

The Labour Rights of Women in Vietnam

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I. Introduction

Rights of female workers as human rights have been key issues in policy-making in Vietnam. Earlier in our history, since the first Constitution in 1946, right after the born of Democratic Republic of Vietnam (which is the Socialist Republic of Vietnam nowadays), “women are equal to men” was regulated as a fundamental principle. And this principle is continued to be affirmed in other constitutions (adopted in 1959, 1980, 1992) and in the most recent one in 2013.¹ The Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW) was signed on 29 Jul 1980 and ratified on 17 Feb 1982 by Vietnam. Since socio-economic reform in 1986, along with economic developments, Vietnam has achieved certain positive results in closing the gender gap. Overall, our population in 2018 is approximately 94.67 million people, including 46.79 million males and 47.88 million females, accounting for 49.4% and 50.6% of our population, respectively.² As of Quarter 2, 2018, Vietnam had 72.5 million persons aged 15 and above, of which 52.1 million people were in the labour force.³ The labour force participation rate stood at 76.7%; the participation rate was 82.0% for males and 71.4% for females. Average monthly income of male and female workers as of Quarter 2, 2018 is VND 5,919,000 and VND 5,216,000, respectively.⁴ Occupations that primarily employ women include textile and foot-wear manufacturing, electronic components processing, and seafood processing.

According to the Global Gender Gap Report 2018, Vietnam’s gender gap score is 0.698, ranks 77 out of 149 countries. In details, the gap scores of economic participation and opportunity, educational attainment, health and survival, and political empowerment are 0.740, 0.972, 0.957, and 0.124, respectively.⁵ This paper will analyse the labour rights of women in Vietnam in the legislation as well as the law enforcement mechanism in practice.

II. Labour rights of female workers in Vietnam

Protection of labour rights of female workers is a fundamental principle in the field of labour, regulated in the Constitution⁶ and clarified in many other statutes such as Labour Code 2012, Law on Gender Equality

1. Article 26, Constitution 2013 of Vietnam.

1) Male and female citizens have equal rights in all fields. The State has a policy to guarantee equal gender rights and opportunities.

2) The State, society, and the family create conditions for women’s comprehensive developments and promotion of their role in society.

3) Sex discrimination is strictly prohibited.

2. GSO (General Statistics Office of Vietnam). 2018. *Socio-Economic Report 2018* (in Vietnamese). <http://gso.gov.vn/default.aspx?tabid=621&ItemID=19037>.

3. This statistic excludes the number of Vietnamese people living abroad.

4. GSO. 2018. *Report on Labour Force Survey Quarter 2, 2018* (in Vietnamese). <http://gso.gov.vn/default.aspx?tabid=512&idmid=5&ItemID=18993>.

5. World Economic Forum. 2018. *The Global Gender Gap Report 2018*. http://www3.weforum.org/docs/WEF_GGGR_2018.pdf.

6. Article 26, Constitution 2013 of Vietnam.

2006, Social Insurance Law 2014, et cetera. This principle of equality applies from the start of the recruitment process, through the employment period, and up to and including the termination of employment.

In general, Vietnam has developed a strong legal framework concerning rights of female workers. The Labour Code 2012 provides broad protections against gender discrimination in the workplace,⁷ and it requires employers to observe the principle of equality in recruitment, employment, promotion, and remuneration,⁸ as well as an express guarantee of equal pay for work of equal value.⁹ Similarly, the Law on Gender Equality specifies that men and woman should be treated equally in workplaces regarding work, wages, pay and bonuses, social insurance, labour conditions, and other working conditions.¹⁰

However, there are some remaining gaps, including restrictions on women's employment intended to "protect" reproductive functions; earlier retirement age; and a lack of definitional clarity and specific penalties concerning anti-sexual harassment provisions.

1. Right to work, right to equal employment opportunities and free choice of profession and employment

A woman's right to work is usually considered a human right. It is guaranteed in the Constitution 2013, Article 35.1: "Citizens have the right to work and to choose their occupations, employment and workplaces" and reassured in the Labour Code 2012: "Article 10. The right of employees to work: 1. To work for any employer in any location that is not prohibited by law." However, the law does not treat women and men equally with respect to retirement age: there is a 5-year gap between male and female workers. In general conditions, retirement age for men is 60 years old while that for women is 55 years old. This regulation was intended to protect female workers on the assumption they are more vulnerable and weaker than men, but it also shortens the career ladder of women unreasonably, and may make employers more reluctant to hire late-career women.

