

The Abolition of Forced Labor in Vietnam: Is it Compatible with ILO's Standards?

Nguyen Thanh Huyen
University of Law, Vietnam National University, Hanoi
Email: huyenmt76@vnu.edu.vn

Abstract

This article analyzes the legal problems in the identification of forced labor and the provisions for the abolition of forced labor in Vietnamese law compared with the core international standards. This article points out the inconsistencies and lack of specificity in Vietnamese law compared to International Labour Organization (ILO) Conventions, specifically regarding the definition of forced labor and the identification of the perpetrators of such acts. Furthermore, the paper analyzes the manifestations of forced labor in Vietnam, as well as challenges in the law enforcement process due to the lack of harmonization between national law and core international labor standards ratified by Vietnam. To implement this research, the author has compared the content of Vietnamese law with ILO regulations on eliminating forced labor (Convention No. 29 and Convention No. 105) in aspects such as the concept and identification of forced labor; regulations on subjects affected by forced labor, the people performing forced labor, and how to address forced labor; and the forms of forced labor which take place in Vietnam. On that basis, the article identifies the legal contents that need to be improved to eliminate forced labor in Vietnam. These include the necessity of specifying the manifestations of forced labor acts; ensuring consistency in identifying the perpetrators of forced labor; and amending and supplementing the elements constituting the crime of forced labor in the Criminal Code, with an emphasis on incorporating consequential elements regarding both physical and mental health.

Keywords: *abolition; forced labor; Labor Code; ILO labor standards; Vietnam*

I. INTRODUCTION

The convergence of Vietnamese legislation with the core labor standards established by the International Labour Organization (ILO) is of paramount importance, particularly in addressing the issue of forced labor. Coerced labor not only constitutes a grave infringement upon human rights but also exerts a profoundly detrimental influence on society and the economy. Economically, the use of forced labor by enterprises to reduce production costs creates an unfair competitive advantage over transparent and law-abiding businesses, ultimately distorting the market. Socially, forced labor deprives workers of their freedom and dignity, exacerbates social inequality, and undermines trust

in justice and the rule of law.¹ Figures from 2017 reveal that 24.9 million people were subjected to forced labor.² A mere five years later, in 2021, 27.6 million were entrapped in forced labor globally.³ A disquieting insight emerges from these statistics, indicating that for every thousand workers globally, 3.5 find themselves trapped in forced labor.⁴ Notably, a significant portion of these victims, amounting to 11.8 million, are women and girls, constituting 42.7% of the total people who were forced into labor.⁵ This unsettling escalation in the prevalence of forced labor over the past half-decade presents a formidable challenge to nations and the international community in realizing the objectives outlined in Goal 8.7⁶ of the United Nations Global Agenda for Sustainable Development by 2030—a commitment established by the United Nations General Assembly in 2015. The surge in global forced labor instances over the past five years can be attributed to multiple factors including the adverse repercussions of the COVID-19 pandemic, the amplification of the informal economy, and a failure to grasp the significance of enacting and enforcing domestic legislation geared towards eradicating forced labor.⁷

The ILO publication *Eliminating Forced Labour: Handbook for Parliamentarians No. 30* discusses forced labor in depth by answering specific questions such as why care about forced labor, what forced labor is, what forced labor looks like, and what factors increase the risk of forced labor. The handbook argues that it is necessary to address forced labor for several reasons. First, it occurs everywhere; it is not confined to developing countries but affects every region and country globally. Second, forced labor is a crime and a significant violation of human rights. It coerces individuals into working under degrading conditions, stripping them of their basic human dignity. It is essential to understand that it cannot be reduced to merely low wages or poor working conditions.

¹ Juliette Faure, “Forced Labour: Does It Make Economic Sense?” (2015) United Nations University, online: <https://collections.unu.edu/eserv/UNU:3293/JRF01_ForcedLabour.pdf>.

² *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, by International Labour Organization & Walk Free (International Labour Organization and Walk Free Foundation, 2017) online: <https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf>.

³ International Labour Organization, Walk Free Foundation, & International Organization for Migration, eds, *Global estimates of modern slavery: forced labour and forced marriage* (Geneva: International Labour Office, 2022).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment, and use of child soldiers, and by 2025 end child labour in all its forms. The State should build a mechanism to ensure

⁷ *Social and economic effects of COVID-19 crisis risk worsening forced labour*, by ILO (2020) online: <https://ilbusiness.network/social-and-economic-effects-of-covid-19-crisis-risk-worsening-forced-labour/?utm_source=chatgpt.com>.

Third, the consequences of forced labor extend beyond the individuals and families affected, negatively impacting society, businesses, and the economy as a whole.

The ILO defines forced labor as “All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [or herself] voluntarily.”⁸ In analyzing the concept of forced labor, this book points out four legal elements of forced labor: Firstly, work or service refers to any form of labor, service, or employment across all activities, industries, or sectors, including those within the informal economy. This definition also covers activities that may be deemed illegal in certain countries, such as begging or prostitution. Forced labor can occur in both the public and private sectors. Secondly, any person indeed encompasses all individuals, including adults and children, nationals and non-nationals, as well as migrants in irregular situations. Thirdly, the menace of any penalty refers to the coercive means used to compel someone to work against their will. This definition should be understood broadly, as it includes penal sanctions and various forms of coercion, both direct and indirect, that are employed to force someone into performing work or service involuntarily. On that basis, this book proposed eight actionable recommendations,⁹ with insistence on solutions such as ratifying the Forced Labour Protocol and other relevant instruments, adopting and strengthening legislation on forced labor, and enhancing the enforcement of laws and regulations on forced labor.¹⁰

In further discussion on the concept of forced labor, authors Hendun Abd Rahman Shah et al. discuss the discourse surrounding forced labor, human trafficking, child labor, and sex trafficking, all of which are often referred to using the term “modern slavery” in Malaysia. Historically, the concept of “slavery” was defined in Article 1 of the 1926 Slavery Convention as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” However, a universally accepted definition of modern slavery remains elusive. This lack of clarity complicates the identification of whether the exploitation of workers constitutes merely a violation of rights or falls within the definitions of slavery, forced labor, or human trafficking as outlined by international law or Malaysian law.¹¹

⁸ ILO, *Convention C029 - Forced Labour Convention, 1930 (No. 29)* (1930).

