

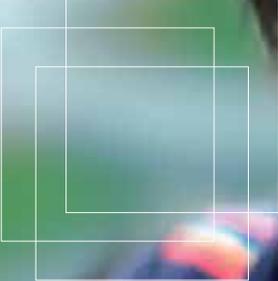
ASIAN 2006  
DECENT WORK  
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International  
Labour  
Organization

# Complaint mechanisms for Vietnamese migrant workers

## An overview of law and practice



Tripartite Action to Protect the Rights of Migrant Workers  
within and from the Greater Mekong Subregion  
(GMS TRIANGLE project)

Regional Office for Asia and the Pacific

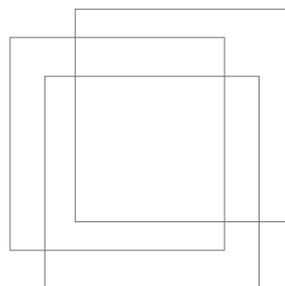
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## Foreword

Labour migration can have a positive impact, providing opportunities for social and economic remittances and skills exchange. However to ensure the benefits of migration are realized, effective protection measures are critical for addressing problems encountered by workers including access to effective complaint mechanism during the recruitment process, while working abroad or after returning home. The timely resolution of a grievance can be the difference between a worker returning to Viet Nam having benefitted from their labour migration, or being worse off than prior to departure, burdened with a debt they cannot repay.

While it is understood that complications arise for both workers and authorities when lodging, progressing or managing complaints, to date there has been no assessment of the efficacy of the institutional framework underpinning the complaints process. This report, *Complaint mechanisms for Vietnamese migrant workers: An overview of law and practice*, presents the results of a study initiated under the ILO GMS TRIANGLE project which considered both the laws governing migrant worker complaints and the practical experiences of migrant workers and authorities in navigating the complaints system. This report provides important context regarding the challenges that may arise during the complaint making process, prompting consideration of the policy and legislative measures that may increase migrant workers' access to justice.

The report finds that while there is a legislative framework that facilitates complaints, gaps in coverage contribute to a lack of clarity for both workers and authorities. The documented practical experiences of workers and authorities indicate that uncertainty or a lack of information leave many migrant workers feeling unsupported or unsure of how to lodge or progress a complaint, with many reports of unresolved complaints or unsatisfactory outcomes. This in turn can have an adverse impact on government policies designed to promote economic development and overseas deployment targets.

The report finds that recent legislative developments and enhancements to internal government processes can be harnessed, through responsible implementation, to drive positive advancements and address challenges in respect of complaint mechanisms. The report makes a series of recommendations designed to promote practical improvements to the complaints process; through legislative reform and effective implementation of laws, conducting training and developing guidance material to increase a awareness of complaints procedures, and conducting further research to better capture complaints' data.

The ILO GMS TRIANGLE project highly appreciates its collaboration with the Department of Legal Affairs, Ministry of Labour, Invalids and Social Affairs and the Viet Nam Association of Judicial Support for the Poor on the study, which was crucial in facilitating analysis of the issues and contributing to a broader evidenced-based discussion on this important issue.



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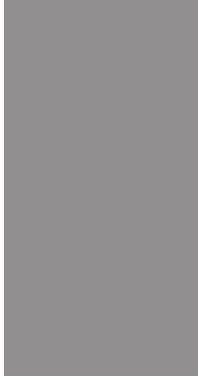
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Particular thanks goes to the interview team for conducting the field research, led by Dr Ta Thi Minh Ly, Chairperson of the VIJUSAP. Interview team participants included Mr Mai Duc Thien, Deputy Director General, Department of Legal Affairs, MOLISA, Mr Nguyen Xuan Toan, Deputy Head, Division for receiving citizens and settling complaints, MOLISA Inspectorate (Quang Ngai province), Mr Tran Quang Duy, Inspector, DOLAB Inspectorate (Ha Tinh and Thanh Hoa provinces), Ms Pham Thi Dam, officer of the VIJUSAP and Ms Nguyen Thi Mai Thuy, ILO GMS TRIANGLE National Project Coordinator, ILO Viet Nam Country Office (Quang Ngai province). Valuable contributions were also made by 34 participants from Government, the Vietnam General Confederation of Labour, and civil society. They included migrant workers who attended a validation workshop to discuss the preliminary results of the project in July 2014. This was organized by the Department of Legal Affairs, MOLISA and VIJUSAP.

The final report was prepared by the ILO GMS TRIANGLE Project Team in Viet Nam, particularly Kristin Letts and Nguyen Thi Mai Thuy. Additional input and support were provided throughout the study design and drafting process by Max Tunon, Gyorgy Sziracki, Nilim Baruah, Anna Olsen, Sally Barber, Tran Thanh Tu, Tran Quynh Hoa, Vu Kim Hue, Nguyen Thi Hai Yen and Phillip Hazelton.

This research was initiated under the ILO GMS TRIANGLE Project with the endorsement of the Viet Nam Project Advisory Committee. The ILO GMS TRIANGLE Project is funded by the Australian Government Department of Foreign Affairs and Trade.

## Executive summary

### Introduction

As increasing numbers of Vietnamese workers travel to all corners of the world to find employment, labour migration presents a significant policy challenge for Viet Nam. Since the 1980s, labour migration has been actively promoted by the Vietnamese Government as a means of employment creation and poverty reduction, with more than 500,000 Vietnamese workers currently living abroad. In support of this policy, the Vietnamese Government has also set an annual target, under the National Target Programme on Employment and Vocational Training, of sending 80,000—100,000 workers abroad each year during the period 2012 to 2015.

Labour migration has a positive impact, providing both remittances and skills exchange. However to ensure the benefits of migration are realized, effective protection measures are critical in ensuring that problems encountered by workers are adequately addressed. Vietnamese migrant workers and authorities alike face issues in managing complaints, however, to date there has been no assessment of the efficacy of the institutional framework that supports the complaints process.

To better understand the operation of complaint mechanisms for migrant workers in Viet Nam, and raise awareness of issues arising during the complaints process, in 2014, supported by the Australian Department of Foreign Affairs and Trade, the International Labour Organization's (ILO) Tripartite Action to Protect the Rights of Migrant Workers Within and From the Greater Mekong Subregion (GMS TRIANGLE) undertook a study of existing complaint mechanisms for Vietnamese migrant workers, in cooperation with the Department of Legal Affairs, Ministry of Labour, Invalids and Social Affairs (MOLISA) and the Viet Nam Association of Judicial Support for the Poor (VIJUSAP).

The study emerged from the basic premise that when issues arise, migrant workers may be reluctant to voice their concerns. Workers may not realize that their rights are being violated, fear retribution from their employer, know who to turn to for assistance, or how to complete a written complaint. Many will be unable to identify the appropriate authority with whom to file a complaint, or face barriers in meeting requirements for lodging or producing sufficient evidence to support their claim. This may be because paperwork has been lost or destroyed, because no written contract was signed or contracts were never properly executed, or may be due to discrepancies between contracts signed in Viet Nam and those presented in the destination country, which are generally not in Vietnamese.

The study consisted of a review of the existing legal framework enabling migrant workers to lodge complaints, including relevant international standards, and interviews eliciting the experiences of Vietnamese workers and authorities in managing complaints. The results of that study, outlined in this report, found that despite the existence of a legislative framework enabling migrant workers to lodge complaints, legal protections are not universal and workers are experiencing practical difficulties in progressing complaints.

VIJUSAP had overall responsibility for conducting the field research, including developing and conducting the interviews, analysing the results, and preparing the first draft of the report. MOLISA representatives were also active in the study, conducting interviews with workers and officials in the provinces and providing background material to inform the desk review of legislation governing complaint mechanisms. The ILO GMS TRIANGLE also provided input into the interview questionnaires and was represented on the interview team.

### **Framework governing complaint mechanisms**

There are a number of international instruments and regional initiatives that provide guidance regarding the effective implementation of complaint mechanisms for migrant workers. These include the ILO Migration for Employment Convention, 1949 (No. 97), the ILO Migrant Workers Convention, 1975 (No. 143), the ILO Private Employment Agencies Convention, 1997 (No. 181) and the United Nations (UN) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. The Association of Southeast Asian Nations (ASEAN) has also encouraged discussion and sharing of ideas on this important issue, including through the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ASEAN Declaration) and recommendations made at the 6th annual ASEAN Forum on Migrant Labour (AFML) in 2013 which focussed on complaints and access to the justice system throughout the migration cycle.

The current Vietnamese legal framework provides mechanisms for migrant workers to make complaints. The primary statute is the Law on Vietnamese Workers Working Abroad Under Contract (No. 72/2006/QH11) (Law on Vietnamese Workers Working Abroad Under Contract). Supporting the operation of this Law, the Decree on Penalties for Administrative Violations against Regulations on Labor Social Insurance and vocational training and sending workers abroad (No. 95/2013/ND-CP) (Decree No. 95) has also been enacted to deal with violations, penalties, fines and remedial measures available for a range of labour issues, including overseas labour supply. Directly relevant to the complaints making process, in 2014, the Decree Stipulating Details of Some Articles of the Labor Code, the Law on Vocational Training and Law on Vietnamese Workers Working Abroad Under Contract (No. 119 /2014/ND-CP) (Decree No. 119), was passed with the aim of improving complaint and denunciation mechanisms for workers, especially overseas migrant workers. Another significant recent development has been the Department of Overseas Labour (DOLAB) complaints database, established with the support of UN Women, which is designed to capture details of complaints and track their progress.

Despite the existence of a legislative framework in Viet Nam, gaps remain in coverage and there are practical issues with implementing the laws, both for workers and their families seeking to make a complaint, and for the authorities responsible for managing complaints. Decree No. 119, the key piece of legislation now governing the management of migrant worker complaints, does not cover those workers recruited by state-owned recruitment agencies, or who migrate independently.<sup>1</sup> The fact that workers may be subject to different complaint processes is notable, and complaint mechanisms need to be enhanced, and the process for making complaints streamlined.

Decree No. 119 has also introduced the concept of “first-time” and “second-time” complaints for migrant workers covered by the legislation, with first-time complaints to be directed to recruitment agencies, and second-time complaints to be directed to DOLAB. The new legislated requirement for recruitment agencies to hear a first-time complaint may create new challenges for workers, officials and recruitment agencies themselves. For a worker intending to lodge a complaint, initially seeking a resolution through direct contact with a recruitment agency or employer may often be prudent and mediation should be encouraged, particularly noting potential benefits such as expediting a resolution and reducing the administrative burden on government agencies. However, requiring complaints to be directed to a recruitment agency as part of the formal, legislatively mandated complaints process is likely to create practical issues, including potentially acting as a deterrent for workers making a formal complaint.

With so many players involved in the migration process, the scope of the difficulties workers may face is broad, and issues can arise from the time a prospective migrant worker begins to consider moving overseas and continue even after their return to Viet Nam. Difficulties in terminating contracts with recruitment agencies, discrepancies between salaries agreed to prior to departure and actual salaries paid abroad, as well as costs charged by recruitment agencies, all feature in DOLAB’s data on migrant worker complaints.

Overall, the number of complaints recorded by the DOLAB Inspectorate is very small (approximately 0.3 per cent) in comparison to the number of workers moving abroad each year, and other countries of origin. When viewed in context of the legislation, and having regard to practical issues faced by workers during their employment abroad, as well as when progressing complaints, this is unlikely to be because migrant workers are not facing problems. Rather, it suggests a systemic problem with the complaint mechanism itself or that workers’ complaints are not officially lodged. This may be because they are concerned about the consequences of bringing a complaint or are not aware of the appropriate mechanism for doing so, think it is unlikely that their complaint will be resolved, or are not covered by legislation.

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<sup>1</sup> Workers who migrate “independently” in Viet Nam are not recruited by licensed recruitment agencies but obtain employment abroad through brokers or direct negotiations with foreign employers. This may be done in accordance with the law but may also occur without the necessary authorization or documents, constituting “irregular migration”.

### **Practical experiences of workers and authorities in managing complaints**

Understanding the way legislation governing complaints for migrant workers is implemented in practice is crucial in considering the effectiveness of the laws and identifying where improvements can be made. Field research found that workers experience significant challenges and barriers when attempting to lodge a complaint. From interviews conducted with 44 migrant workers who experienced difficulties during the migration process, problems identified related to key aspects of the employment relationship or work conditions such as salary or working hours. Many workers interviewed indicated that they did not have access to specific information about their employer or workplace prior to migrating, suggesting there is a correlation between false information or poor access to information prior to departure, and the likelihood of an issue arising.

