migration is a strategic issue under the National Assembly's working agenda, which was specified in the Program of Socio-economic Development (SEDP) for the period of 2001 – 2010. The objectives of labour migration include enhancing employment opportunities, generating additional income for workers, and contributing to poverty reduction and socio-economic development. However, the main reasons for the under-development of Vietnamese labour migration are low working quality, weak potential, and shortage of an extensive cooperation mechanism of the workers.

Bui Sy Tuan,⁵⁷ in *Improving the quality of human resources to meet the needs of labour export of Vietnam by 2020*, reviews the theories on migration, assesses the quality of Vietnamese migrant workers, and offers several measures that might be taken leading up to

⁵⁵Futaba Ishizuka. (2013). International Labour Migration in Vietnam, and the Impact of Receiving countries' policies. IDE discussion paper No.414, Law and Institution Studies Group, Inter-Disciplinary studies centre, IDE.

⁵⁶Phung Quang Huy. (2008). Export labour – Practice and Policy issues - Vietnam case. This paper is prepared for PECC – ABAC Conference on “Demographic Change and International Labour Mobility in the Asia Pacific Region: Implications for Business and Cooperation in Seoul, Korea on march 25-26,2008.

⁵⁷Bui Sy Tuan. (2012). Nâng cao chất lượng nguồn nhân lực nhằm đáp ứng nhu cầu xuất khẩu lao động của Việt Nam đến năm 2020 - *Improving the quality of human resources to meet the needs of labour export of Vietnam by 2020*. Nhà Xuất bản Lao động Xã hội - *Labour and Society Publishing house*, 274 p.

2020. According to Tuan's assessment, the labour market for Vietnamese migrant workers has been expanding. The government of Vietnam has paid more attention to improving the human resources' quality. However, labour migration policies in Vietnam have not provided clear and transparent information, and failed to forecast irregular situations, which makes Vietnamese workers more prone to fraud or fall into difficulty.

As the findings of these studies have pointed out, it is a clear fact that Vietnamese migrant workers have been faced with difficulties. The above scholars share the same view that the incomprehensiveness of policies is one of the reasons why the rights and interests of migrant workers have not been adequately protected. Therefore, it is important to examine whether the inadequacy exists in the current policies. If it does exist, it is necessary to identify what the inadequacy is, such as comparing the inadequacy of national policies against international standards, and whether the inadequacy exists in the legislative or executive stage, or whether the Government of Vietnam has conducted any action to remedy the inadequacy of its current policy system. These are the issues that have not been clarified in the previous studies. This thesis shall investigate all the above mentioned issues in detail.

However, it may be too early to assess that Vietnam is not ready or aggressive enough in protecting its migrant workers because Vietnam has not ratified the ICRMW. As discussed in session 5.1, in this chapter, there are other reasons for a country not to ratify the Convention, which may not be related to the readiness of its domestic policies to protect its migrant workers. The readiness of a nation in protecting its migrant workers must be considered on the basis of how its national policies are designed, organised and implemented. The extent to which international conventions are reflected in a national policy and law system is another factor for considering the degree of readiness. Initiatives and good practices that have been applied by a country in protecting its migrant workers are more important indicators for the degree of readiness than whether or not that country has ratified ICRMW. The ratification of any convention requires scrutiny, particularly in terms of resources needed for implementing the convention. On the other hand, some scholars express a more positive view about Vietnam's policies on protecting the rights of migrant workers. In the book titled "Labour migration in international and Vietnamese laws" co-authored by Nguyen Dang Dung, Pham Hong Thai and Vu Cong Giao,⁵⁸ a set of studies on international labour migration under

⁵⁸Nguyen Dang Dung, Pham Hong Thai, Vu Cong Giao. (2011). *Lao động di cư quốc tế và thực tiễn pháp luật Việt Nam - Labour Migration in International and Vietnamese laws*. Research Center for Human and Citizen's Rights, School of Law of National University Hanoi. Labour and Society Publishing house.

globalisation have been introduced. The most significant study by Le Thi Hoai Thu in the book focuses on the current laws on protecting the rights of Vietnamese workers working overseas under contract. According to Thu, the government of Vietnam has promoted the codification of rules on labour export and protection of migrant workers' rights by a legal system in a relatively full manner, particularly with the issuance of the VNLMW in 2006. Thereby, the rights of Vietnamese migrant workers are considered in all three stages of the migration process. Meanwhile, the government has introduced new policies to support migrant workers, for example, knowledge training requirements and so on. However, the author also pinpointed that a number of regulations and rules are too general, particularly with respect to migrant workers' returning to the home country.

Sharing the same view as Thu's, Nguyen Xuan Tao⁵⁹ claimed that policies to protect the rights of Vietnamese migrant workers are relatively clear and specific, which assign specific tasks for each body involved. Particularly, these policies help enhance the proactive role of Vietnamese workers to self-protect their legitimate rights. The government of Vietnam has undertaken a number of activities including establishing labour attaché, and participating in relevant international institutions and so on.

In their positive comments on the labour migration policies of Vietnam, the above scholars take some good practices undertaken by the government of Vietnam in order to better support migrant workers as good examples for a sound policy system in Vietnam.

It is obvious that there is some disagreement among scholars on the role of the current policy system in protecting Vietnamese migrant workers. However, before any judgement of Vietnamese policy on protecting the rights of migrant worker, this thesis shall do further investigation into a number of policies and practices on a right-based approach in the light of the three important related international conventions. It shall also examines, both gaps and good lessons in the general executive situation of Vietnam to identify the gaps that can be filled in the current policy system of Vietnam. The major argument of this thesis is that although Vietnamese government has not ratified the international conventions related to protect the rights of migrant worker, its policies has met the requirements of international conventions for sending countries. Despite the fact that Vietnamese policies for protecting the rights of Vietnamese migrant workers still have some flaws, Vietnamese government has

⁵⁹Nguyen Xuan Tao. (2014). Công tác quản lý và bảo vệ quyền và lợi ích hợp pháp của người lao động Việt Nam đi làm việc ở nước ngoài - Management and Protection of the legitimate rights and interests of Vietnamese migrant workers. Hanns Seidel – ILSSA International Conference. Press Club Hanoi, 25 February 2014

made huge efforts to overcome challenges posed by international political context to protect every right of Vietnamese migrant workers.

6. Structure of the thesis

The thesis shall comprise four chapters as follows:

Chapter I: Overview. This chapter introduces how the thesis is conducted, including the general context of the research theme, existing gaps in the literature via reviewing relevant domestic and international studies. This chapter also presents a number of basic concepts related to the thesis topic, the applied theoretical framework, research questions, the scope and object of research, and the structure and expectations of the thesis.

Chapter II: Responsibilities of sending countries in protecting the rights of migrant workers under to international conventions. This chapter shall analyse the responsibilities of sending countries according to the international conventions adopted by the ILO and the UN. A framework for comparing and evaluating the policies on protecting the rights and interests of Vietnamese migrant workers is also developed and presented in this chapter.

Chapter III: Vietnam's policies on protecting the rights and interests of its migrant workers. This chapter shall describe the rights and interests enjoyed by Vietnamese migrant workers. Thereby, the chapter shall present an in-depth analysis of the level of implementation and codification of international standards, as well as the effectiveness in relevant law enforcement and typical practices undertaken by Vietnam.

Chapter IV: Conclusion and policy implications. This chapter will present findings, policy implications and conclusions in order to enhance the effectiveness of the Vietnamese policies on protecting the rights of Vietnamese migrant workers on the basis of arguments analysed in chapters II and III.

7. Objectives of the thesis

This thesis aims to provide an objective and overall picture of Vietnam's policies on labour migration to contribute to Vietnam's efforts in protecting the rights of migrant workers in terms of policy and practice. Moreover, the thesis is hoped to conduct a comparative study of labour policies of Vietnam, and issues set forth in policies on protecting the rights of migrant workers as compared with international conventions of UN and ILO. Furthermore, the thesis is expected to propose some conclusions and policy implications. Last but not least, I hope

that the thesis could contribute to the literature of protecting the rights of Vietnamese migrant workers as a reference source for further research.

CHAPTER II. RESPONSIBILITIES OF SENDING COUNTRIES IN PROTECTING THE RIGHTS OF MIGRANT WORKERS UNDER INTERNATIONAL LEGAL FRAMEWORK

As discussed in previous chapter, international conventions play a key role in protecting the rights of migrant workers by setting up a system of international law. The current international conventions impose a set of requirements on sending countries with respect to protecting the rights of migrant workers. These requirements formulate a framework to evaluate a country's policies on protecting the rights of migrant workers in the following chapter.

When a migrant worker moves from one country to another, he or she undergoes three processes: pre-departure, working in the receiving country, and repatriation to the home country due to the expiration of the labour contract.⁶⁰ Protecting the rights of migrant workers must therefore closely follow these three processes. Accordingly, although the rights of migrant workers are governed by the laws of receiving countries when they are working within the receiving countries' territory, their rights must receive adequate attention from sending countries during the course of these three processes. The responsibilities of a sending country play a significantly important role in protecting the rights of migrant workers for the following reasons: firstly, the defence and protection of a citizen abroad in case of dangers and risks are the responsibilities of a sending country;⁶¹ secondly, the sending country has important interests in protecting the rights of migrant workers; and finally the sending country is a crucial actor for the creation of an environment, a framework or a policy promoting relevant parties to effectively protect the rights of migrant workers.

Besides, the role of sending countries and the role of migrant workers also need to be further analysed before evaluating the rights of migrant workers because migrant workers form a bridge between sending countries and receiving countries through their cultural and social factors, according to the systems framework of international migration theory.⁶² The role of

⁶⁰ILO. (2008). Protecting the rights of migrant workers: A shared responsibility. The document is known as an ILO contribution to the Second Meeting of the Global Forum on Migration and Development in Manila from 27 to 30 October 2008. Retrieved from:

http://www.ilo.org/migrant/publications/WCMS_180060/lang--en/index.htm

⁶¹Protecting the rights and interest of country' citizens is the responsibility of this country as specified in Point b, Clause 3, Vienna Convention on Diplomatic Relations 1961.

⁶² Op.cit.note 31 (Fawcett, J.T. (1989))

sending countries is also important because international migration has close relationship with legal factors such as consultation, labour contracts, training in pre-departure process. All these factors come from sending countries, according to institution theory.⁶³ Thus, in order to identify the roles of sending countries, this chapter shall examine three main issues. The first is the impact of migrant workers on sending countries. Through both positive and negative impacts, sending countries are able to identify the importance of migrant workers as well as necessity of the adjustment in policies on protecting migrant workers in order to maximise the benefits and reduce the negative impacts that migrant workers bring forth. The second issue is the rights of migrant workers. Finally, this chapter will identify the responsibilities of sending countries in protecting the rights of migrant workers.

1. The impact of migrant workers on sending countries

1.1 Positive impacts of migrant workers on sending countries

The impacts of migrant workers on labour sending countries include generating jobs, reducing unemployment rate, facilitating economic growth, and improving human resources' quality.

First, worker migration has positive social impacts through job creation, unemployment reduction, and population pressure reduction. Let us take Indonesia and Sri Lankans as examples. In Indonesia, labour export helps this country overcome the unemployment caused by 1997 crisis. According to the Department of Manpower and Transmigration, in this period, Indonesia exported up to 238,324 workers.⁶⁴ In Sri Lanka, migrant workers solved the unemployment issue not only through working overseas but also creating jobs for recruitment service agencies and so on.⁶⁵ This is due to the surplus of young human resources in developing countries. Facilitating labour export not only solves the problems within the sending countries, but also fulfils the shortage of human resources in developed countries where population growth insufficiently meets the demand.⁶⁶ The supply and demand for labour in ASEAN between young labour-surplus countries such as Cambodia, Lao, Vietnam,

⁶³ Op.cit.note 30 (Massey et al. 1998).

⁶⁴ Carunia Mulya Firdausy. (2005). Trends, Issues and Policies Towards International Labour Migration: an Indonesia case study. United Nations Expert Group Meeting on International Migration and Development. Population Division Department of Economic and Social Affairs United Nations Secretariat New York, 6-8 July 2005

⁶⁵ Piyasiri Wickramasekara. (2010). International migration and employment in the post-reforms economy of Sri Lanka. International Migration Papers No. 107. International Migration Programme. International Labour Office – Geneva.

⁶⁶ Op.cit.note 57 (Bui Sy Tuan 2012).

Indonesia and countries with high rates of aging population such as the Philippines or Thailand show that labour export, particularly skilled labour, is significantly important for labour sending countries to resolve employment issues.⁶⁷

Second, migrant workers directly contribute to improving their households' economic status, and indirectly contribute to improving the overall economy of the sending countries. For workers, working abroad gives them higher incomes compared to working in their home countries so that they are able to enhance their households' economic status. With better incomes, the labourer can improve their families' living condition, provide better care for their children's health and education, and invest in housing and businesses.⁶⁸ For sending countries, migrant workers also generate a flow of remittances, and an abundant source of on-going and sustainable foreign currency which continuously increases over years.⁶⁹ This cash flow reduces the deficit in the balance of payments, improves foreign exchange reserves, and reduces the pressure of increasing foreign exchange rate. According to the IOM in 2013, migrant workers generated approximately 440 billion USD, out of which 350 billion USD was remitted to developing countries.⁷⁰ This cash flow is considered a far more effective tool for poverty reduction and economic development than aid programs.⁷¹

Third, migrant workers improve the quality of human resources of sending countries. It is not easy for a worker to be permitted to work in a receiving country unless he or she is qualified. In addition to meeting the legal requirements to ensure legal migration, workers must fulfil requirements related to health, technical skills, foreign language skills, as well as have basic knowledge of the culture and legal system of receiving countries. Hence, sending countries need to invest in necessary facilities and training of staff through the state budget and assistance projects funded by international organisations such as the ILO and the IOM.

⁶⁷Op.cit.note 9 (ASEAN and ADB report 2014).

⁶⁸IOM.(2013). World Migration Report 2013 - Migrant Well-being and Development. p29 and p33. Retrieved from: <http://www.iom.int/cms/wmr2013>; Le Hong Huyen. (2004). Impact of world labour movement in Vietnam's development in condition of international economic integration. *Vietnam Economic Review*, Issue 8(180), August 2009, p 33-38; Seddon D. (2004). South Asian remittances: Implications for development. *Contemporary South Asia*, 13(4): 403-420; UNICEF. (2008). The Impact of Parental Deprivation on the Development of Children Left Behind by Moldovan Migrants. UNICEF Moldova.

⁶⁹Richard H. Adam Jr. & John Page. (2005). Do International Migration and Remittances Reduce Poverty in Developing countries. *World Development*. Volume 33, issue 10, p1645-1669.

⁷⁰IOM, Labour migration, 2013.Retrieved from:
<http://www.iom.int/cms/en/sites/iom/home/what-we-do/labour-migration.html>

⁷¹Ninna Nyberg-Sørensen, Nicholas Van Hear & Poul Engberg-Pedersen. (2002). The Migration-Development Nexus: Evidence and Policy Options State-of-the-Art Overview. *International Migration*. Volume 40, Issue 5, pages 3-47, Special Issue 2, Pg 14; Paola Giuliano & Marta Ruiz-Arranz. (2005). Remittances, financial development and growth. IMF Discussion Paper No. 2160, 2005, Washington DC

Development projects and Official Development Assistance (ODA) programs from developed countries such as Deutsche Gesellschaft für Internationale Zusammenarbeit, GmbH (GIZ) and Agency Française de Développement (AFD) also assist in this matter. The ‘Tripartite action to protect migrant workers against labour exploitation project’ (GMS Triangle Project), with an objective of protecting migrant workers of Greater Mekong Sub-region against labour exploitation, is a typical example. After two years of implementation, 2,025 workers in Cambodia, Lao PDR and Vietnam, and 1,788 workers in Thailand and Malaysia have received training on safe migration, and rights at workplace.⁷² As a result, the quality of human resources has been improved together with an increase in government spending⁷³, and better use of international donors’ assistance and consultation. Moreover, sending countries are able to make use of quality human resources after the repatriation of migrant workers. After working for a certain duration of time in a receiving country, the workers themselves have obtained better skills, foreign language, and professional working styles. The participation of the returned skilled workers in the domestic labour market enhances domestic production, increase productivity and reduce training costs.⁷⁴

As a result, migrant workers have an effective and sustainable impact on a sending country by contributing an abundant source of remittances, solving social issues, and improving the quality of human resources. Meanwhile, migrant workers also help sending countries obtain efficient investment in both infrastructure and vocational training through the funding of international organisations. Particularly, if migrant workers are well prepared for departure and reintegration through, adequate skill and language training and effective resettlement policies, the benefits returning migrant workers bring forth shall be optimised.