⁹ 1. Ratify the Forced Labour Protocol and other relevant instruments; 2. Adopt and strengthen legislation on forced labour; 3. Strengthen the enforcement of laws and regulations on forced labour; 4. Establish a comprehensive national policy and action plan based on consultation and coordination; 5. Raise awareness and build engagement; 6. Generate research and data on forced labour; 7. Allocate financial and human resources to combat forced labour and monitor progress; 8. Promote international cooperation to prohibit and eliminate forced labour.

¹⁰ *Eliminating Forced Labour*, by International Labour Organization and Inter-Parliamentary Union (Geneva Inter-Parliamentary Union, 2019).

¹¹ Hendun Abd Rahman Shah et al, “Modern Slavery And Forced Labour: An Overview Of International Law, The Malaysian Law And Islamic Law Perspectives” (2021) 21:2 Ahkam: Jurnal Ilmu Syariah 239-256.

Rutvica Andrijasevic advances the debate on the term “unfree labour”—another term for “forced labour”—both conceptually and empirically. Conceptually, Andrijasevic’s paper highlights the relevance of social reproduction in understanding forms of labor unfreedom. Empirically, Andrijasevic demonstrates the similarities in forms of control and exploitation between sex work and industrial work by illustrating how debt and housing operate in both settings.¹² However, in reality, the most common manifestations of modern slavery include forced labor, human trafficking, debt slavery, forced prostitution, and child labor.¹³ The manifestations of unfree labor include: Firstly, the existence of debt that employees owe to their employers creates a foundation for an unfree labor relationship. It often stems from immigrant labor contracts that impose high recruitment fees or require employees to take on credit to cover their travel, visa, and accommodation costs. When an employee “owes” money to their employer, it limits their freedom in three aspects: restricted mobility, difficulty changing employers, and limited ability to dispute working conditions. Secondly, the notion that employees “owe time” to their employers further contributes to this lack of freedom. Lastly, housing provided by employers to migrant workers can lead to a situation where employers exert control over these workers, limiting their freedom of movement and restricting their rights to socialize with others.¹⁴

Discussing this issue further, the author Filipe Calvao argues that using the concepts of slavery or forced labor to describe the complete control over an individual in contemporary labor regimes presupposes rigid categorizations (be they of contract, debt, or chattel slavery) and the exclusion of other forms of oppression (whether nonphysical or indisputably violent).¹⁵

Research on ways to promote the abolition of forced labor is covered in the following studies: Katarina Schwarz, et al. offers an assessment of the diverse external policy tools at the disposal of the EU for advancing the eradication of modern slavery and forced labor in third countries. Additionally, the study evaluates the factors that contribute to and impede the practical effectiveness of these measures.¹⁶ The report titled “Ending

¹² Rutvica Andrijasevic, “Forced labour in supply chains: Rolling back the debate on gender, migration and sexual commerce” (2021) 28:4 European Journal of Women’s Studies 410–424.

¹³ Hendun Abd Rahman Shah, Baidar Mohammed Mohammed Hasan, Haziman Muhamad Ahmad and Norfadhilah Mohamad Ali (2021) “Modern Slavery and Forced Labour: An Overview of International Law, the Malaysian Law and Islamic Law Perspectives”, *AHKAM* - Volume 21, Number 2, 2021, Page 241, <https://doi.org/10.15408/ajis.v21i2.22543>
<https://journal.uinjkt.ac.id/index.php/ahkam/article/view/22543/9577>

¹⁴ Rutvica Andrijasevic (2021) “Forced labour in supply chains: Rolling back the debate on gender, migration and sexual commerce” *European Journal of Women’s Studies* 2021, Vol. 28(4) page 410–424.

¹⁵ Filipe Calvão, “Unfree Labor” (2016) 45:Volume 45, 2016 *Annual Review of Anthropology* 451–467.

¹⁶ *External Policy Tools to Address Modern Slavery and Forced Labour*, by Katarina Schwarz et al (2022) online:
<[https://www.europarl.europa.eu/RegData/etudes/STUD/2022/653664/EXPO_STU\(2022\)653664_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/653664/EXPO_STU(2022)653664_EN.pdf)>.

Child Labour, Forced Labour, and Human Trafficking in Global Supply Chains” elucidates the issues of child labor, forced labor, and human trafficking within global supply chains. The report offers two distinct policy perspectives: on the one hand, it furnishes a comprehensive overview of the State’s responsibility to regulate and implement legal frameworks aimed at safeguarding workers, reducing vulnerability to exploitation, and affording access to remedies through the application of exemplary practices and policy instruments. Furthermore, the report presents a necessary and nuanced policy blend designed to facilitate and incentivize responsible business conduct throughout global supply chains.¹⁷

Author Ashley Feasley notes that the presence of forced labor in a company’s supply chain represents a significant challenge in the global effort to eradicate forced labor. Corporations that profit from products made through forced labor are among the most agile and modern perpetrators of trafficking and exploitation. Her article examined four established accountability regimes (international regulation, market-based approaches, civil liability, and domestic regulation) and assessed the effectiveness of each in ensuring that corporations maintain transparency and operate supply chains free from forced labor.¹⁸

Forced Labour: Mini Action Guide for Trade Unions asserts that forced labor persists in emerging manifestations across the globe. Furthermore, specific contemporary iterations of forced labor are on the rise, particularly amidst the backdrop of globalization and heightened migration, which constitutes the antithesis of decent work and violates all core labor standards. Trade unions in most countries are campaigning for decent work for all, so there is a need to fully identify the forms and manifestations of forced labor and the uncompromising struggle to eliminate forced labor.¹⁹ This research demonstrated that many exploited workers do not recognize their forced labor conditions. Therefore, trade unionists should adopt a proactive approach to reach out to vulnerable worker groups.²⁰

Discussing more about how to eliminate forced labor, author Juliette Faure shows that eliminating forced labor requires the use of labor economics and policy instruments, especially the inclusion of labor and human rights provisions in trade agreements, which can contribute to the implementation of a consistent rights-based policy framework for government, businesses, and workers.²¹ Authors Hwok Aun Lee and Adrian Pereira

¹⁷ *Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains*, by International Labour Organization et al (2019) online: <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_716930.pdf>.

