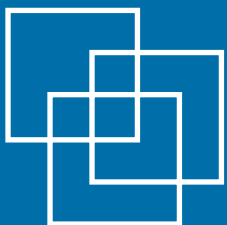




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# Access to justice for migrant workers in South-East Asia





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Benjamin Harkins and Meri Åhlberg



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# Foreword

Labour migration has been an important factor supporting the growth and development of the South-East Asian region, filling labour shortages in countries of destination and providing much needed employment opportunities for workers in countries of origin. However, in spite of the vital role women and men migrant workers play in increasing the region's labour market efficiency, they are often subjected to abuses during recruitment and employment and are unable to make use of the social protection benefits to which they are entitled.

Barriers to accessing formal assistance are one of the key reasons why migrant workers are vulnerable to labour rights violations during recruitment and employment. Due to the challenges they face in seeking help through official channels, migrant workers often turn to informal support networks, even in cases of severe exploitation.

As a result, the data collected on migrant worker complaints within South-East Asia is very limited, particularly in terms of the remedies available. The network of 34 Government, trade union and NGO service providers delivering support services under the Tripartite Action to Enhance the Contribution of Labour Migration to Growth and Development in ASEAN (TRIANGLE in ASEAN programme) have been a great asset in filling this knowledge gap. Based upon extensive delivery of assistance to migrant workers seeking redress for grievances, detailed data was collected on over 1,000 complaint cases resolved.

This dataset has been immensely valuable in providing the International Labour Organization (ILO) with a greater understanding of the effectiveness of the complaint mechanisms available to migrant workers. Analysis of the data will help inform interventions to strengthen the relevant legal and institutional frameworks in ASEAN countries. It also challenges the misperception that the lack of data on complaints means that migrant workers are not faced with exploitative recruitment practices and working conditions.

Building a broad coalition of stakeholders is critical to promoting equality of treatment for migrant workers in South-East Asia. The ILO is committed to supporting governments, social partners, and NGOs in the region to expand access to justice for women and men migrants. Together, we can ensure that the fundamental rights of migrant workers are protected, and that they receive their fair share of the prosperity that they have helped to create.



**Ms Tomoko Nishimoto**

Assistant Director-General and Regional Director for Asia and the Pacific  
ILO Regional Office for Asia and the Pacific

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Comments on the draft report were contributed by Nilim Baruah, Anna Olsen, Kuanruthai Siripatthanakosol, and Oliver Fisher at the ILO Regional Office for Asia and the Pacific; Marja Paavilainen and Anni Santhiago at the ILO Project Office for Malaysia; Nguyen Thi Mai Thuy and Robert Wardle from the ILO Country Office for Viet Nam; and Wai Hnin Po from the ILO Liaison Office for Myanmar. Representatives from government, social partners, and NGOs also provided inputs during the validation of the research. The study was edited by John Maloy and infographics and layout were completed by Nattawarath Hengviriyapanich.

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# Abbreviations and acronyms

ASEAN	Association of Southeast Asian Nations
CSAGA	Center for Studies and Applied Sciences in Gender, Family, Women and Adolescents
DOLAB	Department of Overseas Labour (Viet Nam)
DOLISA	Department of Labour, Invalids and Social Affairs (Viet Nam)
FLCM	ILO Forced Labour Complaint Mechanism
HRDF	Human Rights and Development Foundation
ILO	International Labour Organization
LSCW	Legal Support for Children and Women
M&E	monitoring and evaluation
MOLIP	Ministry of Labour, Immigration and Population (Myanmar)
MOLSW	Ministry of Labour and Social Welfare (Lao People's Democratic Republic)
MOLVT	Ministry of Labour and Vocational Training (Cambodia)
MOU	memorandum of understanding
MRC	Migrant Worker Resource Centre
MTUC	Malaysian Trades Union Congress
MWAC	Migrant Worker Assistance Centre
NGO	non-governmental organization
PDOLVT	Provincial Department of Labour and Vocational Training (Cambodia)
SOMO	Centre for Research on Multinational Corporations
TRIANGLE in ASEAN	Tripartite Action to Enhance the Contribution of Labour Migration to Growth and Development in ASEAN
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNDESA	United Nations Department of Economic and Social Affairs
VAMAS	Viet Nam Association of Manpower Supply





# Executive summary

## Introduction

There are estimated to be 20.2 million migrant workers originating from South-East Asia, nearly 6.9 million of whom migrated to other countries within the region (UNDESA, 2015). Although the labour rights and social protection benefits established for these workers are in many cases the same as nationals under law, they frequently experience unequal and discriminatory treatment in practice. The problem is compounded by ineffective mechanisms for resolving migrant worker complaints in most South-East Asian countries, which do not provide an accessible means for reporting and denouncing abuses when they occur.

Since 2011, the International Labour Organization's (ILO) TRIANGLE in ASEAN programme has supported the operation of Migrant Worker Resource Centres (MRCs) in Cambodia, the Lao People's Democratic Republic, Malaysia, Myanmar, Thailand, and Viet Nam. As part of the MRC service model, legal assistance is provided to migrant workers and members of their families. This allows migrants to seek redress for abuses during recruitment and employment, and to utilize the social protection benefits to which they are entitled.

This report provides a regional analysis of complaints data obtained by MRC legal service providers from 2011 to 2015. The dataset was analysed for utilization, subject of complaint, mechanism of resolution, duration for resolution, remedies awarded (including financial compensation), and sanctions ordered. In total, over 1,000 complaint cases – involving more than 7,000 women and men migrant workers – were analysed. As the data can only be meaningfully interpreted within context, the legal framework and operation of administrative complaint mechanisms in each of the six countries was also reviewed.

## Normative framework

A number of ILO and United Nations Conventions call for establishing complaint mechanisms for migrant workers. In its technical cooperation guidance, the ILO indicates that complaint mechanisms should be based on a differentiated

approach, allowing for settlement among the concerned parties before choosing adjudication. Although some countries require that recruitment and labour rights complaints are filed in labour courts, this often contributes to an expensive, prolonged and excessively legalistic process for settlement. Establishing an administrative grievance procedure to supplement adjudication in court can provide a more efficient system for resolving complaints (ILO, 2007).

Following these standards and guidelines as the normative model for complaint mechanisms, data was collected for “cases” resolved through a wide range of different methods. This included informal mediations, administrative orders and court hearings, as well as cases that were closed without reaching resolutions. Remedies obtained and sanctions applied were similarly broadly defined to capture the diversity of outcomes resulting from complaint cases.

## Utilization of complaint mechanisms

Of the 7,643 complainants who resolved complaints through MRC assistance, the largest portion were in Thailand (56 per cent). For the 1,014 complaint cases closed, Cambodian MRCs handled the most overall (n=490). Although constituting only a relatively small number of resolutions relative to the offenses thought to be taking place, the grievances resolved in Viet Nam (n=75) and Myanmar (n=26) represent a significant breakthrough, as access to justice for migrant workers in these countries is limited.

Overall, there was close to an equal number of women and men complainants assisted, however, there remain major disparities between countries. In countries of origin (Cambodia, Myanmar, Viet Nam), more than 67 per cent of complainants assisted were men. The majority of women who resolved complaints were in Thailand, accounting for two-thirds of all female complainants.

A major reason for the success in providing services to women migrants in Thailand are the partnerships formed with NGOs to provide gender-responsive services at MRCs, which was also the case in Cambodia and Malaysia. In total, 81 per cent of the women assisted in resolving their complaints went to MRCs managed by local NGOs, whereas 47 per cent of men did.

## Subject of complaints

Overall, the most common subject of migrant worker complaints was delayed deployment/jobs not provided as promised (35 per cent), which is a recruitment-related abuse predominantly faced in countries of origin. Recruiting for non-existing jobs is a common fraudulent practice by recruitment agencies, despite violating state laws and regulations.

The most frequent type of complaint in destination countries was non-payment and underpayment of wages (31 per cent). For migrant workers, one of the primary motivations to seek employment abroad is to increase their income. Therefore, wage violations provide a strong motivation to overcome the fear of reprisal for lodging complaints.

In total, 21 per cent of complaint cases were related to wages below the legal minimum. This type of grievance has become more common in recent years due to the enactment of highly publicized minimum wage legislation in Thailand and Malaysia. Establishing a clear statutory minimum has provided an important means for migrant workers to assert their labour rights, however, it is important to note that not all migrants are covered under these laws due to sectoral exclusions.

## Mechanism for resolution

Administrative hearings were the most common method used to resolve migrant grievances regionally (59 per cent). This was particularly the case in Cambodia, where the administrative mechanisms accounted for 82 per cent of all cases closed. As a result, all cases in Cambodia were resolved without court hearings, which can be interpreted as a positive result in providing responsive channels for settlement.

In Thailand, a large proportion of cases were dropped without any form of remedy being obtained (28 per cent), the largest share of which were for non-payment or underpayment of wages. There were three main reasons why cases were closed prematurely: (1) complainants discontinuing cases due to fears of retaliation; (2) inability to follow-up because complainants had moved on; and (3) refusal by authorities to pursue the cases further due to insufficient evidence or inability to meet legal or procedural requirements (particularly due to irregular legal status of migrants).

## Time required for resolution

The time period between registering a complaint and settlement is often crucial for migrant workers, as their permission to stay in destination countries is often tied to their employment. Delays in adjudication can mean that they are denied remedies, as migrants must return home regardless of whether a resolution was reached.

In the aggregate, two-thirds of cases were resolved in less than three months, however, this timeframe varied significantly between countries. Malaysia had the longest processing time, with the majority of cases taking four months or longer to resolve (63 per cent). In Cambodia, 80 per cent of complaints were settled in under three months. The severity of the abuses handled in Malaysia can in part explain the extended time period to reach closure but the complaints process can be long and complicated for migrant workers regardless.

## Remedies awarded for complaints

Regionally, the most frequent remedy obtained by migrant workers was the return or provision of identification documents (35 per cent). This included cases in countries of origin, where recruitment agencies failed to deliver passports and visas, as well as in destination countries, where employers unlawfully withheld passports and work permits to restrict mobility.

Financial compensation and reimbursement made up 30 per cent of the remedies provided in complaint cases. However, the majority of “compensation” paid to migrant workers was money owed to them for unpaid wages rather than compensation for harm suffered. It is extremely rare for migrant workers within the region to be awarded additional money in punitive damages for abuse.

A total of US\$1.62 million in compensation was awarded to migrant workers to resolve their complaint cases, the bulk of which was provided for complaint cases in destination countries (73 per cent). This reflects the substantial gap remaining in holding recruitment agencies in countries of origin accountable for violations against migrant workers. Comparison between the mean amount awarded (US\$5,157) and the median amount (US\$668) suggests that the majority of cases resulted in three-figure compensation amounts and a few very large settlements skewed the mean higher.

## Sanction of offenders

In 82 per cent of complaint cases, no sanctions were applied. It can also be assumed that no penalties were enforced for most of the cases where the sanctions were unknown (7 per cent). Given that half of the complaints were resolved by government agencies for the violation of laws and regulations, the scarcity of penalties suggests the need for stricter enforcement alongside greater publicity for the sanctions applied.

The most common type of sanction was an administrative penalty (5 per cent), which was typically a suspension or revocation of a license to operate for recruitment agencies. Malaysia had the largest share of sanctions imposed (24 per cent), which may be due to the large number of outsourcing agencies who are responsible for placing migrant workers with employers in Malaysia. Severe penalties in the form of prison sentences were most frequently handed out in Viet Nam (8 per cent), primarily against unlicensed brokers for human trafficking offenses.

## Conclusion

The results of the study show that measurable progress has been achieved during the last few years in increasing access to justice for migrant workers in some of the countries of South-east Asia. The experience in Cambodia and Thailand in particular demonstrate that holding employers and recruiters more accountable for labour rights violations against migrants is possible.

In spite of these improvements, migrant workers continue to face major obstacles to lodging and resolving complaints in countries of origin. Only the most brazen violations of migrants’ rights are rectified, such as collecting recruitment and documentation fees for non-existent jobs. Everyday abuses, including overcharging migrant workers on recruitment fees and misrepresenting the terms of employment, continue to go unchallenged.

The situation in destination countries is similar, though compounded by language barriers and employer-tied visas and work permits. As a result, most migrant workers do not risk making a complaint unless their livelihoods or basic dignity as human beings are clearly threatened. It is well-understood by migrants that lodging a grievance is likely to mean the end of their employment and thus long-term improvements to wages and working conditions are currently out of reach.

Within the migrant worker population, there are manifest differences between women and men in access to justice for labour rights abuses. Due to the informal and unrecognized nature of much of women's migration and employment within the region, the already limited opportunity that men migrants have to voice their grievances is reduced exponentially. A domestic worker in Malaysia would have to contend with physical isolation, restricted movement, lack of coverage by labour laws and the possibility of being made homeless in attempting to lodge a complaint.

The critical role of NGOs and trade unions in providing an access point for migrants to seek redress is clearly evidenced by the data. These organizations provide the doorway that the majority of migrants walk through when they need assistance. Particularly for women migrants, the overwhelming preference for NGO services highlights their importance in reducing the gender gap in access to justice.

An overall conclusion drawn from the delivery of legal assistance to thousands of migrant workers in South-East Asia is that there is a substantial and largely unmet demand for fair and responsive remedies. Most migrant workers who are faced with situations of exploitation and abuse seek practical resolutions, such as disbursement of unpaid wages, deployment to destination countries and return of identification documents. It is clear that these needs are not adequately met through enforcement of labour and human trafficking laws currently. Expanded efforts are needed to improve the accessibility and effectiveness of complaint mechanisms to ensure that migrant workers are provided with just remedies.



# 1. Introduction

There are estimated to be 20.2 million migrant workers originating from South-East Asia, nearly 6.9 million of whom migrated to other countries within the region (UNDESA, 2015). Although the labour rights and social protection benefits established for these workers are in many cases the same as nationals under law, they frequently experience unequal and discriminatory treatment in practice.

The problem is compounded by ineffective mechanisms for resolving migrant worker complaints in most South-East Asian countries, which do not provide an accessible means for reporting and denouncing abuses when they occur. As a result, only a small number of migrant workers attempt to file grievances with authorities.

Those that do seek assistance tend to make use of the services of civil society organizations or informal help from friends and family rather than official complaint mechanisms. Any settlements reached through these channels are usually limited in legal enforceability and no sanctions are applied as a deterrent against future violations. Similarly, for social security and workers' compensation claims, there is a substantial gap between the benefits provided to migrants within legislation and their actual accessibility to migrants.

Since 2011, the International Labour Organization's (ILO) TRIANGLE in ASEAN programme has supported the operation of Migrant Worker Resource Centres (MRCs) in Cambodia, the Lao People's Democratic Republic, Malaysia, Myanmar,<sup>1</sup> Thailand, and Viet Nam (figure 1). As part of the MRC service model, legal assistance is provided to migrant workers and members of their families to allow them to seek redress for abuses during recruitment and employment and utilize the social protection benefits to which they are entitled.