Almost one in every three (N=13) workers decided not make a complaint as they did not know where, or how, to lodge it or believed it would not be given due consideration. Three out of ten workers (N=10) who submitted a complaint received a response. However, all of those workers felt that their complaint was not settled satisfactorily.

Of the workers interviewed, nine in ten (N=40) were disappointed with their migration experience, and more than four out of five (N=37) were still in debt. The negative financial impact of an adverse migration experience is of particular concern given that a key motivation for migrant workers to move abroad is the prospect of employment opportunities, particularly increased income, including for their family, and an ability to pay off debts quickly.

As key contact points for aggrieved migrant workers, the experience of local authorities in facilitating the resolution of complaints was also an important element of the field research. Officials interviewed observed that there was ineffective coordination across government agencies in dealing with complaints and there was no clear guidance on how to manage complaints. They also spoke of the lack of cooperation from recruitment agencies in assisting to resolve the complaints of workers.

#### **Box 1 Key findings**

- Of the 44 workers interviewed, **nine out of ten workers** (N=40) were unhappy with their migration experience.
- When problems arise, they are likely to relate to key aspects of the employment relationship or work conditions, such as salary or working hours.
- **More than four out of five workers** (N=37) interviewed were still in debt.
- **Almost one in three workers** (N=13) decided not to proceed with making a complaint as they did not know where, or how, to lodge it or believed it would not be given due consideration.
- Of those who made a complaint, only **three out of ten workers** (N=10) received a response. All of that group felt the complaint was not settled satisfactorily.
- Of the 44 workers interviewed only six were female – a much lower proportion than the proportion of women migrant workers in official statistics. Further research needs to be conducted to determine whether women migrants are more reluctant to, or face greater obstacles in, making complaints.

## **Conclusion**

Migrant workers in Viet Nam are experiencing difficulties both in lodging and resolving complaints, and are unsatisfied with the outcomes when they do. Gaps in legislation and the absence of streamlined processes contribute to a frustrating, difficult and often fruitless complaints process. This not only results in unjust outcomes for migrant workers, but can perpetuate the conditions in which unscrupulous recruitment actors operate. A poorly regulated recruitment industry in turn increases the likelihood that workers will need to make complaints, as well as the incidence of irregular<sup>2</sup> migration – as migrant workers seek to avoid excessive recruitment fees and delays in migration. This impacts adversely on government policies designed to promote migration.

Barriers to making a complaint include not knowing where, or how, to direct a complaint, having insufficient evidence to support a complaint, or experiencing difficulties in preparing a complaint, (particularly in written form) or obtaining comprehensive and timely information from recruitment agencies. Providing written complaints is especially difficult for those migrant workers who do not speak Vietnamese as their first language; ethnic minorities are overrepresented among the population of migrant workers. When complaints are lodged, many complainants do not receive responses at all, or submit multiple complaints to multiple authorities due to uncertainty about where they should be lodged, often without success.

Given that there is a legislative framework to enable ordering of complaints, immediate efforts should be concentrated on facilitating effective implementation and enforcement of these laws. Processes for managing complaints can be improved and streamlined, for example through capacity building for officials, awareness raising for migrants, and ensuring recruitment agencies fulfil their responsibilities to workers. The practical issues experienced by workers and officials should also be considered during any future revision of Vietnamese legislation with a view to reducing the time and opportunity costs involved for workers in making a complaint and regulations governing the responsibilities of recruitment agencies.

The introduction of Decree No. 119 and the establishment of a database for migrant worker complaints within DOLAB provide a timely opportunity to take stock of the effectiveness of the processes and practicalities of making complaints, and consider how they can be improved. Such efforts would support government policy on labour migration and minimize the adverse impacts for migrant workers who face problems abroad.

## **Recommendations**

### *Legislative reform and implementation*

1. DOLAB should consider how the practical operation of laws concerning complaint mechanisms for migrant workers can be improved, having regard to relevant international labour standards including ILO Convention No. 181, the Multilateral Framework on Labour Migration, and AFML recommendations. This process should involve close consultation with tripartite constituents and local authorities and:
  - a. identify gaps in coverage, consider how to streamline and strengthen oversight of complaints processes, and increase capacity for inspections;

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<sup>2</sup> An irregular migrant worker is a worker who leaves, enters, stays or works without the necessary authorization or documents required under the laws of that State.

- b. consider aligning complaints procedures for all migrant workers to provide greater clarity and certainty;
  - c. identify and rectify the barriers to making complaints, especially for women or particularly vulnerable groups, including ethnic minorities;
  - d. enhance cooperation between recruitment agencies, local officials and central authorities during the complaint making process, and consider methods for enforcing compliance with regulations;
  - e. recognize the important role of local authorities, including People's Committees, in the complaints process;
  - f. work with, and draw on the expertise of, other government authorities responsible for managing complaints, such as the MOLISA Inspectorate, to further build internal capacity, oversight and review and ensure the management of migrant worker complaints is monitored at the central and local levels; and
  - g. have regard to regional best practice models.
2. Recruitment agencies should develop internal processes to facilitate their legislated role in considering complaints in accordance with Decree No. 119 with a view to improving services for migrant workers, supported by DOLAB and the Viet Nam Association of Manpower Supply (VAMAS).
  3. Pending further detailed examination of existing legal provisions, MOLISA should consider addressing the practical management of complaints during the development of the Circular to support Decree No. 119, including enhancing enforcement mechanisms, and developing a standard complaints form.

#### *Training and guidance material*

1. DOLAB and the MOLISA Inspectorate should provide training to local authorities on procedures for managing complaints, supplemented by the development of practical operational guidelines. Guidance material should cover the scope of the laws, define key terms, highlight the rights and obligations of involved stakeholders, and clarify which authorities have competency to progress complaints on behalf of workers.
2. DOLAB and the MOLISA Inspectorate should develop guidance material for workers on how to make a complaint, for dissemination by Employment Service Centres (ESCs), particularly Migrant Resource Centres (MRCs), and local authorities, with a view to enhancing the access of workers to justice, supporting the operation of government regulations and policy and improving links between ESCs, MRCs and legal aid services.

#### *Research activities*

1. Consider how to better capture quantitative and qualitative data on labour migration complaints, including by:
  - a. DOLAB leveraging the capacity of its new database to capture gender-disaggregated complaints data, data on complaints initiated or resolved with recruitment agencies, and data on complaints initiated or resolved through the court system, particularly in light of the new Decree No. 119;
  - b. DOLAB, VAMAS and the MOLISA Inspectorate undertaking research to understand the position and possible operating constraints for recruitment agencies;
  - c. VAMAS considering how complaints made against, and the handling of complaints by, recruitment agencies can feed into monitoring of the VAMAS Code of Conduct; and
  - d. Tripartite constituents working with local authorities to undertake further research into gender-specific issues in respect of the complaint making process.

## Acronyms and abbreviations

AFML	ASEAN Forum on Migrant Labour
ASEAN	Association of Southeast Asian Nations
DOLAB	Department of Overseas Labour, Viet Nam
DOLISA	Department of Labour, War Invalids and Social Affairs, Viet Nam
ESC	Employment Service Centre
GDP	gross domestic product
GMS TRIANGLE	Tripartite Action to Protect Migrant Workers within and from the Greater Mekong Sub-region
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
MoLISA	Ministry of Labor, Invalids and Social Affairs, Viet Nam
MOU	memorandum of understanding
MRC	Migrant Resource Centre
UN	United Nations
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
VAMAS	Viet Nam Association of Manpower Supply
VAMAS CoC-VN	Viet Nam Association of Manpower Supply Code of Conduct
VGCL	Viet Nam General Confederation of Labour
VIJUSAP	Viet Nam Association of Judicial Support for the Poor
VND	Vietnamese dong



# 1

## Research approach

### 1.1 Purpose of the study

As increasing numbers of Vietnamese workers travel abroad to find employment, labour migration is promoted by the Government of Viet Nam as a vehicle for employment generation and poverty reduction; for potential migrants migration is viewed as a means of increasing income levels and achieving a higher standard of living. In support of this policy, the Government of Viet Nam has also set an annual target under the National Target Programme on Employment and Vocational Training of sending 80,000–100,000 workers abroad each year from 2012 to 2015. In this mix, recruitment agencies, brokers and foreign employers seek to maximize the utility of a growing market for Vietnamese workers. Against this backdrop, the issues faced by workers during the migration process and especially the processes through which complaints can be initiated and resolved are often ineffectively addressed.

There are currently over 500,000 Vietnamese workers living abroad. Vietnamese workers are travelling to an increasingly large number of destination countries, in South-East and East Asia and beyond. DOLAB recorded over 106,000 migrant workers moved abroad in 2014. The remittances of Vietnamese people living abroad contribute over six per cent of Viet Nam's GDP, totalling more than US\$11 billion as of 2013 (World Bank, 2014, p6).

The operating environment underpinning labour migration in Viet Nam is complex and stakeholders varied. Since 1992, Viet Nam has signed over 20 memoranda of understanding (MOU) and bilateral agreements to facilitate formal labour migration arrangements with destination countries and territories. Over the past 20 years both state-owned and private sector licensed recruitment agencies have become central to the migration process as the primary actors sending workers abroad. According to DOLAB figures, in 2013 there were over 180 recruitment agencies licensed to send workers abroad, 138 of which the state owned or had a partial stake in.<sup>3</sup> Recruitment agencies in which the state has at least a partial interest send more than 88 per cent of all Vietnamese migrant workers abroad each year. Further, as a result of increasing numbers of both workers independently negotiating contracts directly with foreign employers, and irregular workers (for example, those who migrate through irregular channels or become irregular through overstaying visas), there is also a range of “unofficial” stakeholders, including unauthorized recruiters and brokers.

Migration is an attractive option for workers pursuing job opportunities and higher incomes, however, for many the migration experience is difficult, particularly when workers are not adequately informed of their rights and of the responsibilities of recruitment agencies and employers. With so many players involved in the

<sup>3</sup> Of these 138, 51 were wholly owned by the state, 33 had more than 51 per cent state capital and 45 had less than 51 per cent state capital. In 2015 there were over 200 licensed recruitment agencies.

migration process, the scope of difficulties workers may face is broad and issues can arise from the time a prospective migrant worker first considers moving overseas until after their return to Viet Nam.

Problems commonly arise for workers where there is a lack of information, or transparency, on fundamental issues such as the costs of migration, the recruitment process, a worker's suitability for employment in a particular destination or job, or the terms and conditions of employment. This can lead to workers incurring large debts due to excessive fees charged either by recruitment agencies or informal sector brokers. There are numerous reports of workers being underpaid or placed in poor or unsafe working conditions. Further, workers can be enticed by the relative ease and speed of migrating through irregular channels, as well as the comparatively low costs involved.

### **Making a complaint**

Migrant workers and authorities alike face issues in managing complaints, however, to date there has been no assessment of the efficacy of the institutional framework that supports the complaints process. In light of this, in 2014 the ILO GMS TRIANGLE initiated a project, with the endorsement of the Viet Nam Project Advisory Committee, to study existing complaint mechanisms for Vietnamese migrant workers, in cooperation with the Department of Legal Affairs, MOLISA and VIJUSAP. The objective of the research was to better understand the operation of complaint mechanisms in Viet Nam and raise awareness of issues arising during the complaints process, so as to identify how the framework could be enhanced, made more responsive to the needs of migrant workers and provide further guidance for authorities when managing complaints.

VIJUSAP had overall responsibility for conducting the field research, including developing and conducting the interviews, analysing the results, and preparing the first draft of the report. MOLISA representatives were also active in the study, conducting interviews with workers and officials in the provinces and providing background material to inform the desk review of legislation governing complaint mechanisms. The ILO GMS TRIANGLE also provided input into the interview questionnaires and was represented on the interview team.

The study emerged from the basic premise that when issues arise, migrant workers may be reluctant to voice their concerns. Workers may not realize that their rights are being violated, fear retribution from their employer, know who to turn to for assistance, or how to complete a written complaint. Many will be unable to identify the appropriate authority with whom to file a complaint, or face barriers in meeting requirements for lodging or producing sufficient evidence to support their claim. This may be because paperwork has been lost or destroyed, because no written contract was signed or contracts were never properly executed, or may be due to discrepancies between contracts signed in Viet Nam and those presented in the destination country, which are generally not in Vietnamese.