¹⁸ Ashley Feasley, “Eliminating Corporate Exploitation: Examining Accountability Regimes as Means to Eradicate Forced Labor from Supply Chains” (2016) 2:1 *Journal of Human Trafficking* 15–31.

¹⁹ International Trade Union Confederation, *Forced Labour Mini Action Guide* (2008), online: <https://ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_116734.pdf>.

²⁰ *Ibid* at 27.

²¹ Juliette Faure, *supra* note 1.

highlighted that forced labor, which includes various forms of coercive practices and violations of rights, is a persistent issue in Malaysia. The most significant consequence of this situation is that the United States has imposed withhold release orders (WROs) on major rubber glove manufacturers and palm oil producers. However, the Malaysian government has recently made notable efforts to develop and implement policies aimed at eliminating forced labor by 2030.²²

On the effect of the implementation of international labor standards on the abolition of forced labor in Uzbekistan, authors Odiljon Sulaymanov and Jurabek Rasulov argue that the domestic legal system such as labor law, employment law, administrative laws and criminal laws of the Republic of Uzbekistan need to be amended accordingly.²³ In Vietnam, Kieu-Dung Nguyen et al. shows that the law prohibits firms from retaining the worker's original identification and similar documents when concluding and implementing the contracts. Any requirement of an asset or cash deposit to guarantee the worker's compliance with the labor contract is also illegal.²⁴ This regulation aims to prevent forced labor. Another study by Nguyen Thanh Huyen mentioned Vietnam's regulations on job categories that harm the physical, intellectual, and personality development of minors and a list of workplaces that harm the physical, mental, and personality development of minors. If any employer uses minor workers illegally, competent state agencies will administer penalties.²⁵ So, legislation on child labor protection is also a way to prevent forced labor.

Vietnamese authors have studied and issued recommendations regarding the issue of identifying and eliminating forced labor. However, the study of the making and implementation of national legislation on the abolition of forced labor in the context of harmonization with the basic ILO standards has yet to be conducted in Vietnam context. At the same time, Vietnam ratified both of the ILO conventions dealing with forced labor. Vietnam ratified the No. 29 Convention in 2007, and the No. 105 Convention in 2020. Therefore, by delving into the specifics of Vietnamese law and comparing them with the provisions set out in ILO Conventions No. 29 and No. 105, this article aims to answer three questions: What is forced labor, and how is it regulated in Vietnamese law? Are there any differences in the identification of forced labor between the provisions of Vietnamese law and ILO's Convention No. 29 and Convention No. 105? Who is affected by forced labor and who commits forced labor, and how do different forms of forced labor occur in Vietnam? These questions reinforce the article's discussion and clarify the incompatibility between Vietnamese laws on forced labor and forced labor

²² Hwok Aun Lee & Adrian Pereira, *Can Malaysia Eliminate Forced Labour by 2030?* (ISEAS Publishing, 2023).

²³ Odiljon Sulaymanov & Jurabek Rasulov, "Abolition of Forced Labour: Case of Uzbekistan" (2021) 58:1 Psychology and Education Journal 4564–4580.

²⁴ Kieu-Dung Nguyen et al, "Labour law reform and labour market outcomes in Vietnam" (2021) 8:2 Asia & the Pacific Policy Studies 299–326.

²⁵ Nguyen Thanh Huyen, "Impact of Economic Downturn on Child Labor in Vietnam" (2021) 8:3 *Lentera Hukum* 447–470.

abolition with these ILO regulations. On that basis, the article provides appropriate recommendations to strengthen law enforcement in eliminating forced labor and advocating for dignified and humane working conditions for all workers in Vietnam. Besides, the article also aims to support policymakers, legal experts, and those pursuing a fairer and more equitable labor environment.

II. ASSESSMENT OF THE COMPATIBILITY OF VIETNAMESE LAW ON THE ABOLITION OF FORCED LABOR WITH ILO'S REGULATIONS

1. The concept and identification of forced labor according to ILO regulations and Vietnamese law

Through a long struggle in human history, traditional slavery (the right of free men to own slaves) was gradually eliminated,²⁶ and international law, as well as national law, have recognized the right to work and freely choose jobs to earn a living as one of the core human rights.²⁷ Nobody is required to do forced or compulsory labor.²⁸ This human right is also recognized very early in the Constitution and Laws of Vietnam, which states that all Vietnamese citizens are equal before the law, entitled to participate in the government and national construction work according to their talents and virtues.²⁹ Vietnamese citizens have the right to work, rest,³⁰ and choose a career, employment, and workplace. Vietnamese law prohibits discrimination, forced labor, and employment of workers below the minimum working age.³¹ Thus, Vietnamese law is similar to international law in recognizing workers' right to freedom of work and freedom to choose jobs and workplaces without forced labor. Legal provisions should identify forced labor, issue measures to eliminate forced labor, and appropriately punish any subject's forced labor.³²

According to Convention No. 29 of ILO, the term “forced or compulsory labor” shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.³³ Thus, a

²⁶ Shah et al, *supra* note 11 at 241.

²⁷ United Nations, *the Declaration of Universal Human Rights in 1948*.

²⁸ United Nations & OHCHR, *International Covenant on Civil and Political Rights*, 1966 Clause 3 art 8.

²⁹ The National Assembly of the Socialist Republic of Vietnam, *The 1946 Constitution of Vietnam*, 1946 art 7.

³⁰ The National Assembly, *The 1980 Constitution of Vietnam* (1980) at 30,31.

³¹ The National Assembly, *The 2013 Constitution of Vietnam*, 2013 art 35.

³² Huyen, *supra* note 25.