1.2 Negative impacts of migrant workers on labour sending countries

Without adequate management policies, labour migration may create negative impacts for labour sending countries, including brain drain, instability of families and society, and undermining relationships and positions of sending countries in the international community.

First, the flow of migrant workers may lead to the brain drain of skilled workers. The income gap is a significant reason for promoting labour migration, and it is also the reason for

⁷²Information about GMS TRIANGLE Project. (2012). Retrieved from:

http://www.ilo.org/asia/whatwedo/publications/WCMS_182358/lang--en/index.htm

⁷³Le Hong Huyen. (2009). Impact of world labour movement in Vietnam's development in condition of international economic integration. *Vietnam Economic Review*, Issue 8 (180), p33-38.

⁷⁴An anonymous interviewee, who is a governmental official working on Vietnam Department for Managing Overseas Labour, said.

workers staying further in receiving countries. Small countries, such as Guyana, Barbados, or Haiti, constantly face such risks as approximately 90% of their skilled labour is living in another country and tends to seek for permanent stay abroad.⁷⁵

Second, the migration of workers results in an imbalance within their families and society as well. Migrant workers are usually the father, mother or elder sister/ brother and also are often the bread winners of their families, in a household.⁷⁶ The absence thereof - especially in Asian families where almost all family generations are living closely and dependently - break family union. This directly influences the children and the elderly in the family. Although the amount of money remitted can help them improve the living standard, the losses related to emotion, care and education of their children are inevitable.⁷⁷

Third, migrant workers, in some cases, may directly influence the bilateral relation between sending and receiving countries. Illegal immigration brings about a reduction in legitimate immigration of citizens from sending countries to receiving countries. The illegal migration of Vietnam to South Korea can be seen as an illustration. According to the Vietnam Centre for Overseas Labour (COLAB), the rate of illegal Vietnamese migrants residing in Korea is twice higher than the average rate of the 15 countries sending workers to Korea under the Employment Permit System (EPS) program.⁷⁸ This situation leads to the fact that Korea has considered the possibility of unilaterally cancelling the MOU between Vietnam - South Korea.⁷⁹ Due to these situations, receiving countries can apply policies to ensure temporary immigration such as not allowing the families of migrant workers to go along with or visit the migrant workers in receiving countries, prohibiting marriages between migrant workers and citizens of the host countries, forcing migrant workers to associate with an employer, not allowing migrant workers to form unions, tightening and restricting human rights and labour

⁷⁵UN & OECD. (2013). World Migration in Figures. A joint contribution by UN-DESA and the OECD to the United Nations High-Level Dialogue on Migration and Development, 3-4 October 2013. p4.

⁷⁶Lahaie, Claudia, Tinka Markham Piper, Jeffrey A. Hayes, and Jody Heymann. (2009). Work and family divided across borders: The impact of parental migration on Mexican children in transnational families. Community, Work and Family, Volume 12, Issue 3, p299-312.

⁷⁷Op.cit.note 68 (IOM Report 2013).

⁷⁸Ha Nam. (2014). 366 lao động Việt Nam cư trú bất hợp pháp tại Hàn Quốc - 366 Vietnamese workers residing illegally in South Korea. *Vov.vn*. Retrieved from:

<http://vov.vn/xa-hoi/366-lao-dong-viet-nam-cu-tru-bat-hop-phap-tai-han-quoc-352840.vov>

⁷⁹Employment Permit System (EPS) is the program that allow Korean Firms who could not hiring domestic workers will be allowed to recruit foreign workers. Ministry of Labour in Korea allowed to sign MOU with the sending countries. Currently, the Korean Ministry of Labour has selected and signed MOUs with 15 countries, including Vietnam, Thailand, Indonesia, Philippines, Mongolia, Sri Lanka, China, Cambodia, Nepal, Uzbekistan, Pakistan, Bangladesh, Kyrgyzstan, Myanmar and Timor.

For detail information: <https://www.eps.go.kr>

rights.⁸⁰ This will negatively impact the cooperation relations between two countries and pose challenges for sending countries to protect the rights and interests of lawful migrant workers.⁸¹ Moreover, when the rights and interests of migrant workers are not guaranteed, sending countries are likely to face accusations of human rights violation.⁸²

Unless these countries have proper policies on sending migrant workers, their workers will likely fall into illegal status. This directly affects the workers in particular and the relationships between countries and image thereof in general. With potential negative impacts that migrant workers may pose on sending countries, these countries should ensure good orientation policies for migrant workers and consider cooperation with receiving countries to create a database on migrant workers as well as facilitate them to reunite with their families; and implement an effective policy on workers' repatriation in order to ensure skilled workers returning to their home countries.

2. Legal foundation for determining to the rights of migrant workers

The protection of the rights and interests of migrant workers has been stated in a number of international legal instruments, such as the Universal Declaration on Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Law on Human Rights, and others. Based on these conventions on fundamental human rights, UN and ILO have set special priority for human rights related issues for a long time by adopting a number of relevant legal instruments.⁸³ These conventions are divided into two groups, including conventions on the rights of migrant workers⁸⁴, and conventions on equal treatment

⁸⁰Dang Nguyen Anh. (2014). Social welfare of ASEAN and Vietnamese migrant workers. Presentation at the National Conference on domestic and international labour migration: recommendations for the social security system of Vietnam. A conference held by Hanns Seidel – ILSSA at Press Club, Ha Noi, 25 Feb 2014

⁸¹ An anonymous interviewee, who work in taskforce on ASEAN migrant workers and did research on migrant worker in ASEAN, said.

⁸²This can be seen as the case of Sri Lanka. The 2013 Trafficking in Persons Report of the US. pointed out that “Sri Lankan men, women who migrate consensually to Saudi Arabia, Kuwait, Qatar, the United Arab Emirates, Jordan and so on, to work as construction workers, domestic servants, or garment factory workers subsequently face conditions indicative of forced labour including restrictions on movement, withholding of passports, threats, physical or sexual abuse, and threats of detention and deportation for immigration violations”. From those accusations, sending countries could face with a lot of difficulties when widen or open a new labour market. Retrieved from: 2013 Trafficking in Persons Report

<http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215620.htm>

⁸³Op.cit. note 38 (James & Barry 1991).

⁸⁴Including: Migration for employment convention (revised) 1949 (No.97), Migrant workers (supplementary provisions) conventions, 1975 (No.143), International convention on the protection of the rights of all migrant workers and members of their families 1990)

in the workplace.⁸⁵ In this section, in order to identify the responsibilities of sending countries and legal issues related to migrant workers' rights, the thesis shall examine the conventions of the former group as they are directly relevant to protecting the rights of migrant workers, and responsibilities of sending countries. The former group comprises three conventions, including ILO Convention No.97, ILO Convention No.143 and ICRMW.

ILO Convention No.97 was adopted on 8th June 1949 by the ILO to amend and supplement the Convention on Migration for Employment of 1939 – the first convention issued by the ILO related to the protection and promotion of migrant workers' rights. ILO Convention No.97 has come into effect since 22nd January 1952. By the end of 2014, the Convention has been ratified by 49 countries.⁸⁶ The main purpose of this convention is to provide support and protection for migrant workers, and require to member states to treat migrant workers on an equal basis to the citizens of receiving countries.

ILO Convention No.143 was adopted by the ILO on 4th June 1975 in order to supplement ILO Convention No.97 of 1949, and the Convention on Discrimination (Employment and Occupation) of 1958. ILO Convention No.143 came into effect on 9th December 1978, and 23 countries had ratified this convention by 2014.⁸⁷ ILO Convention No.143 has extended the ILO's concern over protecting the rights of migrant workers. This convention affirms the fundamental rights of all migrant workers and aims at preventing illegal migration and facilitating migrant workers with legal papers to reunite with their families.⁸⁸

ICRMW was adopted by the UN General Assembly on 18th December 1990 in accordance with Resolution 45/158 and came into effect on 1st July 2003. This Convention is considered the most important convention in the international legal instrument system on labour migration, and regarded as the Charter on migrant workers. As of 3rd March 2011, this convention has been signed, but not yet ratified, by 47 countries.⁸⁹ The convention, which

⁸⁵Including: Equality of Treatment Accident compensation convention, 1925. (No.19), Equality of Treatment (Social Security) Convention, 1982 (No.118) and Maintenance of Social Security Rights Convention, 1982. (No.157).

⁸⁶ILO. Ratifications of C097 - Migration for Employment Convention (Revised), 1949 (No.97). Retrieved from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312242:NO

⁸⁷ILO. Ratifications of C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143). Retrieved from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312288:NO

⁸⁸Preamble, ILO Convention No.143

⁸⁹UN. Ratifications of International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Retrieved from:

was intended to become a comprehensive convention that is applied uniformly worldwide, includes 93 articles and 9 chapters. According to the ICRMW, the rights of migrant workers and members of their families are promoted on a comprehensive and full basis, including civil rights, political rights, labour rights, economic rights, social rights, cultural rights, and other specific rights in accordance with the nature of migrant workers. Particularly, fundamental human rights must be respected and applied for all groups of migrant workers, regardless of documented and undocumented migration.

3. Rights of migrant workers

3.1 The definition of migrant workers in accordance with international conventions

A migrant worker as defined in ILO Convention No.97 means “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment”.⁹⁰ This definition excludes frontier workers, artists, and freelance professionals working for a short period of time, and crew members.⁹¹ The key point in determining a migrant worker in this definition is the migration from one country to another for employment. And employment herein has a long-term nature. Those who usually have short-term or temporary employment are not considered migrant workers; therefore, they are not subject to the governance of these conventions.

A migrant worker is more specifically defined through the ILO Convention No.143. A migrant worker is defined similarly to the definition mentioned in ILO Convention No.97, but more limited via the addition of two groups of non-migrant workers. Accordingly, non-migrant worker groups include not only frontier workers, artists, freelance professionals working for a short time, crew members, migrants for training and coaching purposes, but also those recruited by organisations or businesses to work temporarily in another country’s territory as required by employers for special positions or tasks within a limited and defined time frame, and leave the country on the completion of the position or task.⁹²

In ICRMW, the definition of migrant worker is much broader. As stipulated in this convention, the term “migrant worker” refers to “a person who is to be engaged, is engaged

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV13&chapter=4&lang=en%20Preamble

⁹⁰ Article 11 ILO Convention No.97.

⁹¹ Article 11 ILO Convention No.97.

⁹² Article 11 ILO Convention No.143.

or has been engaged in a remunerated activity in a State of which he or she is not a national”.⁹³ ICRMW stipulated eight types of migrant workers and six types of non-migrant workers.⁹⁴ Moreover, in the convention, the term “members of the family” refers to “persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.”⁹⁵

On the basis of the legality of residence and labour, Article 2 of ICRMW categorizes migrant workers and members of their families as documented migrant or known as legal migrant, and undocumented migrant or known as illegal migrant”, in which the former are those authorized to enter, stay and engage in a remunerated activity in the state of employment, and the later are those who are not entitled to similar rights. The stipulation of documented and undocumented showcases the humanitarian aspect of the convention when taking protection and vulnerability into consideration. It is possible for a documented migrant to become undocumented without any violation of the laws of the state of employment due to insufficient information, or insufficient preparation and orientation prior to their departure.⁹⁶ As a result, labour sending countries need to implement good management of labour prior to sending workers abroad to avoid their inadvertently acquiring undocumented status. The concept of ‘migrant worker’ in ICRMW is more comprehensively defined than in the previous two conventions.

The above definitions indicate that undertaking employment outside the home country is the most typical characteristic of migrant workers. This characteristic suggests that migrant workers fall under the vulnerable group in the society. Migrant workers often have to cope with challenges related to employment, living conditions and social welfare, and working condition. Migrant workers are also faced with challenges of language barriers,

⁹³According to Article 2 ICRMW, types of migrant workers including: frontier worker, seasonal worker, seafarer, worker on an offshore installation, itinerant worker, project-tied worker, specified-employment worker and self-employed worker.

⁹⁴According to Article 3 ICRMW, types of non-migrant workers including: “(a) Persons sent or employed by international organisations and agencies or persons sent or employed by a State; (b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment; (c) Persons taking up residence in a State different from their State of origin as investors; (d) Refugees and stateless persons; (e) Students and trainees (f) Seafarers and workers on an offshore installation”.

⁹⁵Article 4 ICRMW.

⁹⁶Take Vietnam as an example, in some cases where Vietnamese workers work in the Middle East, within three months, if they fail to obtain work permits, they became undocumented workers. An anonymous interviewee, who is a governmental official working at Vietnam Department for Managing Overseas Labour, said.

environmental factors, cultural practices and legal issues. In addition, differences in training systems, technical skills, and working styles are factors that create difficulty for migrant workers. Particularly, different legal regulations and the lack of legal aid make it difficult for migrant workers to understand their rights and interests. Consequently, they are more prone to fraud, exploitation, passport retaining, coercive limitation of communication, limitation of personal freedom, and privacy violation. Worse, they are likely to be victims of crime, law offenders, or victims of human trafficking. That is the reason why the ILO and the UN have tried to create a legal framework to protect migrant workers, starting from defining this group in a common term. This common definition will provide a basis for countries to adjust their policies to promote and protect the rights of migrant worker.

3.2 Rights of migrant workers

Human rights in general and rights of migrant workers in particular are recognized in the Universal Declaration of Human Rights 1948⁹⁷ which understands that migrant workers are entitled to fundamental human rights without any discrimination. Through the development of international conventions, the rights of migrant workers and family have been widened so that they also enjoy a number of special rights, including the right to freely leave any state, right to form associations and trade unions, right to employment and adequate working condition, right to education and health care, and right to family life.

ILO Convention No.97 is applicable to legal migrant workers. The convention requires countries to provide migrant workers with equal treatment of no less favourable conditions than that provided for their nationals in terms of working condition, association formation, and social security.⁹⁸ As a result, in accordance with this convention, migrant workers are entitled to basic labour rights as workers of the employed countries. Migrant workers shall have access to free assistance and accurate information; support during travelling and receiving processes; health services; non-discrimination in terms of working hours and minimum working age; and appropriate jobs for women, the right to join trade unions and to have proper accommodation and social security.⁹⁹

In ILO Convention No.143, the rights of migrants are expanded to be applicable to all migrant workers and respect the fundamental rights of migrant workers. ILO Convention

⁹⁷Article 1 &7 the Universal Declaration of Human Rights 1948.

⁹⁸Article 6 ILO Convention No.97.

⁹⁹Point a,b, sub-clause 1, Article 6 ILO Convention No.97.

No.143 provides measures to prevent human trafficking. It also stipulates that migrant workers are entitled to basic rights as labourers of the host countries in terms of employment, social security, the rights to join trade union, culture, individual and collective freedom, and the right to reunification with their families (applicable to legal migrants only).¹⁰⁰ Nonetheless, these two conventions merely mention documented migrant workers.

ICRMW has extended the governing subjects to include documented migrant workers, undocumented migrant workers, and their respective families. According to this convention, migrant workers in general, regardless of whether they are documented or undocumented, shall be entitled to fundamental rights – as stipulated in Chapter III from Article 8 to Article 32. Documented migrants and their families in particular are able to enjoy some additional rights – as stipulated in Chapter IV from Article 36 to Article 56.

First, basic rights for migrant workers include basic freedom,¹⁰¹ right to criminal proceedings¹⁰², right to privacy¹⁰³, right to equal treatment as nationals of the employed states in terms of working conditions, social security,¹⁰⁴ right to transfer income,¹⁰⁵ and right to information.¹⁰⁶ These are the basic rights for all documented migrants and their families as well as undocumented migrants. The convention explains that the challenges and difficulties faced by migrant workers are far more serious than the issues that illegal migration brings us.¹⁰⁷ Hence, although the convention recognises the diversity in the origin and status of migrant workers, it primarily focuses on the rights related to difficulties faced by migrant workers. As a result, the fundamental rights of migrant workers are ensured regardless of whether they are documented or not, and they are able to enjoy fundamental rights on an equal basis as those entitled to nationals of the employing states.

Second, the rights of documented migrants and their families comprise special rights which stipulated from Article 36 to 56 of the ICRMW such as right to temporary absence¹⁰⁸, right to

¹⁰⁰ Article 10 ILO Convention 143.

¹⁰¹ Article 10 – 15 ICRMW.

¹⁰² Article 22 ICRMW.