In addition, local authorities face capacity and knowledge-based challenges in effective complaints management, especially in coordinating with relevant stakeholders or obtaining complete and timely information from recruitment agencies. This contributes to the unresponsiveness of the administrative system and obstructs the full implementation of the legislation as intended. As will be discussed in Chapter 3, the existing Vietnamese legal framework provides mechanisms for migrant workers to make complaints, the primary statute governing overseas migration being the Law on Vietnamese Workers Working

Abroad Under Contract. In addition Decree No. 119, which came into effect in February 2015, was designed to improve the complaint and denunciation mechanisms for workers, especially overseas migrant workers. The results of this research indicate that, despite this legal framework, gaps and practical issues concerning implementation and enforcement of laws remain. This means that making a complaint can be a frustrating, difficult and often fruitless process.

This situation creates obstacles for migrant workers seeking access to justice, and, because unscrupulous recruiters are less likely to be held accountable, perpetuates conditions where unscrupulous recruitment actors can operate, increasing both the likelihood of workers needing to make complaints and the incidence of irregular migration. This means that government policies designed to promote migration and targets for sending workers abroad remain unfulfilled. However, the research also finds that recent advancements, such as the introduction of Decree No. 119 and the establishment of the DOLAB complaints database, provide a timely opportunity to take stock of the effectiveness of the processes and practicalities of making complaints and can be leveraged to ensure continued improvements.

This research builds on analysis conducted by the ILO regarding the operation of complaint mechanisms for migrant workers in other jurisdictions in Asia, including in Thailand and Sri Lanka in 2013, and Cambodia in 2014. It also promotes the principles articulated in the ASEAN Declaration and recommendations made at the 6th annual AFML in 2013.

## **1.2 Research methodology**

This report is informed by a review of the existing legal framework enabling migrant workers to lodge complaints, including relevant international standards, and interviews eliciting the experiences of Vietnamese workers and authorities in managing complaints.

The study relies primarily on qualitative research methods, making use of the following data collection tools:

**Desk review:** A review of relevant Vietnamese legislation and international labour standards, supplemented by reports from the Department of Labour, Invalids and Social Affairs (DOLISA) in the target provinces and DOLAB.

**Key informant interviews:** Interviews with staff from organizations and institutions assisting workers with the resolution of complaints.

**In-depth personal interviews:** Interviews with men and women migrant workers and their families regarding their experiences during the migration process and while filing complaints. The interview team also reviewed relevant documentation, including applications of complaint, applications of denunciation and copies of contracts, to inform the interviews and analysis.

**Focus group discussions:** Women and men migrant workers and their family members selected for individual interviews also participated in focus group discussions.

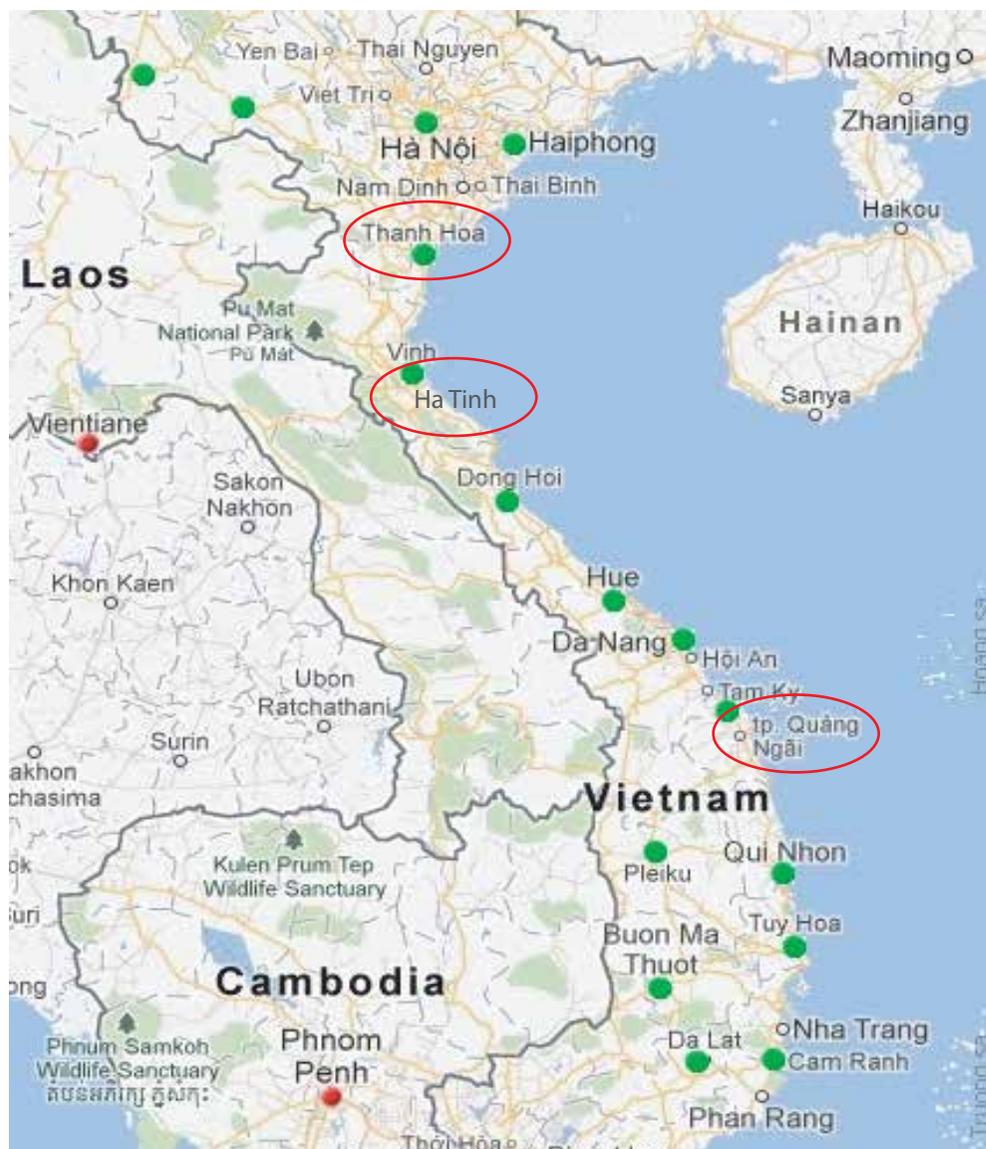
In advance of the field research, the interview team liaised closely with the relevant DOLISA in each interview province to coordinate activities and arrange interviews. Migrant workers approached for interviews were selected based on DOLISA records of prospective and returned migrant workers who had complained about their migration experience.

The preliminary results of this study were discussed at a validation workshop held by the Department of Legal Affairs, MOLISA, and VIJUSAP, in July 2014. It was attended by 34 participants (19 men and 15 women) from Government, the Vietnam General Confederation of Labour (VGCL) and civil society, including migrant workers.

### 1.3 Research sample

From 12 to 27 May 2014, the interviews team conducted 138 key informant and in-depth personal interviews in Quang Ngai, Ha Tinh and Thanh Hoa provinces including with provincial, district and communal officials, prospective and returned migrants, and migrant workers' relatives.

**Figure 1. Map of Viet Nam: Provinces surveyed**



Representatives from provincial agencies interviewed included labour management officials, judges, public security officers, commune officials, and representatives from the Viet Nam Women's Union and commune inspection boards.

Workers targeted for interviews were workers who had completed their contract abroad, workers who had returned prematurely, and workers who had encountered issues prior to their departure and had not been placed in employment abroad.

**Table 1. Interviewees by respondent group**

Respondent group	Number of interviewees
<b>Officials (total)</b>	<b>87</b>
Provincial officials	27
District officials	36
Commune officials	24
<b>Migrant workers</b>	<b>44</b>
<b>Migrant workers' family members</b>	<b>7</b>
<b>Total</b>	<b>138</b>

Source: data from field research

#### **1.4 Limitations of the research**

Of the 44 workers interviewed, just six were women. This figure is disproportionately low compared with official statistics which indicate that women account for approximately one third of all Vietnamese migrant workers. This restricts the gender analysis possible. The 44 workers interviewed were mostly from poor communes, many were from ethnic minority groups, and all had been identified as having had a grievance arise during the migration process, noting this did not necessarily result in a complaint being lodged. As such, the results concerning the incidence and nature of complaints are not representative of the broader migrant worker cohort. It should also be noted that the interviews took place prior to the introduction of Decree No. 119.

The field research focused on workers returning from Malaysia and Libya,<sup>4</sup> some of whom migrated independently. Workers from poor communes are generally low-skilled and more likely to work in lower paid and less desirable positions abroad, noting the associated costs of migration are also lower. Therefore, the results are not suitable for extrapolation for discussion on broader trends, such as in which countries complaints are most likely to arise, nor is the analysis intended to assess the overall impact of migration for low-skilled as workers compared with higher-skilled workers. The involvement of government officials in the field research may also have impacted on the frankness with which interviewees – including government officials – were willing to highlight perceived deficiencies in the complaint management process, or the overarching institutional framework.

Nonetheless, the detailed nature of the interviews and the consistency of the experiences reported means that well-supported conclusions and observations on the complaint making process can be made.

The overview of legislation is not designed to provide a complete, in-depth assessment of all laws pertaining to migrant workers in Viet Nam, rather, it is intended to highlight the key provisions currently governing complaint mechanisms for migrant workers.

<sup>4</sup> Following the outbreak of civil unrest many Vietnamese workers left Libya or were assisted to repatriate to Viet Nam through the Overseas Employment Support Fund, managed by MOLISA.

# 2

## International standards and regional initiatives on complaint mechanisms

In considering the operation of complaint mechanisms within Viet Nam and assessing areas for improvement, it is important to refer to the broader international context, in particular relevant international standards and key regional initiatives. There are a range of such standards and initiatives that countries can use to develop and to implement complaint mechanisms for migrant workers. This includes both binding standards and non-binding guidance material or recommendations.

### 2.1 International standards

#### 2.1.1 Conventions and Recommendations

Migrant workers derive protections from international instruments, including the core ILO Conventions.<sup>5</sup> Several ILO and UN Conventions are specifically relevant to migrant workers, particularly the Migration for Employment Convention, 1949 (No. 97), the Migrant Workers Convention, 1975 (No. 143), the Private Employment Agencies Convention, 1997 (No. 181), the Domestic Workers Convention, 2011 (No. 189), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (ICMW). There is a low ratification rate for Conventions relevant to migrant workers across the ASEAN region (see Table 2 below).

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<sup>5</sup> The core ILO Conventions are the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), the Right to Organise and Collective Bargaining Convention, 1949 (No.98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No.138) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

**Table 2. Ratification of selected international instruments in the ASEAN region**

	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Viet Nam
<b>C.29</b>		1969	1950	1964	1957	1955	2005	1965	1969	2007
<b>C.87</b>		1999	1998			1955	1953			
<b>C.97</b>					*1964		2009			
<b>C.98</b>		1999	1957		1961		1953	1965		
<b>C.100</b>		1999	1958	2008	1997		1953	2002	1999	1997
<b>C.105</b>		1999	1999		***1958		1960	***1965	1969	
<b>C.111</b>		1999	1999	2008			1960			1997
<b>C.138</b>	2011	1999	1999	2005	1997		1998	2005	2004	2003
<b>C.143</b>							2006			
<b>C.181</b>										
<b>C.182</b>	2008	2006	2000	2005	2000	2013	2000	2001	2001	2000
<b>C.189</b>							2012			
<b>ICMW</b>		**2004	2012				1995			

\*Ratification by Sabah. \*\*Signed. \*\*\*Denounced.

Source: ILO.

Convention No. 181 provides standards for the regulation of private employment agencies to ensure fair practices. Article 10 of Convention No. 181 establishes the basis for enacting recruitment complaint mechanisms, providing that:

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation, alleged abuses and fraudulent practices concerning the activities of private employment agencies. (ILO, 1997a)

The non-binding Private Employment Agencies Recommendation, 1997 (No. 188) supplements the provisions of Convention No. 181.

Practical guidance regarding the implementation and application of Convention No.181 and Recommendation No. 188 are found in the ILO’s 2007 Guide to private employment agencies: Regulation, monitoring and enforcement, which also notes that migrant workers should be informed of possible complaint procedures.

While its application is not limited to migrant workers, Convention No. 189 is also a relevant standard given the growing number of migrant workers who undertake domestic work abroad. Pertinent to the establishment of complaint mechanisms, Article 17 of Convention No. 189 provides that:

1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.
2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations. (ILO, 2011a)

Convention No. 189’s accompanying Recommendation, the Domestic Workers Recommendation, 2011 (No. 201) provides further guidance on the implementation of complaint mechanisms under Article 7(a), namely that Members should consider “establishing accessible complaint mechanisms for domestic workers to report cases of abuse, harassment and violence” (ILO, 2011b).