³³ ILO, *supra* note 8 Clause 1 art 2.

labor activity is considered forced labor when all three of the following factors are simultaneously satisfied: A person performing a job or service for another person; the person doing the work has not volunteered but is forced to do the work or service at the will of another; and the person performing the work or service works under the threat of some penalty. This convention specifies that forced labor does not encompass military duties under compulsory military service laws that pertain exclusively to military tasks; work or service integral to the ordinary obligations of citizens in a fully self-governing nation; labor required from individuals post-conviction, provided it is supervised by a public authority and not contracted to private entities; work in emergencies such as war, disasters, epidemics, or threats to population well-being; and minor communal services performed by community members for the community's direct benefit, with consultation rights for community members or their representatives regarding the necessity of such services.³⁴ All Member States which ratify this Convention must take necessary steps to eliminate the utilization of forced or compulsory labor in all its manifestations as swiftly as possible.³⁵ To do this, countries must make and implement legislation to eliminate the use of forced labor.

ILO Convention No. 105, established in 1957, mandates that ILO Member States endorsing the Convention must eliminate all forms of forced or compulsory labor. They are also required to abstain from utilizing such labor for various purposes, including political coercion, economic mobilization, labor discipline, strike retaliation, and perpetuation of discrimination based on factors like race, social status, nationality, or religion.³⁶

Thus, the provisions on forced labor in the ILO Convention No. 29 and Convention No. 105 have clearly defined the concept, content, form, and even signs to identify the nature of forced labor. Based on the coverage of these acts, we can see that the international view of the definition of “forced labor” is not limited to the scope of industrial relations but also involves all other economic, political, and social relations. Subjects affected by forced labor are not only employees in enterprises but also all people in different fields and environments who must work according to the will of others, under the supervision of others, and threatened by some punishments or power.³⁷

Vietnam ratified Convention No. 29 in 2007 and has strictly prohibited forced labor in legal documents such as the Labor Code, as well as abolishing legal documents on forced labor which contradict the content of Convention No. 29. For example, Vietnam abolished the Ordinance of the National Assembly Standing Committee No. 15/1999/PL-UBTVQH10 on The Public Labor Obligations in 2006. However, up to

³⁴ *Ibid.*

³⁵ ILO, *supra* note 8 Clause 1 art 1.

³⁶ ILO, *Convention C105 - Abolition of Forced Labour Convention, 1957* art 1.

³⁷ Bethany Hastie, *By Any Means Necessary: Towards a Comprehensive Definition of Coercion to Address Forced Labour in Human Trafficking Legislation Public Deposited*, 2022. (Master of Laws, McGill University, 2012) at 23–28.

now, the Vietnamese legal interpretation of the term “forced labor” is not as detailed and is inconsistent with the provisions of Convention No. 29. This Convention uses the term “forced labor” as a noun phrase to refer to a job or service that a person is forced to perform, while Vietnam’s Labor Code 2019 explains the term “forced labor” as the use of force or threat to force an employee to work against his/her will.³⁸ In this case, the term “forced labor” is defined as an act indicating how one person forced another to perform work against their will. Thus, even in the understanding of forced labor, there is an incompatibility between Vietnamese law and Convention No. 29. This difference is reflected in the fact that Vietnam’s regulations only focus on “forced labor” for employees who perform legal work and are coerced to do it.³⁹ Meanwhile, Convention No. 29 considers any work (legal or illegal) forced labor if all three elements of the above regulations are met. The authors R. Henriett, T.D. Nguyen, and H. Nguyen indicated that the Vietnamese definition of forced labor seems narrower and more ambiguous than the definition provided in Convention No. 29 by the ILO. Given the lack of a comprehensive definition, it remains a significant challenge for Vietnam to fulfill its commitments under the European-Vietnam Free Trade Agreement (EVFTA).⁴⁰

The concretization of Vietnamese law on “forced labor” is not entirely compatible with Convention No. 29 and No. 105. Vietnam’s 2019 Labor Code stipulates the expression of “forced labor means the use of force or threat to use force or other tricks to force an employee to work against his/her will”.⁴¹ The identification of force or threat of force seems clear and easy to apply when it is only necessary to show that there were factors that led to workers being forced to work. However, subsequent implications such as what “other tricks” include, how to identify other tricks, or what signs are outward manifestations of other tricks have not been clarified by the law or sub-law. “Other tricks” means using methods that are not force or the threat of force, such as mental coercion, physical constraints, and work that makes the worker reluctant to work at the request of the other. And so, in practice, it will be difficult to determine if the conduct is considered forced labor by using “other tricks” if it is not serious enough to be criminally handled.

Vietnam’s 2019 Labor Code stipulates prohibited acts in the field of labor, including forced labor,⁴² gives an explanation of forced labor,⁴³ and issues regulations on handling violations. In addition, this Code regulates prohibited actions in the process of

³⁸ The National Assembly of the Socialist Republic of Vietnam, *Labor Code*, 2019 Clause 7 art 3.

³⁹ *Labor Code of Vietnam 2019* explains that the term “Forced labor” means the use of force or threat to use force or other tricks to force **an employee** to work against his/her will.” And the term “**Employee**” means a person who works for an employer as agreed upon between the two parties, is paid wage, and is managed, directed and supervised by the employer.

⁴⁰ Rab Henriett, Tien Dung Nguyen & Huyen Nguyen, “The Elimination of Forced or Compulsory Labour in Vietnam within the Context of the EVFTA and Lessons from European Countries” (2023) 30:2 *Lex et scientia International Journal*.

⁴¹ *Labor Code of Vietnam*, *supra* note 38 Clause 7 art 3.

⁴² *Ibid* Clause 2 art 8.

⁴³ *Ibid* Clause 7 art 3.

concluding and implementing labor contracts, which encompass (i) retaining original copies of personal identification documents, diplomas, and employee certificates; (ii) demanding monetary deposits or other assets as collateral for fulfilling labor contracts; and (iii) compelling employees to fulfill labor contracts to settle debts with employers. These regulations are similar to signs 07: Retention of Identity Documents and 09: Debt Bondage in the ILO Indicators of Forced Labour. The retention by the employer of identity documents or other valuable personal possessions is an element of forced labor if workers are unable to access these items on demand and if they feel that they cannot leave the job without risking their loss. Forced labor is often associated with debt bondage, where employees are forced to work to pay off debts incurred for recruitment, transportation, living expenses, or emergency care. Debts can be inflated through fraudulent accounting, especially when workers are illiterate. Employers exploit power imbalances, undervaluing work or raising living costs, keeping workers in bondage for long periods, even across generations.⁴⁴

In short, the 2019 Labor Code of Vietnam also explains *forced labor means the use of force or threat to use force or other tricks to force an employee to work against his/her will*. However, the content of the regulations on forced labor in Vietnam's Labor Code 2019 is narrower than the provisions in Convention No. 29, as it only focuses on prohibiting forced labor in labor relations.