Through documentation of case studies, there was clear evidence that these services were helping migrants to obtain remedies for their grievances. However, determining the extent was challenging due to the range of government

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<sup>1</sup> MRCs were established in Myanmar in 2014 following political and economic reforms by the Government.



agencies, trade unions, and non-governmental organizations (NGOs) managing MRCs, each using different systems to document their case work. A needs assessment determined that standardized data collection tools were required so that the complaints data could be aggregated and analysed – providing an evidence-base for strategic planning and advocacy efforts.

Rather than organizing a large regional monitoring and evaluation (M&E) training to respond to these needs, over 20 workshops were held with individual MRCs in all six countries to provide them with more direct coaching. This allowed participants to receive tailored support in addressing their knowledge gaps and facilitated a higher level of engagement with the training material. The smaller workshops provided an opportunity for open discussion of questions and concerns, and the completion of practical exercises and role-plays using each implementing partners' own data.<sup>2</sup>

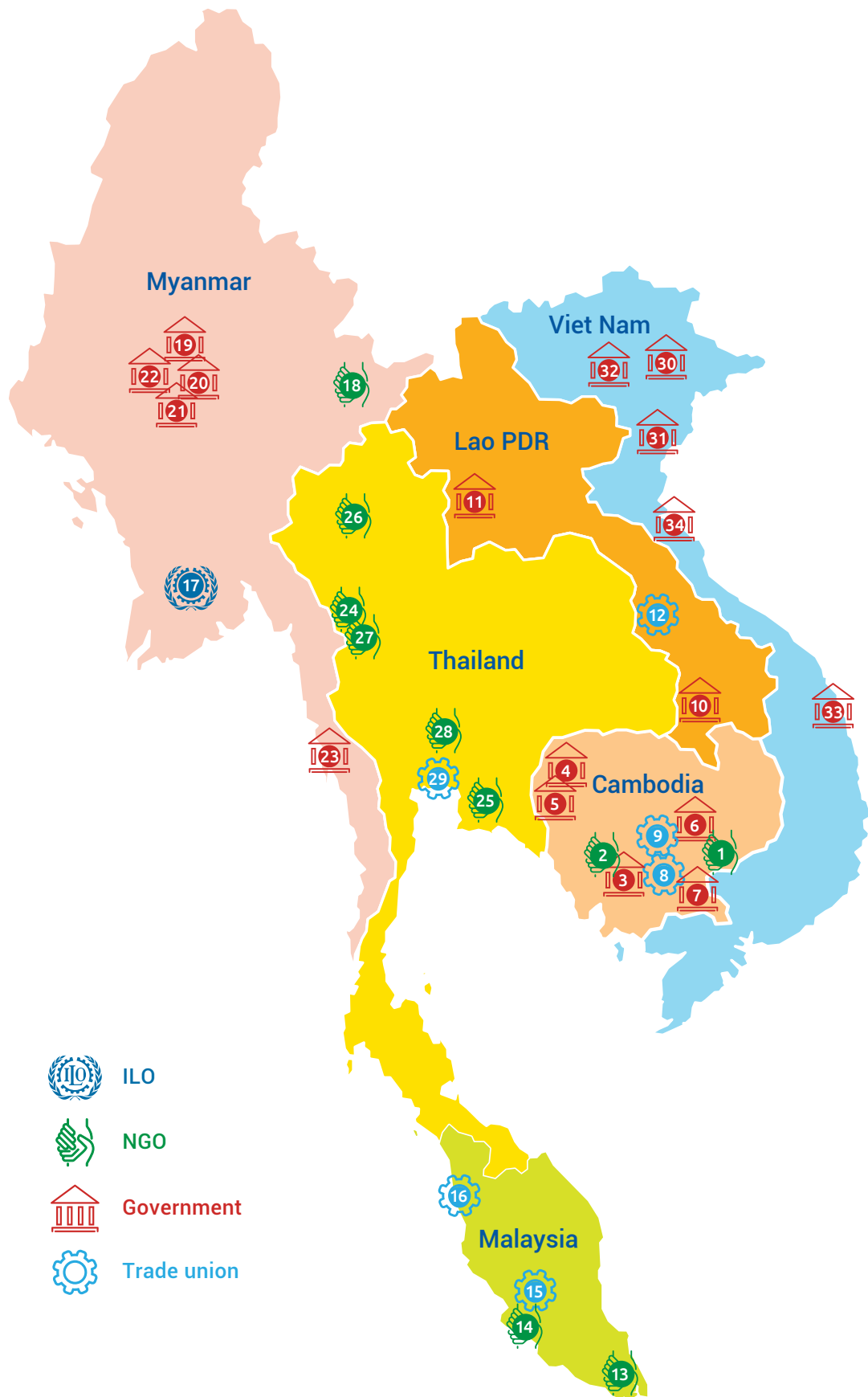
These focused capacity building efforts on M&E have produced substantial results, with implementing partners managing MRCs better able to present a detailed picture of how their activities have protected migrant workers, as well as nurturing their ability to apply a more results-based approach to their work. In total, outcomes for over 1,000 cases involving more than 7,000 complainants were documented across five countries, establishing the largest regional dataset of migrant worker complaints compiled within South-East Asia. This detailed quantitative data, coupled with qualitative case studies for particularly noteworthy cases, has provided a much clearer understanding of the achievements to date and the challenges remaining for migrant workers' access to justice in the region.

This report provides a regional analysis of the complaints data collected by MRCs from 2011-2015. As the data can only be meaningfully interpreted within context, the legal framework and operation of the complaint mechanisms in each of the six countries are also reviewed. The complaint cases are then analysed by the criteria of utilization, subject, mechanism, duration, remedies (including financial compensation), and sanction of offenders, including a gender analysis of disaggregated data for cases involving only women or only men. The report concludes with a brief synthesis of the findings and provides recommendations for improving the accessibility and effectiveness of complaint mechanisms for redress of migrant worker grievances.

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<sup>2</sup> The tools and training materials have been published in the *Monitoring and evaluation guide for migrant worker resource centres*, available on the ILO website.

Figure 1. Map of MRC legal assistance service providers (2011–15)



## Cambodia

- 1 Phnom Srey Organization for Development, Kampong Cham (NGO)
- 2 Legal Services for Children and Women, Phnom Penh (NGO)
- 3 Department of Employment and Manpower, Phnom Penh (Government)
- 4 National Employment Agency Job Centre, Battambang (Government)
- 5 Provincial Department of Labour and Vocational Training, Battambang (Government)
- 6 Provincial Department of Labour and Vocational Training, Kampong Cham (Government)
- 7 Provincial Department of Labour and Vocational Training, Prey Veng (Government)
- 8 Cambodian Labour Confederation, Prey Veng (Trade union)
- 9 National Union Alliance Chamber of Cambodia, Phnom Penh (Trade union)

## Lao People's Democratic Republic

- 10 Provincial Department of Labour and Social Welfare, Champassak (Government)
- 11 Provincial Department of Labour and Social Welfare, Xaiyaboury (Government)
- 12 Lao Federation of Trade Unions, Savannakhet (Trade union)

## Malaysia

- 13 Tenaganita, Johor (NGO)
- 14 Tenaganita, Kuala Lumpur/Selangor (NGO)
- 15 Malaysian Trades Union Congress, Kuala Lumpur/Selangor (Trade union)
- 16 Malaysian Trades Union Congress, Penang (Trade union)

## Myanmar

- 17 Forced Labour Complaint Mechanism, Yangon (ILO)
- 18 Mawk Kon Local Development Organisation, Kyaing Tung (NGO)
- 19 Labour Exchange Office, Mandalay (Government)
- 20 Labour Exchange Office, Kyaukse (Government)
- 21 Labour Exchange Office, Meiktila (Government)
- 22 Labour Exchange Office, Myingyan (Government)
- 23 Labour Exchange Office, Dawei (Government)

## Thailand

- 24 Human Rights and Development Foundation, Mae Sot (NGO)
- 25 Foundation for AIDS Rights, Rayong (NGO)
- 26 MAP Foundation, Chiang Mai (NGO)
- 27 MAP Foundation, Mae Sot (NGO)
- 28 Thai Allied Committee with Desegregated Burma, Bangkok (NGO)
- 29 Thai Trade Union Congress, Samut Prakan (Trade union)

## Viet Nam

- 30 Department of Labour, Invalids and Social Affairs, Bac Ninh (Government)
- 31 Department of Labour, Invalids and Social Affairs, Ha Tinh (Government)
- 32 Department of Labour, Invalids and Social Affairs, Phu Tho (Government)
- 33 Department of Labour, Invalids and Social Affairs, Quang Ngai (Government)
- 34 Department of Labour, Invalids and Social Affairs, Thanh Hoa (Government)



## 2. Research methodology

Case data was collected from MRC service providers over a four-year period from May 2011 to May 2015 (table 1). MRCs delivering legal assistance maintained their individual approaches to case management but were trained on completing a standard form to document outcomes when a case was closed (see appendix I). At the end of the first phase of the TRIANGLE in ASEAN programme, the outcome forms were submitted to the ILO for cleaning and analysis using SPSS Statistics. Qualitative case studies were regularly documented in technical progress reports by MRCs as well as collected through primary research.

Table 1. Complaint cases resolved by service providers (n=1,014)

Service provider	N
<b>Cambodia</b>	<b>490</b>
Legal Services for Women and Children (NGO)	40
National Union Alliance Chamber of Cambodia (Trade union)	21
Provincial Department of Labour and Vocational Training Battambang (Government)	25
Provincial Department of Labour and Vocational Training Kampong Cham (Government)	319
Provincial Department of Labour and Vocational Training Prey Veng (Government)	17
Department of Employment and Manpower (Government)	68

Service provider	N
<b>Malaysia</b>	<b>263</b>
Malaysian Trades Union Congress (Trade union)	13
Tenaganita (NGO)	250
<b>Myanmar</b>	<b>26</b>
Mawk Kon Local Development Organisation (NGO)	7
Forced Labour Complaint Mechanism (ILO)	19
<b>Thailand</b>	<b>160</b>
Human Rights and Development Foundation (NGO)	39
Migrant Assistance Programme (NGO)	101
Thai Trade Union Congress (Trade union)	20
<b>Viet Nam</b>	<b>75</b>
Department of Labour, Invalids and Social Affairs Bac Ninh (Government)	22
Department of Labour, Invalids and Social Affairs Ha Tinh (Government)	12
Department of Labour, Invalids and Social Affairs Phu Tho (Government)	3
Department of Labour, Invalids and Social Affairs Quang Ngai (Government)	19
Department of Labour, Invalids and Social Affairs Thanh Hoa (Government)	19
<b>Total</b>	<b>1 014</b>

## 2.1 Research validation

In January 2017, a regional validation workshop was held in Bangkok, Thailand for stakeholders to review the research findings. The workshop brought together a diverse group of nearly 70 migration experts from governments, recruitment agency and employer associations, trade unions, NGOs, and UN agencies from six countries.

In addition to providing feedback on the results, the workshop participants worked in small groups by organizational type to develop recommendations for applying the research findings to improve access to justice for migrant workers. These recommendations were recorded and used in revising the report for publication. They will also help to shape the interventions of the TRIANGLE in ASEAN programme in strengthening the policy and implementation of complaint mechanisms at regional and national levels within South-East Asia.



### 3. Normative framework

A number of ILO and United Nations Conventions call for establishing complaint mechanisms for migrant workers, including the Forced Labour Convention, 1930 (No. 29) and the 2014 Protocol to the Forced Labour Convention, 1930; the Migration for Employment Convention (Revised), 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Private Employment Agencies Convention, 1997 (No. 181); and the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, 1990.

Another key ILO instrument for encouraging member States to make complaint mechanisms widely available to migrants is the non-binding Multilateral Framework on Labour Migration. The Framework encourages governments to implement “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” (ILO, 2006, p. 21).

More recently, the ILO developed a set of general principles and operational guidelines for fair recruitment, which provide additional guidance on complaint mechanisms. Principle 13 of the document states that “Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred” (ILO, 2016a).

Reflecting many of these same principles, the Association of Southeast Asian Nations (ASEAN) adopted the Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration) during the 12th ASEAN Summit in 2007. Obligations seven and nine within the Cebu Declaration require destination countries to facilitate access to justice for migrant workers, though it does not explicitly state that irregular migrant workers should be granted the same rights. The protection afforded to irregular migrant workers has been a key issue of contention in drafting a regional instrument to realize the principles outlined within the Cebu Declaration (Tunon and Harkins, 2017).

The ILO advises that complaint mechanisms should be based on a differentiated approach, allowing for settlement among the concerned parties before choosing adjudication. Although some countries require that recruitment and

labour rights complaints be filed in labour courts, this often contributes to an expensive, prolonged, and excessively legalistic process for settlement. Establishing an administrative grievance procedure to supplement adjudication in court can provide a more efficient system for resolving complaints. This allows for greater accessibility to justice for migrant workers wanting to file a complaint, as well as more timely resolution of complaint cases (ILO, 2007). Such procedures can also support greater access to criminal justice mechanisms for persons experiencing forced labour or human trafficking and who wish to seek protection services and penal sanctions for the abuses.

The Organization for Security and Co-operation in Europe, International Organization for Migration, and ILO’s *Handbook on establishing effective labour migration policies* provides a model of a three-tiered system for the handling of complaints (table 2).

**Table 2. Recommendations for a three-tiered complaint mechanism**

<b>Tier 1:</b>	<b>Recruitment agency</b>	In the event of abusive employment conditions abroad, migrant workers should be able to contact the recruitment agency that hired them. The recruitment agency should then attempt to settle the dispute between employee and employer amicably and by voluntary agreement.
<b>Tier 2:</b>	<b>Responsible state authority</b>	If tier 1 fails, then the appropriate institutions should provide impartial and effective third-party assistance through mediation and arbitration. Institutions should contact their counterparts in the country of employment. Should the complaint be proven, the responsible authority should revoke or suspend the licenses or satisfy claims for refunding.
<b>Tier 3:</b>	<b>Adjudication</b>	Though prolonged and costly, this is the best way to deal with serious abuses of human rights in the recruitment process, including human trafficking. Complaints involving acts that are criminal in nature and require the imposition of penalties such as fines and imprisonment come within the jurisdiction of the courts.

Source: Baruah and Cholewinski, 2006.

To punish offenders and act as a deterrent against recurrent violations, appropriate sanctions should be applied for recruiters and employers who commit labour rights abuses against migrant workers. Ideally, the type of sanction should be based upon the form of the infraction as well as whether it is a first or repeat offense. The penalties should appropriately reflect these considerations and may range anywhere from a minor administrative reprimand to a prison sentence for severe violations (ILO, 2007).