Gender discrimination in employment is prohibited under the Labour Code 2012 and ensuring gender equality is mandatory. Equal employment opportunities and free choice of profession between men and women first appear in the recruitment process. In principle, regardless of the gender, people from 15 years old who match the vacant position's requirements can be employed.¹¹ Male and female workers are entitled to work for any employer without any restriction on the location which is a new regulation since socio-economic reform in 1986. These regulations in general help promote the equal job opportunities for men and women. However, to protect female workers, Article 160 of the Labour Code 2012 and Circular No. 26/2013/TT-BLDTBXH guiding Article 160 also regulate a list of 77 jobs that the employer is forbidden to hire female employee. These jobs ranging from "Exploratory drilling, blast drilling; Removing rock on the mountains... to Exploratory drilling of oil and gas wells; The work on seafaring vessels (excluding working as waitresses, housekeepers, receptionists, or other jobs on a cruise)." This means that if a woman want to be a captain or a sailor on any kind of ship, she is not be able to do that legally in Vietnam. These provisions are discriminatory as they limit women's employment options, as well as contributing to outdated and unfounded ideas about women's strength and roles. Historically, gender-related legislation in the labour market has generally evolved from regulations that focus on safeguarding women's family responsibilities and ensuring their physical security, to more neutral provisions that promote equal pay and equal opportunities between women and men in the workplace. However, the transition to full gender equality in Vietnam is not yet complete.

Women are also less likely to be promoted than men, including in sectors where women comprise a majority of the workforce. Employers cite the ability to work outside of normal working hours as an important

7. Article 8, Labour Code 2012.

8. Article 154, Labour Code 2012.

9. Article 90, Labour Code 2012.

10. Article 13, Law on Gender Equality 2006.

11. Article 3, Labour Code 2012.

consideration in promotion decisions.¹² Such criteria may disadvantage women who are typically expected to take on a disproportionate share of unpaid household and care-giving responsibilities. More generally, an earlier retirement age for women compared to men is an additional barrier to women's progression to more senior positions.¹³

2. Right to equal remuneration

Labour Code 2012 includes the principle of equal payment of wages without discrimination based on gender for employees performing work of equal value (section 90(3)) and provides for a definition of wages that includes "remuneration" based on the work or position, "wage allowances" and "other additional payments" (section 90(1)). However, the Labour Code sets out a very broad definition of "remuneration" which includes not only "the ordinary, basic or minimum wage or salary" but also "additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the workers' employment." This unclear provision of remuneration makes it difficult to define whether a company pays unequal wages to women.

In practice, average monthly income of male and female workers as of Quarter 2 of year 2018 is VND 5,919,000 and VND 5,216,000, respectively.¹⁴ The earnings gap persists despite women having closed the gap in education levels and is explained in part by women working in lower paid occupations. Women forego higher pay to work in occupations and industries which offer better non-monetary benefits: paid leave, lower weekly hours, health insurance and social insurance. This choice may be driven by an unequal distribution of house- and care-work.¹⁵

3. The right in pregnancy and maternity period

Right to be a mother is a basic human right of any woman. However, to protect this right of female workers, an employer is not entitled to dismiss or unilaterally terminate the labor contract of female employees because of marriage, pregnancy, maternity leave, or caring for a child under 12 months old.¹⁶ A female employee is also entitled to 6 months of prenatal and postnatal leave.¹⁷ The employer is also forbidden to use female employee to work at night, work overtime or take far business trip in case she reaches her seventh month of pregnancy; or if working in upland and remote areas, or border and island areas in her sixth month of pregnancy; or fostering a child under 12 months of age.¹⁸

A woman in an occupation requiring heavy work must be transferred to lighter work during beginning in her seventh month of pregnancy or must receive a reduction of one working hour every day.¹⁹ During this period of light or reduced work, she is still entitled to full payment of her wages. This regulation may discourage employers from hiring women of childbearing age. Moreover, because the lower retirement age for women discourages companies from hiring late-career women, the overall effect of these two regulations is to discourage companies from hiring women throughout nearly all of women's working lives. This is inconsistent with the principle of equality promised elsewhere in the Constitution and the Labor regulations.