2. Regulations on the people in forced labor and people who implement forced labor acts

This section will discuss and compare the provisions of Vietnamese law with those of international labor conventions regarding the identification of forced labor victims and perpetrators, thereby clarifying the inconsistencies between Vietnamese regulations and ILO standards.

a. Regulations on people who are in forced labor

According to Convention No 29, a person in forced labor is any person, whether he/she has entered into a contract of employment or not, who performs the work legally or illegally, as long as there is a sign that he/she is forced or threatened to do a job or service.⁴⁵ In Vietnam, “forced labor” refers to using force, threats, or other tricks to make an employee work against their will.⁴⁶ An employee is defined as someone who works for

⁴⁴ ILO, *ILO Indicators of Forced Labour Special Action Programme to Combat Forced Labour* (1 October 2012), online: <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf>.

⁴⁵ ILO, *supra* note 8 art 1.

⁴⁶ *Labor Code of Vietnam*, *supra* note 38 Clause 7 art 3.

an employer, receives wages, and is under the employer's management and direction.⁴⁷ Thus, regulations on subjects to forced labor can only apply to employees working for the employer. So, only employees who enter into labor contracts and perform lawful jobs may be protected from forced labor by law. The question is whether workers who work outside the labor relationship, not under a labor contract, but forced to work or to do illegal work under threat, such as forced prostitution, forced production, and trafficking drugs are considered forced labor. According to the provisions of Convention No. 29 and Convention No. 105, this case is considered forced labor. However, according to Vietnamese labor law, it is recognized as a violation of the law but may not be considered "forced labor" because the workers are not "employees" in the Labor Code.

b. Regulations on the people who implement forced labor acts

As per the interpretation of forced labor in Vietnam's Labor Code 2019, the act of forced labor pertains solely to the employer or an individual authorized by the employer to manage, oversee, and supervise employees in their work. This does not encompass "any person" who engages in coercive actions to make others work against their will, as outlined in Convention No. 29. In addition, regulations on subjects performing forced labor acts are still inconsistent between the Labor Code 2019 and the Vietnamese Criminal Code of 2015, amended in 2017.

The Labor Code 2019 defines forced labor as the use of force or threat to use force or other tricks to force an employee to work against his/her will.⁴⁸ Unlike Vietnam's Labor Code 2019, the Criminal Code 2015 stipulates the crime of coercive labor as follows:

"1. Any person who uses violence or threat of violence or other methods to force a person to work against his/her will in any of the following circumstances shall be liable to a fine of from VND 50,000,000 to VND 200,000,000 or face a penalty of up to 03 years' community sentence or 06 - 36 months' imprisonment:

The offender incurred an administrative penalty or has an unspent conviction for the same offense;

The offense causes 31% - 60% WPI⁴⁹ for another person;

The offense causes a total WPI of 31% - 60% for more than one person."⁵⁰

Thus, the subject committing forced labor is "any person," not necessarily the employer. At the same time, the subject of forced labor is also referred to with the phrase

⁴⁷ *Ibid* Clause 1 art 3.

⁴⁸ *Ibid* Clause 7 art 3.

⁴⁹ WPI is the abbreviation for "Whole Person Impairment"

⁵⁰ The National Assembly of the Socialist Republic of Vietnam, *Criminal Code of Vietnam 2015, amended 2017*, 2015 art 297.

“a person must work,” not just “employees.” Thus, the regulations on the subject of forced labor in the current legal documents of Vietnam have not yet been unified. Subjects performing forced labor acts and subjects affected by this act in the crime of forced labor of the Criminal Code 2015 are broader than those of the Labor Code 2019.

In addition, sanctions for violations of the law on forced labor in the Criminal Code 2015, and Decree No. 12/2022 on providing penalties for administrative violations in the fields of labor, social insurance, and overseas manpower supply under contract⁵¹ are incompatible with ILO regulations in some of the following aspects:

Firstly, Vietnamese regulations identify the consequences of forced labor crime as either material harm, injury, or harm to human health. However, it is common that “other tricks” such as withholding wages, confiscating documents, or restricting travel do not lead to consequences of physical injury, bodily harm, or death. These other coercive means would only constitute a crime if they have been sanctioned, convicted, dangerously re-offended, organized, or taken place against certain subjects. This regulation is, therefore, unreasonable because even though these tricks do not cause bodily harm or injury, they directly affect the psychology, spirit, and life of forced workers.

Secondly, the regulation of fines for forced labor is also unreasonable. In the act of forced labor but “not yet to the extent” of criminal punishment, the violator may be administratively sanctioned from 50-75 million VND,⁵² while for the act of forced labor “to the extent” of “a crime” the criminal will only be fined VND 50 million minimum.⁵³ Moreover, a person is only criminally prosecuted for forced labor if he (she) was already sanctioned for an administrative violation of forced labor. Therefore, this fine is unreasonable and does not guarantee effective deterrence and crime prevention. The fines for coercive labor in the Criminal Code should be higher than that for forced labor in administrative violations.

Thirdly, the act of using force to force labor and deliberate infliction of bodily harm upon another person,⁵⁴ although different in purpose, has the same consequences and intentional nature. However, the penalty for the crime of forced labor is somewhat lighter is not applied when the extent of bodily injury of the forced workers is from 11% to 30% whole person impairment (WPI) or under 11% WPI. This means that in cases where a worker is subjected to forced labor but suffers an injury of less than 31%, the act does not fall under the crime of forced labor⁵⁵ This provision reflects an unreasonable aspect of the law.