Following these standards and guidelines as the normative model for complaint mechanisms, data was collected for “cases” resolved through a range of different methods – including informal mediation, administrative order, and court hearings – in addition to cases that were dropped. Remedies obtained and sanctions applied were similarly broadly defined to capture the diversity of outcomes reached in complaint cases.



## 4. Research limitations

The large number of cases resolved by MRC service providers allows for evidence-based conclusions to be drawn about the opportunities and obstacles to migrant workers seeking redress for their grievances. However, the data should not be considered nationally or regionally representative. The outcomes achieved in each country were shaped by the capacity and resources of MRC partners working with the TRIANGLE in ASEAN programme in addition to the context in which the complaints were lodged.

It should also be noted that the dataset of 1,014 cases analysed does not represent the entire caseload handled by MRC partners. During the study period, a total of 11,768 migrant workers and members of their families (49 per cent women) were provided with assistance in 2,159 complaint cases. The discrepancy shows that a substantial number of cases were not fully documented, with the largest portion being cases where no resolution was reached. This suggests that the findings may be somewhat biased towards more positive case outcomes.

Extensive efforts were made to clean the case data through follow-up with MRC partners, but some gaps in data quality remain. The MRCs are managed by committed local organizations working to protect the rights of migrant workers, but in some cases they had limited experience in documenting legal assistance in such a detailed manner. In addition, language differences likely affected the consistency of the data reported. The forms were translated into Khmer, Lao, Myanmar, Thai, and Vietnamese for training and use by MRCs, but some of the constraints in language proficiency and differences in terminology could not be entirely overcome.

The TRIANGLE in ASEAN programme also managed three MRCs based in the Lao People's Democratic Republic in cooperation with the Lao Federation of Trade Unions in Savannakhet, the Provincial Department of Labour and Social Welfare in Champassak, and the Provincial Department of Labour and Social Welfare in Xaiyaboury. Because of a number of challenges, including lack of a clear legal process for migrants to seek redress under the Labour Law 2013, the large proportion of migrants employed through irregular channels, and capacity constraints among partners, no complaints were documented by MRCs during their four years of operation.



Following decades of isolation from the international community, Myanmar’s initiation of a transition to democratic governance in 2010 resulted in the easing of economic sanctions, growing diplomatic rapprochement with the international community, and increased optimism for adherence to human rights standards and norms in the country’s administration. Recognizing the significant progress achieved, in 2012 the International Labour Conference lifted the restrictions limiting Myanmar from full participation in ILO meetings and from receiving technical cooperation on issues other than the elimination of forced labour. However, the TRIANGLE in ASEAN programme did not establish functional MRCs in Myanmar until 2014, limiting the legal assistance services delivered by MRCs there to a period of only a year and a half. As of 2016, six MRCs are now operational in Myanmar.<sup>1</sup>

The terminology used within the analysis of “awarded” or “ordered” reflects the limitations that exist for service providers in ensuring that remedies are realized in practice. Particularly for financial compensation, migrants are often not able to collect the entire sum awarded due to the long duration of periodic payments ordered; having to return home before the money is collected; informal settlement arrangements made with recruitment agencies and employers; and other obstacles.

Exchange rate fluctuations should be considered in interpreting the data on compensation paid. As the year in which the amount was awarded was not documented for individual cases, four-year average exchange rates were used in the report analysis (table 3). Appreciation of the US dollar against several of the relevant national currencies during the time period had the effect of lowering the figure calculated during data analysis.

**Table 3. Exchange rates applied**

Cambodia riel (KHR/US\$1)	Lao kip (LAK/ US\$1)	Malaysia ringgit (MYR/US\$1)	Myanmar kyat (MMK/US\$1)	Thailand baht (THB/US\$1)	Viet Nam dong (VND/US\$1)
4 098.03	8 095.85	3.18	865.42	31.51	21 208.28

In developing the legal assistance outcome forms, it had been the intention to obtain detailed profiles of the beneficiaries assisted through merging the complaints data with the card completed by every MRC client during their first visit. As this was not possible when the data was finally collected from partner organizations at the end of the first phase of the TRIANGLE in ASEAN programme, the analysis does not include demographic information on some important issues such as country of origin/destination, sector of employment, and legal status.




<sup>1</sup> MRC partners in Myanmar: Dawei Labour Exchange Office (Tanintharyi Region); Mawk Kon Local Development Organization (Shan State); Mandalay Labour Exchange Office (Mandalay Region); Myingyan Labour Exchange Office (Mandalay Region); Meiktila Labour Exchange Office (Mandalay Region); Kyaukse Labour Exchange Office (Mandalay Region).



## 5. Legal framework and operation of complaint mechanisms

This section provides a brief analysis of the national legislative and institutional framework for complaint mechanisms in Cambodia, the Lao People’s Democratic Republic, Malaysia, Myanmar, Thailand, and Viet Nam. It also examines how these laws have been enforced to provide an understanding of the achievements to date and the challenges remaining in providing migrant workers with access to redress for labour rights violations.

Figure 2. Mechanisms available for resolving migrant worker grievances

	Cambodia	Lao PDR	Malaysia	Myanmar	Thailand	Viet Nam
 Assistance with dispute resolution	✓	●	●	●	✓	●
 Administrative complaint mechanism	✓	✗	●	●	●	●
 Criminal and civil court hearings	●	●	●	●	●	●

✗ Not established

● Established in legislation

✓ Accessible in practice

Figure 2 offers an overview of the availability of complaint mechanisms in each country based upon the findings of the study. They are assessed on a three-tiered scale; from not established to accessible for migrants in practice. The findings show that while complaint mechanisms are stipulated in law in most countries, practical accessibility is still very limited for migrant workers.

## 5.1 Cambodia

### Legislative and institutional framework

In 2012, the Ministry of Labour and Vocational Training (MOLVT) requested technical assistance from the ILO to draft a number of *prakas* (ministerial orders) to support the implementation of Sub-Decree No. 190 on the Management of Sending Cambodian Workers Abroad through Private Recruitment Agencies. A tripartite working group was formed to draft the new laws and eight *prakas* were enacted in December 2013, including *Prakas* No. 249 on Complaint Receiving Mechanism for Migrant Workers.

*Prakas* No. 249 stipulates the establishment of a section at the MOLVT and Provincial Departments of Labour and Vocational Training (PDOLVTs) with responsibility for receiving complaints from migrant workers, supporting conciliation, and referring cases to other institutions when appropriate. It also outlines the information required to lodge a complaint, the timeframe for resolution, and the rights and responsibilities of the parties involved. *Prakas* No. 249 specifies that migrant workers are allowed to file grievances regardless of their legal status.

In January 2014, MOLVT opened an MRC in Phnom Penh with the primary function of supporting the resolution of migrant worker grievances. To operationalize *Prakas* No. 249, the MOLVT designed standard complaint forms to be used during the process and Winrock International developed a complaint database for case management. Trainings on the complaint process were organized for all 25 provinces of Cambodia, with participation from the PDOLVTs, provincial governors, Provincial Committees to Combat Trafficking, recruitment agencies, trade unions, and NGOs (ILO, 2016b).

### Operation of complaint mechanisms

There has been considerable utilization of the newly established complaint mechanism by migrant workers. During an 18-month period, over 500 complaint cases were resolved, involving more than 1,500 migrant workers, with nearly US\$220,000 awarded in compensation. It is clear that the process has created opportunities for migrant workers to seek redress for their grievances that did not exist previously (ILO, 2016b).

Staff from the MOLVT, PDOLVTs, MRCs, trade unions, and service providers have demonstrated high levels of commitment to assisting migrant workers with dispute resolution. Although some cases have faced delays, the majority of complaints resolved required less than three months and complainants were able to obtain financial compensation.

As the institution of an administrative process for resolving grievances is still a relatively nascent development, a number of gaps in implementation were found during an ILO assessment of the mechanism. These include inconsistent procedures and deviation from official processes; major gaps between the compensation sought by migrant workers and compensation received; few sanctions imposed on private recruitment agencies that violate the law; lack of resources at diplomatic missions to handle migrant workers' complaints while overseas; insufficient capacity at PDOLVTs to run dispute resolution in some provinces; and difficulty in maintaining the database of complaints (ILO, 2016b).

Enduring challenges impeding migrant workers' ability to lodge complaints for abuses during the recruitment process have also been identified through research. Recruitment agencies in Cambodia have been known to try to dissuade workers from pursuing claims by arguing that they knew of or were complicit in some part of the legal violation; or in other cases, by alleging that the worker still owes them money (Asia Foundation, 2011). In addition, as migrant workers are often not provided with a written copy of their employment contract, nor given receipts for payments, they face difficulties in providing sufficient evidence when pursuing legal action (UN Women, 2013). There is also evidence to suggest that fewer women have opportunities to migrate regularly through recruitment agencies in Cambodia, with the resulting lack of legal status likely reducing access to justice on both sides of the border (ILO, 2016b).

## 5.2 Lao People's Democratic Republic

### Legislative and institutional framework

The National Assembly of the Lao People's Democratic Republic adopted an amended Labour Law in December 2013. The new law subsumes the 2006 version, and is also intended to update the legal framework governing deployment of Lao migrant workers provided by the Prime Minister's Decree on the dispatching of Lao workers to work overseas (Decree No. 68), passed in 2002. The Decree includes requirements for pre-departure training and the licensing and inspection of recruitment agencies, but did not have any provisions for complaint mechanisms so that migrant workers could seek redress.

Article 153 of the Labour Law, 2013, states that labour disputes with "international characteristics" can be brought before the Labour Administration Agency, the Committee for Resolution of Labour Disputes, or "in accordance with conventions or international agreements to which the Lao People's Democratic Republic is a party." While this Article broadly provides for the possibility of migrant workers lodging grievances, lack of detail on how migrant workers are to be informed of their right and on the responsibilities of authorities in resolving such disputes is likely to limit the effectiveness of its implementation.

It is anticipated that sub-laws supporting the implementation of the new Labour Law will be adopted in the coming years to specifically address labour migration governance, including regulation of recruitment agencies and the process for management of complaints, but these instruments have yet to be proposed. Until these laws are enacted, major legislative and institutional gaps exist in the protection of Lao migrant workers. The standing legal provisions are discriminatory towards women because they devalue domestic work and in practice prohibit migration into the sector.

### Operation of complaint mechanisms

The Labour Law allows the Ministry of Labour and Social Welfare (MOLSW) to appoint labour attachés to be stationed at Lao diplomatic missions, in conjunction with the Ministry of Foreign Affairs. Among other duties, Lao labour attachés are tasked with assisting migrant workers in resolving labour disputes through cooperation with local authorities. To date, however, the Lao People's Democratic Republic has only one labour attaché on assignment, who is based at the Embassy in Bangkok (table 4). This is a low number of attachés relative to the hundreds of thousands of Lao migrant workers deployed abroad, and many migrant workers appear to be unaware of the availability of their services. At a recent training workshop, it was stated that just a single complaint had been received at the Embassy in the past 12 months (though MOLSW officials indicated that they had been involved in the resolution of some additional complaints) (ILO, 2015b).

Since 2011, the MOLSW has worked with the ILO to deliver direct support services in Savannakhet, Xaiyaboury, and Champassak provinces through MRCs. Integrated within provincial labour offices, the MRCs provide migrant workers and their families with counselling, information, and training and legal assistance services to support safe migration and protection of their labour rights.

Despite falling within the remit of the services offered, the MRCs in the Lao People's Democratic Republic have yet to report receiving or resolving any complaints about abuses during the migration process. Several factors for the lack of results must be considered, including high levels of irregular migration, reluctance to approach government authorities for assistance, and insufficient outreach to raise awareness in migrant communities. Moreover, due to the lack of a clear process for resolving complaints, any cases received by the MRCs would likely have to be resolved through a negotiated settlement rather administrative order.

Table 4. Assignment of ASEAN labour attachés

Country	No. of attachés	Countries/territories of assignment
Cambodia	3	Malaysia; Republic of Korea; and Thailand
Indonesia	12	Brunei Darussalam; Hong Kong (China); Jordan; Kuwait; Malaysia; Qatar; Republic of Korea, Saudi Arabia (Riyadh, Jeddah); Singapore; the Syrian Arab Republic; and the United Arab Emirates
Lao PDR	1	Thailand
Malaysia	4	India; Indonesia; Singapore; and Switzerland
Myanmar	5	Malaysia (2); Republic of Korea; and Thailand (2)
Philippines	40	Australia; Bahrain; Brunei Darussalam; Canada (Toronto, Vancouver); Cyprus; Greece; Hong Kong (China) (2); Israel; Italy (Rome, Milan); Japan; Jordan; Kuwait; Lebanon; Libya; Macau (China); Malaysia; Northern Mariana Islands (Saipan); Oman; Qatar; Republic of Korea; Saudi Arabia (Riyadh, Al-Khobar, Unaizah/CRO, Jeddah); Singapore (2); Spain; Switzerland; the Syrian Arab Republic; Taiwan (China) (Taipei, Kaohsiung, Taichung); United Arab Emirates (Abu Dhabi, Dubai); the United Kingdom and Ireland; and the United States
Thailand	15	Brunei Darussalam; Germany; Hong Kong (China); Israel; Japan; Malaysia; Philippines; Republic of Korea; Saudi Arabia (2); Singapore; Switzerland; Taiwan (China) (2); and the United Arab Emirates
Viet Nam	7	Japan; Malaysia; Qatar; Republic of Korea; Saudi Arabia; Taiwan (China); and the United Arab Emirates.

Source: ILO, 2015e.

## 5.3 Malaysia

### Legislative and institutional framework

The Employment Act 1955 is the core legislative instrument regulating employment practices and working conditions for migrant workers in Malaysia, including employment contracts, wages and methods of payment, working hours, rest days, public holidays, sick leave, annual leave, and maternity protection. Rules for termination of employment are covered under by the Industrial Relations Act 1967. The Anti-Trafficking in Persons and Smuggling of Migrants Act 2010 criminalizes trafficking for purposes of labour exploitation and provides for compensation of trafficked persons.<sup>1</sup> These laws provide migrant workers with the right to pursue remedies when faced with abuse.

In the event of a breach of their labour rights, workers can lodge a complaint with the Labour Department and with the Industrial Relations Department. The Labour Department is mandated to accept complaints relating to violations of the Employment Act, the Minimum Wage Order, the Workers' Minimum Standard of Housing and Amenities Act, the Workmen's Compensation Act, and the Anti-Trafficking of Persons and Smuggling of Migrants Act. The Industrial Relations Department is responsible for resolving cases of unfair dismissal, filed under Section 20 of the Industrial Relations Act.

<sup>1</sup> A supplementary regulation was passed in May 2016 that requires court ordered payments of wages due in cases of non-conviction.