### **2.1.2 Multilateral framework on labour migration**

The ILO's non-binding Multilateral Framework on Labour Migration, provides a comprehensive set of rights-based guidelines and principles developed through tripartite global consensus. Principle 10 of the Framework concerns the effective application and enforcement of national laws and regulations to protect migrant workers. The guidelines recommend that governments facilitate this by:

10.5. providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation;

10.6. providing for remedies from any or all persons and entities involved in the recruitment and employment of migrant workers for violation of their rights;

10.7. providing effective sanctions and penalties for all those responsible for violating migrant workers' rights;

10.8. providing information to migrant workers on their rights and assisting them with defending their rights;

10.9. providing information to employers' and workers' organizations concerning the rights of migrant workers;

10.10. providing interpretation and translation services for migrant workers during administrative and legal proceedings, if necessary;

10.11. offering legal services, in accordance with national law and practice, to migrant workers involved in legal proceedings related to employment and migration. (ILO, 2006, p. 20)

Principle 11 of the Framework concerns measures designed to prevent abusive practices towards migrant workers. In respect to complaint mechanisms the guidelines recommend:

11.3. implementing effective and accessible remedies for workers whose rights have been violated, regardless of their migration status, including remedies for breach of employment contracts, such as financial compensation;

11.4. imposing sanctions and penalties against individuals and entities responsible for abusive practices against migrant workers;

11.5. adopting measures to encourage migrant workers and trafficking victims to denounce abuse, exploitation and violation of their rights, taking account of the special circumstances of women and children and to this effect establishing mechanisms for migrant workers to lodge complaints and seek remedies without intimidation or retaliation.

(ILO, 2006, p. 21-22)

### **2.2 ASEAN initiatives**

Convened by the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, the ASEAN Forum on Migrant Labour (AFML) is a forum for the discussion and exchange of best practices and ideas between governments, workers' and employers' organizations and civil society stakeholders on key issues facing migrant workers in South-East Asia.

The AFML develops recommendations to advance the implementation of the ASEAN Declaration. Obligations 13 and 14 of the ASEAN Declaration are particularly relevant to Viet Nam.

Obligation 13 requires Members to “[s]et up policies and procedures to facilitate aspects of migration of workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as repatriation and reintegration to the countries of origin”(ASEAN, 2007).

Obligation 14 highlights the need to eliminate recruitment malpractices which, by implication, requires that there be effective mechanisms to uncover them. Obligation 14 provides that Member states should “[e]stablish and promote legal practices to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful agencies”(ASEAN, 2007).

The AFML is held annually, and each year focuses on a particular migration-related theme. At the 6th AFML held in Brunei Darussalam in 2013, access to complaint mechanisms for migrant workers in countries of origin and destination was a key area of discussion. In order to protect the rights of migrant workers in line with international human rights and labour standards, the AFML made the following recommendations for implementation in ASEAN Member States:

**Table 3. Recommendations on complaint mechanisms from the 6th AFML**

Recommendation Number	Text of recommendation
9	Develop and strengthen the existing complaint mechanisms for migrant workers in ASEAN Member States that are transparent, accessible and simplified during recruitment, employment and in case of termination and deportation. In this regard, it is important to ensure that the integrity of complaints be carefully examined.
10	Ensure that complaint mechanisms are gender-sensitive and responsive to the vulnerability of migrant workers.
11	Support the development of “one-stop” service centres for migrant workers that among other things facilitate access to complaint mechanisms and assistance, including interpretation and free legal counselling/referral, in collaboration with all stakeholders including migrant communities, workers’ and employers’ organizations, and CSOs to ensure that the services are accessible to migrant workers.
12	Ensure that information on the availability of such service centres and complaint mechanisms is disseminated to migrant workers and their families through appropriate communication channels, such as, electronic and print media, migrant workers resource centres, outreach programmes, pre-departure trainings, pre-employment orientation seminars and diplomatic missions.
13	Ensure and strengthen the role of labour attachés, embassies and consular officials to include support services on availing of complaint mechanisms for migrant workers.
14	Dispute resolutions, mediation, and other alternative dispute settlement mechanisms should be fully explored before administrative or judicial litigation processes.

Recommendation Number	Text of recommendation
15	Ensure timely notification and communication between the countries of destination and origin on judicial cases of migrant workers and extend cooperation to provide access to migrant workers to file cases for violation of rights in the country that the violation took place.
16	Promote inter-country trade unions collaboration to support migrant workers in cases of complaints.
17	Ensure, where possible, the joint accountability of employers and recruitment agencies in case of migrant workers' complaints when the recruitment agencies are responsible for recruiting and placing workers abroad.
18	Ensure that adequate arrangements in case of return and repatriation to be shouldered by employers.
19	Promote sharing of experiences and information among ASEAN Member States in implementing their respective complaint mechanisms through stock taking of the processes in handling grievances of migrant workers.
20	Consider developing regional guidelines and tools on the establishment of key aspects and standards of complaint mechanisms for migrant workers.

Source: ASEAN, 2013.

The implementation of recommendations from previous forums was discussed at the 7th AFML, held in Myanmar from 20 to 21 November 2014.

# 3

## Legal framework for migrant worker complaints in Viet Nam

There are a range of Vietnamese laws governing all phases of the labour migration process, from recruitment and deployment to repatriation. This includes a number of laws that have been revised in recent years and new laws. The quantum and diversity of laws creates a complex operating environment which can be difficult for many migrant workers to navigate. This report focuses on the key legislative provisions currently in effect in Viet Nam that govern the rights of migrant workers to make complaints.

### 3.1 Constitution of Viet Nam

Under article 30 of the Constitution of Viet Nam (Revised 2013), citizens have the right to lodge complaints or denunciations about illegal acts:

1. Everyone has the right to lodge complaints or denunciations about illegal acts of agencies, organisations or individuals with competent agencies, organisations or persons.
2. Competent agencies, organisations or persons shall receive and resolve complaints and denunciations. Those suffering damages have the right to material and mental compensation and restoration of honour in accordance with law.
3. Taking revenge on complainants or denunciators, or abusing the right to complaint and denunciation to slander or falsely accuse others, is prohibited.

(Socialist Republic of Viet Nam, 2013)

### 3.2 Law on Vietnamese Workers Working Abroad Under Contract

Underpinned by the Constitution, the Law on Vietnamese Workers Working Abroad Under Contract is the primary law governing the deployment and management of Vietnamese migrant workers. The Law regulates a range of issues relating to migrant workers including the licensing of agencies permitted to send workers abroad, and the rights and obligations of workers and recruitment agencies.

It also provides migrant workers with the right to make a complaint under certain circumstances, and obligates authorities to manage complaints. Prior to the enactment of this law, there were no complaint provisions specific to migrant workers.

#### 3.2.1 Scope of the law

Under Article 2, the Law applies to:

- enterprises and state-owned non-profit organizations sending workers abroad under contract

- workers working abroad in accordance with the law
- guarantors for workers working abroad under contract
- organizations and individuals involved in the overseas contractual employment of workers.

Article 6 sets out the means by which workers may be sent abroad, namely:

- contracts signed with enterprises providing overseas employment services
- state-owned non-profit organizations permitted to send workers abroad
- arrangements with enterprises with overseas contracts
- internships
- under an individual contract signed with a foreign employer.

Article 9(4) requires enterprises providing overseas employment services to pay a deposit as a pre-condition of licensing, and Article 22 provides that deposits may be used to address issues arising from the failure of enterprises to fulfil their obligations in sending workers abroad.

The Law outlines a number of obligations for recruitment enterprises in relation to recruitment services including:

- the obligation to settle disputes related to workers (Article 27(2)(f))
- the obligation to report and coordinate with Vietnamese diplomatic missions or consulates in managing and protecting the lawful rights and interests of workers in foreign countries (Article 27(2)(g))
- the obligation to compensate workers for damage caused to them (Article 27(2)(h)).

State-owned non-profit organizations have an explicit obligation under Article 41(2)(e) to report to, and coordinate with, Vietnamese diplomatic missions and consulates in managing workers, protecting their lawful rights and interests, and resolving their employment issues. Where a state-owned non-profit organization breaches a contract with a worker, the worker may also receive compensation (Article 49(3)).

### **3.2.2 The ability of workers to make complaints**

Article 44(6) enables workers to lodge complaints or denunciations or initiate lawsuits against illegal acts in the sending of workers abroad. Article 44(6) does not limit the parties against whom a complaint may be made. A comparable right is not explicitly provided for workers on individual contracts but these workers do have the right to the protection of their legal rights and interests by the relevant Vietnamese diplomatic mission in the country of destination (Article 53(1)(b)).

Article 69(8) provides that state management of overseas workers, which is MOLISA's responsibility in accordance with Article 70, includes inspecting, supervising and handling violations of the law; and settling disputes, complaints and denunciations.

Chapter VII deals with the settlement of disputes and handling of violations. In particular, it provides that:

- Disputes between workers and enterprises or state-owned non-profit organizations sending workers abroad shall be settled on the basis of contracts between the parties and provisions of Vietnamese Law (Article 73(1)).
- Disputes between workers and foreign employers shall be settled on the basis of agreements signed between the parties and the legal provisions of receiving countries, relevant treaties or international agreements (Article 73(2)).

Under Article 74, a person who commits a violation under the law shall be disciplined, administratively sanctioned or may be required to pay compensation. Article 75 also sets out the range of sanctions that may apply to enterprises, state-owned non-profit organizations, organizations or individuals involved in the sending of workers abroad, including a caution, fine, compensation or revocation of a licence. Competence to impose sanctions on organisations and individuals for violations of the Law sits with a number of authorities including the Chairpersons of Provincial People's Committee, the Chief inspector of MOLISA, Chief inspectors of DOLISA, and the Director-General of DOLAB (Article 76).

### **3.3 Decree No. 119**

The most recent legal instrument to be approved concerning complaint mechanisms for migrant workers is Decree No. 119, which came into force on 1 February 2015. The Decree is intended to regulate the handling of complaints and denunciations on a range of issues, including the dispatch of Vietnamese workers for overseas employment by recruitment agencies.

Notably, the Decree explicitly does not apply to state-owned enterprises, non-profit state-owned entities (noting complaints concerning state-owned enterprises may be considered in accordance with the Law on Complaints, 2011 No. 02/2011-QH13—see below) or workers employed under individual employment contracts (Article 2(2)(a)). Prior to 1 July 2015, a state-owned enterprise was defined under article 4(22) of the Law on Enterprises No. 60-2005-QH11 as an enterprise in which the state owns over 50 per cent of the charter capital. A state-owned enterprise is now defined as an enterprise in which the state owns 100 per cent charter capital under the new Law on Enterprises No. 68/2014/QH13. Based on 2013 figures, it is estimated that Decree No. 119 now applies to over 70 per cent of licensed recruitment agencies.

Under the Decree a complaint involves a request, supported by evidence, for the review of decisions or acts concerning workers' dispatch overseas (Article 3(3)). Persons who may make a complaint include workers on overseas employment under contract, or organizations or individuals relevant to the dispatch of those workers (Article 3(7)). Complaints may be made against organizations and individuals dispatching workers overseas (Article 3(10)).

There is a broad power to make denunciations under the Decree. A denunciation occurs where a citizen alleges there has been a violation in respect of the dispatch of workers for overseas employment that has caused, or threatened to cause, damages to the interests of the State or the legitimate rights and interests of citizens, agencies or organizations (Article 3(4)). Denunciations may be made by any citizen against organizations and individuals dispatching workers for employment abroad (Article 3(14)).

A complainant may make a complaint via an application (in accordance with Article 6), upon having evidence of a violation (Article 5(1)). Article 17(1) of the Decree provides that the heads of organizations dispatching workers for overseas employment under contract (that is, recruitment agencies) have the right to handle complaints regarding their decisions or acts ("first-time complaints"). If complainants do not agree with the decision made in respect to a first-time complaint to a recruitment agency, or if time limits for responding to a first-time complaint have elapsed, the Director-General, DOLAB may then deal with the matter under Article 17(2) ("second-time complaints").