⁵¹ The Government of the Socialist Republic of Vietnam, *Decree No 12/2022/NĐ-CP: Providing penalties for administrative violations in the fields of labor, social insurance, and overseas manpower supply under contract*, 2022.

⁵² *Ibid* Clause 3 art 8.

⁵³ *Criminal Code of Vietnam 2015, amended 2017*, *supra* note 50 Clause 1 art 297.

⁵⁴ *Ibid* art 134.

⁵⁵ *Ibid* Point b, Clause 1, art 297.

In the relationship between employees and employers, employees are often the more vulnerable group. Although the employment relationship is established on the basis of equality, the employer holds the authority to direct, inspect, and supervise the employee's performance during the execution of the labor contract, resulting in a power imbalance within this relationship. Therefore, the exploitation of this power imbalance in the form of forced labor of the employers shows disregard for the law and the life, health, and honor of workers. Criminal law should stipulate stricter penalties for forced labor in order to reduce and gradually eliminate these violations in practice. The incompatibility of the provisions on forced labor in Vietnam's law with the ILO Convention leads to difficulties in enforcing the law on the abolition of forced labor in Vietnam. Therefore, Vietnamese legal regulations need to be amended and supplemented to harmonize with ILO regulations on the abolition of forced labor.

III. THE MANIFESTATIONS OF FORCED LABOR IN VIETNAM

Currently, competent authorities have not released any official and comprehensive statistics on forced labor in Vietnam. The aggregate compliance reports under the ILO's Better Work Program in Vietnam also indicate that no data on forced labor was recorded in the surveyed factories, based on assessment results from 2017-2019 (covering 331 factories) and in 2022 (covering 449 factories). However, that does not mean that forced labor does not exist in Vietnam. Several studies have demonstrated that forced labor manifests in different forms at the workplace, recruitment, employment, and human trafficking. In a 2018 study conducted by Liva Sreedharan, Aarti Kapoor, and Hoa Nguyen, the interviewed workers consistently emphasized that they were compelled to work under duress, primarily through threats and intimidation.⁵⁶ Notably, all workers conveyed that they had faced threats of job loss or wage reductions for taking sick leave, making work-related errors, or deviating from management's expectations.⁵⁷ The 2019 publication "Insufficient living wages and consequences - A study of some garment export enterprises in Vietnam" by OXFAM in collaboration with the Institute of Workers and Trade Unions provides specific data on manifestations of forced labor practices stemming from insufficient living wages. This report has pointed out the tragic situation of garment workers. Insufficient living wages are the main cause of their being forced to work overtime and accept reduced income, job insecurity, abuse, and gender

⁵⁶ See also Dao Mong Diep, "Current Status of Internalizing International Labor Standards on the Prevention, Removal and the Case in Vietnam" (2023) 11:5 Journal of Law and Sustainable Development, online: <<https://doi.org/10.55908/sdgs.v11i5.662>>.

⁵⁷ *Sitting on Pins and Needles a Rapid Assessment of Labour Conditions in Vietnam's Garment Sector Commissioned by Anti-Slavery International Sitting on Pins and Needles: A Rapid Assessment of Labour Conditions in Vietnam's Garment Sector*, by Liva Sreedharan, Aarti Kapoor & Hoa Nguyen (2018) online: <<https://www.antislavery.org/wp-content/uploads/2019/04/Pins-and-Needles-Vietnam-supply-chains-report.pdf>>.

inequality.⁵⁸ Furthermore, the report highlights a prevalent practice in the garment industry of extending the overtime of current employees instead of hiring additional workers to fulfill demands. According to a labor agency, 39.5% of enterprises failed to adhere to the stipulated overtime limits, surpassing daily, monthly, and yearly thresholds of 04 hours, 30 hours, and 300 hours⁵⁹ respectively. Enterprises resort to employee overtime to meet deadlines, cut recruitment costs, and address worker demands for increased wages. It is only a violation of labor law regarding exceeding overtime hours, not an act of forced labor. However, some employees are compelled to work overtime without compensation due to production pressure. A team supervisor from a factory in Thanh Hoa cited this challenge:

“Line 11 has never completed the production norm. They can make only 350 products, while the assigned production norm is 400. Every day, the director tells me to put pressure on this line. But the line always has new employees, and many of them are in their probationary period. It affects the output of the team. The team has to stay until 6.30 pm to complete the 400 products without being calculated as overtime.”⁶⁰

In another interview conducted in 2018 by Sreedharan et al., certain employees shared that when their daily production targets are not achieved, the company requires the entire team to remain on-site to complete the orders. Despite their exhaustion, the workers feel hesitant to leave for meals, reluctant to work overtime yet compelled to do so, and unable to decline due to the collective commitment of their colleagues. Staying behind becomes obligatory, as failure to do so results in point deductions by the team leader, negatively impacting their rank and annual bonus. Among the workers the research team interviewed, some worked 60-74 hours a month overtime.⁶¹ This proves that the enterprise has violated the law on overtime limits. Furthermore, the punitive measures imposed by team leaders, such as point deductions and negative impacts on rankings and annual bonuses, exacerbate the situation. The fear of these repercussions adds another layer of stress, leaving employees feeling trapped between the pressure to conform and the desire to prioritize their well-being.⁶²

Another manifestation of forced labor behavior reported by workers in a survey project by the Institute of Workers and Trade Unions in 2018 is that they are abused,

⁵⁸ *the Consequences of Low Wages - a Study on Fashion Suppliers in Vietnam*, by Institute of Workers and Trade Unions (Oxfam, 26 February 2019) online: <<https://vietnam.oxfam.org/latest/publications/report-consequences-low-wages-study-fashion-suppliers-vietnam>>.

⁵⁹ According to the Inspection Campaign conducted by the Ministry of Labour, Invalids and Social Affairs (MOLISA) in 152 garment enterprises in 2015: MOLISA-ILO, 2015, Synthetic report on the result of the labor inspection campaign in the garment sector”.

⁶⁰ Institute of Workers and Trade Unions, *supra* note 58 at 39.

⁶¹ *Ibid* at 40.