Although a portion of migrant workers are provided with equal access to seek remedies under this legal framework, migrants employed in an irregular legal status and as domestic workers are not granted similar rights (Harkins, 2016). The protections afforded to domestic workers within the Employment Act are restricted to notice of termination and payment of wages (Santhiago, 2011). Irregular migrants are subject to immediate arrest and detention if caught by authorities and face strict sanctions for violating the Immigration Act. Based on the current estimates of these two populations in Malaysia, the majority of migrant workers are excluded from registering grievances about labour rights violations in practice.

### Operation of complaint mechanisms

Despite the access to redress ensured under law, the number of cases pursued by migrant workers remains negligible in comparison to the number of violations committed (Santhiago, 2011). A key reason for the low number of complaints filed by migrant workers is their vulnerability to reprisals from employers. Permission to stay and work in Malaysia is strictly tied to an employer, and in some cases the threat of retaliatory dismissal is used to coerce migrant workers (Verité, 2014).

If an employer decides to cancel their work permit during a labour dispute, migrants must apply for a “Special Pass” to remain in the country while pursuing legal remedies. Immigration authorities have the discretion to issue a Special Pass for a period not exceeding one month, which can be extended for a maximum of three months but prohibits employment.<sup>2</sup> There have been problems in the past with the long duration of the court process – often over six months – resulting in migrants unable to remain in Malaysia until the end of the case or being held in detention centres.

When complaints are filed by migrant workers, even completing the initial step of identifying the employer who bears legal responsibility often proves a daunting task due to the common practices of outsourcing and subcontracting. Other factors that impede migrant workers’ utilization of complaint mechanisms include the lack of written contracts and other documentary evidence, language barriers, the high cost of legal assistance, and the lack of information available to migrants on their rights to redress (ILO, 2015c).

Because the legal process often does not function effectively for migrant workers, service providers report that most migrant complainants rely on direct negotiation with employers to attempt to resolve their grievances. Uneven law enforcement has contributed to segmentation of the labour force, establishing migrants as a class of workers to which a different set of rules apply (Harkins, 2016).

Social partners and NGOs have played an important role in increasing access to justice for migrant workers in Malaysia. Tenaganita and the Malaysian Trades Union Congress (MTUC) manage three MRCs in Selangor, Johor, and Penang to deliver support services to migrant workers. In addition, the Malaysian Employers Federation has provided migrant workers with information on accessing complaint mechanisms and has advocated for complaint procedures to be established at the workplace level. A survey conducted among the Federation’s membership found that 84 per cent of the respondent companies have a grievance mechanism for employees claiming unfair treatment, and 75 per cent have systems in place to handle complaints of sexual harassment (MEF, 2014).

## 5.4 Myanmar

### Legislative and institutional framework

The primary law regulating the recruitment of migrant workers is the Law Relating to Overseas Employment, 1999, which entitles migrant workers to take civil or criminal action for loss of rights and privileges relating to overseas employment. The Law does not include specific provisions on the process for handling of complaints, but it does establish the right for migrants to make a complaint, the institutions responsible for the protection of migrant workers, and the particular offences related to overseas employment that can be brought to court.

The Department of Labour within the Ministry of Labour, Immigration and Population (MOLIP) is mandated to accept complaints from migrant workers. In mid-2013, two complaint centres were set up in Nay Pyi Taw and Yangon by the Department of Labour’s Migration Division, which provide 24-hour service through a hotline. Complaints may also be

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<sup>2</sup> Under the Anti-Trafficking of Persons and Smuggling of Migrants Act, trafficked persons are granted the right to remain in Malaysia and work after a protection order has been issued.

submitted by phone, email, letter, or in-person at one of the 77 Labour Exchange Offices throughout Myanmar, which are then processed at the Nay Pyi Taw Complaint Centre (ILO, 2016c).

Violations of the Law Relating to Overseas Employment by any of the more than 200 registered employment agencies in Myanmar can result in the Department of Labour suspending or revoking their license to operate, imprisonment, and/or fines. The Department also has the authority to order financial compensation be paid to complainants. If the agency cannot pay the amount directly, it is withheld from the US\$5,000 security deposit paid by the employment agency to obtain its license. The Ministry of National Planning also maintains a list of employment agencies that have been blacklisted for their involvement in complaints of serious violations against migrant workers (ILO, 2016c).

### Operation of complaint mechanisms

The establishment of an effective administrative complaint mechanism in Myanmar is a work in progress, as few complaints are currently registered with labour authorities and the sanctioning of recruitment agencies for abuses has been limited. Between December 2013 and March 2016, a total of 302 cases were received by Labour Exchange Offices throughout Myanmar. Most of the complaints were related to deaths (29 per cent), employment contracts (16 per cent), and detention (12 per cent). Among a total of 256 employment agencies identified in these complaints, 11 agencies had their licenses temporarily suspended and nine agencies had their licenses revoked (ILO, 2016c). No documentation on the amount of compensation awarded to migrant workers as a result of these complaints is currently available.

Lack of awareness and trust in the government services available to assist migrant workers with their grievances are significant challenges to be overcome in expanding access. An ILO survey of over 600 potential migrant workers found that only 10 per cent would contact labour authorities for assistance if they faced violations of their rights during recruitment (ILO, 2015d). Efforts to ensure that migrant workers are better informed about the complaint mechanisms available have been made through inclusion in pre-departure training and distribution of information by MRCs and at the Migrant Reporting Counter at Yangon International Airport.

Labour attachés have been deployed to three destination countries for Myanmar migrants: Malaysia, the Republic of Korea, and Thailand. These attachés work with migrant associations, NGOs, and labour authorities in destination countries to provide information and services to migrant workers. There are indications that migrant workers have begun accessing these officials for assistance with complaints, but more capacity building is needed to improve the quality of services they are able to deliver (ILO, 2015b).

Migrant workers also file grievances with NGOs and labour organizations in Myanmar, including the Confederation of Trade Unions Myanmar, the Myanmar Maritime Trade Union, the Agriculture and Farmers' Federation of Myanmar, the 88 Generation, and the Migrant Worker Rights Network. These organizations work with branch offices, NGOs and other agencies in destination countries, as well as Myanmar authorities, to provide legal assistance with complaints (ILO, 2016c).

The Government of Myanmar and the ILO established a complaint mechanism in 2007, which gives residents the right to lodge complaints on forced labour and related abuses, including recruitment of children, forced recruitment, human trafficking, and bonded labour. The ILO Liaison Officer is responsible for determining if a case amounts to forced labour, in consultation with the Working Group on Forced Labour established by the Government. After a decision is made, the Working Group refers cases to the relevant ministry or department to be resolved (ILO, 2016c).

The majority of the complaints received by the ILO are related to recruitment of children and forced labour within Myanmar, but some cases are also brought by family members of migrant workers. Between 2013 and March 2016, the ILO received 29 complaints related to forced labour, missing persons, and labour rights violations involving migrants. Most of the cases involved migrant workers employed in Thailand, Malaysia, Singapore and China (ILO, 2016c).

## 5.5 Thailand

### Legislative and institutional framework

The primary legislation for protecting jobseekers during the recruitment process in Thailand is the Recruitment and Job Seekers Protection Act 1985. The Act regulates the recruitment of workers for domestic employment and the recruitment of outbound Thai migrant workers by private employment agencies. However, it was drafted before

large-scale in-migration had begun to take place in Thailand, with the consequence that many labour officials interpret the law as only applying to Thai workers. No clear procedures or institutional frameworks have been established to provide recruitment protections to foreign migrant workers, including the establishment of mechanisms to file grievances (Harkins et al., 2013).

In August 2016, the Royal Ordinance Concerning Rules on Bringing Migrant Workers to Work with Employers in the Kingdom was adopted to address the legislative gap. The Ordinance applies the principle of zero worker-borne recruitment costs from the Private Employment Agencies Convention, 1997 (No. 181). The provisions of the law establish the requirement of 5 million Thai baht (US\$140,600) guarantee deposit for recruitment agencies, against which employers or migrant workers can request compensation. The Ministry of Labour's Department of Employment (DOE) is the agency mandated to enforce both the Recruitment and Job Seekers Protection Act and the Royal Ordinance.

The Labour Protection Act 1998 provides both nationals and migrant workers in Thailand – including irregular migrants – with the right to register complaints related to a broad range of offenses, including in relation to working hours, holidays, annual leave, payment of wages, disciplinary action, discrimination, harassment, job duties during pregnancy, and child labour. In addition, the Occupational Safety, Health and Environment Act 2011 provides the right for all employees to lodge complaints in relation to occupational safety and health violations. The Ministry of Labour's Department of Labour Protection and Welfare has been delegated with responsibility for enforcement of these two laws (Harkins, 2014).

The Social Security Act 1990 states that employees who are 15–60 years of age shall be insured under the law, providing benefits for non-work-related injury or illness, maternity, disability, death, children, old-age, and unemployment. For employers who do not fulfil their obligations to register their employees, either an officer or the worker themselves can file a complaint. The Act provides for both the filing of grievances and the sanctioning of employers who fail to register their employees within the time prescribed (Harkins, 2014).

Additionally, the Workers' Compensation Act 1994 requires employers to provide compensation for any employee who becomes injured, ill, or dies during or as a result of their work duties. Employees and their dependents are allowed to submit claims for compensation to authorities within 180 days of such an event. The Social Security Office of the Ministry of Labour is the institution responsible for administering the provisions of the Social Security Act and the Workers' Compensation Act.

### Operation of complaint mechanisms

Although regular migrant workers are theoretically covered by the same protections as nationals under Thai labour laws, they are often unable to make use of their right to file grievances when abuses occur. While there has been increased cooperation between labour officials and NGOs to improve access, major obstacles to migrants utilizing official complaint mechanisms remain. Many migrant workers are not able to seek redress because they are unaware of their rights under the law; face language barriers and discrimination; are wary of accessing government services; or fear retaliation for making a complaint. As a result, the number of complaints lodged remains very slight in comparison to the prevalence of labour rights abuses found to be occurring (Harkins, 2014).

Official data in Samut Sakhon, an area that employs hundreds of thousands of migrant workers, bears out these findings: only 70 migrants filed complaints with the provincial labour office during 2013 (ILO, 2014). Similar results were obtained by a survey of nearly 600 workers in Thailand's fishing sector, with nearly all (95 per cent) stating they had never lodged a complaint about a rights violation, and the vast majority (93 per cent) reporting that they were unlikely to seek assistance from a government official if they were to do so (Chantavanich et al., 2013).

Among irregular migrants, fears about filing grievances with labour authorities appear to be even more potent, with near complete avoidance of official channels. During an assessment conducted by the ILO across seven provinces, authorities with the Department of Labour Protection and Welfare confirmed that they had never received any complaints from irregular migrant workers, either directly or through the hotline service provided (Harkins, 2014).

Instead of using official mechanisms, the small number of migrants that do seek assistance to resolve their grievances tend to make use of the services of NGOs for mediation. However, if settlements are reached informally, their legal enforceability is limited, and no penalties are applied to curb the potential for future abuses (Harkins, 2014).



Similarly, for social security and workers' compensation claims, there is a considerable gap between the rights provided to migrants under the law and their ability to apply them in practice. A social protection assessment carried out by a joint United Nations/Royal Thai Government research team in 2013 found that: "Although migrant workers under the MOU [memorandum of understanding] or who have passed nationality verification can in theory be registered under the Social Security Fund and the Workers' Compensation Fund, they encounter difficulties in fully accessing benefits because of limited compliance with the law by employers" (Schmitt et. al, 2013). This poses a significant barrier to migrants accessing social protection entitlements, layered on top of eligibility restrictions that prevent enrolment in agriculture, fishing, domestic work, animal husbandry, forestry, and other informal sectors, as well as those with irregular legal status (ILO, 2014).

To expand access to information and assistance for migrant workers, the Department of Employment has established ten pilot migrant worker assistance centres (MWACs) in Tak, Chiang Mai, Songkhla, Surat Thani, Ranong, Samut Sakhon, Samut Prakarn, Chonburi, Khon Kaen, and Nakhon Ratchasima. The centres are based at provincial employment offices and are meant to work in cooperation with labour protection and welfare offices, social security offices, social development and human security offices, and NGOs (DOE, 2016). While the MWACs are a relatively new initiative, a field visit in December 2016 to the Centre in Khon Kaen found that they had yet to receive any complaints from migrant workers, indicating that more outreach is needed to increase utilization of the services available.

## 5.6 Viet Nam

### Legislative and institutional framework

The legal framework that governs migrant workers' access to complaints mechanisms in Viet Nam is complex and coverage under the law is not universal. The Law on Vietnamese Workers Working Abroad under Contract, 2006, enables migrant workers employed through private recruitment enterprises or state-owned agencies to lodge complaints. The Law on Complaints, 2011, only governs grievances relating to the acts or decisions of state-owned recruitment agencies or recruitment agency personnel. The newest piece of legislation, Decree No. 119, was passed in February 2015 to further elaborate the complaints process for migrant workers deployed by private recruitment agencies. For the increasing number of workers who migrate abroad independently<sup>3</sup> – potentially those who are most vulnerable to abuse – there is no formal means of recourse available (ILO, 2015).

The Department of Overseas Labour (DOLAB) is the government agency responsible for managing complaints made prior to a worker's move abroad and after their return. Under Decree No. 119, a three-tiered system has been established whereby complaints are first addressed by the relevant recruitment agency and only passed on to DOLAB if the complainant does not agree with the agency's decision. The matter can then be taken to a court of law if the complainant still does not agree with the decision reached by DOLAB.

As DOLAB has limited staffing resources to deal with complaints and migrant workers face difficulties in compiling sufficient evidence for court cases, this tiered system has the potential to increase workers' access to justice by providing an alternative dispute resolution mechanism through the engagement of recruitment agencies. However, it is unlikely that many recruitment agencies in Viet Nam have sufficient capacity to carry out this new role in a fair and efficient manner. In addition, establishing a formal legal requirement that complaints must first be directed to the recruitment agency involved in the dispute will deter many workers from filing complaints, as many of the complaints are likely to be related to violations committed by recruitment agency (ILO, 2015). In such cases, recruitment agencies would be placed in the position of both arbitrator and accused, resulting in a clear conflict of interest.

The Viet Nam Association of Manpower Supply (VAMAS) Code of Conduct also establishes principles for settlement of disputes. The Code states that all disputes should be resolved in accordance with the terms of employment contracts, Vietnamese and destination country laws, and international agreements. It also stipulates that workers should be provided with support by recruitment agencies, embassy officials, and interpreters during resolution of grievances (VAMAS, 2010).

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<sup>3</sup> In Viet Nam, the term "independent migrant" refers to those who have obtained employment abroad through brokers or direct recruitment by a foreign employer rather than through a licensed recruitment agency. It is not synonymous with being an "irregular migrant" as it may include obtaining legal documents and following the proper procedures to migrate for work.