### **3.3.1 Timing for making a complaint**

Initial complaints must be made within 180 days of the complainant becoming aware of the act or decision that constituted the alleged breach (Article 7(1)). Second-time complaints must be made within 30 days of a complainant receiving the outcome of a first-time complaint, or within 30 days after the time limit for a complainant to receive a response to a first-time complaint has elapsed (Article 7(2)). Extenuating circumstances for failing to make a complaint within the time limits are provided for under Article 7(3).

### **3.3.2 Rights and duties**

The complainant is provided with certain rights under the Decree including the right to make a complaint themselves or to authorize others to make a complaint (Article 10(1)(a)). Complainants also have the right to request that individuals, agencies and organizations provide them with material in their possession (with the exception of confidential State material) relevant to a complaint (Article 10(1)(d)). Further, complainants have an automatic right to take a matter to court upon having evidence that decisions of organizations and individuals dispatching workers for overseas employment under contract are illegal. Alternatively, a complaint may be brought to court where a complainant does not agree with either a decision made in respect of a first-time complaint or a decision made in respect of a second-time complaint (Article 10(2)), or relevant time limits for handling these complaints have not been met.

The rights and duties of those hearing first-time and second-time complaints are set out in Article 12 and Article 13, respectively. There are also procedural rules around the timing and manner in which a complaint is to be handled (part 4 (first-time complaints) and part 5 (second-time complaints)). Under Article 18(3), first-time complainants, and any organization that has forwarded a first-time complaint on the complainant's behalf, must receive an acknowledgement of their complaint within seven days of it being received, and DOLAB must also be advised. Article 19(1) provides that first-time complaints must be dealt with within 30 working days of formal acknowledgment of the complaint or, for complicated cases, within 45 days. Where the complaint requires accessing remote localities, the time limit for most cases is 45 days or, for complicated cases, 60 days.

DOLAB must also acknowledge second-time complaints within seven days of receipt (Article 26). Complaints must be dealt with within 45 days from the date of acknowledgement, or 60 days for complicated cases (Article 27(1)). Where investigation of a complaint requires accessing a remote locality, complaints must be dealt with within 60 days following the date of acknowledgement, or 90 days for complicated cases.

## **3.4 Law on Complaints 2011, No. 02/2011-QH13 (Law on Complaints)**

The Law on Complaints provides for citizens, agencies, organizations or government officials to request reconsideration of acts or decisions of state administrative agencies, or competent persons in state administrative agencies, on the basis that those decisions or acts are illegal and violate legal interests and rights (Article 2). A lawyer or legal aid officer may also be authorized to act on behalf of a complainant. A complaint may be lodged with the person issuing the administrative decision in question ("first-time complaints") and later with the body managing the person who has performed the administrative act ("second-time complaints") (Article 7).

The Law sets out process and procedures for making complaints, which may include meetings between the complainant and person settling the complaint. Complaints must be filed within 90 days of receiving the administrative decision or becoming aware of the administrative act (Article 9).

### **3.5 Decree on Detailing and Guiding the Implementation of Numbers of Articles of the Law on Vietnamese Workers Working Abroad Under Contract (No. 126/2007/ND-CP) (Decree No. 126)**

Decree No. 126 reiterates the responsibilities of government agencies in relation to the settling of complaints and denunciations. In particular, it provides that the deposit for licensed enterprises is 1 billion Vietnamese dong (VND)(US\$46,850) (Article 5), which can be used to resolve issues arising from a failure on the part of the recruitment agency to perform its obligations. It also provides that MOLISA is responsible for settling complaints and denunciations and is responsible for inspecting, examining and handling administrative violations of organizations and individuals (Article 8(9)).

Under Article 14(2)(d), People's Committees also have responsibility for settling complaints and denunciations related to the sending of workers abroad. The Ministry of Public Security has responsibility for prosecuting and investigating violations regarding law and regulations on sending workers abroad (Article 10).

### **3.6 Decree No. 95**

Decree No. 95 deals with the violations, penalties, fines and remedial measures available for a range of labour issues, including overseas labour supply (Article 1). It was informed by the earlier Decree on Sanctioning of Administrative Violations in the Sending of Vietnamese Workers Abroad for Employment (No. 144/2007/NĐ-CP), which it superseded. Specific breaches in respect to overseas labour supply are dealt with under chapter 4 of the Decree. These include failing to inform workers of contract conditions (Article 31(1)(a)), inconsistencies between contracts to send workers abroad, and contracts of supply with overseas employers (Article 31(2)(d)), and failing to refund service charges paid by workers who are not sent abroad (Article 33(3)(a)).

Chapter 5 allows certain authorities to impose penalties for administrative violations, including the Presidents of People's Committees at the commune, district or provincial level (Article 36), labour inspectors (Article 37), the Director of the Overseas Manpower Authority (Article 38), and diplomatic missions and consular offices (Article 39). A complaint against a decision made under Decree No. 95 may be considered under the Law on Complaints.

### **3.7 Other laws**

While not specifically dealing with migrant workers, there are a number of laws that provide certain authorities with the power to deal with general complaints from citizens, or to govern sanctions associated with breaches of legislation. These include:

- The Law on Denunciations 2011 (No. 03/2011/QH13): Under this Law, citizens may denounce illegal acts committed by cadres, civil servants or public employees when performing their public duties, or by agencies, organizations and individuals with respect to state management issues. Denunciations may be settled by superiors within the agency in question, or a superior agency (Article 12).

- The Law on Organization of the People's Council and the People's Committee 1994: This Law includes the duty of the People's Council and President of the People's Committee to receive and handle complaints and denunciations (Article 23 and Article 52(1)(d), respectively).
- The Penal Code 1999 (No. 15/1999/QH10): This Law imposes penalties for abuse of position or power to obstruct the lodging or settlement of complaints or denunciations. It also imposes penalties for refusals to abide by the decisions of agencies in relation to complaints or denunciations, or for taking revenge on those who submit a complaint or denunciation (Article 132).
- The Law on Handling Administrative Violations 2012 (No. 15/2012/QH13): This Law provides individuals and organizations with the ability to lodge complaints or denunciations or initiate lawsuits regarding the handling of administrative violations (Article 15). The Law provides for all levels of the People's Committee to handle complaints and denunciations (Article 17(5)), and that ministers, heads of ministerial-level agencies, and chairpersons of People's Committees at all levels shall promptly settle complaints and denunciations regarding the handling of administrative violations under their management (Article 18(2)(c)).
- The Law on the Prevention and Combat of Human Trafficking 2011 (No. 66/2011/QH12): Noting the vulnerability of migrant workers to human trafficking, this Law includes measures designed to increase protections for migrant workers including requiring that organizations sending workers abroad must sign contracts with, and register, foreign workers (Article 15). Chapter III outlines means of reporting and denouncing instances of human trafficking, as well as the handling of violations.
- The Law on Inspection 2010 (No. 56/2010/QH12): This Law provides that state agencies shall assist competent state agencies in settling complaints and denunciations (Article 5). The Government Inspectorate is specifically tasked with the settlement of complaints and denunciations (Article 15), as is the Ministerial Inspectorate (Article 18). The Provincial Inspectorate (Article 21), provincial-level department inspectorates (Article 24), and District Inspectorates (Article 27), are also given powers to settle complaints and denunciations.

### **3.8 Viet Nam Association of Manpower Supply (VAMAS) Code of Conduct (CoC-VN)**

While non-binding, the VAMAS CoC-VN is relevant to the regulation of recruitment agencies. The voluntary code was adopted in 2010 and applies to those Vietnamese enterprises sending workers abroad who have agreed to be assessed in accordance with the Code. The CoC-VN outlines the fundamental principles with which enterprises recruiting workers for overseas employment should comply and is based on Vietnamese laws, ILO Conventions and Recommendations, and other relevant international instruments.

The CoC-VN covers 12 key areas ranging from recruitment and training, to protection of workers overseas. In terms of dispute settlement, article 10 provides that:

1. All disputes between workers and the enterprise must be settled in accordance with the contract signed by concerned parties and Vietnamese laws.
2. All disputes between workers and employers overseas must be settled on

the basis of [the] agreement signed by related parties, by the laws in [the] receiving country and international treaties [to] which the Socialist Republic of Vietnam is a member State, by international agreements...signed with foreign parties.

3. The dispute settlement procedures must ensure [that] Vietnamese workers overseas have support from the enterprise, officers from the Vietnamese embassy, interpreters as well as legal representatives who speak Vietnamese.

(VAMAS, 2010)

**Figure 2. Ranking of recruitment agencies in Viet Nam (2014)**



Source: Monitoring results from VAMAS CoC-VN, 2014.

VAMAS and VGCL are conducting ongoing assessments of recruitment agencies' compliance with the CoC-VN. In the first two years of its operation, 47 recruitment agencies were assessed and this number is expected to rise to 67 in the third year. Results of the assessment inform ratings given to recruitment agencies; excellent (A1 and A2), good (B1 and B2), satisfactory (C1 and C2) and not satisfactory (D1 and D2). In 2014, more than half of the rated agencies belonged to group A2, with a quarter achieving top tier A1 status and nearly one fifth receiving B1 status.<sup>6</sup>

### **3.9 Managing a complaint in practice: the official figures**

The DOLAB Inspectorate is responsible for managing complaints made prior to a worker's move abroad and after their return. Complaints made to DOLAB whilst a worker is abroad are referred to the relevant country desk within DOLAB. To date, details of complaints directed to country desks have not been collated although, as is discussed below, this is likely to change with the introduction of the DOLAB complaints database.

Several Labour Management Sections run by MOLISA officials have been established abroad to provide support to migrant workers, and some recruitment agencies also have representatives in major destination countries. In destination countries serious or urgent complaints are, in practice, handled by Vietnamese diplomatic missions or, where there have been established, Labour Management Sections within these

<sup>6</sup> The CoC-VN is transitioning from the existing rating system to a new "six star" rating system but will retain the current assessment process.

missions. Diplomatic missions most commonly observe issues arising for Vietnamese workers pertaining to working hours, underpayment or maltreatment. Currently, there are Labour Management Sections in Malaysia, Taiwan (China), the Republic of Korea, Japan, the Czech Republic, Qatar, Saudi Arabia and the United Arab Emirates.

From 2007 to 2014 the DOLAB Inspectorate received a total of 2,055 complaints in relation to migration issues, with 105 complaints received in 2012, 100 complaints in 2013 and 115 complaints in 2014. Complaints peaked in 2009 (521), which may be explained by the flow on effects of the global financial crisis. Very low numbers of complaints were received in the period 2012–14 compared to other years, with the fewest complaints received in 2013.

In 2011, the DOLAB inspectorate considered the number of complaints received from 2007–11 by destination (see Table 4 below), as well as issues commonly raised in complaints.

**Table 4. Migrant worker complaints received by DOLAB 2007-11, by destination**

Destination	2007	2008	2009	2010	2011	Total (country)
Taiwan (China)	68	41	97	103	60	<b>369</b>
Malaysia	96	110	150	75	86	<b>517</b>
Republic of Korea	50	31	40	12	19	<b>152</b>
Middle East	6	92	47	97	98	<b>340</b>
Russia, Czech Republic	10	13	149	20	25	<b>217</b>
Other destinations (Australia, Canada, Singapore, Italy, Maldives, France, Cyprus, Macau (China))	46	44	38	8	4	<b>140</b>
<b>Total (year)</b>	<b>276</b>	<b>331</b>	<b>521</b>	<b>315</b>	<b>292</b>	

Source: DOLAB.

Data from DOLAB indicates that the most common issue raised by workers from 2007 to 2011 was difficulty in dealing with recruitment agencies to have deposits refunded (“contract liquidation”) when workers were required to return to Viet Nam prematurely, due to no fault of their own (50 per cent). Other issues raised included contract substitution (20 per cent); recruitment agencies collecting higher fees than prescribed by the Government (15 per cent); and failure on the part of recruitment agencies to secure visas for workers, or otherwise to facilitate their employment abroad after collecting service fees (see Table 5 below). While numbers of complaints have varied from year to year across the destinations, complaints regarding migration to Malaysia and the Middle East have been consistently high, with complaints related to the Middle East rising steadily in the period 2007-11.

Migration to Malaysia generated the highest number of complaints over this period, 148 more than migration to Taiwan (China), which had the second-highest number of complaints. This is despite a significant difference in the number of workers who travel to these destinations. Based on current figures, more than ten times the number of Vietnamese workers travel to Taiwan (China) compared to Malaysia. Malaysia was also a major destination for workers interviewed during the field research (see Chapter 4), further underscoring that workers migrating to Malaysia, the majority of whom are low-skilled and low-educated, may face a higher likelihood of encountering problems.