⁶² Danièle Bélanger, “Labor Migration and Trafficking among Vietnamese Migrants in Asia” (2014) 653 *The Annals of the American Academy of Political and Social Science* 87-106.

threatened, and have their identification documents withheld; leaving workers intimidated but afraid to speak out. Abusive behavior by managers such as shouting, banging tables and chairs, and using profane language is common, and 23% of interviewed employees reported being yelled at daily or weekly.⁶³ The intent of this behavior is to compel workers to meet output targets and enhance productivity. Constantly working under the threat of verbal abuse leaves employees feeling mentally exhausted, with 39% reporting high levels of workplace stress.⁶⁴

Forced labor also exists in the form of document withholding, most notably employees' health insurance cards. According to the Law on Health Insurance 2008, amended 2014 of Vietnam, a health insurance commitment is granted as a basis for enjoying health insurance benefits.⁶⁵ However, in practice, some managers have violated the law by retaining the health insurance cards of employees. Employees in need of medical care are required to visit the company's medical office to borrow their card and are obligated to return it immediately after treatment.⁶⁶ The coercive nature of this policy is evident in the way it discourages employees from seeking the medical attention they require. The fear of facing consequences, combined with the inconvenience of accessing their own health benefits, discourages individuals from prioritizing their health. This not only perpetuates a cycle of illness within the workforce but also poses serious risks to the overall productivity and morale of the company.

Although the results of the 2018 study by the Institute of Workers and Trade Union are rooted in a small quantitative survey sample, which is not representative of all garment enterprises, they nonetheless shed light on a deeply concerning and widespread issue within the industry. The findings underscore the pervasive nature of forced labor, revealing that many of the acts mentioned in the study are not isolated incidents but rather distressing patterns that have taken root in various forms across different workplaces. One of the most alarming aspects brought to the forefront is the prevalence of underreported forms of abuse, such as verbal, physical, and sexual mistreatment. Moreover, the complex consequences of such behaviors make it difficult to fully comprehend the extent of the issue. The trauma endured by employees subjected to forced labor and abuse can have far-reaching effects on their physical, mental, and emotional well-being. These consequences may manifest long after the abuse has occurred, impacting not only the individual's life but also their ability to contribute effectively within their workplace and wider community.⁶⁷ In light of these challenges, the research team of the Institute of Workers and Trade Unions suggests that the actual

⁶³ Institute of Workers and Trade Unions, *supra* note 58 at 46.

⁶⁴ *Ibid.*

⁶⁵ The National Assembly of the Socialist Republic of Vietnam, *Law on Health Insurance of Vietnam, 2008 amended in 2014*, 2008 Clause 1 art 16.

⁶⁶ Institute of Workers and Trade Unions, *supra* note 58 at 46.

⁶⁷ Joe Buckley, "Formalising and Informalising Labour in Vietnam" (2023) 53:2 *Journal of Contemporary Asia* 207-232 at 221.

prevalence of forced labor and its associated abuses may be significantly higher than what the current study's data indicates.

Furthermore, whether verbal abuse such as shouting or vulgar language is considered forced labor is unclear. According to a Better Work study on the concern of Vietnamese textile factory workers regarding verbal abuse such as shouting or vulgar language, 91.6% of workers surveyed answered that these behaviors were not a concern.⁶⁸



(Source: *Progress and potential: How Better Work is improving garment workers' lives and boosting factory competitiveness: A summary of an independent assessment of the Better Work programme/ International Labour Office. Geneva: ILO, 2016, Table 2, Page 15*)

Forced labor is still relatively prevalent in the workplace partly because the workers themselves are not fully aware of the acts of forced labor. Furthermore, even if workers are aware that they are being forced to work, with a weak position in labor relations, they are not able to protect themselves but psychologically rely on trade unions. However, according to the provisions of the current Law on Trade Union of Vietnam,⁶⁹ grassroots trade union cadres working part-time are not paid salaries from the trade union's financial sources but are paid by the business owners. The dependence on financial resources leads to the fact that grassroots trade union officials are not entirely effective. In representing and protecting workers, particularly against coercive behaviors, a lack of financial resources can lead to diminished outreach and advocacy efforts. Grassroots officials may struggle to provide legal assistance, counseling, or support services to workers facing harassment or unjust treatment. This can result in workers feeling isolated and powerless, ultimately undermining the union's mission of safeguarding their rights. Therefore, the initiative, resoluteness, and independence of the trade union in representing and protecting the interests of workers in general and protecting workers from coercive behavior in particular are not high.

Another manifestation of forced labor has taken place regarding both Vietnamese workers who migrate legally and Vietnamese workers who migrate illegally to work abroad. Firstly, workers who migrate legally under the Law on Vietnamese Guest Workers. Vietnam's policy of sending Vietnamese workers to work overseas under

⁶⁸ *Progress and Potential: How Better Work Is Improving Garment Workers' Lives and Boosting Factory Competitiveness: A Summary of an Independent Assessment of the Better Work Programme*, by International Labour Organization and International Finance Corporation (International Labour Office, 2016).

⁶⁹ The National Assembly of the Socialist Republic of Vietnam, *Law on Trade Unions of Vietnam*, 2012 Clause 2 art 24.

contracts to create jobs and increase income for workers and their families can be effective and beneficial is correct.⁷⁰ However, in the implementation process, workers must pay high brokerage and service fees to work abroad, leading to them being in debt for many years and working hard to pay off those costs. This may also be seen as a manifestation of forced labor. According to the research results of Fiona Samuels and Dang Bich Thuy in 2020, the study participants said that they have to pay a lot of costs related to recruitment in addition to those payable to the recruitment company, including the cost of passports, travel to the training center and the medical examination paid directly to the service providers. The interviewees stated that the total recruitment fees and other associated costs they paid varied, ranging from approximately VND 10.7 million (for travel to Malaysia in 2012) to VND 350 million (for travel to Japan before 2016). These costs usually include airfare (one-way or sometimes round-trip), pre-departure training, service fees, and brokerage fees paid to the recruiting company.⁷¹ Currently, this issue has been amended by the Law on Vietnamese Guest Workers by stipulating that it is strictly forbidden to collect brokerage fees from workers when they go abroad under contract⁷² and regulating the maximum service charge of employees when they go abroad under contract.⁷³ Secondly, Vietnamese migrant workers who illegally move abroad in search of higher income often carry dreams of a better life and strong hopes of improving the financial situation for themselves and their families. Although their migration is entirely voluntary, with no coercion or deception involved, and they are fully aware that they are migrating illegally, they still become victims of modern slavery. Upon arrival in the destination country, they are frequently forced to work under extremely harsh conditions, both physically and mentally.⁷⁴ According to Official Home Office figures, Vietnamese nationals constituted the third largest group identified as victims of modern slavery. In 2020, there were 653 confirmed Vietnamese victims of slavery, with most being found in cannabis farms and nail bars.⁷⁵