¹⁰³ Article 14 ICRMW.

¹⁰⁴ Article 25 – 28 ICRMW.

¹⁰⁵ Article 32 ICRMW.

¹⁰⁶ Article 33 ICRMW.

¹⁰⁷ Preamble of the ICRMW.

¹⁰⁸ Article 38 ICRMW.

freedom of movement,¹⁰⁹ right to equal treatment as nationals of the employing states¹¹⁰ and so on.

4. Responsibilities of sending countries in the protection of migrant workers

All three conventions emphasize that countries must ‘by all means’ support migrant workers in accordance with three principles of equal treatment, national treatment, and ensuring that workers are entitled to the rights in the three processes as stipulated. With the advancement of the recent conventions, the responsibilities of labour sending countries have been gradually expanded.

4.1 ILO Convention No.97

ILO Convention No.97 emphasizes the principles that the member states must apply to migrant workers treatment no less favourable than which they apply to their nationals in terms of working conditions, freedom to association formation, and social security.¹¹¹ This principle of ILO Convention No.97 requires member states to submit to the ILO office and provide other relevant states information of national policies, special regulations, general and special agreements with other states related to emigration and immigration.¹¹² In this way, this regulation forces all member states to transparently publish their policies on protecting migrant workers in their countries. In the meantime, sending countries are able to access to official information of receiving countries’ policies so that they can educate their workers. In addition, with respect to migrant workers, sending countries must, by all means, closely cooperate with receiving countries to provide support and facilitate migrant workers in terms of travelling, providing official information on emigration and immigration on a free of charge basis,¹¹³ and income remittances¹¹⁴.

4.2 ILO Convention No.143

ILO Convention No.143 has further extended the concern over the protection of migrant workers’ rights. In addition to the principles of equal treatment, ILO Convention No.143 further emphasizes the issue of restricting the flow of illegal migration, and supporting family reunification for migrant workers.

¹⁰⁹Article 39 ICRMW.

¹¹⁰Article 54 ICRMW.

¹¹¹Article 6 ILO Convention No.97.

¹¹²Article1, ILO Convention No.97.

¹¹³Articles 2,3, ILO Convention No.97.

¹¹⁴Article 8, ILO Convention No.97.

In terms of illegal migration, ILO Convention No.143 requires member states to examine the situation of migrant workers being illegally employed in or passing through their respective territories¹¹⁵ and to apply necessary and appropriate measures to suppress clandestine movements of migrants for employment and illegal employment of migrants.¹¹⁶ At the same time, member states must apply civil administrative measures or penal sanctions onto illegal employment recruiters and migrant workers traffickers.¹¹⁷ This responsibility is primarily executed in receiving countries but requires close cooperation with sending countries to provide information, or suppress illegal migration movements from sending countries.

In terms of equal treatment and support for migrant workers, ILO Convention No.143 requires member states to adopt and implement a national policy on promoting and ensuring equality of employment opportunity and labour treatment, social security, trade union and cultural rights, individual and collective freedom for migrant workers and their families who are lawfully residing within the territory of the employed states.¹¹⁸ Member states then take different measures that fit their conditions and practices in implementing these policies, for example, the coordination of employers' organisations, employees' organisations, and other appropriate organisations; the promulgation of laws, and encouragement of specific training programs; the dissemination of policies in a full and wide manner; the revocation and amendment of regulations and inappropriate administrative practices; the encouragement of efforts made by migrant workers and their families in maintaining the cultural identity of sending countries.¹¹⁹ As a result, the role of sending countries is of significant importance, particularly in providing legal information, and consultation for maintaining cultural values of places where migrant workers retain their citizenship and so on.

In terms of ensuring reunification of families, ILO Convention No.143 requires member states to support the reunification of families of all migrant workers legally residing in their territories.¹²⁰

¹¹⁵Article 2 ILO Convention No.143.

¹¹⁶Article 3 ILO Convention No.143.

¹¹⁷Articles 5,6 ILO Convention No.143.

¹¹⁸Article 10 ILO Convention No.143.

¹¹⁹Article 12 ILO Convention No.143

¹²⁰Article 13 ILO Convention 143.

4.3 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) comprises two principles as stipulated in ILO Convention No.97 and ILO Convention No.143 in relation to non-discrimination, and national treatment.¹²¹ However, ICRMW emphasizes that the application of these rights onto migrant workers must be uniformly implemented throughout the course of their migration.¹²² This means sending countries must ensure that their nationals working overseas are entitled to the rights and interests starting from departure time to repatriation time.

In the migration preparation process, labour sending countries must undertake two important responsibilities including provision of information and cooperation with receiving countries upon request.¹²³ As a result, sending countries bear the responsibilities of providing information for and educating migrant workers and their families' members on the rights that they shall enjoy in accordance with the convention, as well as the conditions for them to be accepted in the receiving countries, the rights and obligations as stipulated by law and practices of receiving countries, and the compliance with administrative procedures thereof,¹²⁴ and legal information applicable to migrant workers (in relation to residence, salary, competent authorities to visit when changes emerge and so on).¹²⁵ Particularly, sending countries must ensure that the aforementioned information originates from official and lawful sources, such as employers, trade unions, state agencies and so on. At the same time, sending countries bear the responsibility of cooperating with relevant countries in providing information when requested.¹²⁶

While migrants are working in receiving countries, sending countries must support migrant workers in their search for legal aid, and cooperate with receiving countries to protect the rights and interests of their nationals.

Sending countries, through consulates or diplomatic missions, shall also provide support for migrant workers and their families if they are arrested, detained or held in custody. In order to

¹²¹Article 6 ILO Convention 97, Preamble and Article 3 ILO Convention 143.

¹²²Article 1 ICRMW.

¹²³Article 33 ICRMW.

¹²⁴Article 33 ICRMW.

¹²⁵Article 37 ICRMW.

¹²⁶Article 33 ICRMW.

protect their nationals,, these agencies must be fully aware of when and why they are arrested¹²⁷, support and protect the arrested citizens in case their rights recognized in the ICRMW are violated.¹²⁸ Meanwhile, sending countries must create favourable conditions for migrant workers and their families to return to the original countries at the consent of temporary absence by the receiving countries,¹²⁹ exempt import taxes and fees as stipulated,¹³⁰ facilitate remittance¹³¹ and non-prejudice to applicable double taxation agreements as well as apply appropriate measures to avoid double taxation.¹³²

With respect to cooperation with the receiving country, a sending country shall bear the responsibility of establishing agreements on social security to ensure that the rights entitled to migrant workers and members of their families in receiving country are of equal status with those enjoyed by nationals thereof. The sending country needs to closely coordinate with the receiving country to ensure that its respective citizens shall meet the requirements stated in bilateral and multilateral agreements signed by both countries, and meet the requirements of the law in the receiving country.¹³³ At the request of the receiving country, the sending country needs to closely cooperate with the receiving country to develop proper policies to facilitate the integration of migrant workers' children in the local school system, teach them mother tongue languages and culture, and providing special schemes of education in their mother tongue languages.¹³⁴

With respect to the reunification of migrant workers and their families, ICRMW requires member states to create favourable conditions for freedom of movement (in accordance with law), and apply all measures to protect and facilitate the reunification of migrant workers and their families.¹³⁵

Upon the repatriation of migrant workers and their families, sending countries are responsible for maintaining appropriate services, including formulation and implementation of policies on migration, providing consultation, and information on migration, employment, and relevant governmental agreements and so on for employers and employees. Sending countries

¹²⁷ Article 16 ICRMW.

¹²⁸ Article 23 ICRMW.

¹²⁹ Article 38 ICRMW.

¹³⁰ Article 46 a,d ICRMW.

¹³¹ Article 47 ICRMW.

¹³² Article 48 ICRMW.

¹³³ Article 27 ICRMW

¹³⁴ Article 45 sub-clauses 2,3,4 ICRMW.

¹³⁵ Article 8, article 44 ICRMW.

are also responsible for providing and assisting migrant workers and members of their families with information related to permits, procedures relating to the termination of labour contract and repatriation, working and living conditions in the State of employment, and customs, practices, currency, taxes, and relevant regulations. Sending countries must provide consular services and other necessary services to meet the socio-cultural and other needs of migrant workers and members of their families.¹³⁶ Sending countries must collaborate with receiving countries in applying measures related to orderly repatriation. Also, sending countries must promote economic conditions for resettlement and facilitate the reintegration and cultural maintenance thereof.¹³⁷

In addition to the three process mentioned above, sending countries must carry out a number of activities in collaboration with receiving countries, including setting out procedures that reflect the aspiration and special rights of migrant workers¹³⁸; promoting fair and humanitarian conditions for labour, social, economic and cultural needs;¹³⁹ preventing illegal labour migration by providing official information for detection and application of proper punishment;¹⁴⁰ and creating favourable conditions for transfer of the bodies of deceased migrant workers or members of their families to the state of origin.¹⁴¹ According to ICRMW, the Committee on migrant workers shall comprise 14 specialists nominated by the Member States. The Committee is responsible for reviewing the implementation of convention by examining reports submitted by member states; conducting annual reports including observation and recommendation; and reviewing declaration.¹⁴²

In short, protecting the rights of migrant workers must be carried out at all three movement stages of labour migration. In this process, migrant workers are self-reliant, and they must actively teach themselves with knowledge, experiences and understandings of legal issues and related services so as to protect themselves comprehensively throughout the process.¹⁴³ In addition to migrant workers' self-reliance, there exists collaboration between multiple stakeholders to support migrant workers, including employers, labour brokers (also known as labour supply businesses), representatives of employees (also called trade union), receiving

¹³⁶ Article 65 ICRMW.

¹³⁷ Article 67 ICRMW.

¹³⁸ Article 42 ICRMW.

¹³⁹ Article 64 ICRMW.

¹⁴⁰ Articles 68,69 ICRMW.

¹⁴¹ Article 71 ICRMW.

¹⁴² Article 76-77 ICRMW.

¹⁴³ An anonymous interviewee, who is a governmental official working at Vietnam Department of International Cooperation – MOLISA, said.

country, relevant international organisations such as the ILO, IOM, UNWOMEN, and domestic and international non-governmental organisations. But the role of the sending country is also important as it significantly plays at the first and the last stages of the migration process.

The above analysis of the three conventions on protecting the rights of migrant workers proves that ICRMW is the most comprehensive convention in relation to setting out the rights of migrant workers and their family. ICRMW not only covers the contents of both ILO conventions but also, as a UN convention, has a higher binding level than those of ILO Conventions – a specific agency of UN. Thus, the monitoring process of ICRMW will also be stricter than ILO Conventions. For this reason, this thesis will take ICRMW as the legal-framework to evaluate the Vietnamese policies on protecting the rights of migrant workers. Accordingly, in order to protect the rights of migrant workers, sending countries must have appropriate policies in all of the three processes. For migration preparation, a sending country must provide legal information on the conditions of the receiving country, immigration procedures, the rights and obligations of migrant workers in the receiving country. For the working period in the receiving country, the sending country must provide legal support at the request of migrant workers via its consulates or diplomatic representatives. Also, these agencies must co-monitor to ensure that the necessary rights of their nationals are guaranteed. On repatriation of migrant workers, a sending country must support the return of migrant workers and their reintegration and conduct necessary procedures to avoid double taxation.

CHAPTER III. VIETNAM'S POLICIES ON PROMOTING AND PROTECTING THE RIGHTS OF ITS MIGRANT WORKERS

As analysed in the previous chapter, ILO Convention 97, ILO Convention 143 and ICRMW provide an international legal framework for sending countries to protect the rights and interests of their migrant workers during the entire three stages of the migration process. Although these international conventions are only mandatory for member states, they provide a good gauge, references, and suggested responsibilities for non-member countries to consider and apply in the process of policy development. The relationship between sending countries and receiving countries which related to management and employment activities has great impact on migrant worker. Thus, when there is an adjustment in one of those countries' policies, it will also create effects on the remaining countries.¹⁴⁴ This has significant implications for Vietnam as Vietnamese migrant workers play an important role in the socio-economic development of the country.

This chapter will analyse the current status of Vietnamese migrant workers in order to evaluate the Vietnamese policies on protecting the rights of migrant workers. After that, it will outline the policies currently in place in Vietnam to protect the rights of migrant workers. It will also then try to evaluate Vietnam's policies promoting and protecting the rights of migrant workers by analysing the positive and negative aspects of Vietnam's policies in comparison with the international conventions mentioned above.

1. The current status of outward migrant workers from Vietnam

1.1 Characteristics of Vietnamese migrant workers

In 2014, the population of Vietnam was estimated to be approximately over 90 million, ranked 14th in the world, 8th in Asia, and 3rd in Southeast Asia region.¹⁴⁵ With a high proportion of young labour in Southeast Asia region, Vietnam is rated as a nation with potential labour force and the second largest labour force in Southeast Asia. (Table 1).¹⁴⁶

Table 1. Migrant workers in ASEAN countries

¹⁴⁴ Op.cit.note 31(Fawcett, J.T. (1989))

¹⁴⁵Thuy Giang. (2013). Dân số Việt Nam chính thức đạt ngưỡng 90 triệu người - The population of Vietnam officially reached 90 million people. Vietnamplus. Retrieved from: <http://www.vietnamplus.vn/dan-so-viet-nam-chinh-thuc-dat-nguong-90-trieu-nguoi/227875.vnp>

¹⁴⁶Op.cit.note 9 (ASEAN and ADB report 2014), p8.

	Labour force (000s) ^(a)	Education and skills development ^(b)			Average monthly wage (\$) ^(c)	Labour productivity (constant 2005 international \$) ^(d)
		Literacy rate, ages 15+ (per cent)	TVET enrolment as share of total secondary enrolment (per cent)	Tertiary gross enrolment rate (per cent)		
Brunei Darussalam	186	95.4	11.4	24.3	...	100 015
Cambodia	7 400	73.9	2.3	15.8	121	3 989
Indonesia	118 193	92.8	18.0	27.2	174	9 848
Lao PDR	3 080	72.7	0.8	16.7	119	5 396
Malaysia	13 785	93.1	6.8	36.0	609	35 751
Myanmar	30 121	92.7	...	13.8	...	2 828
Philippines	41 022	95.4	...	28.2	206	10 026
Singapore	3 444	95.9	11.6	...	3 547	98 072
Thailand	39 398	93.5	15.4	51.4	357	14 754
Viet Nam	53 246	93.4	...	24.6	181	5 440

Note: "... " = data not available. 2013 labour force data, except for Brunei Darussalam (2011), Cambodia (2012) and Lao PDR (2010).

Source: (a) Official national sources; ILO estimates; (b) UNESCO Institute for Statistics; (c) ILO estimates based on official national sources; (d) ILO: Trends Econometric Models, Jan 2014; World Bank: World Development Indicators, 2013¹⁴⁷

Up to 2013, there were approximately 500,000 Vietnamese workers in over 40 countries and territories, including Malaysia (about 76,000 workers), Taiwan (about 130,000 workers), South Korea (50,000 workers), Japan (22,000 workers) and so on. Vietnamese migrant workers (unskilled and skilled ones) are working in about 30 different industries ranging from apparel, electronics, housekeeping, nursing, to seafaring.¹⁴⁸ Approximately 300,000 workers out of 500,000 migrant workers were sent to work overseas by authorised labour export organisations or enterprises. Meanwhile, 100,000 workers found employment overseas independently by using tourist visas in the host countries or were deceived by unauthorised enterprises.¹⁴⁹

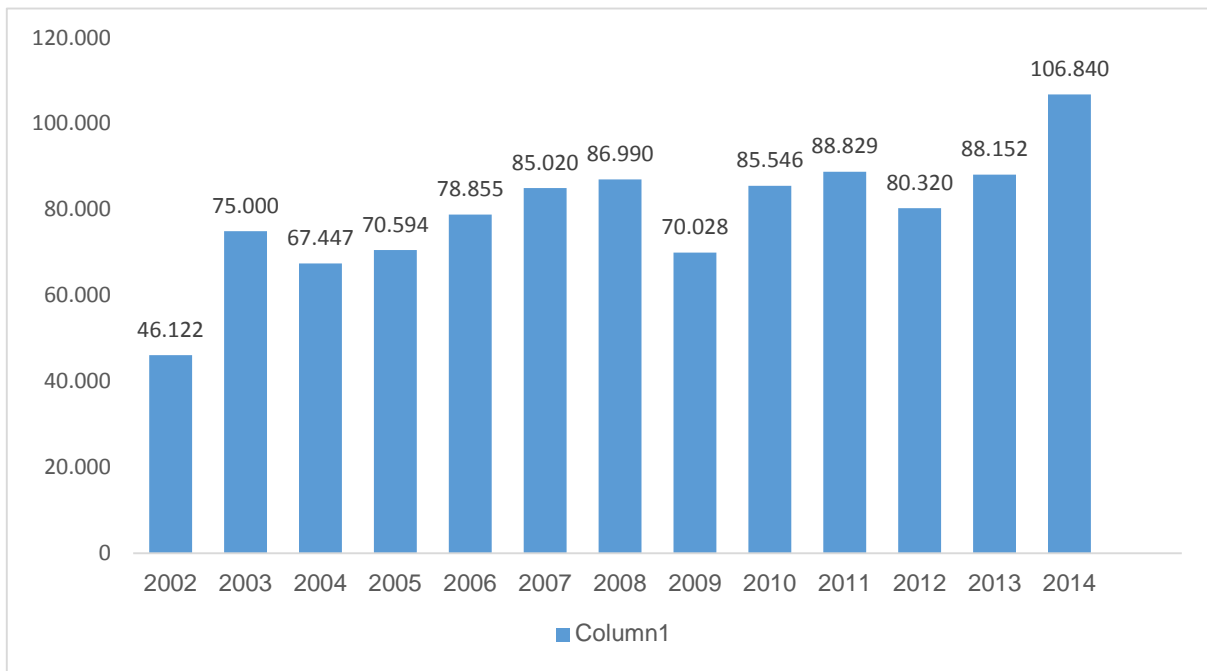
The chart below shows the number of Vietnamese migrant workers from 2002 to 2014.