**Table 5. Migrant worker complaints received by DOLAB 2007-11, by issue**

Issue	Percentage of complaints
Contract liquidation	50
Contract substitution	20
Higher recruitment fees than prescribed	15
Failure to send workers abroad, six months after fees collected	5
Inadequate support from recruitment agency for insurance claim following accident or death	3
Fees collected by unlicensed agencies/brokers	3
Maltreatment by employers abroad	2
Withholding of salaries/passport/identity papers by employer, or employer failure to extend visas on time	2
<b>Total</b>	<b>100</b>

Source: DOLAB.

Compared with other countries of origin, the number of complaints recorded by the DOLAB Inspectorate is extremely low. In 2009, the Philippines recorded over 37,056 migrant worker complaints; from 2007 to 2010 Sri Lanka recorded 42,482 migrant worker complaints; and from 2008 to 2011 Indonesia recorded 194,967 migrant worker complaints (Bhula-or, forthcoming, p.52). While the official number of workers migrating annually from each of these countries is significantly higher than from Viet Nam, this alone does not explain the disparity. It is clear that the number of complaints recorded by each of the aforementioned countries of origin vastly outnumbers those recorded in Viet Nam, which in turn suggests a high rate of underreporting in Viet Nam.

There is also a more even spread of issues raised by migrant workers from other countries of origin compared with those identified by DOLAB (see Table 6).

**Table 6. Migrant worker complaints received by selected countries of origin**

Philippines (2009)	Indonesia (2008-11)	Sri Lanka (2007-10)
Contract violation (24%)	Non-payment of agreed wages (22%)	Non-payment of agreed wages (19%)
Personal problems (24%)	Contract loss (20%)	Contract loss (14%)
Delayed/non-payment of wages (18%)	Employment different to contract (11%)	Harassment (physical and sexual) (12%)
Maltreatment/mistreatment (14%)	Workers wished to return home (10%)	Problems at home (11%)
Poor working/living conditions (8%)	Death in country of desination (6%)	Illness (10%)
Immigration/document problems (7%)	Violence by employers (5%)	Breach of contract (9%)
Other (3.9%)	Other (27%)	Other (24%)

Source: Bhula-Or, forthcoming

Observations from DOLAB are that deceptive practices of unlicensed brokers have increased, and workers may be easily deceived when faced with a lack of alternative employment opportunities. This in turn increases difficulties associated with investigation and prosecution as authorities work to establish the legal status of a particular individual or organization. With a staff of four, the DOLAB Inspectorate has limited resources to deal with complaints. DOLAB organizes 20–30 scheduled inspections of recruitment agencies annually in accordance with the authorization of the relevant DOLAB Deputy Director-General. Scheduled inspections may be undertaken where a recruitment agency has a high number of workers, has had a

high number of complaints made against it (though there is no specific number of complaints that triggers an inspection), or is entering a new labour market. DOLAB also conducts 5–10 monitoring visits each year, under the guidance of the DOLAB Director-General, where abnormalities are detected, such as a sudden increase in the number of workers being sent abroad or where a recruitment agency has a large number of branches.

**Table 7. Sanctions issued by DOLAB against licenced recruitment agencies, 2010-14**

Sanction type	Number
Warning	8
Fine	60
Additional penalty	10
<b>Total</b>	<b>78</b>

Source: DOLAB.

Sanctions are not necessarily imposed in response to a complaint from a worker. For example, a sanction may be imposed where an inspection reveals that an enterprise has recruited and deployed workers to destination countries not permitted under their licensing arrangements.

In 2014, with the support of UN Women, DOLAB piloted a database to record the number of migrant worker complaints and is in the process of transferring historical records on complaints into the database. The database will be capable of recording information such as the number of complaints, destination countries where issues arise, nature of complaints, how long since a complaint has been submitted and the resolution of a complaint. It will also enable DOLAB to capture the number of complaints that are received by its different divisions. The establishment of this database represents a significant step forward in respect of the management of complaints and also provides a timely opportunity to more closely monitor the progress of complaints, including time taken to resolve complaints and their outcome.

### 3.10 Migrant resource centres (MRCs)

With the support of the ILO GMS TRIANGLE project, since November 2011 MOLISA has coordinated with DOLISAs in five provinces (Thanh Hoa, Quang Ngai, Bac Ninh, Phu Tho and Ha Tinh) to establish five MRCs within local Employment Service Centres (ESCs). The functions of existing MRCs have been rolled out to all ESCs in the 63 provinces of Viet Nam in 2015.

MRCs can be key in disseminating information to prospective migrant workers and are places where migrant workers can access counselling services, and obtain legal and other assistance in progressing complaints with authorities. Since 2011, DOLISAs in the five target provinces have estimated that the amount owing to workers for migration related grievances has exceeded US\$212,000 (VND4.6 billion). Between June 2013 and June 2014, DOLISAs in the five target provinces managed 40 complaint cases concerning 95 people, including those referred by MRCs, in which compensation paid totalled approximately VND250 million (US\$12,429 at exchange rate when compensation was paid). This outcome affirms the positive role local officials can have in supporting workers in progressing complaints and highlights potential for MRC expertise in this area to be further developed, having regard to recent legislative developments.

### **3.11 Observations**

Domestic legislation in Viet Nam provides a number of mechanisms for workers to make complaints regarding issues that arise during the migration process. However, bridging the gap between legislative intention and the actual operation of complaint mechanisms is critical. Considering the accessibility of mechanisms to migrant workers seeking to make a complaint, and their likely procedural effectiveness, is necessary.

Decree No. 119 should be viewed as a significant step forward in the regulation of migrant worker complaints. However, despite this progress it is important to note that not all migrant workers are eligible to make a complaint under this law, such as those who are recruited by state-owned enterprises or irregular migrants. As outlined in Chapter 1, DOLAB figures indicate that the current definition of “state-owned enterprise” would exclude approximately 50 recruitment agencies.

While the Law on Vietnamese Workers Working Abroad Under Contract provides workers recruited by state-owned enterprises with recourse to progress a complaint, for example under the Law on Complaints, there is a question as to whether arrangements should be aligned for all migrant workers to provide greater certainty. This could not only create additional clarity for workers and authorities but also allow for the consolidation of expertise on labour migration with Government, and the further development of specialist knowledge on inspection and enforcement issues.

Decree No. 119 also does not apply to the growing number of workers who are signing individual contracts with foreign employers, including with the assistance of unregulated brokers. While receiving countries may have laws that apply to the employment relationship between an independent worker and their employer, there is limited information for Vietnamese independent workers as to who they should contact if a problem arises, including if they face issues with a Vietnamese broker. In addition, workers who migrate outside legal channels, who are potentially most vulnerable to exploitation, have no formal recourse under Vietnamese labour migration law, noting the possibility of a police investigation in certain circumstances.

Where a worker does decide to make a complaint, there remains potential ambiguity regarding how the complaint process is managed. There is little clarity as to what evidence is required to support a claim, including what happens when there is limited, or no, documentation, and what criteria will be applied in assessing a complaint. Adding to the intricacies of the system is the sheer number of laws governing complaints, the interaction between these laws and the overlapping responsibilities of different authorities. Further, while workers have a legal right to the protection of the diplomatic missions abroad, which is accessed in serious and urgent cases, greater clarity regarding the division of responsibilities between diplomatic mission, especially Labour Management Sections labour management units, and recruitment agencies and officials in Viet Nam would be helpful. Clear guidance for authorities on the process for managing complaints may enhance their ability to explain the operation of relevant laws to migrant workers, apply the law in practice and expedite and streamline processes. This is particularly important given that Decree No. 119 provides no formal role for local authorities in either considering, or assisting with complaints (noting complainants may authorize others to make a complaint on their behalf). As is further considered in Chapter 4, local authorities are often a key contact point for workers or their families looking to lodge a complaint.

Regarding first-time and second-time complaints, the new legislated right for recruitment agencies to hear a first-time complaint may create new challenges for workers, officials and recruitment agencies themselves. For a worker intending to lodge a complaint, initially seeking a resolution through direct contact with a recruitment agency or employer may often be prudent and mediation should be encouraged, particularly noting potential benefits such as expediting a resolution and reducing the administrative burden on government agencies. However, requiring complaints to be directed to a recruitment agency as part of the formal, legislatively mandated complaints process is likely to create practical issues, including potentially acting as a deterrent for workers making a formal complaint.

Under the new law, a worker's recruitment agency may be both the party against whom a complaint is being made, and the arbitrator. For such an internal review process to operate effectively recruitment agencies will need to have transparent procedures to support their new legislated role, coupled with a commitment to improve services for workers. Given the ongoing scope for existing recruitment practices in Viet Nam to be strengthened, and noting recruitment agencies may currently lack the capacity to develop effective internal processes, closer consideration should be given to the extent to which the legislation can be effectively implemented. This includes consideration of DOLAB's role as arbitrator of second-time complaints and in reviewing the responses of recruitment agencies to first-time complaints.

In light of this, the benefits of first-time complaints instreamlining processes are likely only to be realized if there is sufficient support for the implementation of the Decree. The Decree's accompanying Circular, which is currently under development, has the potential to provide guidance for all parties in managing first-time and second-time complaints and monitoring their progress. The timely establishment of the DOLAB database on complaints also has the potential to serve as an important aid in the implementation of Decree No. 119 and in increasing coordination between involved stakeholders.

# 4

## Complaint mechanisms in practice: results from the field research

Understanding the way legislation governing complaints for migrant workers is implemented in practice is crucial in considering the effectiveness of the laws and identifying where improvements can be made. As such, the qualitative interviews with migrant workers and local officials in Quang Ngai, Ha Tinh and Thanh Hoa provinces were a critical component of this research (see Table 8 below).

**Table 8. Provinces surveyed by district and commune**

Province
<b>Quang Ngai province</b>
<i>Son Tay district</i>
Son Tinh commune
<i>Tay Tra district</i>
Tra Lanh commune
<b>Ha Tinh province</b>
<i>Cam Xuyen district</i>
Cam Nhuong commune
<i>Thach Ha district</i>
Thach Kenh commune
<b>Thanh Hoa province</b>
<i>Thieu Hoa district</i>
Thieu Do commune
<i>Hau Loc district</i>
Ngu Loc commune

Source: field research

Thanh Hoa and Ha Tinh were targeted for interviews given the large number of migrant workers from these provinces who travel abroad each year. The total number of migrant workers travelling abroad from Quang Ngai is much lower in comparison, however, interviewing workers from this province also enabled the experiences of ethnic minority migrant workers to be captured by the study, given Quang Ngai's significant ethnic minority population (see Table 9 below).

**Table 9. Approximate number of migrant workers by provinces surveyed, 2007-13**

Province	Number of migrant workers	Number of destination countries
Quang Ngai	2 000	30
Ha Tinh	43 102	54
Thanh Hoa	63 068	58

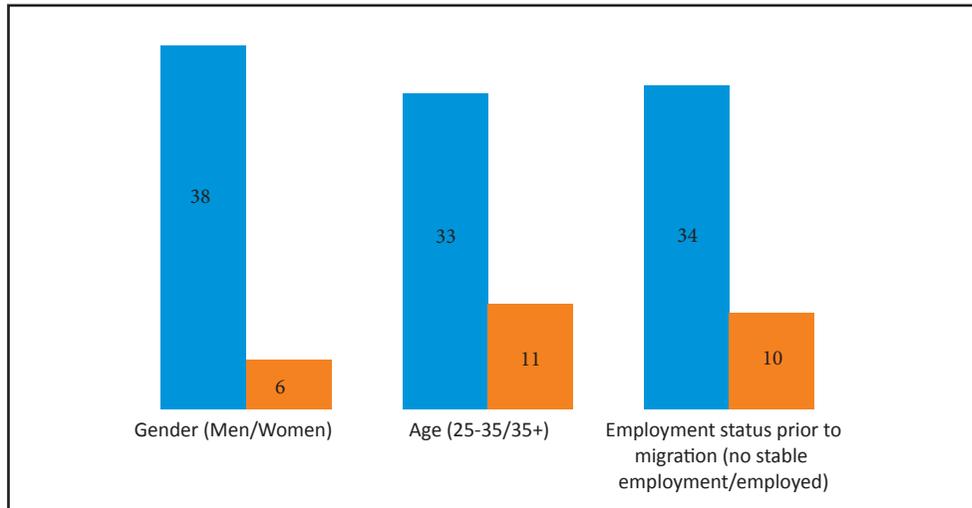
Source: results from the field research

Officials noted the actual number of migrant workers was likely to be much higher taking into account the unknown number of workers who migrate through irregular channels, and gaps in information provided by some recruitment agencies.