## Operation of complaint mechanisms

The quantity of complaints recorded by the DOLAB Inspectorate is very slight in comparison to the number of workers moving abroad each year (three out of every 1,000). This should not be interpreted as a sign that migrant workers are not facing problems during migration. Rather, it suggests systemic problems in migrant access to complaint mechanisms, brought on by gaps in coverage for independent migrants, fear of the consequences of lodging a complaint, insufficient awareness about where to go for assistance, and lack of confidence in the effectiveness of the complaint mechanism available.

From 2007–14, DOLAB received a total of 2,055 complaints related to problems experienced while migrating for work, but the number of complaints has dropped to around 100 cases per year since 2012. The reason for the decline is not fully understood but steps to develop a more robust monitoring system to analyse data on migrant complaints have been taken. With the support of UN Women, DOLAB has developed a database to record the number of migrant worker complaints, the destination countries where the issues occurred, the nature of the complaints, the duration of the complaint case, and the resolution reached (ILO, 2015).

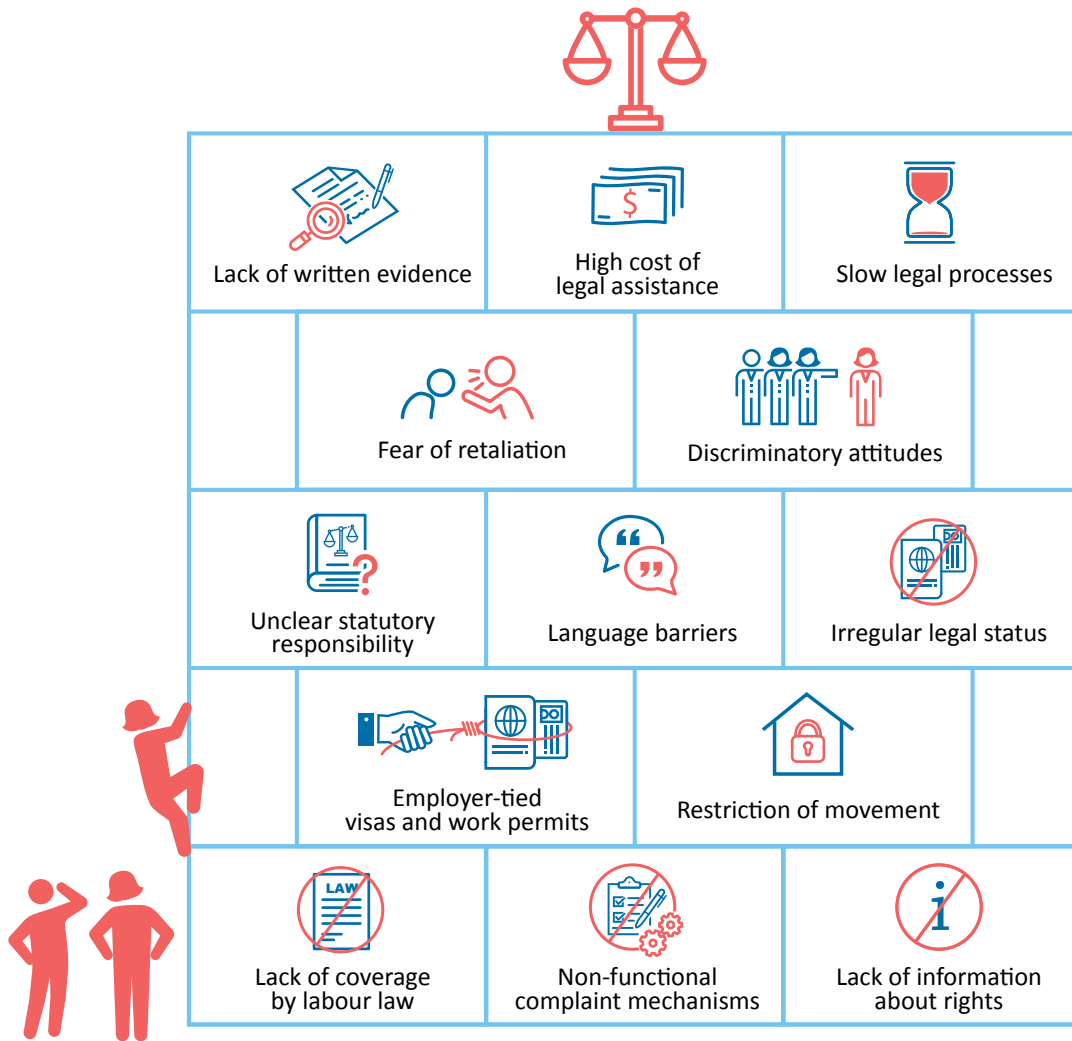
Anecdotally, DOLAB has reported that deceptive practices by unlicensed brokers have increased in recent years, which has created challenges for the authorities responsible for resolving complaint cases. With a staff of four, the DOLAB Inspectorate has limited resources to deal with complaints and is only able to organize 20–30 scheduled inspections of recruitment agencies annually, supplemented by 5–10 monitoring visits if abnormalities are found. Although these audits are carefully targeted, additional inspectors are needed to more effectively regulate the recruitment of migrant workers (ILO, 2015).

An additional challenge still to be overcome is that authorities at local levels often view it as positive that they receive very few complaints, seeing it as evidence that abuses are not taking place rather than that the mechanisms are ineffective. It is not uncommon for Department of Labour, Invalids and Social Affairs (DOLISA) officials to downplay the severe problems that exist in the Vietnamese recruitment industry – particularly in regard to excessive recruitment costs and deceptive information about job opportunities – rather than take steps to improve regulation. In some cases, financial linkages exist between recruitment agencies and authorities, which contribute to impunity for abuses committed (ILO, 2015f).

Overall, many Vietnamese migrant workers experience difficulties both in lodging and resolving complaints and are often unsatisfied with the outcomes when they do. Complex and inefficient complaints procedures mean that attempts to lodge grievances are often fruitless, which further enables the perpetuation of unfair recruitment practices. These difficulties have also contributed to increases in irregular migration, as migrant workers seek to avoid widespread problems with overcharging on recruitment fees and other abuses (ILO, 2015).

A meaningful step towards greater access for registering complaints has been the institutionalization of the MRC service model in Viet Nam. In 2015, the functions of the ILO-supported MRCs in Thanh Hoa, Quang Ngai, Bac Ninh, Phu Tho, and Ha Tinh provinces were introduced to DOLISAs and Employment Service Centres in 63 provinces across Viet Nam. This will expand the legal assistance services available to migrant workers and members of their families so they can successfully resolve their grievances but will also require greater clarity about the mandate of local labour authorities in resolving grievances. To date, DOLISA officials have often been reluctant to get involved in settling disputes, preferring to refer cases to DOLAB for arbitration.

Figure 3. Summary of barriers to accessing justice for migrant workers in South-East Asia



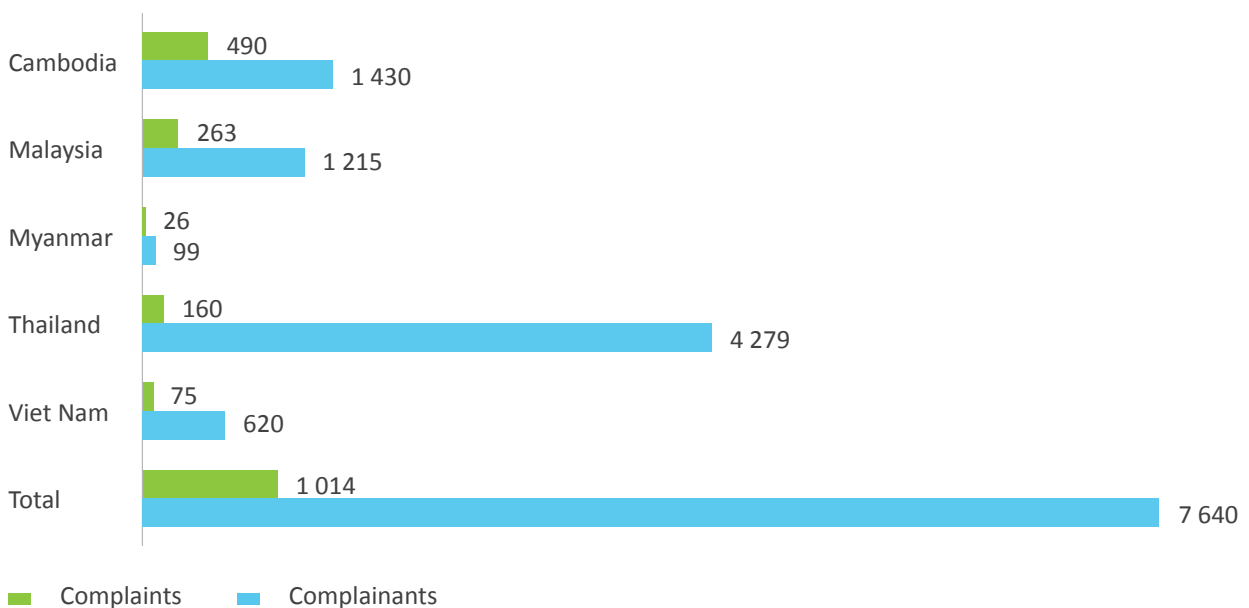


## 6. Case analysis

This chapter analyses case data collected by MRC service providers for utilization, subject of complaint, mechanism of resolution, duration for resolution, remedies awarded (including financial compensation), and sanctions ordered. Where possible, analysis of differences by gender is provided, though it should be noted that this was limited because many of the cases involved both women and men as co-complainants.

### 6.1 Utilization of complaint mechanisms

Figure 4. Complaint cases and complainants by country (n=1,014)



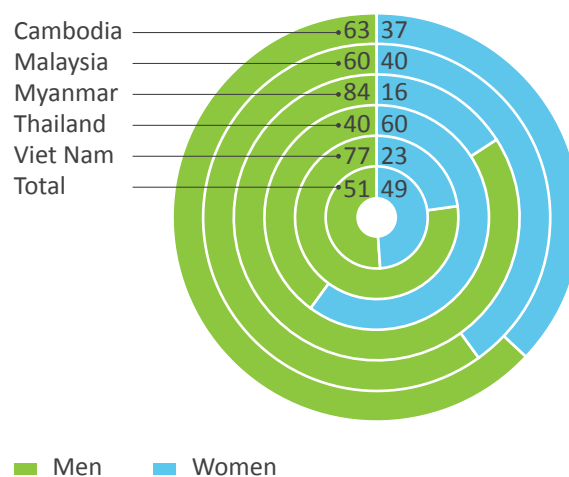
As shown in figure 4, the largest numbers of complainants were assisted in Thailand, representing 56 per cent of the total. Many of the cases in Thailand involved large groups of migrants filing complaints collectively, with an average of 27 complainants per case. This reflects a perspective among many complainants that there is greater safety in numbers when confronting abuses. Among all five countries, 25 per cent of resolved complaint cases were filed by groups of migrant workers.

Cambodia received the most complaint cases (n=490) and was the country of origin where the most complainants were assisted (n=1,430). Extensive development of sub-laws on sending Cambodian workers overseas, capacity building of officials, and networking among tripartite constituents and NGO stakeholders during the last several years are key contributing factors to the large number of complaints received and resolved.

Although small relative to the number of offenses thought to be taking place, the grievances resolved in Viet Nam (n=75) and Myanmar (n=26) represent a significant breakthrough. Access to justice for migrant workers is typically very limited in Viet Nam due to lack of clarity on complaint procedures and the high emphasis placed on reaching quotas for deployment of workers in national labour migration policies. Similarly in Myanmar, lack of formalization of the complaint process has restricted the number of complaints received, as have the high-levels of irregular migration and historical distrust of government authorities among many ethnic communities.

### 6.1.1 Gender of complainants

Figure 5. Gender of complainants by country (n=7,506)<sup>1</sup> (%)



<sup>1</sup> Gender-disaggregated data was not available for 137 migrants involved in two cases in Viet Nam.

Overall, a nearly equal number of women and men complainants were assisted, but major disparities exist between countries (figure 5). In countries of origin (Cambodia, Myanmar, Viet Nam), more than 67 per cent of complainants assisted were men. The vast majority of women who resolved complaints were in Thailand, with that country accounting for two thirds of all female complainants.

A major reason for the success in providing services to women migrants in Thailand are the partnerships formed with NGOs to provide gender-responsive services at MRCs (box 1). Through targeted outreach via networks of migrant paralegals and a focus on informal sector employment (where women migrants are disproportionately employed), these organizations have been extraordinarily effective in providing assistance to women migrant workers, even for physically isolated workplaces in some cases. Even so, some groups of women migrants have less access to support from NGOs because these initiatives are often targeted towards the main nationalities of women migrant workers in the country and do not reach smaller populations (such as Vietnamese women migrants in Thailand).

Complainants assisted in Viet Nam and Myanmar were overwhelmingly men migrants, constituting 77 and 84 per cent respectively. Labour migration flows from Viet Nam are heavily male-dominated, but the gap also reflects greater challenges faced by women in accessing complaint mechanisms through government service providers. For women migrants in Myanmar, restricted opportunities for regular migration – particularly into domestic work – may be a contributing factor to the small number of women lodging grievances, as irregular migrants are typically less likely to seek formal assistance.

### Box 1

#### NGO assistance for women migrant workers in Thailand

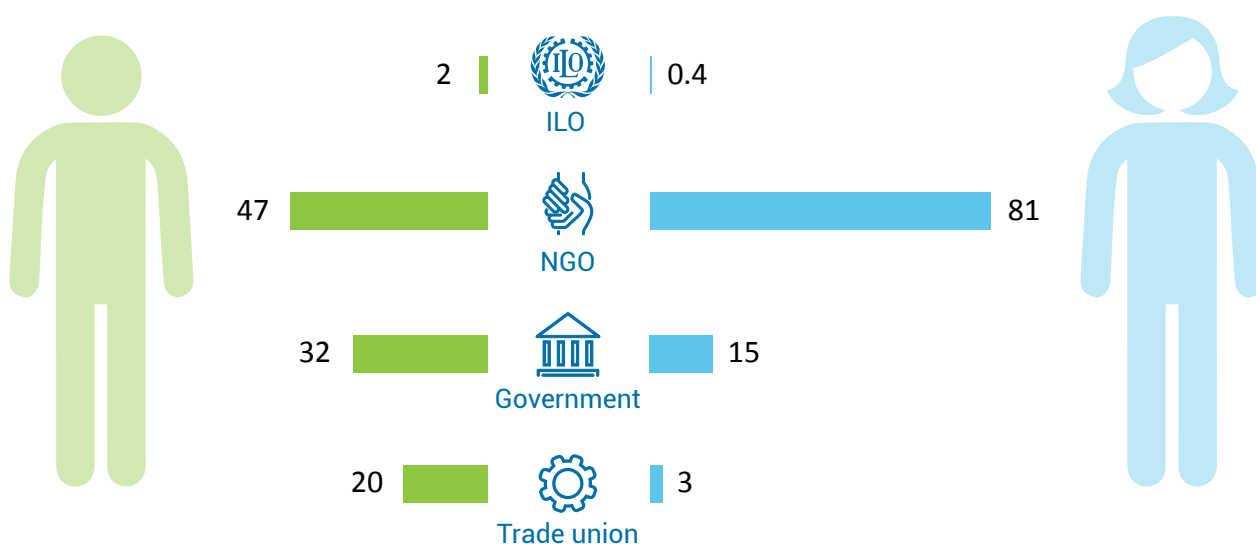
The Human Rights and Development Foundation (HRDF) has been working for over ten years to promote the rights of migrant workers in Thailand. Through their Legal Aid Clinic in Mae Sot, HRDF provides legal assistance and representation to migrant workers. They also work to increase knowledge and understanding of rights among migrant workers through training of paralegals from community-based organizations, and cooperate with government agencies and private sector companies to improve labour standards in Mae Sot and surrounding areas.