Chart 1. Vietnamese migrant workers from 2002 to 2014

¹⁴⁷ Ibid.

¹⁴⁸ An anonymous interviewee, who is a governmental official working at Vietnam Department of International Cooperation – MOLISA, said.

¹⁴⁹ Ibid.



Source: Data compiled from statistics of the Department of Overseas Labour, MOLISA 2002-2012, archived at the offices of the Department of Overseas Labour, and Vietnam Association of Manpower Supply.

From this chart, we can see the number of Vietnamese migrant workers has been increasing over years (Chart 1). According to the statistics of the Department of Overseas Labour, there were 106,840 Vietnamese working abroad in 2014, up by 21.20% compared to 2013, exceeding 18% compared to the set forth annual plan.¹⁵⁰

Vietnamese migrant workers generate from around USD 1.7 billion to USD 2 billion of remittances, and the number of workers employed abroad is equivalent to about 5% of total number of those employed in Vietnam.¹⁵¹ However, Vietnamese migrant workers are largely unskilled, coming from rural areas with poor foreign language skills, and low-skilled in technology. According to a study on the socio-economic impact of international migration on Vietnam,¹⁵² Vietnamese labourers mostly work in low-skilled industries, which do not help improve their skills or knowledge. The primary purpose of Vietnamese migrant workers is to

¹⁵⁰Information from Vietnam Association of Manpower Supply (VAMAS). (2015). Lao động Việt Nam đi làm việc ở nước ngoài năm 2014 - Vietnam Laour working abroad 2014. Retrieved from: http://vamas.com.vn/lao-dong-viet-nam-di-lam-viec-o-nuoc-ngoai-nam-2014_t221c654n44352.html

¹⁵¹Consular Department of the Ministry of Foreign Affairs of Vietnam. (2012). Review of Vietnamese Migration Abroad. Retrieved from: <http://dicu.gov.vn>.

¹⁵²Dang Nguyen Anh, Nguyen Ngoc Quynh, Tran Thi Bich & Dao The Son, Nghiên cứu ảnh hưởng Kinh tế - Xã hội về lao động di cư quốc tế ở Việt Nam - Socio-economic Impact Study on international migration in Vietnam. An article from Nguyen Dang Dung, Pham Hong Thai, Vu Cong Giao. (2011). *Lao động di cư quốc tế và thực tiễn pháp luật Việt Nam - Labour Migration in International and Vietnamese laws*. Research Center for Human and Citizen's Rights, School of Law of National University Hanoi. Labour and Society Publishing house. p95.

improve their income, and work under termed contracts. As a result, Vietnamese migrant workers rarely bring their families along and participate in union or community activities.

1.2 Challenges faced by Vietnamese migrant workers

Vietnamese workers face a great number of challenges in all three stages of the migration process, including high risks of suffering from the abuse or violation of rights.

In pre-departure process, Vietnamese migrant workers are easily deceived due to inability to access to official information. According to a sociological survey on workers in Malaysia,¹⁵³ Vietnamese workers often seek information from their peer workers, family members or middlemen rather than look for formal information from enterprises or local agencies. In addition, Vietnamese migrant workers may encounter illegal labour export companies or those with low capacity. All of these factors lead to a prolonged wait, and even a loss of deposit for labour export services. Second, Vietnamese migrant workers are usually those who suffer the highest migration fee in Southeast Asia region.¹⁵⁴ Brokerage fees fall in the range from USD 5,000 to USD 10,000 per head.¹⁵⁵ As a result, Vietnamese migrant workers easily fall into needy situations after selling assets of high value or debt because of borrowing to pay for the brokerage fee. According to Verite report on forced labour migration in the electronics industry in Malaysia,¹⁵⁶ fees for employment overseas paid by Vietnamese migrant workers ranked the highest compared with those paid by migrant workers of other nationalities. Also, 70% of Vietnamese migrant workers must work for an indefinite period of time to pay back debts. Third, after an overseas employment opportunity is confirmed, Vietnamese migrant workers are often not fully trained and equipped with skills, foreign languages, working style, and law of receiving country, particularly that concerning their fundamental rights. Labour hiring companies do not sufficiently provide workers with legal and cultural information of the receiving countries, which includes the rights and obligations to which migrant workers are entitled, and the legal mechanism for protecting migrant

¹⁵³ According to Ms. Nguyen Mai Thuy, Coordinator of the Triangle Project, International Labour Organisation (ILO), the latest survey results on self-protecting capacity of migrant workers are shared. Thu Phuong. Di cư lao động an toàn - Cần giải pháp đồng bộ để giảm thiểu rủi ro - Safety labour migration - The need for solutions to minimize the risks. Retrieved from: http://www.xuatkhaulaodongantoan.com/di-cu-lao-dong-an-toan-can-giai-phap-dong-bo_p319.aspx

¹⁵⁴ Piyasiri Wickramasekara. (2011). Labour migration in South Asia: A review of issues, policies and practices. *International Migration*, paper No 108. International Migration Program. Retrieved from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1913316

¹⁵⁵ Op.cit.note 152 (Dang Nguyen Anh 2011), p85.

¹⁵⁶ Verité. (2014). Forced Labour in the Production of Electronic Goods in Malaysia - A Comprehensive Study of Scope and Characteristics. Retrieved from: <http://www.verite.org/sites/default/files/images/VeriteForcedLaborMalaysianElectronics2014.pdf>

workers.¹⁵⁷ The insufficiency of information too often leads migrant workers to fall into illegal status without their realising it. When their rights are violated, for example, salary payment rejection, migrant workers do not know how to contact non-governmental organisations, trade unions, and competent authorities.¹⁵⁸ Meanwhile, due to poor foreign language skills, it is difficult for Vietnamese migrant workers to meet the technical requirements, to understand and communicate effectively with employers, particularly in markets like the Middle East, Taiwan or South Korea.¹⁵⁹

While working in receiving countries, Vietnamese migrant workers have to undertake harder work in a harsher condition with lower wages compared to those of their regional peers.¹⁶⁰ The interviews with high officials working in Ministry of Labour Invalids and Social Affairs (MOLISA) revealed the reason for this fact which is migrant workers are low-skilled and are not equipped with knowledge in language and law to protect themselves so they are easily exploited. In addition, they suffer from violation and abuse of rights, for example salary payment rejection, verbal, physical and mental abuse, and other ways.¹⁶¹ This, in return, creates great pressure on Vietnamese migrant workers, and they choose to flee from their workplace, or unilaterally terminate their labour contracts.¹⁶² This fact closely follows the system framework of international migration theory which highlights the cultural and social factors that migrant brings to receiving countries as well as the role of legal consultation during the pre-departure process.

On returning to the country of origin at the end of labour contracts, migrant workers may encounter difficulties in reintegrating into their former community due to the lack of information about job opportunities. Meanwhile, according to neo-economy theory, through great income in receiving countries, migrant workers' family could avoid risks and society

¹⁵⁷Dang Nguyen Anh. (2002). Vietnam: Emergence of return skilled migration. pp.113–141 in (ed) R. Iredale, Return Skilled and Business Migration and Social Transformation. APMRN, UNESCO-MOST and Ford Foundation.

¹⁵⁸Op.cit.note 152.

¹⁵⁹An anonymous interviewee, who is a governmental official working at Vietnam Department of International Cooperation – MOLISA, said.

¹⁶⁰According to the Trafficking in Persons Report 2014 of the United States, Vietnam is accused of violating human rights. It is caused by the highest fee that Vietnamese workers must endure prior to migration when compared to that endured by other Asian workers. As a result, Vietnamese migrant workers are usually impoverished, bonded to debt, and subjected to poor working conditions and unpaid employment. Trafficking in Persons Report 2014. VIETNAM Tier 2. Retrieved from: <http://www.state.gov/j/tip/rls/tiprpt/2014>

¹⁶¹Op.cit.note 152 (Dang Nguyen Anh 2011), p32.

¹⁶²Op.cit.note 30 (Massey et al. 1998).

also benefits from the remittances.¹⁶³ This theory explains the Vietnamese migrant worker's trend to continuously find jobs overseas instead of finding jobs in Vietnam.

With the challenges and risks that Vietnamese migrant workers are faced with, they are even more vulnerable than those of other sending countries. In Vietnam migrant workers are categorised as a vulnerable group who need protection in the society.

2. Policies on protection and promotion of the rights of Vietnamese migrant workers working overseas

2.1. Policies on sending Vietnamese to work abroad

The Government of Vietnam considers sending their nationals working overseas a socio-economic strategy to develop human resources, solve unemployment, generate income, increase foreign exchange reserves, and strengthen cooperative relations with other countries. Labour export of Vietnam has experienced long history of development.

In 1980, Labour export was first mentioned in Vietnam's policy through Resolution No. 46/CP dated 11 February 1980, with the Government sending massive quantities of labour to Eastern European countries under the form of labour cooperation via government agreements. The main objective of labour export in this period was to improve workers' skills through cooperation, support, and training in labour importing countries.¹⁶⁴ Therefore, protecting the rights and interests of migrant workers, repatriation policies and other related specific issues were not regulated by the government yet.

In 1990, the "Doi moi" policy¹⁶⁵ and international integration¹⁶⁶ created favourable conditions for economic development and opening of the markets. Due to this, the policy on

¹⁶³Op.cit note 27 (Stark& Bloom (1985))

¹⁶⁴Preamble, Decision No. 46-CP.

¹⁶⁵"Doi moi" policy is one of the restructuring policy of Vietnam carried out since 1986. This policy aims to transfer Vietnam from a centralized economy to a socialist-oriented market economy. Thanks to this policy, GDP of Vietnam continued growth, particularly during 1986- 1996 average GDP of Vietnam growth of 6.6% / year. Nguyen Do. 2015. Melanie Beresford. 2006. Vietnam: the Transition for Central Planning. In Garry Rodan et al(Eds.), The Political Economy of South-East Asia: Markets, power and contestation. Oxford University Press. Third Edition. p200

¹⁶⁶ The intergration of Vietnam started in 1991 from the VII Party Congress in 1991 to enhance the domestic economic and using the international support effectively. According to this, Vietnam has expand economic cooperation on bilateral and multilateral with many partners, in many forms, in many areas (trade in goods, investment production, expanding the financial, scientific and technical cooperation). Nguyen Do. 2015. Hội nhập kinh tế quốc tế của Việt Nam sau gần 30 năm đổi mới - International economic integration of Vietnam after nearly 30 years of innovation. Tạp chí Cộng sản - Communist Review. Retrieved from:

labour migration in Vietnam has a chance to thrive. On 9 September 1991, the National Assembly of Vietnam approved Decree 370-HDBT on regulations governing the sending of Vietnamese workers to work overseas,¹⁶⁷ which allowed enterprises to be established for labour export activities through licenses. Hence, since 1991, enterprises licensed to operate in labour export have been put under the supervision of the Ministry of Labour – Invalids and Social Affairs (MOLISA). Labour export was then moved to the category of revenue generating services of private enterprises. Accordingly, labourers were required to pay a sum of money and an initial fee for overseas employment. At this point, labour export was not only placed within the scope of treaties among governments, but also spread to the level of authorized private enterprises. This has been considered the buffering step for later policies on labour exporting enterprises, human resources training and rights protection for migrant workers.¹⁶⁸

In 1999, the Vietnamese government issued Decree No.152/1999 ND-CP on overseas employment specifying procedures and mechanisms to facilitate the work of Vietnamese workers overseas. This provision allowed local labour export agencies to expand in order to meet the increasing demand from abroad. Particularly, workers were required to have language skills, cultural knowledge and vocational training prior to migration to ensure the requirements of international labour markets.¹⁶⁹ In 2002, the Labour Code added six articles, mainly focusing on labour export. Especially in 2006, the Law on Vietnamese workers working overseas under contract (VNLMW) was passed to integrate all regulations on labour export. Protecting the rights of migrant workers was also included in this law. This can be seen as an attempt of the government to improve the competitiveness and quality of labour force in the international labour market as well as a reflection of their desire to protect the rights of migrant workers.

<http://www.tapchiconsan.org.vn/Home/Nghiencuu-Traodoi/2015/31336/Hoi-nhap-kinh-te-quoc-te-cua-Viet-Nam-sau-gan-30.aspx>

¹⁶⁷Decree No. 370 was replaced by Decree No. 07/CP providing detailed regulations on some provisions of the Law on Vietnamese workers working under term overseas, and Decree No. 05/CP on providing detailed guidelines for implementation of the Ordinance on Income taxes applicable to high income earners in 1995.

¹⁶⁸Dang Nguyen Anh (2008). Labour Migration from Vietnam: Issues of Policy and Practice. ILO Asian Regional Programme on Governance of Labour Migration Working Paper No.4

¹⁶⁹Dang Nguyen Anh, Cecilia Tacoli & Hoang Xuan Thanh. (2003). Migration in Vietnam: A review of information on current trends and patterns, and their policy implications. This paper is prepared for the Regional Conference on Migration, Development and Pro-Poor Policy Choices in Asia, organised by the Refugee and Migratory Movements Research Unit, Bangladesh, and the Department for International Development, UK, and took place on 22–24 June 2003 in Dhaka, Bangladesh.

The integration of Vietnam into the international community also facilitates the promotion of its labour export. Since 2007, after becoming a member of the World Trade Organisation (WTO), Vietnam has expanded labour markets, increased its attraction for investment in improving human resources and so on. At the same time, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was signed among ASEAN leaders.¹⁷⁰ This Declaration gave Vietnam a favourable chance to enhance its ability to protect the rights of migrant workers through the recommendations of the ASEAN Forum on Migrant Labour (AFML).¹⁷¹ From this period, Vietnam has enhanced its capacity in protecting the rights of migrant workers and carried out several activities such as establishing nine labour attachés in nine countries to support labourers in receiving countries, issuing policies to support migrant workers such as social protection for disadvantaged workers,¹⁷² opening labour markets in poorest provinces and so on.¹⁷³

2.2 Vietnam's policies on protecting and promoting the rights and interests of its outward migrant workers

While creating a legal framework for labour export, the Vietnamese government also laid the initial foundation for the protection of the rights and interests of Vietnamese migrant workers with many legal instruments. These include (i) legal instruments at central, ministerial and local levels, (ii) international commitments, treaties, agreements, and MOUs on labour cooperation and protection of migrant workers at regional and multilateral levels which are integrated in the national legislation, and (iii) other regulations on organising and supervising the protection of migrant workers during the entire migration process. Among those instruments, VNLMW 2006 is one of the most important documents which focuses on

¹⁷⁰The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was signed at the 12th ASEAN Summit on 13 January 2007 in Cebu, Philippines. This Declaration affirmed the cooperation of ASEAN members on protecting the rights of migrant workers against exploitation, mistreatment and human-trafficking. In which, the responsibilities of sending and receiving countries among ASEAN were stipulated clearly to support this issues. Retrieved from: ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

<http://www.asean.org/communities/asean-political-security-community/item/asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers-3>

¹⁷¹ Through this Declaration, ASEAN Migrant Workers Forums were set up. This Forum attracts the participants of ASEAN countries, international organisations (ILO, IOM...), representatives of workers and employers and so on. After each forum, parties give out a set of recommendations which aim at protecting the rights of migrant workers in ASEAN countries. Retrived from: The ASEAN Forum on Migrant Labour (AFML) Background information booklet, 01 October 2014. Pg 2 Retrieved from:

http://www.ilo.org/asia/whatwedo/publications/WCMS_310994/lang--en/index.htm

¹⁷² Decree No.78/2002/NĐ-CP on providing credit and loan for poor people to work overseas of Vietnam dated 04/10/2002.