Thus, the manifestations of forced labor in Vietnam do not always fully satisfy the three requirements mentioned by ILO Convention No. 29 (a person performing a job or service for another person; the person doing the work has not volunteered but is

⁷⁰ VnEconomy, “Overseas workers send remittances home 3.5 - 4 billion USD per year” (2025), online: <<https://vneconomy.vn/di-lao-dong-nuoc-ngoai-gui-kieu-hoi-ve-nuoc-3-5-4-ty-usd-moi-nam.html>>.

⁷¹ *Vulnerabilities and Risks of Exploitation Encountered by Vietnamese Migrant Workers—a Qualitative Study of Returnees’ Experience*, by International Organization for Migration (2020) at 34 online: <https://publications.iom.int/system/files/pdf/Vulnerabilities-and-Risks-of-Exploitation_1.pdf>.

⁷² The National Assembly of the Socialist Republic of Vietnam, *The Law on Vietnamese Guest Workers*, 2020 Clause 8 art 7.

⁷³ *Ibid* Clause 4 art 28.

⁷⁴ VOV, “Vietnam has the highest number of people suspected of being victims of “modern slavery” in the UK” (27 October 2019), online: <<https://vov.vn/the-gioi/viet-nam-co-so-nguoi-nghi-la-nan-nhan-no-le-hien-dai-cau-nhat-o-anh-971596.vov>>.

⁷⁵ Tim Dowling, “Revealed: the secret ‘forced labour’ migration route from Vietnam to the UK” (2021), online: <<https://www.theguardian.com/global-development/2021/dec/25/revealed-the-secret-forced-labour-migration-route-from-vietnam-to-the-uk>>.

forced to do the work or service at the will of another; and the person performing the work or service works under the threat of some penalty). Therefore, to eliminate forced labor and modern slavery, it is necessary to research specific solutions suitable to Vietnam's actual situation.

IV. CONCLUSION

This article discusses the concept of forced labor, with regards to its content, form, and the signs to recognize acts of forced labor according to Vietnamese law, and compared them with the provisions of Conventions No. 29 and No. 105 of the International Labor Organization. The article also evaluated the legal regulations on eliminating forced labor to ensure the rights of employees in Vietnam and pointed out that Vietnamese legal regulations are not entirely compatible with the content of the International Convention on the Abolition of Forced Labor. For example, according to the Vietnam Labor Code 2019, the person who commits forced labor is only "the employer" or "the individual authorized by the employer" to manage and supervise the employee. In contrast, ILO Convention No. 29 states that any person who commits the act of forcing another person to work against their will is committing forced labor.

In addition, regulations on subjects performing forced labor are still inconsistent between the Labor Code 2019 and the Penal Code 2015, amended in 2017 in Vietnam. In the Labor Code, the subject of forced labor is "the employer," while in the Penal Code, it is "any person." Moreover, the article also identified the contents of labor law, criminal law, and regulations on Vietnamese guest workers that need to be researched and amended to ensure the best implementation of forced labor elimination in Vietnam. After revision, the labor law of Vietnam should encompass a comprehensive list of activities that exhibit indications of forced labor. These indications could encompass a range of exploitative practices, such as deceptive recruitment practices, coercion, and manipulation, that strip individuals of their freedom and subject them to involuntary servitude. To effectively address the complex issue of forced labor eradication, competent state agencies must adopt a multi-pronged approach that encompasses not only legislative measures but also comprehensive awareness campaigns and robust enforcement mechanisms, in which it is necessary to agree on the understanding of the subject of forced labor as anyone, not just formal employees. In the Vietnamese Criminal Code, the crime of coercive labor needs to be amended and supplemented with additional consequences, not only imposed at the loss of life and health but also property and mental damage in order to have a basis for addressing the "other tricks" which can constitute forced labor and to increase the penalty for this crime. At the same time, it is essential to establish a robust enforcement mechanism that guarantees the swift identification and prosecution of instances of forced labor. The law on Vietnamese guest workers needs to be amended so that only foreign parties receiving Vietnamese workers abroad, rather than the workers themselves, must pay service fees to enterprises that send employees abroad as guest workers.

A practical analysis of forced labor manifestations in Vietnam reveals concerning situations. For instance, employees are often required to work overtime to meet the assigned quotas without receiving overtime wages, and they may face scolding from their managers during working time. Based on a practical analysis of the manifestations of forced labor that have occurred and are currently taking place in Vietnam, I believe it is essential to improve the effectiveness of law enforcement in combating forced labor. This can be achieved by promoting collective bargaining activities among grassroots employee representative organizations, raising awareness about the laws on eliminating forced labor and enhancing the skills of law enforcement officers responsible for this task.

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Nguyen Thanh Huyen is a lecturer at the Faculty of Private Law, University of Law, Vietnam National University, Hanoi. She earned her Doctoral Degree from the same university in 2013, following the completion of her Master of Laws program there in 2004. With 20 years of experience in teaching and research, Dr. Nguyen Thanh Huyen has authored several textbooks, reference books, and scholarly articles published in both domestic and international journals, as well as in proceedings of international conferences. In addition to her academic career, she has been actively involved in training, research, and consultancy in the fields of labor law and social security law for the ILO’s Better Work Vietnam program and the Labor Law & Social Insurance Law course for Chief Executive Officers organized by the Asian Institute of Technology Centre in Vietnam.