12. ILO. 2015. *Gender Equality in Recruitment and Promotion Practices in Vietnam*. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_349666.pdf.

13. United Nations Vietnam. 2017. *Viet Nam One UN Results Report 2017*. http://www.un.org.vn/en/publications/doc_details/566-viet-nam-one-un-results-report-2017.html.

14. GSO, N4 above.

15. World Bank Group. 2018. *Gender Gap in Earnings in Vietnam: Why Do Vietnamese Women Work in Lower Paid Occupations?* <http://documents.worldbank.org/curated/en/685791521537975174/pdf/124438-BRI-19-3-2018-11-16-51-EAPVietnamBriefWEBv.pdf>.

16. Article 155.3, Labour Code 2012.

17. Article 157.1, Labour Code 2012.

18. Article 155.1, Labour Code 2012.

19. Article 155.2, Labour Code 2012.

4. Right to safety and hygiene

The employer is obligated to ensure occupational safety and hygiene for the all workers in general and female workers in particular. In addition to standard safety and hygiene like annual health check-up, female workers are entitled to “gynecology check-ups”²⁰ annually, “30-minute break in every working day” if they are menstruating, and “sufficient bathrooms and appropriate toilets in the workplace.”²¹ This seems to be a basic right that any employer can fulfil. However, in practice, there are many cases where companies did not allow workers to use sufficient bathrooms and toilets leading to strike action of workers. For example, in 2014 at Shilla Bags Ltd in District 12, Ho Chi Minh City, where the majority of workers were female, had regulated “toilet hours” for workers from 9.30 am to 10.30 am, and from 2.00 pm to 3.00 pm. Other than these hours workers were forbidden from going to toilets. In addition, workers who wanted to go to toilets need to ask for “toilet cards,” write down their names and times from “queen of toilet.”²² In this company, each 40 workers had only 3 “toilet cards,” the rest-rooms were in bad condition, they often lacked running water, and they were located far from the factory. All these things included made going to the toilet nearly impossible for many workers. One female worker in Shilla Bags Ltd was refused a “toilet card” because her request was not within “toilet hours.” This led to the strike of almost 900 workers, with workers demanding the right to go to reasonable toilet access. Similarly, another strike action of 100 workers in Lua Vang Ltd in Tan Uyen, Binh Duong happened from 27–31 Mar 2014 because each department with 30 workers had only 2 cards to drink and go to the toilet, and each halfday workers was permitted only one toilet one time (not to exceed 07 minutes), or their salary would be deducted.²³ These violations mean that in practice, the law enforcement is highly relied on the goodwill of the stakeholders and the role of grassroots trade unions and effectiveness of labour inspectors.

5. Protection from sexual harassment

One of the most fundamental issues for women at work is the assurance that their bodily integrity is respected. The 2012 Labour Code prohibits acts of sexual harassment (Art. 8). Article 182 of the Labour Code also prohibits acts of “mal-treatment, sexual harassment, forced labour, and violence against domestic workers.” However, the Labour Code does not define “sexual harassment.” Also, though the Labour Code grants the employees who are victims of mal-treatment, sexual harassment, and forced labour to unilaterally end the labour contract (Art. 37.1), it still requires the employees to notify the employers (Art. 37.2). The lack of definitions as recognised by the Ministry of Labour, Invalids and Social Affairs (MOLISA), have significantly hindered of the ability of women to lawfully end their labour contracts unilaterally to protect themselves.²⁴

III. Governance and enforcement mechanism to ensure the labour rights of women

Gender equality, including labour rights of women, is a cross-cutting issue relevant to all aspects of development in Vietnam. There are two major organizations of women at the national level: the Vietnam Women’s Union and the National Committee for the Advancement of Women in Vietnam.

The Vietnam Women’s Union (VWU) (which has existed since 1930²⁵ and is a member of the Vietnam Fatherland Front) is a socio-political organization of Vietnamese women, aiming to work for the equality and development of women. The Vietnam Women’s Union is organized in all provinces, districts, and communes. VWU is a large-scale national women’s organization with 15,342,302 members as of December 2011;²⁶ it

20. Article 152.2, Labour Code 2012.

21. Article 154.3, Labour Code 2012.

22. This term refers to the person who is in charge of distributing the “toilet cards” in the company.

23. “Công nhân đình công đòi quyền... đi vệ sinh [Workers Strike for Right to Go to the Toilet],” *Lao Dong*, 11 June 2015. <https://laodong.vn/phong-su/cong-nhan-dinh-cong-doi-quyen-di-ve-sinh-526610.ldo>.