¹⁷³ Decision No.71/2009/QĐ-TTg on assisting the people in 62 poorest provinces to work overseas under national program on employment period 2012-2015 dated 29/4/2009.

Vietnamese workers working overseas under contract. This part, therefore will examine this VNLMW and other related main laws¹⁷⁴ to identify the rights and obligations of Vietnam migrants working overseas, the responsibilities of enterprises and individuals involved in sending employees to work abroad and the responsibilities of the government in protecting the rights of migrant workers.

2.2.1 Vietnamese migrant workers' rights

2.2.1.1 Vietnam's definition of migrant worker

Vietnam's law refers to its migrant workers as 'Vietnamese workers working overseas under contract'. According to the 2013 Labour Code, the term 'employee' is construed as any person who must have attained at least 15 years of age, have the capability to work, must work according to a labour contract, be entitled to a salary, and subject to the management and administration of an employer.¹⁷⁵ According to the VNLMW 2006, a Vietnamese migrant worker refers "to any person who is a Vietnamese citizen, residing in Vietnam, qualified by the laws of Vietnam and of the receiving country, goes to work abroad to work as per the provisions of this Law."¹⁷⁶ Compared with the definition of 'migrant worker' mentioned in ICRMW, the definition of 'migrant worker' in the law of Vietnam under the governing scope of regulations and policies merely means documented migrant workers. The law of Vietnam does not use the term 'migrant worker', but 'Vietnamese workers working overseas under contract'. This definition has some limitations which increase the risk and vulnerability of workers who are working without a contract or beyond the terms of their contract may be not in the protection of the law.

2.2.1.2 Rights of Vietnamese migrant workers

The rights of Vietnamese migrant workers are mentioned in the Vietnamese Constitution. According to this, labourers are free to find a job and free to move to find a job within the country or abroad.¹⁷⁷ The government has responsibilities to protect the fundamental rights and fair working conditions for labourers.¹⁷⁸ The government have responsibilities to protect

¹⁷⁴ Vietnam Labour Code issued in 2012; Vietnam Law on Employment issued in 2013; Vietnam Law on Vocational Training issued in 2014

¹⁷⁵ Article 3 Vietnam Labour Code 2012

¹⁷⁶ Article 3 VNLMW

¹⁷⁷ Article 23 Vietnam Constitution

¹⁷⁸ Article 23 Vietnam Constitution

the fundamental rights and fair working conditions for labourers.¹⁷⁹ Based on the Constitution, VNLMW specified the rights of Vietnamese labour. First, Vietnamese workers can migrate under one of the following types of contracts: A labour contract signed with corporations providing overseas employment services or non-profit organisations eligible to send workers overseas; a labour contract signed with bid-winning corporations, or with foreign investing organisations or individuals that send employees to work overseas; a labour contract signed with corporations operating in sending workers overseas for skill development practice in form of skill improvement training; and finally, an individual contract.¹⁸⁰ Therefore, except for cases where Vietnamese employees work abroad under individual contracts, the other three forms of working overseas under contract involve a labour export brokerage corporate or a bid winning corporate. These groups' responsibilities in protecting the rights and interests of migrant workers must also be taken into consideration.

Chapter III of VNLMW describes clearly the rights of Vietnamese workers. Accordingly, first, they have the right to request information of different types including policies and laws of receiving countries and Vietnam, customs and practices of receiving countries and obligations of the related parties in the receiving country. Furthermore, workers are entitled to request information about wages, other types of earnings, health care, social security, and other rights as stipulated in their labour contracts and international law. Workers are also entitled to transfer their earnings and personal belongings to Vietnam. The law also clearly provides the measures to protect their legitimate rights and interests; for example, Article 68 VNLMW provides the right to access to Overseas Employment Support Fund¹⁸¹, Article 44 and 53 VNLMW provides the right to receiving counselling to implement the aforementioned rights as described in their labour contracts or internship contracts. They are also entitled to take litigation actions against those who violate their rights.¹⁸²

In comparison with ICRMW, the requirements for the rights of migrant workers in Vietnam meet the requirements of ICRMW when the Vietnamese migrant labours are ensured with basic rights in sending countries such as the right to information, the right to transfer income,

¹⁷⁹ Article 35 Vietnam Constitution

¹⁸⁰ Article 6 VNLMW

¹⁸¹ The Fund is created with the aim of supporting the expansion and development of foreign labour market, providing trainings and capacity building for labour resources, and handling risks encountered by workers and enterprises.

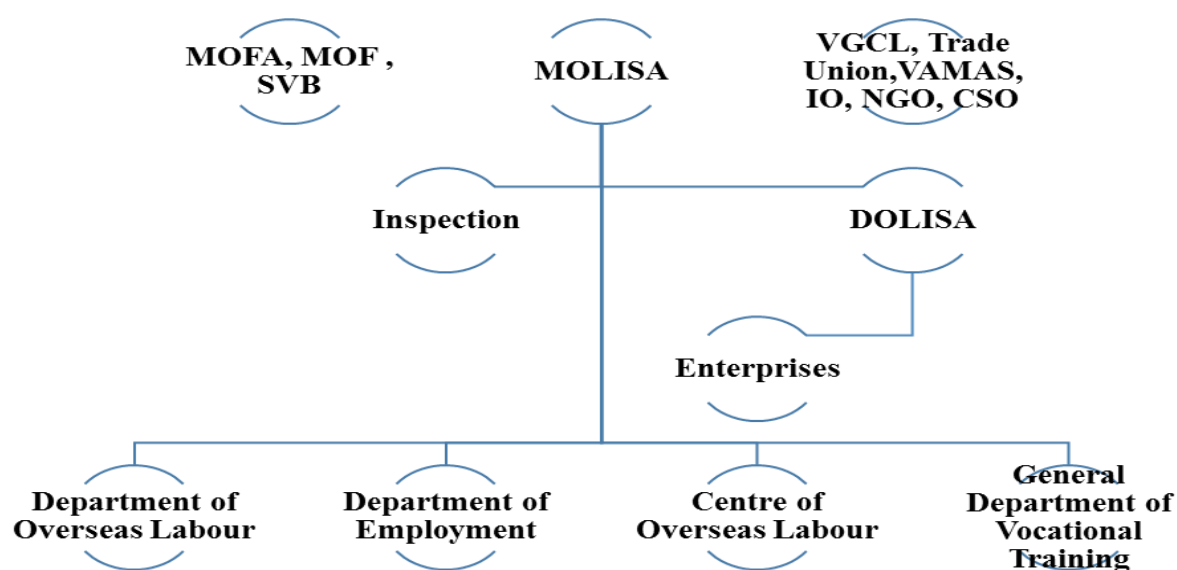
¹⁸² Article 44 VNLMW

the right to freedom of movement. However, with the characteristics of Vietnamese migrant workers as mentioned above, Vietnamese migrant labourers mainly work abroad on short term contracts. They do not expect to bring their families along, so that the matter of migrant's family is not highlighted yet in the policies. Besides, due to the focus on legal migrants, the basic right for illegal labour migration which is mentioned in ICRMW was not mentioned in VNLMW.

2.2.2 Mechanism on managing and protecting Vietnamese workers working overseas

According to Chapter VI on the State Management of Employees Working Overseas in VNLMW, the Ministry of Labour – Invalids and Social Affairs (MOLISA) is the state administrative agency which is in charge of labour export. Below is the diagram which describes the mechanism of labour export in Vietnam.

Chart 2. The mechanism on managing and protecting Vietnamese workers working overseas



At central level, MOLISA cooperates with other ministries such as Ministry of Finance (MOF) and the State Bank of Vietnam (SBV) to promulgate bylaws such as fees, pre-departure training courses and so on.¹⁸³ Other agencies under MOLISA such as the Department of Overseas Labour (DOCLAB),¹⁸⁴ the Department of Employment,¹⁸⁵ the

¹⁸³ Article 70 VNLMW.

¹⁸⁴ Department of Overseas Labour was established under Decision No.1012/ QĐ-LĐTBXH dated 8/7/2013. This unit must carry out the state management functions on Vietnamese employees working overseas under contract. Website: <http://dolab.gov.vn/>

Centre of Overseas Labour (COLAB),¹⁸⁶ the General Department of Vocational Training (GDVT),¹⁸⁷ the Department of Labour, Invalids and Social Affairs in provinces (DOLISA) and Inspection are responsible for direct administration of specific tasks. Some agencies which are not state management agencies such as representative organizations of employees (Vietnam General Confederation of Labour – VGCL, Trade Union), representative organizations of employers (Vietnam Association of Manpower Supply – VAMAS), international organisations, non-governmental organisations, and other Civil Society Organisations (CSOs) closely cooperate with MOLISA to support activities of labour export. At the local level, Departments of Labour – Invalids and Social Affairs (DOLISA) coordinate with relevant local bodies to implement labour market promotion, and protect Vietnamese workers working overseas. During policy consultation processes at both central and local levels, MOLISA and DOLISA must conduct tripartite consultation.¹⁸⁸

2.2.3 Responsibilities of Vietnamese migrant workers, labour export enterprises and the government in protecting the rights of migrant workers

According to the VNLMW, the responsibilities of migrant workers, enterprises and the government are stipulated in all three process of migration.

At the pre-departure stage, Vietnamese migrant labourers need to find employment information of the receiving country from enterprises, People Committees, DOLISA and Migrant Workers Resource Centres.¹⁸⁹ When they submit their profiles to enterprises, Vietnamese migrant workers must follow the obligations of paying brokerage fee, service

¹⁸⁵ Department of Employment was established pursuant to Decision No. 517/2013/QĐ-LĐTBXH dated 28/3/2013. This unit must undertake the state management functions on employment, labour market, and unemployment insurance in accordance with law.

¹⁸⁶ Center of Overseas Labour is a body under the Ministry of Labour – Invalids and Social Affairs, which performs the functions of recruiting, training and sending Vietnamese employees to work and receive training overseas under contract. Website: <http://colab.gov.vn/>

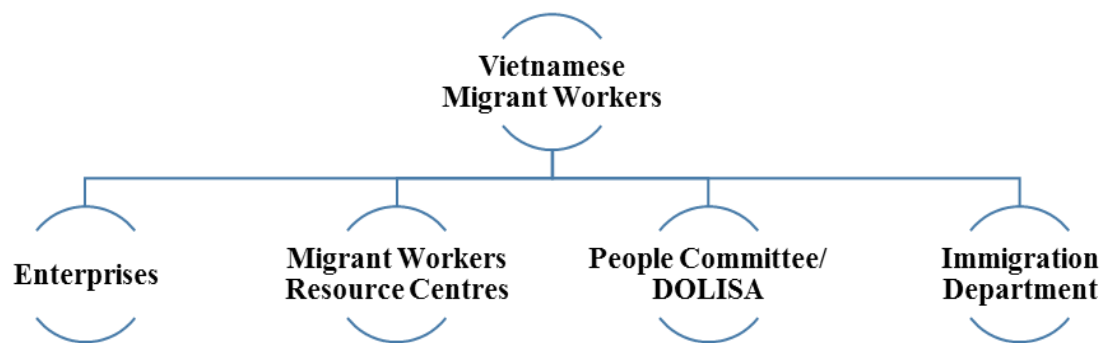
¹⁸⁷ General Department for Vocational Training (GDVT) is a body under the Ministry of Labour – Invalids and Social Affairs, which performs the functions of advising Minister of Labour – Invalids and Social Affairs about the state management on vocational training, training program, curriculum, training quality, qualification, national standard of skills, lecturers and managerial staff's standard, testing regulations, system of certificates and diplomas, vocational training portfolio, and facilities and training equipment. GDVT must undertake the state management on vocational training as stipulated by law. Website: <http://tcdn.gov.vn>

¹⁸⁸ Circular 27 issued on 6 October 2014 providing guidelines for state managerial bodies in charge of labour export to consult local representatives of employers and employees in formulation of policies and laws on labour relations.

¹⁸⁹ Chapter III, VI VNLMW.

charge, fee for the Overseas Employment Support Fund¹⁹⁰ and participating in necessary training courses.¹⁹¹ Once getting to this stage, Vietnamese migrant workers need to work closely with the agencies named in the following chart.

Chart 3. Key agencies supporting migrant workers during pre-departure stage



To complete these procedures, labour export enterprises must provide workers with information related to policies and laws, customs and practices of receiving country, rights and obligations of involving parties when working abroad, wages and health insurance as prescribed in contracts, international treaties and international agreements and detailed information¹⁹² in case of necessary.¹⁹³ The government of Vietnam has responsibilities to organise orientation courses which include training on skills, foreign languages, and necessary knowledge to create a qualified group of workers that fits the requirements of the targeted labour market.¹⁹⁴

In the stage of working in the receiving countries, migrant labourers are responsible for complying with and working under the contract, complying with the law of receiving countries, paying social insurance and income tax, preserving and promoting the culture of

¹⁹⁰The Fund is created with the aim of supporting the expansion and development of foreign labour market, providing trainings and capacity building for labour resources, and handling risks encountered by workers and enterprises.

¹⁹¹Article 45 – 49 VNLMW

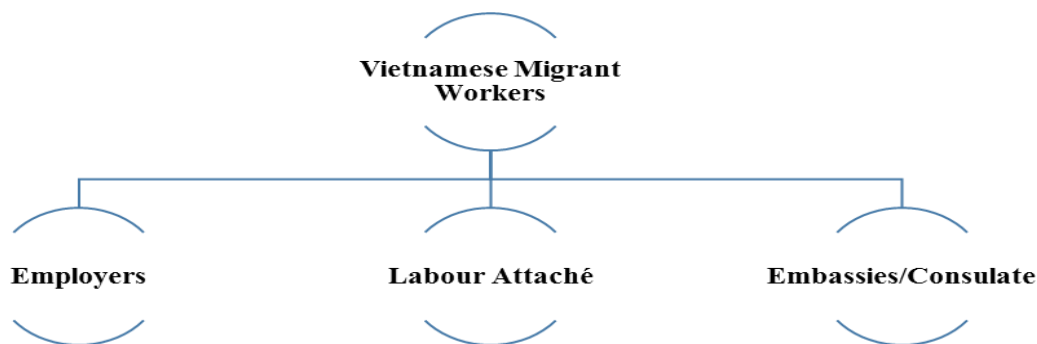
¹⁹²The information including the contact number and address of employers' representatives in both receiving country and Vietnam, contact details of Labour attaché, Vietnamese Embassies in case of emergency

¹⁹³Article 44, Section 1, Chapter 3, VNLMW.

¹⁹⁴Article 61 VNLMW

Vietnam.¹⁹⁵ When Vietnamese workers enter a receiving country, the enterprises must notify and coordinate with their foreign and provide the list of workers to Vietnamese Embassy, Consulate and Labour Attaché,¹⁹⁶ as follows.

Chart 4. Key agencies supporting migrant workers when working oversea



The protection of migrant workers' rights in this stage involves the participation of Embassies, Consulates¹⁹⁷ and labour attachés.

On returning to the Vietnam after finishing the contract, the migrant worker has responsibilities to go back to Vietnam by the date prescribed in the contract through the agencies illustrated below.

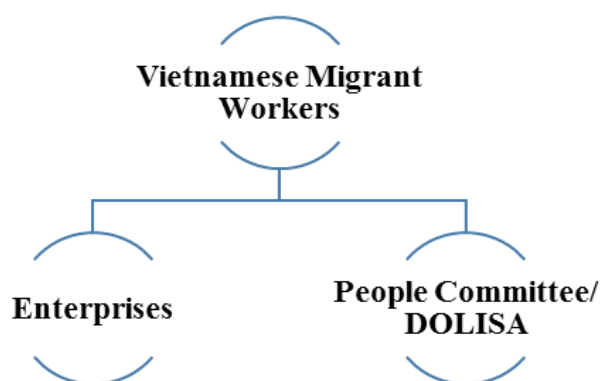
¹⁹⁵The Fund is created with the aim of supporting the expansion and development of foreign labour market, providing trainings and capacity building for labour resources, and handling risks encountered by workers and enterprises.