#### 4.1 Profile of the workers interviewed

In-depth interviews were conducted with 44 workers who considered their rights to have been violated during the migration process.

**Figure 3. Number of interviewees by gender, age, and employment status**



Source: data from field research

Among workers surveyed:

- 38 were male and six were female.
- Three-quarters of the workers were 25 to 35 years old (N=33), with the remainder being over 35 years old.
- One-quarter belonged to the Hre ethnic minority group (Quang Ngai province) (N=11).
- The majority had returned prematurely from Malaysia and Libya.
- More than three-quarters (N=33) indicated they did not have a stable job in Viet Nam. The main work performed by workers in Viet Nam was in agriculture, with just a fifth (N=9) engaged in other work, such as carpentry or handicrafts.
- Just over half (N=25) had commenced, and around just over a tenth (N=6) had completed, upper secondary education. The remainder had primary education or lower secondary education.

#### 4.2 Experiences with complaint mechanisms in practice

The 44 migrant workers interviewed were selected because they reported to have experienced difficulties during the migration process. Issues had arisen at various stages during the migration cycle, including prior to departure, while living abroad, and upon return. When seeking to lodge a complaint, interview results indicate that workers struggled to navigate the process. Further, when a complaint was lodged, both complainants and local authorities felt they had difficulty in managing the complaints process.

Almost one in three (N= 13) interviewees decided not to proceed with making a complaint due to a lack of knowledge of where, or how, to lodge it, or due to a belief that the complaint would not be given due consideration. Other barriers identified during interviews included a lack of understanding by migrant workers of their rights, including rights under the complaints process, or fear of an adverse response from their employer in their destination.

#### **4.2.1 Nature of the complaints**

##### **Pre-departure**

Loans incurred by workers to facilitate migration were as high as VND30 million (US\$1,405), however, the costs involved did not guarantee deployment. Almost one in five (N=8) workers interviewed indicated that despite making payments to recruitment agencies they had neither been deployed, nor had payments refunded, 12 months on.

Workers interviewed directed concerns to communal People’s Committees or recruitment agencies. Communal People’s Committees often provided support to the workers to assist in resolving the issues, or directed complaints to recruitment agencies. It was noted that Chairpersons of communal People’s Committees would also accompany workers to recruitment agencies in other provinces to request the consideration of complaints, or would send requests for support to provincial and central officials. The positive experiences of interviewees in dealing with People’s Committees suggest that they are perceived as trusted and accessible contact points for workers seeking to make complaints, and that they therefore have an important role to play in the complaints process.

Many of those interviewed spoke of difficulties in completing paperwork due to low levels of education, and limited access to recruitment agencies, which were often based in other provinces.

##### **Working abroad**

Noting that all workers interviewed were identified as having experienced issues during the migration process, the vast majority (nine out of ten workers; N=40) were disappointed with their migration experience (see Table 10 below). The key issue identified by workers interviewed was a discrepancy between contractual arrangements in Viet Nam, and actual working conditions abroad.

**Table 10. Problems experienced by migrants interviewed**

<b>Problems experienced</b>	<b>Percentage interviewed</b>
Lower salaries than agreed	100
Longer hours than agreed	95
Insufficient food, accommodation, utility arrangements	90
Differences in work agreed to undertake and work performed	80
Occupational, health and safety concerns	75
Safety and security concerns	50
Personal documents stolen	7

Source: data from field research

All workers interviewed were paid salaries significantly lower than stipulated in their employment contract, which in some cases were lower than subsistence levels in the destination country, meaning they had to return home early. More than nine out of ten workers were required to work longer hours than agreed to and nine out of ten workers also experienced issues with arrangements regarding food, accommodation or utilities.

Discrepancies between the work undertaken in the destination country, and type of job agreed to prior to departure, were reported by four out of five interview participants. In instances where workers interviewed attempted to address this, it was met with a negative reaction from their employer. There were multiple reports of interviewees being sent home for requesting days off, even though this had been agreed under employment contracts.

All workers interviewed felt that the jobs, salaries and working hours performed overseas should be equivalent to the commitment made prior to departure. In light of the concerns raised about working conditions abroad, this statistic is unsurprising, but is nevertheless a violation of a legal contract.

Half of the workers interviewed also reported concerns regarding safety and security, including physical or verbal abuse from their employer, with three out of four workers reporting occupational health and safety issues arising from work in hot or hazardous workplaces, while one in fifteen workers reported having personal documents stolen.

A significant majority of workers interviewed faced challenges in communicating with key individuals and organizations in Viet Nam, with more than four out of five reporting difficulties contacting recruitment agencies or their families while overseas. Despite the legal requirement that recruitment agencies advise workers of the role of Labour Management Sections operating within Vietnamese diplomatic missions abroad, the majority of interviewees were unaware of their existence or functions. The majority of workers nevertheless felt that these services should have been available, with more than four out of five of those interviewed considering the overseas presence of local stakeholders, for example recruitment agencies, to be important, particularly given language barriers faced by workers when interacting with foreign employers.

When interview participants did raise concerns with foreign employers or recruitment agencies during deployment, many were not prepared to do so in writing for fear of an adverse response from their employer, with reduced hours, reduced payment or loss of employment being among the deterrents. Given concerns about losing employment, workers may have perceived loss of their deposit upon return to Viet Nam as a further potential risk, in the event recruitment agencies refused to liquidate contracts on the basis workers had breached the terms of their employment. As a key motivation for migrant workers to move abroad is the prospect of employment opportunities, particularly increased income for their family, and an ability to pay off debts, such considerations were likely to have been decisive factors in dissuading workers from making complaints.

### **Reintegration**

More than four out of five (N=37) of those interviewed were still in debt, and one in ten (N=4) had sold land or livestock to repay their loan. Only one in four (N=11) were able to find local employment upon return, or had moved elsewhere to gain employment. Issues were also identified with recruitment agencies failing to liquidate contracts appropriately upon workers' return, meaning that deposits

could not be recovered, including for workers returning from Libya due to political unrest.

Relatedly, other workers interviewed reported seeking to reclaim deposits from recruitment agencies when returning prematurely through no fault of their own, with DOLISA's assistance. However, in a number of cases DOLAB's advice was that workers had mistaken a broker or service fee for the deposit and could not reclaim the funds. This highlights the importance of workers being clearly informed by recruitment agencies about payments they are required to make, the purpose of these payments, and the need for receipts provided by recruitment agencies to clearly reflect this. It also suggests that certain recruitment agencies are failing to fulfil their ongoing responsibilities to workers after deployment, or are focussed on obtaining fees from workers to the detriment of robust recruitment and selection processes and ensuring migrants are equipped for working overseas.

A further issue relating to costs arose where migrant workers were required to return early after failing to meet health requirements abroad, despite passing health checks in Viet Nam prior to departure. In many such cases, both recruitment agencies and the health facilities refused to take responsibility for this issue, leaving workers at a significant financial disadvantage.

**Box 2**  
**The experiences of workers: what can go wrong?\***

The field research revealed that migrant workers moving abroad can suffer serious issues during the migration process, which can impact on their physical safety, health and ongoing financial security. Here is a snapshot of a few of these stories.

**Vinh:** Although suffering from kidney stones, Vinh was assessed as fit to travel to Malaysia under a 12-month contract. Upon arriving in Malaysia, Vinh had to self-fund his medical expenses and ultimately had to return prematurely to Viet Nam. He is still in debt for the loan he took out to fund his travel.

**Van:** Van was accused of stealing money from his employer. Van was arrested by police and detained for two months before being deported to Viet Nam. He received no support during his detention.

**Ha:** Ha's son migrated to Malaysia for two years in 2004. He could only borrow VND5 million (US\$235) and so had to borrow from relatives to pay the VND22 million (US\$1,034) owing to the recruitment company. At the time of interview Ha's son still owed VND20 million (US\$940).

*\*Names of workers have been changed.*

Source: field research

#### **4.2.2 Process for making a complaint**

Workers interviewed who lodged a complaint generally used more than one channel to do so. All of the interviewees who lodged a complaint telephoned their licensed recruitment agency. Most complainants followed through on complaints, with seven out of ten (N= 30) following up with a written complaint to their recruitment agency or local authorities.

Other means used by interview participants to raise issues included visits to the recruitment agency (one in four workers; N=10), communal People's Committees (three out of five workers; N=27), district People's Committees and provincial DOLISA offices (two out of five workers; N=19) or public security agencies (one in six workers; N=7). Some interview participants also sent letters to courts (one in five workers; N=9). One quarter of those interviewed sent multiple requests.

The fact that workers often sent multiple complaints suggests they were unsure of where complaints should be directed, or authorities were unresponsive. However, it also highlights possible difficulties for authorities when complaints are directed through multiple channels for resolution.

**Table 11. Complaint channels for migrants interviewed**

Means of making a complaint	Percentage interviewed N = 44	
Telephone call to recruitment agency	100	44
Letter to recruitment agency/local authority	70	30
Visit to communal People’s Committees	61	27
Visit to district People’s Committees/provincial DOLISA offices	43	19
Letter to DOLAB	25	11
Visit to recruitment agency	23	10
Courts	20	9
Visit to public security agencies	16	7

Source: data from field research

A further issue identified during the interviews was difficulty in compiling evidence to support a claim. This may have been due to the absence of a written contract because employment contracts were not prepared in Vietnamese, discrepancies between contracts signed by workers in Viet Nam and those provided in the destination country, or other issues such as limited language proficiency. One worker indicated that the staff they dealt with encouraged them to abide by the employment contract, despite the worker’s concerns.

Approximately one in three workers (N=13) interviewed who had submitted a complaint received a response. However, all of that group felt that the complaint was not settled to their satisfaction. This suggests not only that the existing complaints process needs to be improved to ensure complaints are acknowledged, but also that the system itself is unresponsive to the needs of workers.

**Box 3  
Where is my son?**

**Vietnamese worker still missing in Malaysia after eight years**

Trang,\* then 32, was reported missing while working in Malaysia in November 2006.

Born to a farming family in Thach Ha District in the central province of Ha Tinh, Trang set forth on a new career path in Malaysia in 2003 hopeful of changing his life.

According to his father, Trang had to pay VND24 million to move abroad (US\$1,650 at the 2003 exchange rate) for fees and orientation courses. The entire amount – which was a fortune for a farmer – was borrowed from his extended family.

Trang was sent to work in Kuala Lumpur by a recruitment agency and vocational school. Between 2003 and 2006, Trang sent home a total of VND11 million (US\$680, at the 2006 exchange rate).

In November 2006 Trang’s family was informed by his friends that Trang was missing. Upon receiving this news Trang’s family met with, and sent an official request for assistance to, Trang’s recruitment agency. The recruitment agency advised Trang’s family that Trang “illegally ran away from his workplace” but failed to explain how they came to that conclusion or where Trang was “hiding”.

Trang's family sent a subsequent complaint later that month to Ha Tinh DOLISA and the recruitment agency and vocational school. Having failed to receive a response, in February 2007 Trang's family sent a further complaint to each of these organizations and in March 2007, wrote again, this time to the Prime Minister, MOLISA and the recruitment agency.

After Trang's family sent a further complaint to MOLISA in July 2007, the case was transferred to MOLISA's DOLAB that requested that the recruitment agency expend more effort on Trang's case.

Further responses from the recruitment agency and authorities failed to address questions raised by Trang's family as to where he was, where his personal belongings were and who was responsible for his disappearance. Not giving up, the family kept sending complaints over and over again.

In 2008 and 2009, the recruitment agency gave Trang's family a total of VND36 million (US\$2,100 at the 2009 exchange rate) as financial support and completed Trang's contract liquidation. At the time of interview, over ten years after his initial departure, no more information on Trang's fate had been revealed despite his family filing complaints each year.

"I don't have much time left in this world, my only wish is to get a confirmation from the authorities on whether my son is still alive or already dead," said Trang's father, now nearly 90. "If he has already passed away, I will ultimately have to set up an altar to worship him before I myself lie down."

*\*Name of worker has been changed.*

Source: field research

### **Local authorities**

As a key contact point for aggrieved migrant workers, the experience of local authorities in facilitating the resolution of complaints was an important element of the field research.