24. MOLISA’s Impact Assessment of the revision of the 2012 Labour Code.

25. As a part of the former Indochina Communist Party, which is now the Vietnam Communist Party.

26. <http://hoihpn.org.vn/newsdetail.asp?CatId=2&NewsId=18275&lang=VN>.

is also a member of the Women's International Democratic Federation and the ASEAN Confederation of Women's Organizations.

In addition to VWU, there is also the National Committee for the Advancement of Women in Vietnam. The Committee was officially established in 1993. Since 2008, Minister or Deputy Minister of MOLISA is the head of this Committee, other members are usually the female leaders of other Ministries.²⁷ The Committee aims to support the Prime Minister to study and coordinate interdisciplinary issues related to the advancement of women in the whole country. This Committee for the Advancement of Women exists in all ministries and central bodies, provinces, districts, and communes.²⁸

Labour rights of women is enforced by different channels, ranging from government programs of the above-mentioned unions and committees and other governmental bodies at all different levels. The purpose is to raise people's awareness of inclusion of gender equality issues in policy-making, to create economic preferences for manufacturing companies whose workforce is comprised primarily of women, and to discourage violations of women's labour rights. If a labour dispute arises between an employer and a female worker, the settlement mechanism for such dispute is identical to the normal case of labour disputes.

1. Inclusion of gender equality issues in law-making process

Since the Law on Gender Equality 2006, the Vietnam government has committed to include principles of gender equality in all new legal documents where relevant. The purpose is to identify contents related to gender equality or gender inequality or gender discrimination; and provide necessary measures for realizing gender equality or tackling gender inequality or gender discrimination; to forecast the impacts of these regulations on men and women after they are promulgated; and to identify necessary human and financial resources for the implementation of measures for realizing gender equality or tackling gender inequality or gender discrimination problems.²⁹ In fact, currently, to create or amend any law, law-makers must submit an impact assessment report describing the gender impact, if any, of the new or amended law.

2. Economic preference

An economic preference in the form of a tax reduction is used to promote the employment opportunities for women. Companies employing a certain percentage of female workers can enjoy this tax reduction. A production, construction, or transportation enterprise that employs between 10 and 100 female laborers who account for more than 50% of its total regular employees, or which regularly employs over 100 female laborers who account for more than 30% of its total regular employees, is entitled to a reduction of payable CIT (corporate income tax) equivalent to the actual additional expenses for female laborers.³⁰ However, offices and units of corporations not directly engaged in production and business operation are not entitled to tax reduction under this term.

3. Sanction

Depending on the severity of violations, different sanctions can apply, including administrative and criminal sanctions.

However, the fine for gender discrimination act is inconsistent between the Decree No. 88/2015/ND-CP amending Decree No. 95/2013/ND-CP on administrative sanctions in the field of employment, social insurance, and Vietnamese guest workers and Decree No. 55/2009/ND-CP on administrative sanctions in

27. <http://genic.molisa.gov.vn/Default.aspx?tabid=351&IntroId=730&temidclicked=730>.

28. The National Committee for the Advancement of Women in Vietnam. 2004. *156/HD-UBQG*, guidance related to organizational structure for the advancement of women, released 26 November 2004. <https://thuvienphapluat.vn/van-ban/Van-hoa-Xa-hoi/Huong-dan-156-HD-UBQG-2004-to-chuc-hoat-dong-vi-su-tien-bo-cua-phu-nu-361582.aspx>.

29. Article 8, Decree No. 48/2009/ND-CP providing measures to assure gender equality.

30. Article 21, Circular No. 78/2014/TT-BTC guiding Decree No. 218/2013/ND-CP on corporate income tax.

the field of gender equality.³¹ Additionally, there's a lack of a detailed definition of employment-related discrimination to guide policy-making. According to MOLISA, there is a need to develop a more detailed definition of discrimination in employment and occupation—emphasizing positive obligations (e.g. ensuring equal employment opportunities) as well as prohibited practices (e.g. prohibited grounds of discrimination)—to guide official policy and practice. More generally, employers' groups have identified perceived difficulties in practically defining discrimination in employment as a constraint on efforts to enforce non-discrimination laws and promote more equal access to and opportunities in employment.