¹⁹⁶For the State of Vietnam, a labour attaché bears the responsibilities of conducting research on labour market, labour policies, labour receiving modes, and signing MOUs. For labour export enterprises, the labour attaché is responsible for providing information of labour market, labour supply contracts, and feasibility evaluation of sending labour to receiving countries. For migrant workers, the labour attaché is responsible for protecting their rights, determining the legal status of employers, solving complaints or issues related to labour migration. Di cư lao động an toàn - Kinh nghiệm quốc tế và thực tiễn tại Việt Nam - Safety labour migration - Eexperiences of international and reality in Vietnam. Retrieved from:

<http://hoctacquocte.com/tin-tuc/di-cu-lao-dong-an-toan-kinh-nghiem-quoc-te-va-thuc-tien-tai-viet-nam/>

¹⁹⁷ Article 44 of VNLMW.

Chart 5. Key agencies supporting migrant workers upon returning



The DOLISA in provinces must notify workers of employment opportunities in their localities, provide guidelines, and encourage returning migrants to register for suitable jobs. Enterprises are encouraged to recruit and accept returning migrant workers, or to send them to work abroad at their request if they satisfy requirements stipulated by law.¹⁹⁸

2.3 Evaluating the Vietnamese policies on protecting the rights of Vietnam migrant workers

Although Vietnam has not ratified all the three international conventions related to protecting the rights of migrant workers, its national policies have gradually come to meet the requirements of those international conventions. However, due to the flaws in policy making and implementation, there remained several constraints. This part will identify these constraints besides the advancement of Vietnamese policies in protecting the rights of migrant workers and identify their position in comparison with international conventions.

2.3.1 Vietnam's first steps in approaching the requirements of ICRMW

After looking into the Vietnamese policies in protecting the rights of migrant workers, I would like to argue that Vietnam not only has a mechanism on protecting the rights of migrant workers but also has a complete system of policies and regulations; and it can archive several successes in protecting the rights of migrant workers. Therefore, Vietnam, also meets the requirements of ICRMW in only "maintaining appropriate services to deal with questions concerning international migration of workers and members of their families"¹⁹⁹.

¹⁹⁸Chapter IV VNLMW

¹⁹⁹Article 65 ICRMW. This appropriate services include: "(a) the formulation and implementation of policies regarding such migration; (b) an exchange of information. consultation and co-operation with the competent

Firstly, Vietnam has established a mechanism to manage and protect the rights of Vietnamese migrant workers. The mechanism on managing and protecting the rights of Vietnamese migrant workers is in place from the central level to local level. This is an important tool for implementing relevant policies smoothly. This mechanism requires the participation of government agencies, inspection agencies and the cooperation among ministries to manage the operation of the labour export enterprises as well as carry out the activities to protect the rights of migrant workers. This mechanism also ensures the participation of the representative of employers and employees, international organisations and CSOs.

Secondly, Vietnam has formed a complete system of policies and regulations to protect the rights of migrant workers.

The issue of protecting the rights of Vietnam migrant workers has been mentioned in the Constitution, laws and bylaws. In particular, from the period 1980 to 2006, labour migration was stipulated in several laws and bylaws. Only when VNLMW was born in 2006, were the issues of protecting the rights of migrant workers unified in one law. Those policies and laws protecting the rights of migrant workers have covered the three stages of worker migration and clarified the responsibilities of government, enterprises and migrant labourers. To some extent, it could help government to manage sending labour abroad.

Next, the study and review of the policies on protecting migrant workers that have been issued from 1980 to 2015 reveals that the government of Vietnam, ministries and authorities from local to central levels have made ongoing efforts in issuing regulations, decrees, and guiding circulars governing labour export activities since 1997. Table 2 below demonstrates Vietnamese government's efforts in more details.

authorities of other States Parties involved in such migration; (c) provide necessary information for employers, migrant workers and members of their families"

Table 2. The number of legal instruments issued since 1980 to 2015

Year	Number of legal instruments related to labour migration issued by year (from 1980 to 2015)	Percentage of legal instruments related to labour migration issued by year (from 1980 to 2015)
1980	1	1.1
1991	2	2.2
1992	1	1.1
1994	1	1.1
1995	2	2.2
1996	1	1.1
1997	1	1.1
1998	1	1.1
1999	2	2.2
2000	6	6.7
2001	3	3.4
2002	1	1.1
2003	4	4.5
2004	6	6.7
2005	2	2.2
2006	4	4.5
2007	11	12.4
2009	7	7.9
2010	4	4.5
2011	5	5.6
2012	4	4.5
2013	12	13.5
2014	7	7.9
2015	1	1.1
Total	89	100.0

Source: Compiled from official websites of Vietnamese administrative agencies

During 17 years (from 1980 to 2006), 37 legal instruments on protecting the rights and interests of migrant workers were issued, equivalent to 42.7% of the total number of legal instruments on the same matter that have been promulgated. Meanwhile, within 8 years (from 2007 to 2015), 51 legal instruments on the same issue were promulgated, equivalent to 57.3% of the total legal instruments on protecting migrant workers. In some particular years, the number of relevant legal instruments could go up to 11 or 12 instruments issued a year; for example in 2007 when Vietnam officially acceded to the WTO, and the VNLMW took full effect or in the year 2013 when ASEAN's member countries prepare for the process of setting up the ASEAN Economic Community in 2015. This data show that the Vietnamese government has made great efforts to continue issuing legal documents to enable labour migration to adapt with the change of new situation. Also, there have been great improvements in the quality and effectiveness of those instruments. The later instruments have been adjusted to focus more specifically on orientation education, labour export support in poor areas, national strategies in decent works and so on.

Moreover, the policy makers in MOLISA, in the series of in-depth interview, informed that the process of setting up the law²⁰⁰ involved consultation with enterprises and Vietnamese migrant workers. This consultation includes getting comments on drafts of laws and holding conferences with the Vietnamese migrant workers and labour export enterprises. Especially, the law²⁰¹ has been designed with reference and consultation from international conventions with the support of international organisations, non-governmental organisations and so on. The requirements of educating migrant labourers before departure and the Fund for overseas employment support are two examples of policies that Vietnam has learned from the international conventions.²⁰²

Furthermore, Vietnam also has policies to protect migrant workers at the international level through international cooperation mechanisms. The government of Vietnam has actively ratified other international conventions and international standards related to protecting the rights of migrant workers. As mentioned in the introduction, Vietnam ratified several ILO conventions which cover issues of child labour, forced labour, discrimination at workplace, freedom to form associations and so on.

²⁰⁰Vietnam Code Law 2012 and VNLMW 2006

²⁰¹Ibid.

²⁰²An anonymous interviewee, who work in taskforce on ASEAN migrant workers and did research on migrant worker in ASEAN, said.

Vietnam also ratified five out of eight conventions on fundamental labour rights. Those specific conventions focusing on its own subjects and are included in ICRMW. Thus, although Vietnam has not ratified the ICRMW yet, the ratification of other specific conventions also helped Vietnamese policies meet the requirement of international conventions in some fields in protecting the rights of migrant workers. Besides, its participation in regional forums which discuss the migrant labour issues such as ASEAN, Colombo Process, Abu Dhabi Dialogue and so on is another effort of Vietnam Government in protecting the rights of migrant workers. Through these activities and ratifications, Vietnam is able to carry out good practices and receive recommendations from international experts to better protect its citizens. Moreover, to promote bilateral cooperation frameworks in this regard, MOLISA has closely coordinated with MOFA and other representatives of governmental bodies abroad to study the policies and labour needs of several countries which can receive migrant workers.²⁰³ MOLISA has signed treaties and agreements on labour cooperation with other countries, or established cooperative relations with competent authorities of receiving countries to coordinate the management of labour migration to protect the legitimate rights of Vietnamese migrant workers.

Vietnam has signed a number of treaties and agreements on labour cooperation with various countries and territories, including Malaysia, South Korea, Taiwan, Japan, Laos, Qatar, Bahrain, and Russia. From 1992 to 2014, there were approximately 26 bilateral treaties signed between Vietnam and other countries, such as South Korea, Japan, the US, etc.²⁰⁴ This cooperation has created a favourable condition for Vietnam to monitor and handle issues arising to its migrant workers in the country of employment.²⁰⁵ Also, Vietnam has established nine labour management agencies in Malaysia, Japan, South Korea, Taiwan, the UAE, Saudi Arabia, and Czech Republic to protect the rights of its migrant workers.²⁰⁶

By ratification of others specific international conventions, international standards, regional initiatives, as well as signing bilateral agreements related to protect the rights of migrant

²⁰³ An interview with high official in International Cooperation Department of MOLISA

²⁰⁴ An anonymous interviewee, who is a governmental official working at Vietnam Department of International Cooperation – MOLISA, said.

²⁰⁵ MOLISA has coordinated closely with MOFA and other agencies of Vietnam located abroad to search for policies and demand for labour of different countries. MOLISA actively proposes to other countries the receipt of Vietnamese labour. MOLISA's main policy is to sign treaties and agreements on labour cooperation with other countries. In case no agreement and treaty is signed, MOLISA sign agreements to establish cooperative relations with competent authorities overseeing foreign labour management to coordinate the sending of Vietnamese labour, and to protect their legitimate rights. Ibid

²⁰⁶ Ibid.

workers, Vietnam has shown the willingness to protect its migrant workers. The fundamental rights of Vietnamese migrant workers are guaranteed and protected under the bilateral agreements and international initiatives. In this regard, the policies of Vietnam have met the requirements of the ICRMW for cooperation to ensure safe migration.²⁰⁷

For the reasons above, it is arguable that Vietnam has made huge efforts to set up a coherent and transparent system of policies and regulations on labour migration in order to meet the requirements of international conventions. More importantly, Vietnam has achieved certain success in protecting the rights of migrant workers. It has managed to take a number of effective actions to reduce potential risks encountered by migrant workers, and ensure the management of safe and efficient labour migration. Those are initiatives in the managing and implementing of labour migration policies which include: Overseas Employment Support Fund; enterprises' self-monitoring mechanism and the establishment of Migrant Workers Resource Centre, which are discussed below.

The government of Vietnam established the Overseas Employment Support Fund (the Fund) in 2007²⁰⁸ on the basis of restructuring the Fund for labour export founded in 2004.²⁰⁹ Contribution for the Fund comes from enterprises,²¹⁰ workers,²¹¹ and the State. The Fund is used to support expansion and development of foreign labour markets, to provide training and capacity building for labour resources, and to handle risks encountered by workers and enterprises. The Fund played an important role in the repatriation of Vietnamese migrant workers from Libya in 2011, when Libya underwent a political unrest in 2011. Over 10,000 Vietnamese workers working in this country were supported to return to Vietnam safely. Until February 2012, after the situation in Libya gradually was stabilised, the government approved the plan allowing MOLISA to cooperate with other related ministries to send workers back to Libya. Before sending workers to Libya, functional authorities had to finalise necessary legal procedures to ensure safety for labourers under contract.²¹² In July 2014, there were 1,750 Vietnamese employees in Libya, who had been sent by 14 manpower supply

²⁰⁷ Article 64-71 ICRMW.

²⁰⁸ Decision No.144/2007/QĐ-TTg on the Establishment and Use of the Overseas Employment Support Fund dated 31/08/2007.

²⁰⁹ Decision No. 163/2004/QĐ-TTg dated 8 September 2004 on Overseas Employment Support Fund.

²¹⁰ Labour export enterprises must deduct 1% of their annual revenues from brokerage fees to contribute to the Overseas Employment Support Fund in accordance with Article 8 VNLMW

²¹¹ Vietnamese workers working overseas must contribute 100,000 VND/ head/ contract (equivalent to 5 USD) to the Fund. Retrieved from: Decision No.144/2007/QĐ-TTg dated 31 August 2007 on the Establishment and Use of the Overseas Employment Support Fund.

²¹² An anonymous interviewee, who is a governmental official working at Department of International Cooperation – MOLISA, said.

enterprises. Most of these workers went away from Libya in 2011, and then returned to work in Libya from the beginning of 2012 until now. The majority of them work in construction and service sectors. More than 200 workers are now working in warfare escalating zone of Tripoli and Benghazi.²¹³ In the context of unpredicted political instability, it was a great effort of Vietnam to bring back 10,000 workers to Vietnam and support them to resettle their life. The Funds plays an important role in this success as it provided necessary financial support. Especially, bringing a large number of migrant workers back in a tense military situation shows very effective coordination among related agencies inside and outside the country. This reflected the efforts that Vietnamese government has made to effectively protect Vietnamese migrant workers.

Promoting enterprises' self-monitoring mechanism is another good example of Vietnamese policies on protecting the rights of migrant workers. Vietnam's Code of Conduct (CoC-VN) is an instrument developed to improve the compliance with national regulations and international standards on labour migration, and to strengthen the management and protection of migrant workers against abuses. It is not a legal instrument as it is applied on a voluntary basis. Based on CoC-VN, enterprises are evaluated and certified annually. The certificate is valid within a year. Participating enterprises must comply with evaluating rules and criteria, and strive to retain their rating titles. Rating titles are publicly announced on the website of Vietnam Association for Manpower Supply (VAMAS). Enterprises voluntarily register to participate in CoC-VN. Certificates will be based on the quality and reputation evidence of enterprises, which may help them attract more workers to use their services.²¹⁴ CoC-VN has attracted the participation of a great number of enterprises. According to Mr. Nguyen Luong Trao,²¹⁵ the CoC-VN provides support and guidelines for enterprises to conduct labour export activities in accordance with Vietnamese and international laws. A number of international commitments, despite having not been ratified, are integrated in CoC-VN. When a labour export enterprise refers to and complies with CoC-VN in their business operations, it does not have to be concerned about risks that may occur. It can also save time for reviewing laws governing its business operations, avoid the omission of laws, and thereby reduce costs incurred due to risks, and avoid lawsuits from workers." Currently, there are about 102 enterprises which have registered to participate in CoC-VN, and 47 of which have strictly and

²¹³ Ha Nam. 2014. Lao động trở về từ Libya được hỗ trợ như thế nào? - How were labour from Libya being supported?. vov.vn. Retrieved from:

<http://vov.vn/xa-hoi/lao-dong-tro-ve-tu-libya-duoc-ho-tro-nhu-the-nao-359563.vov>

²¹⁴ An anonymous interviewee, who is a working at VAMAS, said.

²¹⁵ Mr Nguyen Luong Trao is an author of COC-VN and is president of VAMAS.

successfully applied CoC-VN.²¹⁶ Therefore, the application of the CoC-VN for promoting a self-monitoring mechanism shows active efforts made by Vietnam to improve the efficiency of labour migration management and migrant workers' rights protection. This again confirms the full reference to and application of international conventions in Vietnam's legislative and executive systems though these conventions have not been ratified yet. Basically, CoC-VN has a direct impact on the interests of enterprises to maintain quality of their services. Besides, it helps government manage labour export more easily. Especially, CoC-VN particularly helps migrant workers access to formal information of reliable enterprises, reduce vulnerability to risks and being deceived.

Migrant Workers Resource Centres set up to provide consultation for future migrant workers and their families are also another achievement of Vietnam in protecting the rights of migrant workers. Services provided by MRC include information and orientation, psychological and legal counselling, and vocational training prior to migration²¹⁷. MRCs coordinate with other job reference centres to ensure safe migration for Vietnamese workers. Also, MRCs play an important role in cooperating with non-governmental organisations and labour export enterprises. In Vietnam, there are five MRCs in five provinces and cities. The one in Hanoi was established jointly by Department of Overseas Labour (DOLAB) and IOM.²¹⁸ According to the assessment of ILO consultants,²¹⁹ the establishment of MRCs is considered one of the measures for safe migration. Compared with other countries in the Southeast Asia region, MRCs in Vietnam have made more progress in providing migrant workers with information about both domestic and international migration markets. MRCs in Vietnam are established with full facilities, and maintained by a stable source of capital. This ensures MRCs become promising service providers. However, the problem, which hereby arises, is whether or not the quality and quantity of MRCs can satisfy domestic demand for information and more particularly, whether or not workers and other related agencies are aware of the existence of MRCs and seek for MRCs' support.²²⁰

²¹⁶Thuy Dung. (2014). 23% doanh nghiệp xuất khẩu lao động được xếp hạng “xuất sắc” - 23% of labour export enterprises was rated as “outstanding”. *TheSaiGontimes*. Retrieved from:
<http://www.thesaigontimes.vn/119990/23-doanh-nghiep-xuat-khau-lao-dong-duoc-xep-hang-%E2%80%9C22.html>

²¹⁷ Migrant Workers Resource Centres (MRCs). Retrieved from:
http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=84

²¹⁸ An anonymous interviewee, who is a governmental official working at Vietnam Department of International Cooperation – MOLISA, said..