HRDF recognizes that women migrant workers, whether they work in factories, on farms or as domestic workers, are critically important to Thailand's economy. But considering the significance of their contribution, the level of legal protection afforded to women migrant workers remains very low. Women employed as domestic workers are especially vulnerable to labour rights abuses, despite the passing of a ministerial regulation on domestic work in 2012, as they continue to be exempt from a number of fundamental rights provided under the Labour Protection Act.

Between 2005 and 2015, HRDF provided legal assistance in a number of high profile cases of abuse of women migrant workers. These often involved women who had their labour rights violated and then experienced discriminatory and degrading treatment from the legal system as a result of their gender, nationality, or ethnicity. In these cases, the state mechanisms established to provide remedies for abuses and prosecute criminal offenses were not only unsuccessful in providing justice but also re-victimized women migrant workers during the process of seeking redress. By bringing attention to the stories of women migrants pursuing legal remedies, HRDF has sought to demonstrate the need for reform of the current system and for upholding the domestic laws and international obligations that Thailand has agreed to adhere to.

Source: HRDF, 2016.

Figure 6. Men (n=3,814) and women (n=3,692) complainants assisted by type of service provider (%)



Note: Gender-disaggregated data was not available for 137 migrants involved in two cases in Viet Nam.

NGO assistance settled the majority of migrant grievances regardless of gender. In total, 63 per cent of migrant workers who resolved complaints made use of MRC services provided by NGOs. This figure is known to fall short of the reality, as NGOs were also involved as an initial access point for referrals to government services in a number of cases.

Women’s greater utilization of NGO service providers extends to other countries beyond Thailand, including Cambodia and Malaysia. In total, 81 per cent of the women assisted in resolving their complaints went to MRCs managed by local NGOs (figure 6).

Men migrant workers also received more assistance from NGO service providers, with nearly half of the male complainants using their services (47 per cent). However, men were much more likely than women to resolve their grievances through government and trade unions. Greater employment in informal sectors of work among women is a key factor to be considered, as trade unions are typically less active in organizing these workers and informal workers may also have reduced access to government benefits and services due to irregular legal status.

The ILO also resolved fewer cases for women than for men through the Forced Labour Complaint Mechanism in Myanmar (15 versus 85 per cent respectively). In part, this may reflect gender biases in the referral process, as cases of abuse against women may more commonly be viewed by authorities as “human trafficking”, whereas those involving men are more often considered to be “forced labour”.

## 6.2 Subject of complaints

Figure 7. Ten most common types of complaints regionally (n=1,014) (%)



Note: Complaints could have more than one subject.

In the aggregate, delays in deployment and jobs not provided as promised were the most common subjects for migrant worker complaints at 35 per cent, which is a recruitment-related abuse predominantly faced in countries of origin (figure 7). Recruiting for non-existent jobs is a form of fraud that violates laws and regulations regulating recruitment, but is a common practice among recruitment agencies within the region looking to maximize profits. However, it should be noted that delays in deployment are not necessarily reflective of unlawful actions by recruitment agencies, as they may also reflect bureaucratic inefficiencies in the management of regular channels for migration.

The most prevalent type of complaint during employment in destination countries was for non-payment and underpayment of wages (31 per cent). As the primary motivation for migrant workers to seek employment abroad is related to increased income, wage violations are more likely to force them to overcome fears of retaliation for making a complaint.

Complaints related to wages below the legal minimum constituted 21 per cent of the cases handled. This type of case has become much more common in recent years due to the enactment of highly publicized minimum wage legislation in Thailand and Malaysia in 2013. Although the application of these laws to migrant workers was not entirely clear when first passed, they now provide an important means for migrant workers to assert their labour rights. However, it should be noted that migrants are often employed in informal sectors of work that are excluded from these laws. In Thailand, for example, domestic workers and agricultural workers are not entitled to the minimum wage.

Figure 8. Five most common types of complaints in Malaysia (n=263) (%)



Note: Complaints could have more than one subject.

As displayed in figure 8, most complaint cases handled in Malaysia involved severe and compounding labour rights violations, such as withholding of identification documents (77 per cent), inability to take leave from work (74 per cent), excessive work hours (70 per cent), and contract substitution (64 per cent). In total, 94 per cent of the cases assisted involved multiple forms of abuse. This result is partially due to the focus of work for NGO partner Tenaganita, which provides shelter and legal assistance services to migrants who have experienced forced labour and trafficking in Selangor (box 2). But it also suggests that migrant workers in Malaysia rarely suffer only one type of labour rights violation with otherwise fair working conditions.

Although not among the five most common types of complaints, nearly 45 per cent of the cases resolved in Malaysia were assessed as situations of forced labour. These determinations were made by case managers providing legal assistance, as forced labour can be difficult for victims to identify on their own. The ILO indicators of forced labour were applied, which represent the most common signs or “clues” of the existence of a case of forced labour (ILO, 2012).

## Box 2

### Assistance for victims of forced labour in Malaysia

Tenaganita is a Malaysian NGO that offers assistance and shelter services to migrants who have experienced forced labour and trafficking. The shelter provides not only a safe house in a physical sense, but also a secure environment where survivors can share their experiences of exploitation and abuse. The information Tenaganita gathers provides vital evidence that can assist migrants to file complaints and seek compensation, as well as building cases for prosecution of human trafficking.

Many of the individuals Tenaganita assists have migrated to Malaysia for domestic work. There are some 300,000–400,000 domestic workers in Malaysia, the majority of them migrants from Cambodia, Indonesia, and the Philippines. Due to the physical isolation of working in private homes, restrictions on movement and association, and lack of mechanisms to ensure accountability of employers, a large number of domestic workers suffer from abusive working conditions (Harkins, 2016).

Tenaganita responds to hundreds of calls for rescue and shelter services for domestic workers each year, and reports that in almost every case the situation is severe enough to be described as forced labour. One such example is the case of Junati, a domestic worker from Indonesia who worked for a Malaysian family for five years without being paid. Her passport was withheld, she never had a day off and was barred from contacting her family.

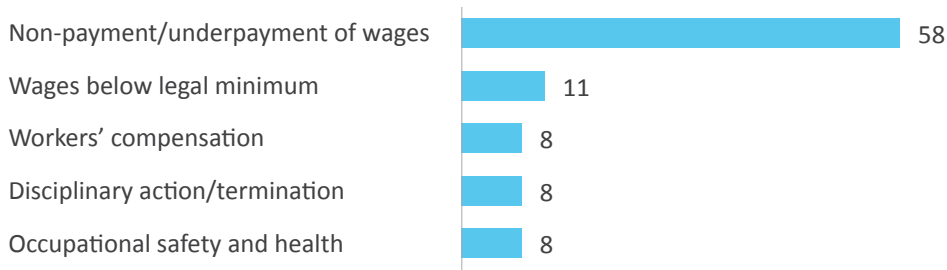
Through the assistance of a local man, Junati came to Tenaganita’s shelter, where she received counselling and help contacting her family in Indonesia. With the information Junati provided, Tenaganita has lodged a police report and proceedings have been initiated to get her the wages she is owed.

Source: Adapted from progress report of Tenaganita (2015) and Harkins, 2016.



Wages below the legal minimum were also reported in a majority of the complaint cases handled in Malaysia (74 per cent). The Minimum Wage Order in Malaysia came into effect on 1 January 2013, requiring that workers be paid a minimum wage rate in all sectors – irrespective of nationality – with the notable exception of domestic workers, who have no statutory minimum wage.

Figure 9. Five most common types of complaints in Thailand (n=160) (%)



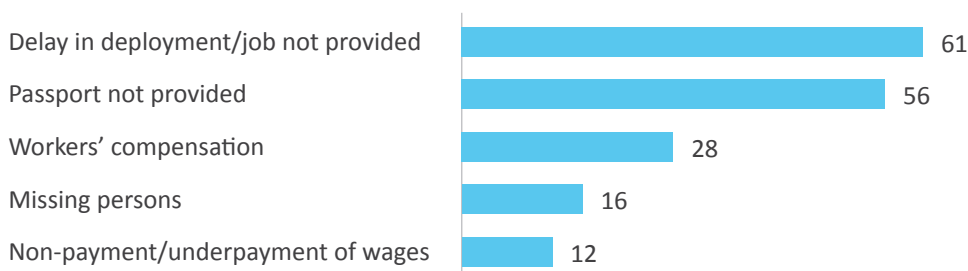
Note: Complaints could have more than one subject.

In Thailand, the majority of complaints related to non-payment or underpayment of wages, with 58 per cent of cases seeking to obtain wages due (figure 9). Notably, all three of the most common types of complaints filed in Thailand were related to pecuniary concerns (payment of wages, wages below the legal minimum, and workers' compensation).

The pattern of complaints in Thailand differs noticeably from Malaysia. Only a small share of complaints were related to abuses considered indicative of forced labour, such as withholding of documents (4 per cent), contract substitution (4 per cent), and excessive work hours (2 per cent).<sup>1</sup> Overall, determinations of forced labour were made in just one per cent of the complaint cases. While this is largely explained by the different types of MRC services delivered in the two countries, it may also suggest a variance in the nature of the labour rights abuses occurring.

Workers compensation and occupational safety and health complaints were common in Thailand, collectively representing 16 per cent of the cases handled. Because the majority of migrant workers are employed in "3D" jobs (dirty, dangerous, and difficult), the nature of their work generally places them at an elevated risk for work-related accidents and health problems.

Figure 10. Five most common types of complaints in Cambodia (n=490) (%)



Note: Complaints could have more than one subject.

As revealed in figure 10, the most frequently received complaints in Cambodia related to delays in recruitment agencies sending workers abroad after signing agreements to do so (61 per cent). Typically, this occurred because workers were recruited before a job was actually available in the destination country. The resulting delays were often quite lengthy, lasting as much as two years for some complainants. In many of these cases, migrants had already paid agencies for passports and other documentation, so secondary complaints were made regarding provision of travel documents.

<sup>1</sup> Withholding of wages as a means of coercion is also considered to be an indicator of forced labour but cannot be definitively determined from the dataset.

Generally, migrant workers had already made multiple attempts to resolve the issue directly with recruitment agencies, and were repeatedly promised that they would be deployed “soon”. In some cases, they were also told that the process could be expedited if additional money was paid.

Cross-border cases were relatively common in Cambodia, including workers’ compensation claims (28 per cent), missing persons cases (16 per cent), and non-payment or underpayment of wages (12 per cent). Because a functioning referral system has been established between provincial service providers and specialized NGOs and government agencies in Phnom Penh, many cases involving problems faced in destination countries have been successfully resolved.

### Common types of complaints in Viet Nam

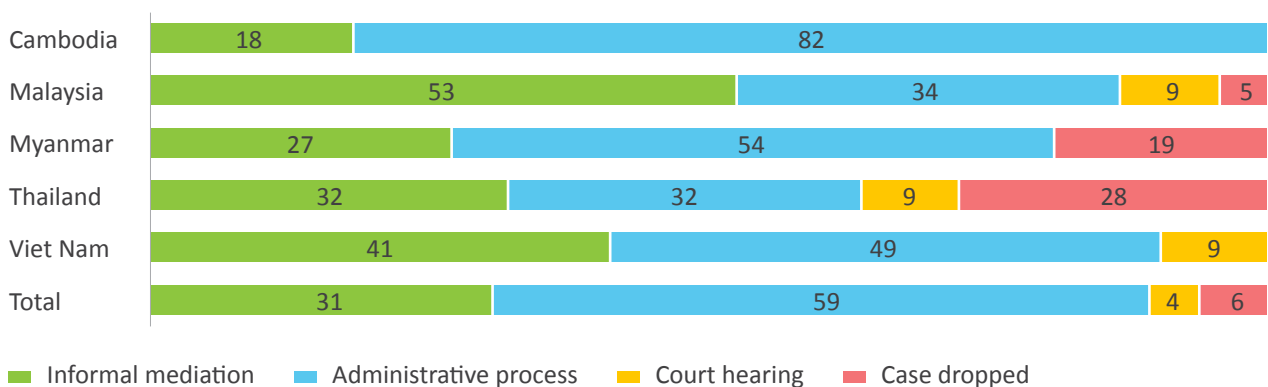
The relatively small number of complaints received in Viet Nam (n=75) makes identifying a significant trend in subject matter difficult. As discussed previously, the legal framework for migrants to register grievances is not yet well-developed and many complaints are resolved informally, never reaching government-run MRCs. Progress reports submitted by these agencies suggest that delays in deployment and jobs not provided constituted the majority of complaints received but challenges in the quality of data available remain an obstacle to drawing more solid conclusions.

### Common types of complaints in Myanmar

Similarly in Myanmar, acquiring sufficient data to determine prevailing types of complaints is not possible as an effective mechanism for migrant workers to make complaints under the Law Relating to Overseas Employment has yet to be established. Moreover, fewer complaints have been handled by MRCs in Myanmar, as they were only operational after restrictions on technical cooperation with the Government were loosened. In total, 26 complaints were resolved and most were handled directly through the ILO’s Forced Labour Complaint Mechanism.

## 6.3 Mechanism for resolution

Figure 11. Mechanism for resolving complaints by country (n=991)<sup>1</sup> (%)



<sup>1</sup> The mechanism used was not documented for three cases in Cambodia and 20 cases in Malaysia.

As revealed in figure 11, administrative hearings were the most common method used to resolve migrant grievances regionally (59 per cent). The administrative mechanism in Cambodia was particularly effective at resolving complaints, responsible for 82 per cent of cases closed. This allowed for all of the cases in Cambodia to be resolved without court proceedings, which can be interpreted as a positive result in providing responsive channels for settlement.