Reiterating the responses from workers interviewed, local authorities interviewed perceived that many workers were unaware of their rights and responsibilities or how to make a complaint. They were also unaware of the relevant authorities able to assist in complaints resolutions, and workers were generally considered to have low education and skills levels, a perception likely to have been compounded in the case of female migrants given their increased likelihood of performing low-skilled work abroad.

Local officials perceived recruitment agencies as unwilling to fulfil responsibilities owed to migrant workers after deployment, and as unwilling to work with local authorities to resolve issues for workers when they arose. These issues were compounded by the fact that recruitment agencies were often not located in the provinces where workers lived. Responses suggested that there should be regular inspections of recruitment agencies' practices to ensure compliance with their obligations to workers.

Officials interviewed also reported a lack of coordination across relevant government agencies and other stakeholders and a lack of clear guidance on how to manage complaints. They also considered that sanctions issued for violations were often not strong enough. The Chairperson of the People's Committee in one commune noted that in seven serious cases where significant debts had been incurred by workers who had not been placed abroad, workers had written to the Hoan Kiem District Court three times but had failed to receive a response. There were also conflicting reports from officials regarding whether complaints claimed to have been submitted had actually been received by agencies. This further highlights deficiencies in the complaints process, whether regarding the ability of

workers to effectively make and direct a complaint to the relevant authority, or regarding the capacity of competent authorities to manage the complaint.

Officials also spoke of the risks created for workers in dealing with unlicensed recruitment agencies, including vulnerability to human trafficking.

#### **Box 4**

##### **No money, no return**

**The family of a Vietnamese worker in Malaysia was forced to pay their son's recruitment agency so that he could return home after a serious work accident.**

*Ngu's\* story is illustrative of the range of problems migrant workers may encounter including underpayment and injury. It also highlights the lack of support some workers receive from their recruitment agency when they face issues abroad and how an unresolved complaint can lead to financial hardship.*

Ngu from Thieu Hoa District in Thanh Hoa, was deployed to work in Malaysia in March 2013 by a recruitment agency. Under his contract, Ngu's basic salary was 35 Malaysian ringgit (MYR) (US\$9.60) for an eight hour day. However, Ngu worked up to 12 hours a day without overtime compensation.

Ngu had a work accident 27 days after leaving Viet Nam. According to Ngu, his employer did not send him to the hospital after the accident happened, but left him in pain for another four hours. As a result, two of Ngu's fingers were irreversibly damaged. As treatment, he was given medication to take for five days.

Unable to continue working and with no money, Ngu called home to seek help. When his family contacted his recruitment agency in Thanh Hoa, they requested Ngu's family pay an extra VND13 million (US\$630) to cover his air ticket, as they argued that Ngu had broken his contract.

Ngu's family paid the money as requested in May 2013, hoping their son could be brought home as soon as possible for treatment. They also sent a complaint to their commune's People's Committee, which was elevated to the People's Committee of Thieu Hoa District.

In June 2013, the district People's Committee sent an official letter requesting action to DOLISA in Thanh Hoa Province, and DOLAB. A week later, Thanh Hoa's DOLISA wrote to DOLAB, requesting that the recruitment agency send staff to Malaysia to settle the case. DOLAB then sent an official request to the agency.

Two months after paying the extra money, however, Ngu was still in Malaysia. In July 2013, his family filed another complaint to Thanh Hoa's DOLISA, which again forwarded the case to DOLAB. The authority sent a further letter to the recruitment agency, requesting that they settle the case and bring Ngu home.

Ngu finally arrived in Viet Nam over two months after his family paid the agency additional money to cover his airfare, and three months after the accident. He was hospitalized for treatment, costing him another VND40 million (US\$1,950). His injury was left untreated for too long and his health was permanently affected.

At the time of interview, Ngu's family had not received a refund, and Ngu's case has still not been brought before the courts.

*\* Name of worker has been changed.*

Source: field research.

### **4.3 Analysis of field research**

The results from the field research confirm that when an issue occurs abroad, it can arise at any stage of the migration process. It was found that more than four out of five workers (N=37) were still suffering financially from the negative effects of migration, and remained in debt, thereby actively negating the overarching policy objective of migration as a means of reducing poverty, as well as entrenching, rather than improving, financial difficulties for migrant families. Reports from workers that they received lower salaries in destination countries than agreed in Viet Nam, were charged high recruitment costs, and had difficulties in finding employment upon their return to Viet Nam, are likely explanations as to why high debt levels were reported.

Official statistics show that the proportion of women migrant workers from Viet Nam is significantly higher than the proportion of women interviewed, with only six women identified for participation in the interviews. Further research needs to be conducted to consider the experiences of women migrants, including whether they may be more reluctant or face more obstacles in voicing complaints than men. This would be of concern, considering the particular vulnerability of women to exploitation, and the impact of negative migration experiences on long-term financial security and employment prospects. It is imperative that further research be undertaken with a larger sample size of women, in order to assess gender specific issues that may be pertinent to the complaints process.

Many workers interviewed indicated that they did not have access to specific information about their employer or workplace prior to migrating, suggesting there may be a correlation between false information or poor access to information prior to departure, and the likelihood of an issue arising. While this lack of understanding or access to information maybe exacerbated by low education or skills levels, this only serves to highlight the importance of ensuring pre-employment and pre-departure education is reliable and tailored to the skills and education levels of prospective migrants. Importantly, it should include sufficient information for workers regarding key terms and conditions of their employment, their rights and responsibilities under relevant legislation, and the availability of support mechanisms abroad, such as Labour Management Sections.

The results from the interviews suggest that problems most often relate to key aspects of the employment relationship or work conditions, such as safety, salaries or working hours. Notably, all workers interviewed were paid salaries lower than advised prior to departure. Inflated costs charged by recruitment agencies were also identified as an issue.

Overall, the number of complaints made to DOLAB is small in comparison to the number of workers moving abroad each year. When viewed in context of national legislation, practical issues faced by Vietnamese workers in progressing complaints and when compared with data from other countries of origin, this is unlikely to be due to a lack of problems faced by migrant workers. Rather, it suggests a systemic problem with the complaint mechanism, and that workers are not lodging official complaints. This could be because of the limited coverage of legislation and regulations, because of concerns about the consequences of making a complaint, because of a lack of awareness or lack of clarity as to the appropriate complaint mechanism for doing so, or because of a perception that a resolution of the complaint is unlikely. This is supported by the field research where almost a third of the workers interviewed did not proceed with complaints, either because they did not think it would receive support, or because they did not know where, or how, to submit it.

Notably, all complaints made were directed to the recruitment agency in the first instance, with People's Committees also being common choices for follow-up complaints. The fact that only one in three workers who made a complaint (N=10) received a response, and all of those who received a response were unsatisfied with the outcome, further underscores the underlying issues with the institutional framework. A lack of responsiveness from recruitment agencies could be explained by an unwillingness to engage on issues that reflect negatively on their operations, or that could uncover systemic issues; a lack of incentive to provide assistance when service fees have already been received; or that they are not compelled to fulfil their responsibilities. While recruitment agencies are the immediate contact point for workers when experiencing issues, the fact that their complaints are not being resolved through this channel casts doubt over the likely effectiveness of the new first-time complaint mechanism provided in Decree No. 119, unless internal processes within recruitment agencies are strengthened. In this regard, VAMAS can play a key role in supporting recruitment agencies in managing migrant worker complaints, building on the work already undertaken through its Code of Conduct. The attitude of recruitment agencies also suggests that there are insufficient resources being directed by government and recruitment agencies towards enforcement of relevant laws, with the result that there is lack of concern among unscrupulous recruitment agencies that they will be held to account for violations committed against workers.

A failure by authorities to respond to complaints could be explained by a number of factors. Migrant workers may not be able to provide sufficient information to enable complaints to be considered, indicating they require additional assistance to complete or obtain, relevant documentation. Alternatively, limited resources or low awareness of issues faced by migrant workers may mean low priority is given by officials to responding to migrant worker complaints. Officials may also be unsure of how to manage complaints, particularly given the complex issues involved, and have difficulties liaising with unresponsive recruitment agencies.

The field research highlights the adverse impact that a lack of clarity around processes or coordination between stakeholders may have on the outcome of a complaint, as evidenced by the length of time taken to resolve complaints, the number of authorities involved in managing a complaint or supporting complainants, and the satisfaction of complainants themselves.

## Conclusion

The introduction of the Law on Vietnamese Workers Working Abroad Under Contract and Decree No. 119, was a positive step in establishing a specific mechanism to allow migrant workers to bring complaints. However, the fact that different complaint mechanisms apply to different groups of workers is notable, and complaint mechanisms need to be enhanced and the process for making complaints streamlined.

Decree No. 119 explicitly does not apply to workers migrating through a state-owned recruitment agency, or under a contract negotiated directly with an employer. Irregular migrants are also generally not covered by formal means of recourse. The development of the Circular to accompany Decree No. 119 is an opportunity for additional clarification of key provisions such as the evidentiary requirements for making a complaint, and responsibilities of recruitment agencies in managing a complaint against them.

Qualitatively assessing data on complaints and responses issued under Decree No. 119, by recruitment agencies and DOLAB, would be helpful in assessing the Decree's effectiveness, including uncovering any gender specific issues. This would complement the new DOLAB database established to record, and track, migrant worker complaints. Furthermore, qualitative assessment could reveal information regarding the effectiveness of the first-time complaint mechanism including determining if recruitment agencies are dedicating appropriate resources to the management of complaints, the extent to which they are making evidence available to workers to support their claims, and how many second-time complaints are progressed to DOLAB.

There are practical challenges experienced by workers and government officials in managing complaints, even where there is genuine intent for them to be resolved satisfactorily. The development of guidance material for key parties involved in the complaint making process would greatly assist. Detailed operational guidelines would bridge the gap between the good intentions of the legislation and their practical realization. This is particularly important given the number of enterprises the state owns, or has a partial stake in.

For workers, guidance material could outline who to contact; evidence needed to make a complaint or where to seek assistance to obtain it; and the overall process for making a complaint. For local officials, guidance could focus on their role in managing a complaint, the roles and responsibilities of other competent authorities and recruitment agencies, how to tailor their approach for different workers, such as those who migrate to different destinations or through a variety of channels (for example, workers who have been sent abroad by a recruitment agency or who have negotiated a contract directly with an employer), and how to handle complaints made jointly by workers. The field results also suggest that

strengthening coordination efforts in the management of complaints, both between local, provincial and central authorities, as well as recruitment agencies, would result in tangible benefits for migrant workers and other stakeholders.

The responsibilities of recruitment agencies to assist workers, local authorities to resolve complaints and central authorities to compel enterprises to respond to complaints needs to be clarified. In the absence of effective enforcement, there is limited incentive for recruitment agencies to assist in the process; additional consideration should be given to the sanctions for failing to provide information in a timely and transparent manner. Coupled with the continued promotion of best practice by recruitment agencies through the VAMAS Code of Conduct, a system of effectively enforced sanctions would reinforce the importance of strong and accountable recruitment practices.

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## **Complaint mechanisms for migrant workers: An overview of law and practice in Viet Nam**

The ability of Vietnamese migrant workers to access complaint mechanisms is an issue which continues to receive increasing attention. Problems can arise from the time a prospective migrant worker begins to consider moving overseas, and may continue even after they return to Viet Nam, creating complex challenges for stakeholders. Although it is understood that migrant workers and authorities alike face issues in managing complaints, to date there has been no assessment of the efficacy of the institutional framework that supports the complaints process in Viet Nam. To assist in addressing this, the International Labour Organization cooperated with the Ministry of Labour, Invalids and Social Affairs and the Viet Nam Association of Judicial Support for the Poor to undertake research into the operation of complaint mechanisms for migrant workers in Viet Nam. This research considered both the legislative framework underpinning complaints and the practical experiences of workers and authorities. The research outcomes provide valuable insight into the potential barriers to making and progressing complaints and prompts consideration of ways in which the complaints framework could be enhanced and made more responsive to the needs of migrant workers and authorities.

**The Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project)** is a five-year project that aims to strengthen the formulation and implementation of recruitment and labour protection policies and practices in the Greater Mekong Subregion, to ensure safer migration resulting in decent work. The project is operational in six countries: Cambodia, the Lao People's Democratic Republic, Malaysia, Myanmar, Thailand and Viet Nam. In each country, tripartite constituents (government, workers' and employers' organisations) are engaged in each of the GMS TRIANGLE project's objectives—strengthening policy and legislation, building the capacity of stakeholders and providing services to migrant workers. These goals are interdependent, with policy advocacy and capacity building activities driven by the voices, needs and experiences of workers, employers and service providers.