²¹⁹ ILO. 2014. The ASEAN Forum on Migrant Labour (AFML). Background information Booklet.

220 Ibid.

2.3.2 Challenges for protecting the rights of migrant workers

Firstly, from the data collected for this research mentioned in the research methodology, I would argue that there is an ‘imbalance’ in the number of documents issued among state and local area. Regarding the level of authority which issued the documents (Table 3), 51.7% out of the total 89 legal instruments related to protecting the rights of migrant workers were issued by the Government; 39.3% were issued by ministries. Provincial governments only began issuing guidelines to implement the central government’s policies on sending workers to work abroad when Vietnam started its administrative decentralisation in 2003.

Table 3. The level that legal instrument about protecting the rights of migrant workers issued from 1980 - 2015

Year of issuance	Number of legal instruments issued at central government level by years	Number of legal instruments issued at ministerial level by years	Number of legal instruments issued at local government level by years	Total number of legal instruments issued by years
1980	1			1
1991	1	1		2
1992		1		1
1994		1		1
1995	1	1		2
1996		1		1
1997	1			1
1998	1			1
1999	1	1		2
2000	1	5		6
2001		3		3
2002	1			1
2003	1	2	1	4
2004	3	1	2	6
2005	1	1		2
2006	3	1		4

2007	6	5		11
2009	3	3	1	7
2010		3	1	4
2011	1	4		5
2012	1	1	2	4
2013	12			12
2014	6		1	7
2015	1			1
Total	46	35	8	89
Percentage equivalent	51.7%	39.3%	9%	100%

Source: Compiled from official websites of Vietnamese administrative agencies

Secondly, I would also argue that the policies focus too much on pre-departure process. From the contents of the legal instruments, I found that local governments mainly focus on procedures for labour-export preferential loans, and educational orientation for migration. Legal instruments issued by the Government and ministries primarily aim at providing guidelines, regulations, and support for pre-migration activities, such as vocational trainings, regulations and procedures, and bank loans and so on. There are five instruments issued by ministries, which provides guidelines to facilitate the job search process for returning migrant workers. This idea is illustrated by the table below.

Table 4. Number of instruments issued during stages of migration process by different administrative levels

Instruments/ Issued by	Pre- migration	In the receiving country	Returning to home country	Pre- migration & Returning to home country	In the receiving country & Return	The entire 3-stage migration process	Total
Central government	20	3	1	11	5	3	46
Ministries	23	2	4	3	3		35
Local governments	8						8
Total	51	5	5	14	8	3	89

Source: Compiled from official websites of Vietnamese administrative agencies

To some extent, the data in table 3 and 4 indicates that the instruments cover almost all activities of labour export. Nevertheless, the instruments mainly focus on the preparation for migration stage with 51 out of 89 instruments. Meanwhile, the instruments on the other processes of migration only occupy 5 out of 89 instruments. Therefore, there is an ‘imbalance’ in policies to protect returning migrant workers in terms of supporting for migrants labour and their families. From the perspective of neo-economic theory of labour migration by Stark and Bloom (1985), we can see that the government of Vietnam is placing much more resources and concern on promotion of sending migrant workers abroad.

According to an official working in DOLISA of Phu Tho Province, the leverage of the knowledge, skills and resources of this group of labourers, when they return home, has not been adequately taken into account. It leads to the fact that migrant workers are not determined to go home and not motivated to learn and gain more experiences. It also gives them a reason to try and find an illegal way to stay on in receiving countries to earn more money. Currently, there is no adequate study identifying challenges of returning migrant workers, particularly psychological difficulties related to re-integration to the former community. However, the results, which have been drawn out from interviewing with labour managerial officials at local level, and reviewing relevant legal instruments, show the inadequacy between the coverage and implementation of these policies, and the potential of these policies for protecting the Vietnamese rights of migrant workers.

Third, there is a lack of resources and measures to monitor the activities of sending workers abroad as well as the operation of labour export enterprises. Vietnam ratified the Labour Inspection Convention of ILO on 3/10/1994.²²¹ Under this Convention, member states have responsibilities to "maintain a system of labour inspection" and must ensure "the sufficient number of labour inspectors to secure the effective duties of the inspectorate".²²² However, the number of labour inspectors in Vietnam is very limited. In 2013, the total number of labour inspectors Vietnam is 471 (1 inspector/100,000 employees).²²³ According to interviews with high officials working in the Inspectorate of MOLISA, the quantity of workers' labour inspectors and their qualifications are insufficient to carry out monitoring

²²¹ Ratifications of C081 - Labour Inspection Convention, 1947 (No. 81). Retrieved from: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312226

²²² Article 1 & 10 Labour Inspection Convention, 1947 (No. 81).

²²³ Anonymous. 2014. Nâng cao năng lực thanh tra ngành Lao động Thương Binh và Xã hội - Enhancing the capacity of MOLISA Labour Inspector. Website of MOLISA. Retrieved from: <http://www.molisa.gov.vn/vi/Pages/chitiettin.aspx?IDNews=20403>

activities. This leads to difficulties in the management of labour export enterprises. The ineffective management of labour export enterprises impacts directly the migrant workers when they encounter fraudulent enterprises or have to pay excessively high fees.

At the pre-departure stage, Vietnam migrant labourers primarily work with labour export enterprises. While these enterprises undertake the responsibility of providing and supporting the labourer with such requirements, government has responsibilities to facilitate business operations, monitor and supervise the implementation process.²²⁴ However, due to the fact that enterprises always think of their benefits first, the migrant labourers have to face a lot of difficulties such as receiving enough information, paying extra money and so on.²²⁵ This leads to the fact that a number of complaints and appeals gradually emerge from the labours towards the enterprise.²²⁶ With a limited number of inspectors, it is difficult for the Vietnamese Government to ensure that the voices of migrant workers are heard.

Finally, I would like to suggest that there are some gaps in managing and implementing the policies. We can take activities in the two stages of working abroad and returning home countries as examples.

At the stage of working abroad, Vietnamese embassies and labour attaché can offer limited support. According to Mr. Nguyen Luong Trao,²²⁷ the supporting system of Vietnam at this stage is relatively weak. Labour attachés are usually understaffed and lack sufficient resources to oversee and handle all issues of migrant workers. In addition, Vietnam currently has only nine labour attachés in other countries. Therefore, Vietnam as a sending country cannot fulfil its responsibilities at this stage.

At the stage of returning to the home country, challenges are created from both sides of enterprises and migrant workers. In my interviews with local authorities,²²⁸ one of them said that the management of job creation for returning migrant workers encounter a number of difficulties. When employees migrate via labour export enterprises without any notice to the local authority, the authority will not be able to monitor if the employees do not apply for

²²⁴The monitoring and sanctions shall be implemented in accordance with Decree No. 95/2013/NĐCP dated 22 August 2013 on administrative penalties in labour, social security and labour export.

²²⁵An anonymous interviewee, who is a governmental official working at Centre for Employment of Phu Tho Province, said.

²²⁶According to information obtained from the Department for Overseas Labour, the Department have received 115 complaints from employees related to labour export; and handled 40 disputes related to the same in 2014

²²⁷Mr Nguyen Luong Trao is an author of COC-VN and is president of VAMAS

²²⁸An anonymous interviewee, who is a governmental official working at DOLISA of Phu Tho province, said.

bank loans or financial support from the provincial authority. Therefore, it is difficult for the local authority to create jobs for returning migrant workers. Besides, he also mentioned that local authorities do try to create jobs for returning workers. However, returning migrant workers only wish to continue migrating because it is hard for them to find local jobs with incomes as high as when working abroad.

2.3.3 Vietnam's policies on protecting the rights of migrant workers and the ratification of ICRMW

Up to now, Vietnam has not ratified ICRMW, ILO Conventions No.143 and ILO Convention No.97 which relate to protecting the rights of migrant workers. Other countries in ASEAN have already ratified those conventions. For instance, the Philippines has ratified all three conventions including ICRMW, ILO Convention 143 and ILO Convention 97. Meanwhile, Indonesia and Cambodia have ratified ICRMW, and Malaysia has ratified ILO Convention No.97.²²⁹ Non-ratification has led to several difficulties for Vietnam, as the country has been blamed for not protecting its migrant workers well enough. This also makes it harder for Vietnam to compete with other sending countries in ASEAN. This fact may urge Vietnam to ratify those Conventions as soon as possible.

It can be said that Vietnam is in the process of popularizing ICRMW. This is a long process which requires a roadmap with a clear timeframe to ensure the compatibility between ICRMW and VNLMW.²³⁰ My interview results and available research show that Vietnam is in the process of researching and studying ICRMW and preparation to take the first steps toward ratifying ICRMW. A study by the International Cooperation Department of MOLISA²³¹ on the understanding of international commitments (including international labour standards, and the UN Convention 1990) was conducted by interviewing 120 labour management staff using questionnaires, and can provide an illustration of the degree of knowledge and understanding of the ICRMW among responsible staff. The understanding of international commitments is classified on a scale of “have heard about”, “have talked about”, “have applied”, “have received general training of” the commitments. The study

²²⁹Op.cit.note 9 (ASEAN and ADB report).

²³⁰Article 70 Vietnamese Constitution

²³¹This research team led by Professor Ha Huy Thanh in August 2014. The research team conducted interviews using questionnaires with 120 labour managerial staff in 30 provinces in the North and South of Vietnam, of which 113 answers were considered valid and completed the information on understanding and applying the international conventions related to labour and social affairs, including the ILO and the UN's conventions in policy development and implementation. Unpublished research.

reveals that 85% of the participants knew about the ILO's conventions, while only about 40% of the participants knew about the ICRMW. With respect to the applicability and integration of international commitments and labour standards into national policy and legal system, the above study reveals that: (i) 57.97% of policy-makers have referred to international standards and requirements of the UN convention in policy advocacy; (ii) 81.16% of them have referred to and cited the UN convention in relevant policy and plan making process; and 76.81% of them have applied the convention in trainings. However, the study results also indicate that the application of international conventions and labour standards has encountered a number of challenges. One of those may be the fact that the ICRMW is only well-known among a small number of government officials or the language used in the convention is confusing to them, which may make them misunderstanding.

There may be some reasons for Vietnam for being not ready for ratifying ICRMW. Firstly, in terms of policy and implementing the policy, Vietnam is now step-by-step approaching the requirements of ICRMW. As analysed in previous parts of the thesis, there are still flaws in Vietnamese policies to protect the rights of migrant workers as well as in the way of implementing those policies. So, the most important task of Vietnam now is to complete its legal system in protecting migrant workers' rights. Secondly, the capacity and resources to implement the requirements of the ICRMW in Vietnam are limited. The ratification requires Vietnam to fulfil the obligations arising from the convention including the understanding of ICRMW, harmonizing ICRMW with domestic laws and reporting each six months. Those requirements create the need for human resources and finance. My interview results show that although officials have known about the conventions, have referred to it, they do not fully understand all the contents of the Convention due to language barriers. At the same time, the interviews also showed that Vietnam is not ready to invest financial resources for the ratification of this Convention.

That is why ratifying the convention is not the priority of Vietnam at this time. For the Vietnamese Government, it seems that understanding and referencing the provisions of ICRMW to protect the rights of migrant workers is more important. The ratification may create difficulties in the implementation of the Convention due to flawed policies. However, it is also necessary to take into account that the ratification could create a sense of over confidence among policymakers. When ICRMW is ratified, policymakers may think that there is no need to invest more resources to the implementation of convention. In other

words, actually putting in place domestic legal and policy protections of the rights of migrant workers are more worth making efforts to do than ratification of the Convention. So, what the Vietnamese government should do first and foremost is focusing on pursuing a complete policy for protecting migrant workers' rights.

CHAPTER IV. CONCLUSION AND POLICY IMPLICATIONS

International labour migration has been growing stronger than ever, and considered an important resource contributing to economic development, especially for developing countries. Migrant network theory, international migration system theory, and neo-economic theory of migrant workers agree that international migration is a common phenomenon. International migration closely ties to the social, economic and political conditions, as well as to the international context. Therefore, it is interrelated with both internal and external factors. Along with the rising trend of migrant workers, their vulnerability and protection the rights of migrant workers and their families have been of increasing concern of the international community. The UN Convention 1990, the ILO Conventions No. 97 and No. 143 have prescribed the fundamental rights entitled to migrant workers, and the responsibilities of labour sending countries in protecting their migrant workers' rights. On one hand, these conventions have been ratified by a few countries, and there are different views on the role of these conventions. On the other hand, the principles, basic requirements of migrant workers' rights, and responsibilities of labour sending countries stipulated in these conventions have been the reference to, or even the foundation for the development of regional commitments, bilateral agreements, and national policies related to migrant workers' rights.

These international conventions are important to labour-sending countries, no matter if they are ratified or not ratified yet in those of countries because they fully recognize the rights of migrant workers and regulate the protection of those rights. Countries, particularly labour sending countries, have a special role in promulgating and implementing effective and transparent migration policies. The international conventions have laid a legal foundation for national labour migration policies. The ratification of these conventions of a country affirms its political commitments and strengthens its position in the realization of the rights of migration workers. It also sends a message requiring receiving countries to respect the rights of its workers. Ratification of the conventions, on the other hand, reduces the risks of illegal migration, labour exploitation, and human trafficking as member states are provided with relevant international guidelines on protecting the rights of migrant workers.

As a labour sending country, Vietnam has realized the important role of those international conventions as well as the need to study and develop a plan to ratify those conventions in the

long term. With an abundant labour force, and a high demand for labour export, the government of Vietnam has developed a legal system to protect the rights and interests of Vietnamese migrant workers. Vietnam has acceded to a number of bilateral, regional and global commitments on human rights. The country has also built a relatively close partnership with international organisations like the ILO, IOM, and UNWOMEN in promoting and protecting Vietnamese nationals working overseas.

As the evidence presented here demonstrates Vietnam has formed a system of policies and laws on protecting the rights of migrant workers. This system has been gradually reformed to meet the economic growth conditions of Vietnam and approach to IRCMW. Although Vietnam has not ratified the International Convention on the Rights of Migrant Workers (ICRMW), ILO Convention No. 97, and ILO Convention No. 143, related laws and policies of Vietnam have been developed with reference to these conventions and include requirements of these conventions, especially for the pre-departure stage of migration. Vietnamese laws and policies in protecting migrant workers' rights focus on encouraging and guiding its workers to actively defend themselves under any circumstance, and to facilitate their legal and organised migration. A number of measures and initiatives of Vietnam, including the development of CoC-VN, the establishment of the Supporting Fund for Overseas Workers, and the establishment of MRC have increased the efficiency for migrant labour protection in Vietnam.

Moreover, in terms of policy enforcement, Vietnam has established a labour migration management mechanism from the central to local level, with the presence of labour inspection system and inter-sectoral coordination mechanism. The labour migration managerial mechanism is responsible for supervising the activities of labour export enterprises, protecting migrant workers, and facilitating their safe and efficient migration, and their return. This mechanism ensures the participation of representatives from employees' and employers' organisations, international organisations, non-governmental organisations, and other civil societies.

However, there are some drawbacks in policies and the way of carrying out those policies in protecting the rights migrant workers in Vietnam. In terms of policy promulgation, Vietnam's regulations primarily focus on the pre-departure stage and only cover legal migrant workers. There are neither specific regulations on the returning stage of migrant workers nor forecast of irregular situations. Specifically, there is a lack of regulations on managing the number of

returning migrant workers and supporting them on expiration of their labour contracts as well as the lack of policies on supporting returning migrant workers to reintegrate into the domestic labour market.

In terms of policy implementation, Vietnam lacks necessary resources and methodology to ensure efficient information providing services. Although the Government has approved preparation training courses for migrant workers, the quality of these courses is low due to the lack of qualified teaching staff. This has caused difficulty for Vietnamese migrant workers to effectively adapt to the legal and cultural environment of the receiving country. Also, there are no training programs for returning migrant workers to get them prepared and ready prior to their repatriation to Vietnam. Another hindering factor is that Vietnam has a shortage of resources and efficient monitoring measures for implementing policies. The unavailability of statistics of local migrant workers makes the administration of labour export enterprises ineffective.