In case of severe violations of gender equality, according to the Criminal Code 2015, Article 165 on Infringement of gender equality, violators shall be liable to a fine of from VND 5,000,000 to VND 50,000,000 or face a penalty of up to 2 years' community sentence. If the offence involves the abuse of the offender's position or power; or if the offence has been committed more than once; or if the offence is committed against two or more people, then the fine will be raised to VND 50,000,000 to VND 100,000,000 or a penalty of 03–24 months' imprisonment. The offender might also be forbidden from holding certain positions, practicing his/her profession, or doing certain jobs for 01–05 years.

IV. Conclusion

Rights of women have been a key issue in policy-making as well as in practice in Vietnam, especially after socio-economic reform in 1986. Until now, the role of women in Vietnamese society has become more important than ever; gender equality and women's empowerment are among the United Nations Sustainable Development Goals that the Vietnam government strongly remains committed. Overall, Vietnam has developed a strong legal framework concerning rights of female workers, from the Constitution(s) to the Labour Code, the Law on Gender Equality and many other legislations. Additionally, the government continues to implement its National Strategy for Gender Equality (2011–2020), which aims to improve gender equality across political, social, economic, and cultural domains. With respect to employment, noteworthy objectives include increasing the number of women in leadership and management position in the public sector; reducing the gender gap in economic, labour, and employment areas through the promotion of equal opportunities in recruitment; supporting female entrepreneurs; improving vocational training of rural women; and ensuring gender equality in family life, including reducing the proportion of household tasks that fall on women.³²

However, in practice, the laws concerning the rights of female workers are inconsistently enforced. There are reports of discrimination affecting recruitment, promotion, and pay, especially for women. The use of gendered language in job advertisements, the practice of asking female job candidates about family status and plans, and employers' negative bias against women in their 30s due to assumed family responsibilities, are among the most common discriminatory practices. Additionally, prevalent gender norms and stereotypes about the social roles and professional aptitudes of women and men continue to constrain women's equal access to and opportunities in employment. Provisions which meant to protect women's reproductive functions and health are discriminatory as they limit women's employment options and shorten their careers' ladder.

31. A fine of from VND 5,000,000 to VND 10,000,000 shall be imposed for the act of discrimination by gender, skin color, social class, marital status, belief, religion, HIV infection, impairment in recruitment, employment, and worker management (Art.4a.3, Decree No. 88/2015/ND-CP).

A fine of between VND 3,000,000 and 5,000,000 shall be imposed for assigning jobs based on gender discrimination, resulting in a disparity in income, salary or remuneration levels between male and female laborers having the same qualifications and capabilities. (Art.8, Decree No. 55/2009/ND-CP).

A fine of between VND 5,000,000 and 10,000,000 shall be imposed for either of the following acts: (i) Applying different conditions in recruiting male and female laborers to the same jobs though they have the same qualification and capabilities, except for cases of applying measures to promote gender equality or for particular professions prescribed by law; (ii) Refusing to recruit or recruiting a limited number of male or female laborers for gender reasons, except for cases of applying measures to promote gender equality; dismissing or sacking laborers for gender reasons or for their pregnancy, giving birth or raising small children. (Art. 8, Decree No. 55/2009/ND-CP).

32. Decision No. 2351/QĐ-TTg dated 24 December 2010.

Finally, several recent reports identify sexual harassment against women as a significant problem in society in general and in employment specifically.³³ The lack of a clear legal definition of sexual harassment, the reluctance of victims to come forward, and the failure of officials to investigate complaints adequately are among the specific concerns raised.³⁴ Vietnam has come a long way in the last 50 years toward increasing both the legal rights and the employment status of women. On paper, women have some of the most robust protections from discrimination and policies of integration into the workplace in the world. However, social attitudes and the expectations that women will be the primary caregiver at home impede further progress. Vietnam has made significant progress, but there is much work left to do.



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33. Actionaid Vietnam. 2016; ILO. 2013. "Sexual Harassment at Workplace in Vietnam: An Overview of the Legal Framework, A research report of ILO, March 2013."

34. Nguyen Khanh Chi, "Seeing Sexual Harassment for What It Is," *Viet Nam News*, 13 March 2017, <https://vietnamnews.vn/society/372701/seeing-sexual-harassment-for-what-it-is.html#VBfkRH7Fa4WqxutB.97>.