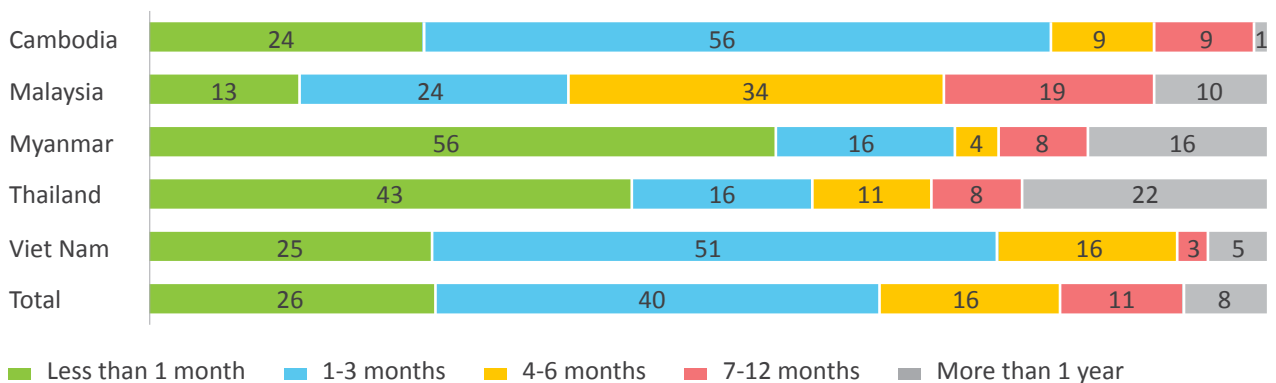
The results on mechanisms used in the other countries of origin are less significant due to small sample sizes. Under-developed systems for handling grievances led to few cases resolved through any means in the Lao People’s Democratic Republic, Myanmar, and Viet Nam. In particular, the administrative process for handling migrant worker complaints is not yet well-defined in these countries, representing an important gap in establishing more effective mechanisms.

A large number of cases were dropped without obtaining remedy in Thailand (28 per cent), the biggest portion of which were related to non-payment or underpayment of wages. Probing of reasons why cases were closed prematurely found three main explanations: (1) complainants discontinuing cases due to fears of retaliation; (2) inability to follow-up because complainants had moved on; and (3) refusal by authorities to pursue the cases further due to insufficient evidence or inability to meet legal or procedural requirements (particularly because of irregular legal status of migrant workers).

Service providers relied on informal mediation to resolve cases in Malaysia (53 per cent), which is reportedly due to slow and ineffective administrative mechanisms (Harkins, 2016).

## 6.4 Time required for resolution

Figure 12. Time for resolution by country (n=956)<sup>1</sup> (%)



<sup>1</sup> Duration was not documented for 15 cases in Malaysia and 43 in Cambodia.

For migrant workers, the period of time between registering a complaint and obtaining remedy is critical, as their permission to stay is frequently tied to their employment. In a very practical sense, “justice delayed is justice denied” for migrant workers, as they often face the prospect of having to return home before settlement if a resolution is not reached in a timely manner. In some cases, lack of timely compensation for workplace injuries can also lead to serious health consequences for migrant workers (box 3).

In the aggregate, two thirds of complaint cases were resolved in under three months, but the time required to reach resolution varied significantly from country to country (figure 12). The process was the longest in Malaysia, with the majority of the cases taking four months or more to resolve (63 per cent), whereas 80 per cent of complaints in Cambodia were resolved in less than three months. The greater severity of the abuses handled in Malaysia partially explains the difference. However, the complaints process in Malaysia is also long and legalistic, which creates challenges for migrant access to justice as they are only permitted to stay for a three-month period on a Special Pass visa.

It was notable that the majority of cases involving overcharging on fees/unlawful deductions (69 per cent), wages below the legal minimum (62 per cent), forced work (62 per cent), missing persons (62 per cent), inability to take leave from work (62 per cent), and withholding identification documents (60 per cent) all took over three months to resolve.

Government partners were the most efficient in closing cases, resolving 81 per cent in under three months, which is likely due to their ability to directly issue orders to settle disputes and sanction offenders.

### Box 3

#### Administrative delays result in a permanent disability

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

Less than a month after arriving in Malaysia, Ngu suffered a serious workplace injury. According to Ngu, his employer did not send him to the hospital after the accident and left him suffering in pain for several hours. As a result, two of Ngu's fingers were irreversibly damaged.

Unable to continue working and with no money, Ngu called home to seek help. When Ngu's family contacted his recruitment agency in Viet Nam for assistance, they were told that Ngu had broken his contract and would have to pay 13 million Vietnamese dong (US\$630) for a flight ticket home. His 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 the DOLISA in Thanh Hoa province and to the 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 recruitment agency.

However, two months after paying the extra money, 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. DOLAB authorities sent a further letter to the recruitment agency, requesting that they settle the case and bring Ngu home.

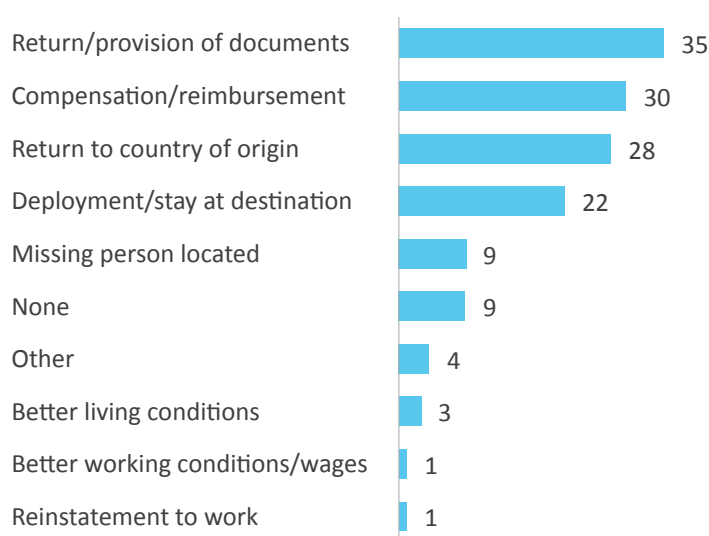
Ngu finally arrived in Viet Nam over two months after his family paid the agency additional money to cover his airfare, and three months after the accident. He was hospitalized for treatment, costing him another VND40 million (US\$1,950). His injury was left untreated for too long and his health was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

Ngu's story is illustrative of the range of problems migrant workers may encounter, including underpayment of wages and injury. It highlights the lack of support some workers receive from their recruitment agency, and the impunity with which agencies are able to overcharge their clients. It also demonstrates the importance of resolving complaint cases efficiently, and the serious consequences to workers' health and livelihoods that can result from unnecessary delays.

Source: ILO, 2016d.

## 6.5 Remedies awarded for complaints

Figure 13. Remedies awarded for complaints regionally (n=1,010)<sup>1</sup> (%)



<sup>1</sup> Remedies were not documented for three cases in Thailand and one case in Cambodia.

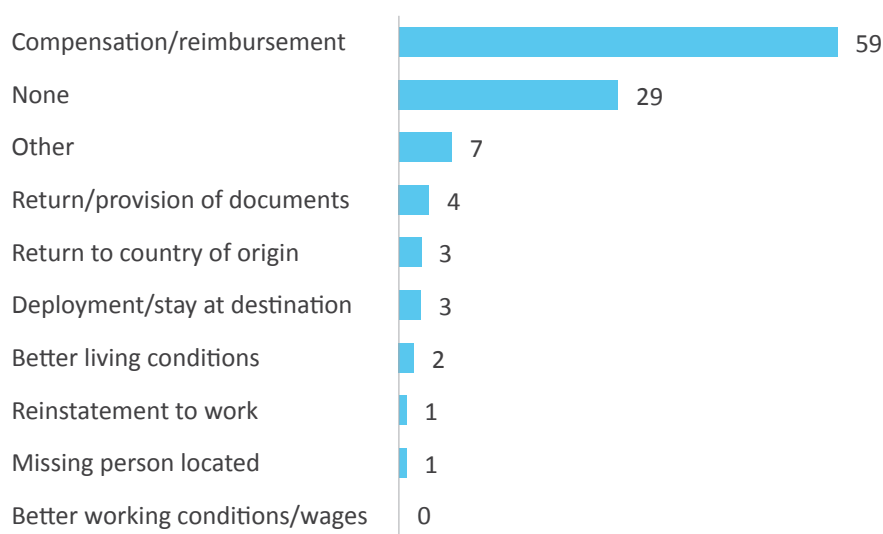
Note: Cases could result in more than one remedy awarded.

Regionally, the most common remedy obtained for migrants was return or provision of identification documents (35 per cent), as shown in figure 13. This included cases in both origin countries where recruitment agencies had failed to deliver passports and visas paid for, as well as in destination countries where employers unlawfully withheld passport and work permits to restrict mobility. In the former cases, provision of documents was also coupled with deployment to destination countries (22 per cent).

Financial compensation and reimbursement was also a major remedy provided for migrant worker grievances, awarded in 30 per cent of complaint cases. It is important to note that most of the “compensation” paid to migrant workers was in fact money that was due to them for unpaid wages and not in fact compensatory for harm suffered. It is extremely rare for migrant workers within the region to be awarded additional money in punitive damages for abuses.

The general absence of improvement in living conditions (3 per cent), better working conditions and wages (1 per cent), and reinstatement to work (1 per cent) among remedies provided is notable as they correspond to some of the most common types of complaints made. That migrant workers are not typically able to obtain lasting remedies for these problems suggests that it is very difficult for migrant workers to keep their jobs after lodging a grievance.

Figure 14. Remedies awarded for complaints in Thailand (n=157)<sup>1</sup> (%)



<sup>1</sup> Remedies were not documented for three cases.

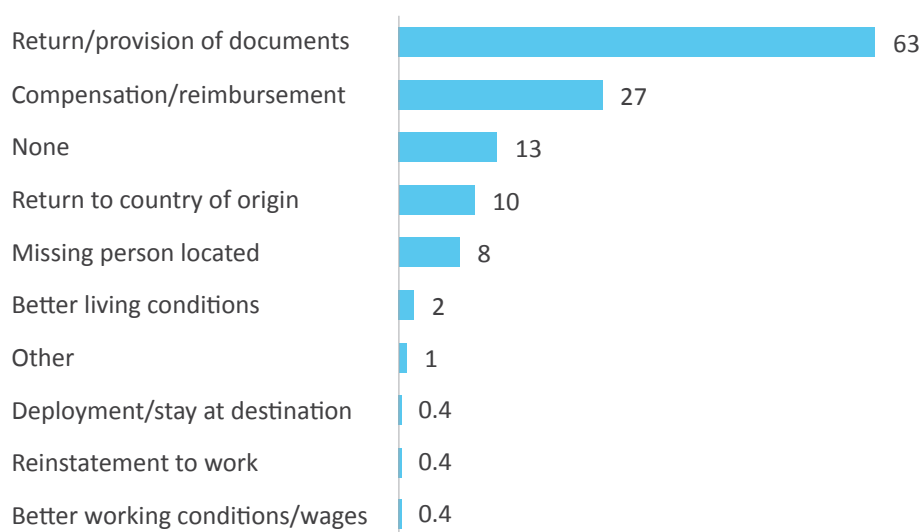
Note: Cases could result in more than one remedy awarded.

Financial compensation was provided in the majority of cases resolved in Thailand (59 per cent), as depicted in figure 14. Although a very positive result, there are often significant challenges in ensuring that the full compensation amounts awarded are actually received by migrant workers. Even when compensation is ordered by government officials, there is limited recourse available to migrant worker complainants should recruitment agencies or employers decide not to pay all or a portion of the amount. It is a common practice for offenders to delay making such payments, with the knowledge that migrants must eventually return home and the order is unlikely to be enforced further.

A large portion of complaint cases were also closed without obtaining remedies (29 per cent). The bulk of these cases involved complaints of non-payment or underpayment of wages (61 per cent). Reducing the impunity of employers to commit wage-related violations against migrants is a key objective of MRC legal assistance services in Thailand due to the large scale of the problem.

No migrant workers were able to obtain improvements in wages or working conditions as a remedy for their complaints, which is salient given that frequent complaints regarding wages below the legal minimum and occupational safety and health issues were received. An implication is that employers in Thailand may be willing to correct immediate labour rights violations when raised by migrant workers but are much more reluctant to abide long-term increases in labour costs. This suggests that the complaint mechanisms currently available have not been effective in encouraging systemic changes in the treatment of migrant workers.

Figure 15. Remedies awarded to complainants in Malaysia (n=263) (%)



Note: Cases could result in more than one remedy awarded.

The most common remedy provided to migrants in Malaysia was return to their country of origin, which was an outcome for 63 per cent of complaint cases (figure 15). Some of these cases involved migrant workers who were provided with shelter services after enduring forced labour – and returning home was a high priority. In other cases, however, considering repatriation to be a “remedy” may be a mischaracterization due to the loss of income and investment in migration costs.

Compensation was the other frequently provided remedy, awarded in 27 per cent of cases settled. Between the two destination countries, migrants in Thailand were almost one-third more likely to receive financial compensation for their complaints, whereas migrants in Malaysia were much more commonly repatriated (59 per cent). A regular response to migrant complaints in Malaysia is to send them home as quickly possible, in some cases without providing due wages (box 4).

Despite being the most common complaint received in Malaysia, only 13 per cent of the migrants who requested to have their identification documents returned were successful. Retention of the passports of migrants is a very common practice in Malaysia, with a survey by the Malaysian Employers Federation suggesting that 74 per cent of migrant passports are held by employers and outsourcing agencies, although this is illegal without the owner’s permission and never advisable regardless (2014, p. 47).

There was no particularly prominent type of complaint among the 13 per cent of grievances for which no remedy was awarded, but most could be considered serious abuses as they involved multiple labour rights violations.