The findings above suggest some policy implications for Vietnam. These implication also takes into account of the coming years' context. Labour export will still be a strategic orientation to deal with domestic job shortage and poverty reduction. Countries may continue to witness a rising trend in labour migration,²³² and international integration will be a dominant trend in Vietnam's policies.²³³ Therefore, the government of Vietnam will need to strictly comply with international commitments, and be actively involved in regional and international activities.

VNLMW should be reviewed and revised to respond to the social, economic and political conditions of the country and to be compatible with international requirements and labour standards stipulated by the ILO conventions and ICRMW. That means it has to: (i) consider the possibility of expanding the scope of the Law (to include both legal and illegal migrant workers, members of their families, and female migrant workers); (ii) strengthen monitoring mechanisms (the role of local authorities, labour inspectors, and labour attachés); and (iii)

²³² According to the statistics of the Department for Overseas Labour, in 2014 alone, Vietnam has sent 106,840 labourers to work abroad under contract, reaching an accomplishment rate of 110 % in comparison with the plan of 90,000 labourers (for 2011-2013; there are about 85,000 labourers sent to work overseas per annum). TTXVN. 2015. Năm 2015 nhiều triển vọng cho xuất khẩu lao động – 2015 Prospect of Vietnamese workers working overseas. Retrieved from:

<http://vietcomhuman.com.vn/tin-tuc/nam-2015-nhieu-trien-vong-cho-xuat-khau-lao-dong.html>

²³³ Resolution No.22 issued by the Politburo of Vietnam on international integration dated 10/4/2013. The resolution stipulates and defines major issues related to international integration of Vietnam, ranging from goals, guiding directions, to basic contents of international integration by sectors, and major solutions for implementation.

promote some measures on supporting migrant workers when they return to home country (monitoring the returning workers, and creating jobs for them). It is necessary to continue studying, referencing and citing to, and applying the ILO Convention No. 97, ILO Convention No. 143, and the 1990 UN Convention in greater depth during policy advocacy and improvement process. It is important to review and harmonize relevant international conventions with the law of Vietnam. Besides, there should be a roadmap for ratifying relevant conventions of the ILO and the UN.

In addition, the Vietnamese Government should pay more attention to the implementation of those policies. Employing communication channels properly is an important factor to enhance information providing services. This includes the use of websites, schools and training facilities, representatives of migrant workers' community, mass media and public information campaigns. The Government also needs to evaluate the accessibility to information services of the migrant workers and the capacity of service providers. Besides, the government should provide accessible channels for migrant workers so that they could report and claim compensation for the violation of their fundamental rights.

It is important for policy-makers to consult with stakeholders – relevant government agencies, employers, and employees on how to implement guidelines, detect violations, and propose solutions for manage and monitor the policy implementation effectively. The achievements in the past should be taken as lessons for further policies development. The Fund should be maintained and developed. Also, the CoC-VN should be encouraged and multiplied as an effective self-monitoring tool.

At local level, stricter rules should be applied to monitor the migration of local workers; for example, by conducting periodical household registration check every six months to confirm their presence at home. Besides, it is important to raise enterprises' as well as public's awareness of the importance of protecting the rights of migrant workers. Migrant workers would be better protected if enterprises put their rights above financial benefits. Moreover, enterprises themselves can contribute to the protection of migrant workers' rights by enhancing their capacity to make Vietnamese migrant workers well prepared from the beginning stages of their migration.

In conclusion, it may take some time for Vietnam to come up with a decision when to ratify the international conventions as it is not easy for a developing country to meet all the

international requirements. With the findings based on different evidence on current practices in protecting the rights of Vietnamese migrant workers this thesis may shed a small light on how to enhance the effectiveness Vietnamese policies designed to protect Vietnamese migrant workers. Although there are still limitations, hopefully this thesis can become a source of reference for further studies on migrant workers' rights in the future.

ANNEX

Annex 1. Legal instruments related to labour export of Vietnam and protecting the rights of Vietnamese migrant workers since 1980 – 2015

Legal instrument No.	Issued Date (D/M/Y)	Content
08/2015/NĐ-CP	21/1/2015	Providing detailed regulations and measures to implement Law on Customs Procedures, Customs Monitoring, Inspection and Control
119/2014/NĐ-CP	17/12/2014	Providing detailed regulations for some articles on complaint and denunciation of the Labour Code, Law on Vocational Training, Law on Vietnamese Employees Working Overseas under contract
74/2014/QH13	27/11/2014	Law on Occupational Education
58/2014/QH13	20/11/2014	Law on Social Insurance
68/2014/QH13	26/11/2014	Law on Enterprises
54/2014/QH13	23/6/2014	Law on Customs
44/2014/QĐ-UBND	29/09/2014	Providing regulations on managing and organising the implementation of support policies for termed migrant workers for 2014 – 2015 in Vinh Phuc province
11/2014/NQ-HĐND	18/07/2014	Approving the Assistance Proposal for workers working overseas under contract in the 2014 – 2020 period
32/2013/TTLT-BLĐTBXH-BNG	06/12/2013	Providing guidelines on the sanction procedures for administrative violations of regulations on labour, social insurance and sending Vietnamese workers to work overseas under contract
38/2013/QH13	16/11/2013	Law on Employment
31/2013/TTLT/BLĐTBXH-BTC	12/11/2013	Providing guidelines to implement Decision No.1465/QĐ-TTg issued by the Prime Minister dated 21 Aug 2013 on piloting deposits for migrant workers sent to South Korea in accordance with the Employment Permit System of South Korea
22/2013/TT-BLĐTBXH	15/10/2013	Circular regulating the form and content of Labour Supply Contract and Labour working overseas Contract
21/2013/TT-BLĐTBXH	10/10/2013	Circular on deposit cap and labour markets that service providing enterprises are allowed to enter into agreement with workers
102/2013/NĐ-CP	05/09/2013	Providing detailed regulations to implement a number of articles on foreign migrant workers in Vietnam stated in the Labour Code

95/2013/NĐ-CP	22/08/2013	Regulating the sanction of administrative violations in labour sector, social insurance, and sending Vietnamese employees to work abroad under contract
1465/QĐ-TTg	21/08/2013	Decision on piloting deposit applicable to migrant workers to South Korea in accordance with the Employment Permit System of South Korea (EPS)
31/2013/TTLT-BLĐTBXH-BTC	21/08/2013	Circular providing guidelines to implement Decision No. 1465/QĐ-TTg issued by Prime Minister on 21 Aug 2013 on deposit pilot applicable to migrant workers to South Korea in accordance with EPS.
46/2013/NĐ-CP	10/05/2013	Providing detailed regulations for a number of articles on labour disputes stipulated in the Labour Code
44/2013/NĐ-CP	10/05/2013	Providing detailed regulations for implementing a number of articles on labour contracts stipulated in the Labour Code
43/2013/NĐ-CP	10/05/2013	Providing detailed regulations for implementing Article 10 on the rights and responsibilities of trade unions in representing and protecting the legitimate rights and interests of employees stipulated in the Law on trade unions
10/2012/QH13	06/08/2012	Labour Code
36/2012/QĐ-UBND	16/07/2012	Regulating the policy on support and incentives for labour export applicable to Ha Tinh province
673/QĐ-LĐTBXH	31/05/2012	Decision on revocation of permits on services of sending labour to work abroad
428/2012/QĐ-UBND	29/02/2012	Implementing support policies for employees of Quang Ninh province to work abroad under termed contracts for 2011-2015
1427/QĐ-TTg	18/08/2011	Approving National Program on Defence Actions against Human Trafficking for 2011 - 2015
940/QĐ-LĐTBXH	29/07/2011	Providing repatriation support for migrant workers and labour export enterprises in Libya due to political crisis
655/QĐ-LĐTBXH	31/05/2011	Revocation of permits for services of sending employees to work overseas
532/QĐ-LĐTBXH	04/05/2011	Revocation of permits for services of sending employees to work overseas
167/QĐ-LĐTBXH	15/02/2011	Revocation of permits for services of sending employees to work overseas
168/2010/TT-BTC	28/10/2010	Providing regulations on collecting, paying, managing and using of fees for non-convicted certificates required by termed employees overseas
57/2010/QĐ-UBND	31/05/2010	Providing support of vocational training for labour export enterprises in Bac Ninh province.
630/QĐ-LĐTBXH	19/05/2010	Regulating temporary unit cost for vocational training, language and knowledge training for employees of the

		poorest districts to work abroad in accordance with Decision No. 71/2009/QĐ-TTg issued by the Prime Minister
01/2010/TTLT-TANDTC-BLĐTB&XH-VKSNDTC	18/05/2010	Providing guidelines for the application of some provisions of the law to settle dispute over guarantee contracts for employees working overseas under contract at the people's court of
16/2009/CT-UBND	21/12/2009	Enhancing labour export activities in Bac Kan province
08/2009/TTLT/B CA-BNG	06/10/2009	Providing guidelines for issuing ordinary passports, and entry and exit permits in accordance with Decree No.136/2007/NĐ-CP on entry and exit of Vietnamese nationals issued by the government on 17 Aug 2007
31/2009/TTLT-BLĐTBXH-BTC	09/09/2009	Joint Circular providing guidelines for implementing Resolution No. 71/2009/QĐ-TTg on approval of supporting poor districts to promote labour export for sustainable poverty reduction in 2009-2020
71/2009/QĐ-TTg	29/04/2009	Decision on approval of program on supporting poor districts to promote labour export for sustainable poverty reduction in 2009-2020
1417/QĐ-LĐTBXH	09/11/2009	Establishment of the Steering Committee to implement the Program on supporting poor districts to promote labour export for sustainable poverty reduction in 2009-2020
1717/QĐ-TTg	26/10/2009	Supplement to the budgeting plan of 2009 to implement the Program on supporting poor districts to promote labour export for sustainable poverty reduction in 2009-2020
33/2009/QH12	18/06/2009	Law on Overseas representative missions of the Socialist Republic of Vietnam
144/2007/NĐ-CP	10/09/2007	Decree on sanctions of administrative violations in sending Vietnamese employees to work abroad
136/2007/NĐ-CP	17/08/2007	Decree on the entry and exit of Vietnamese nationals
144/2007/QĐ-TTg	31/08/2007	Decision on the establishment, management and use of Fund for overseas employment support
126/2007/NĐ-CP	01/08/2007	Decree providing detailed regulations and guidelines for the implementation of some provisions stipulated in the Law on Vietnamese employees working overseas under contract
18/2007/QĐ-BLĐTBXH	18/07/2007	Issuing necessary knowledge training for workers prior to their migration
19/2007/QĐ-BLĐTBXH	18/07/2007	Issuing "Regulations on the organisation of activities related to sending workers abroad, and specialised teams providing necessary knowledge for employees prior to working abroad"

08/2007/TTLT-BLĐTBXH-BTP	11/07/2007	Providing detailed guidelines for the content of guarantee contracts and the liquidation of guarantee contracts applicable to employees working overseas under contract.
20/2007/QĐ-BLĐTBXH	20/08/2007	Decision issuing necessary training certificates for employees prior to working abroad
101/2007/QĐ-TTG	06/07/2007	Approving the National target program on employment by 2010
05 /2007/QĐ-BLĐTBXH	17/01/2007	Regulating cost norms applicable to labour export brokerage services in a number of markets
17/2007/QĐ-TTg	29/01/2007	Issuing regulations on receiving and supporting community reintegration for returning women and children who were victims of human trafficking
72/2006/QH11	29/11/2006	Law on Vietnamese Workers Working Overseas under Contract
33/2006/QĐ-TTG	02/07/2006	Approving the Vocational training project for migrant workers by 2015
06/2006/TTLT-BLĐTBXH-BTP	07/07/2006	Providing guidelines on guarantee for employees working abroad
33/2006/QĐ-TTg	07/02/2006	Approving the Vocational training project for employees working abroad by 2015
59/2006/TTLT-BTC-BLĐTBXH	26/06/2006	Providing guidelines for brokerage fees applicable in labour export
141/2005/NĐ-CP	11/11/2005	Administering Vietnamese workers working overseas
1138/QĐ-TTG	26/10/2004	Initial financing for the Labour Export Supporting Fund
163/2004/QĐ-TTG	08/09/2004	Decision on the establishment, management and use of Labour Export Supporting Fund
130/2004/QĐ-TTG	14/07/2004	Decision approving the Action plan to prevent women and children trafficking for the period of 2004 - 2010
02/NHNN	19/05/2004	Providing guidelines for depositing at bank applicable to labour export enterprises
04/CT.UBNDT	09/03/2004	Directive on the implementation of labour export activities in Soc Trang province
08/CT-UB	18/02/2004	Directive on several measures for promoting labour export in An Giang province
86/2003/QĐ-BNV	22/12/2003	Decision on the establishment of Vietnam Association of Manpower Supply
23/2003/QĐ-UB	22/10/2003	Lang Son Provincial people's committee's decision on issuance of Labour Export Plan and specialists working overseas under fixed term for the period of 2003 – 2005
81/2003/NĐ-CP	17/07/2003	Decree providing detailed regulations and guidelines to implement the Law on Vietnamese Employees working overseas
373/2003/QĐ-NHNN	22/04/2003	Decision on the amendment and supplement to some provisions stipulated in Decision No. 440/2001/QĐ-NHNN on bank loans for termed workers working

		abroad dated 17 April 2001
01/2002/L-CTN	07/01/2002	The 1992 Constitution (amended)
23/2001/QĐ-BGD&ĐT	28/06/2001	Decision of the Minister of Education and training on issuing Regulations on Administering Vietnamese nationals being trained abroad.
440/2001/QĐ-NHNN	17/04/2001	Decision on bank loans applicable to workers working overseas under fixed term
23/2001/QĐ-BGD&ĐT	28/06/2001	Issuing regulations on managing Vietnamese citizens being trained overseas.
74/2000/QĐ-BCN	22/12/2000	Approving the charter on organisation and operations of Training Cooperation and Manpower Export Company
58/2000/QĐ-BCN	10/12/2000	Establishing Centre for Labour Export under the Corporation of Industrial Construction of Vietnam
28/1999/TT-BLĐTBXH	15/11/2000	Providing guidelines to implement Decree No. 152/1999/NĐ-CP on Vietnamese workers and specialists working overseas under fixed term issued by the government on 20 Sep 1999
115/2000/CT/BN N-TCCB	14/11/2000	Promoting labour export activities and industrial experts for the period of 2001 - 2005
16/2000/TTLT-BLĐTBXH-BTC	28/02/2000	Providing guidelines to implement the financial regimes for Vietnamese workers and specialists working overseas under fixed term in accordance with Decree No. 152/1999/NĐ-CP issued by the government on 20 Sep 1999
179/2000/QĐ-BLĐTBXH	22/02/2000	Decision promulgating temporary regulations on issuing and managing orientation training certificates for workers working overseas under fixed term
152/1999/NĐ-CP	20/09/1999	Regulations on Vietnamese workers and specialists working overseas under fixed term
725/1999/QĐ-BLĐTBXH	30/06/1999	Promulgating Temporary regulations on a number of measures to prevent and handle violations in sending workers to work abroad
41-CT/TW	22/09/1998	Directive on Labour Export and Specialists
766/1997/QĐ-TTg	17/09/1997	Assigning implementing responsibilities and preventive measures for illegal sending of women and children abroad
05/LB-TC-LĐTBXH	16/01/1996	Providing guidelines for financial regimes applicable to sending workers to work overseas under fixed term in accordance with Decree No. 07-CP issued by the government on 20 Jan 1995
20/LĐTBXH-TT	03/08/1995	Providing guidelines to implement Decree No. 07/CP on sending Vietnamese workers to work overseas under fixed term issued by the government on 20 Jan 1995
07/CP	20/01/1995	Providing detail regulations on a number of articles of the Labour Code related to sending Vietnamese workers

		to work overseas under fixed term
24/LB-TT	19/09/1994	Providing amendment and supplement to a number of provisions stipulated in Joint Circular No. 12/TT-LB on policies and regimes applicable to workers working overseas under fixed term, who return to Vietnam prior to 3 August 1992
12/TT-LB	03/08/1992	Circular providing guidelines to implement a number of policies and regimes applicable to returning workers who work abroad under fixed term
370/HĐBT	09/11/1991	Issuing regulations on sending Vietnamese workers to work overseas under fixed term
11/LĐTBXH-TT	04/11/1991	Providing guidelines to implement a number of policies and regimes applicable to returning workers who work abroad under fixed term
46/CP	11/2/1980	Decision on sending a segment of Vietnamese labourers to work overseas under fixed term for skill improvement issued by the Government Council

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