#### Box 4

### Remedies for laid-off migrant workers in Malaysia

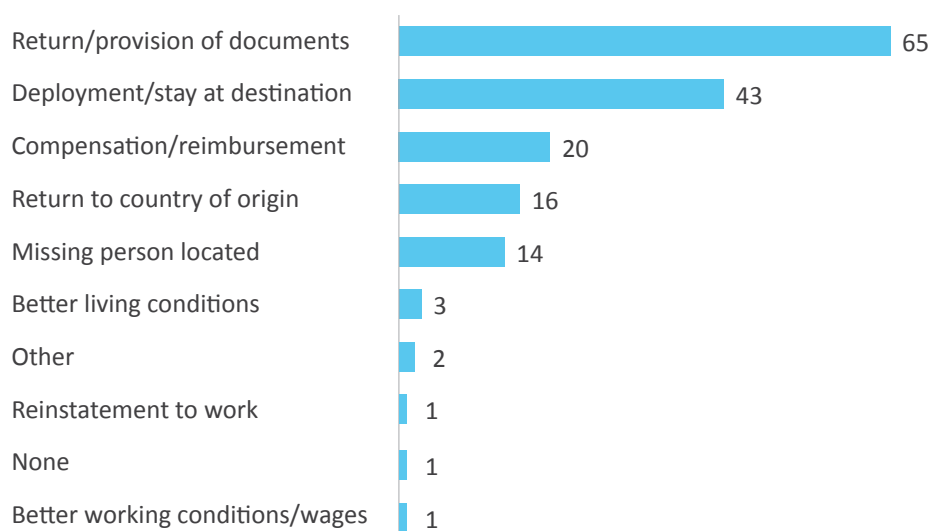
In Johor, Malaysia, about 900 migrant workers from Bangladesh, Nepal, and Pakistan lost their jobs without notice when a furniture company was shut down due to insolvency. As the workers' immigration status was tied to their work permit – which did not allow them to transfer to another employer – they were in a very difficult and uncertain situation. In addition, the worksite and the workers' accommodation were located in an isolated area about 150 kilometers from the nearest city. Once the company was shut down, the workers quickly ran out of money and had to sell their belongings in order to survive.

The MRC run by the Malaysian Trades Union Congress (MTUC) helped negotiate an amicable layoff settlement for the workers, with an option of either transferring to another employer or repatriating. Negotiations held at the Department of Labour resulted in the employer agreeing to pay each worker one month of wages in compensation for not giving adequate notice in accordance with Malaysian laws, in addition to the two months of wages that had been left unpaid when the factory closed. The presence of immigration officers at the meeting was welcome, as it made it possible to resolve the issue relating to new employment contracts. The immigration officials agreed to grant transfer of employment permits to workers, provided that all parties agreed to the transfer.

This case is noteworthy as the workers not only received compensation and the wages they were due, but were also able to change employers and continue working in Malaysia. Since migrant workers' right to remain in Malaysia is tied to their employer, many are afraid to make complaints in fear of being sent home and losing the often significant investment they have made to obtain work abroad. The case also demonstrates the important role that destination country trade unions, such as MTUC, can play in protecting migrant workers' rights.

Source: Adapted from progress report of the Malaysian Trades Union Congress (2015).

Figure 16. Remedies awarded to complainants in Cambodia (n=489)<sup>1</sup> (%)



<sup>1</sup> Remedies were not documented for one case.

Note: Cases could result in more than one remedy awarded.

In Cambodia, provision of documents was the most frequent remedy provided to migrants, ordered in 65 per cent of cases (figure 16). As recruitment agencies failed to deliver passports and visas despite receiving upfront payments, the cases were resolved through delivery of these missing documents. For a substantial portion of these cases, migrants



were also deployed to destination countries for work (43 per cent), but no compensation was provided for the many months of delay.

Location of missing persons (14 per cent) and safe return home (16 per cent) were also regular remedies obtained for Cambodian complainants. Though sometimes the result of simple misunderstandings, more disturbing causes for disappearance of Cambodian migrant workers are not exceptional, particularly in the Thai fishing sector and the domestic work sector in Malaysia.

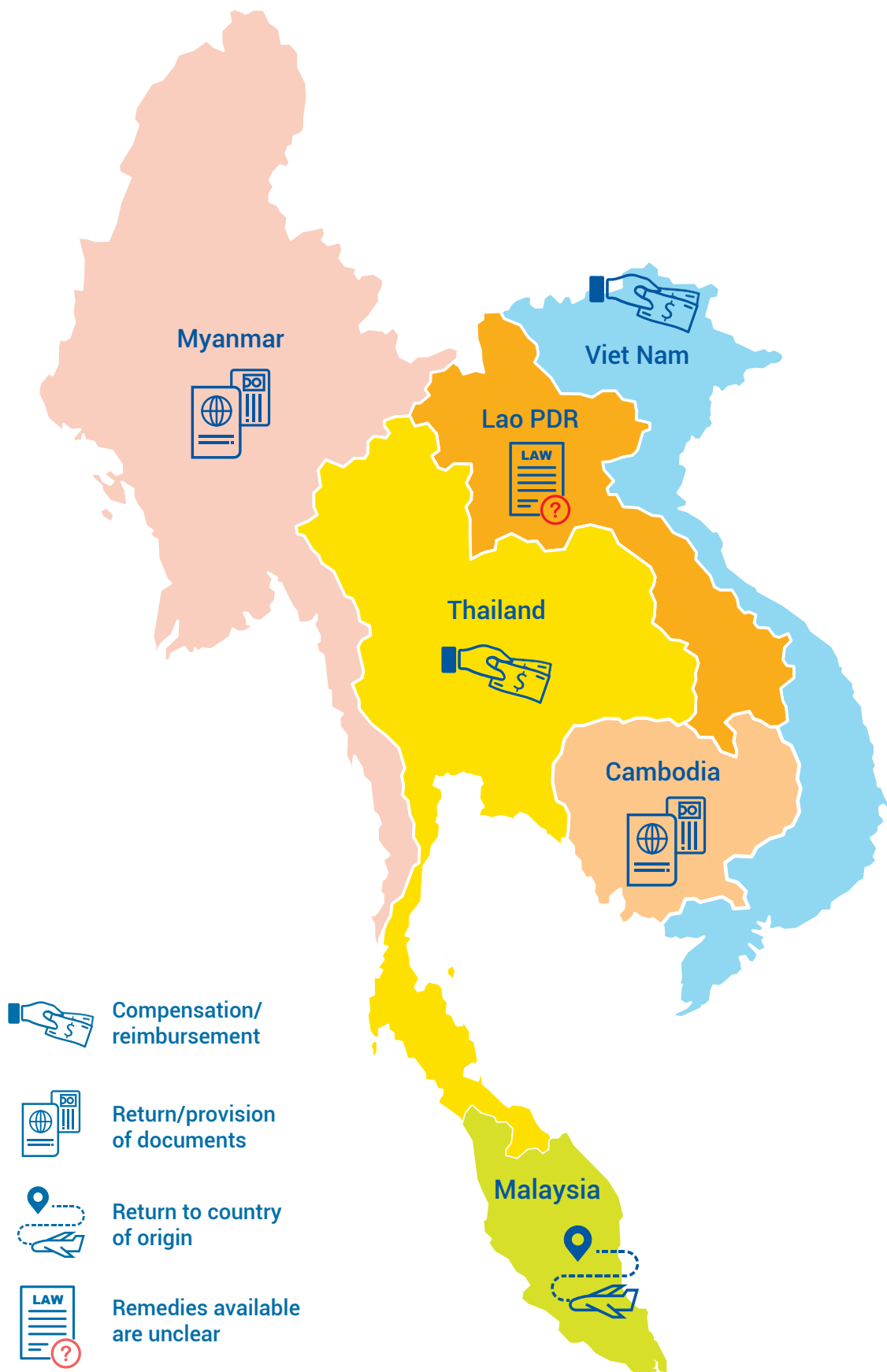
### Remedies awarded to complainants in Viet Nam

In Viet Nam, all of the complaint cases resolved received remedies (n=75). Nearly half of the cases were awarded financial compensation and almost one-quarter were repatriated. The data suggests that obtaining remedies is possible for migrant complaints in Viet Nam but that problems with impunity of offenders remains a challenge. It was notable that the majority of these cases involved unlicensed brokers rather than licensed recruitment agencies, who are often well-connected, and as a result, may be sheltered from providing compensation for abuses (ILO, 2015f).

### Remedies awarded to complainants in Myanmar

Remedies were ordered for most of the cases closed in Myanmar (20 out of 26), predominantly in the form of repatriation or financial compensation. The ILO's Forced Labour complaint mechanism has clearly been effective in obtaining remedies for migrant complainants and their family members, though access to assistance must be expanded through local service providers so that a greater number of migrant workers can obtain redress.

Figure 17. Map of most common remedies provided by country



## 6.5.1 Financial compensation

Figure 18. Compensation awarded by country (n=314) (US\$)

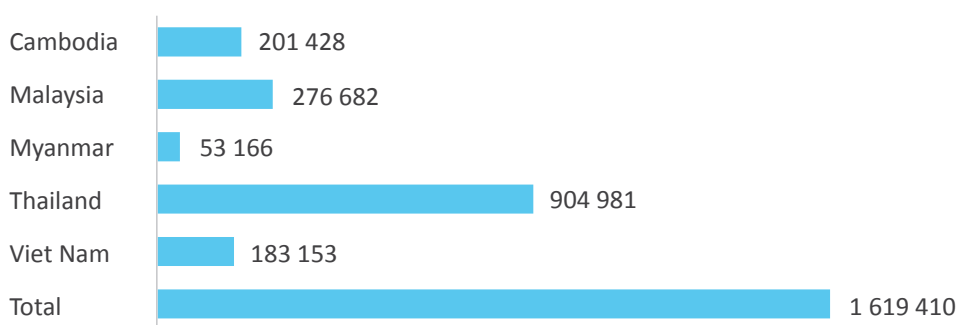


Figure 18 shows that in total, migrants were awarded US\$1.62 million in compensation to resolve their complaint cases. The majority of this money was obtained for complaint cases in destination countries (73 per cent), which reflects the substantial gap remaining in holding recruitment agencies accountable for violations against migrant workers in countries of origin.<sup>2</sup>

Despite the greater accountability achieved in destination countries overall, by 2015, there was a discernable trend towards greater amounts of compensation awarded in countries of origin. In particular, this can be attributed to the establishment of a functional administrative complaint mechanism in Cambodia; the active engagement of ILO staff in assisting with the resolution of cases in Myanmar (box 5); and greater clarity on the process for handling grievances in Viet Nam through consultation between stakeholders and enactment of Decree No. 119.

### Box 5

#### Compensation paid to a domestic worker for a workplace injury

On 30 May 2014, the ILO Forced Labour Complaint Mechanism (FLCM) in Myanmar received a complaint from the husband of Ms Khin Khin, who had been working as a domestic worker in Singapore. In February 2014, she had fallen from the fourth floor of the building where she worked, breaking both her legs and arms, causing paralysis, and seriously damaging her skull. She was admitted to the National University Hospital in Singapore, where she received treatment for one month. The hospital expenses were covered by Ms Khin Khin's insurance company. She was then sent back to Myanmar, where she was treated at Yangon General Hospital.

Upon return, Ms Khin Khin was in need of further surgery, including an operation to reconstruct her skull. Her family had understood that she would receive further compensation, but when they did not hear from the insurance company, they contacted the FLCM. ILO staff followed up with the organizations involved and contacted the Migrant Workers Centre in Singapore to coordinate with the Ministry of Manpower.

In August, the Ministry of Manpower informed the ILO that the insurance company had assessed Ms Khin Khin's claim for permanent disability benefits under the Maid Ease policy, but found no evidence that she had suffered a qualifying injury. Ms Khin Khin and her family decided to go ahead with the operation, and requested that the doctor write a detailed medical report to submit to the insurance company documenting her disability.

<sup>2</sup> It should be noted that previous compensation data collected from MRC partners totalled US\$2.04 million over the four years of MRC service delivery. The difference is the result of incomplete documentation of complaint cases in Malaysia during the early stages of MRC service delivery, as well as exchange rate fluctuations (see limitations section).

### Box 5 (cont.)

In November, the insurance company informed Ms Khin Khin that her disability claim had been accepted and she would receive the maximum compensation payment allowed. As the financial infrastructure is limited in Myanmar, and most rural families do not have bank accounts, the process of arranging for the transfer of money took four months to complete. Ms Khin Khin's was finally able to receive the money from her disability claim in March 2015, 13 months after her accident occurred.

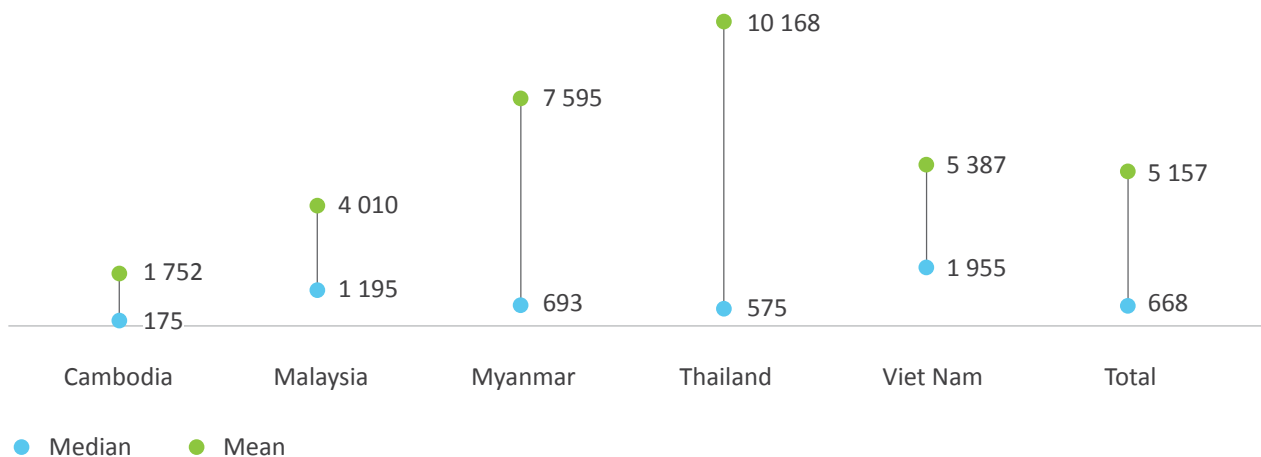
With the money she was provided, Ms Khin Khin was able to pay for further surgery and her health has now improved. Her family has also been able to buy a house and a motorbike, which her husband now uses to earn a living as a motorbike taxi driver.

It can be especially difficult for migrant workers who have returned to their country of origin to receive compensation for accidents or injuries that have occurred during their time abroad. It is therefore important to establish connections between different migrant support services, including those provided by NGOs and trade unions, in countries of origin and destination. Without the assistance of the FLCM in Myanmar and the Migrant Workers Centre in Singapore, Ms Khin Khin's case could have ended very differently.

Source: Adapted from a case file of the ILO Forced Labour Complaint Mechanism (2015).

Efforts were made to collect data on the amount of compensation requested to support a comparison with the amount awarded. However, for most countries the data was incomplete, as an amount was not specified when lodging complaints. In Thailand, where the data was most complete, requests totaled US\$6,088,590 and awards totaled US\$904,981, which means that only 15 per cent of the total petition was met. This result demonstrates that although compensation for abuse of migrant workers is awarded in Thailand, the amounts are likely far from satisfactory for complainants.

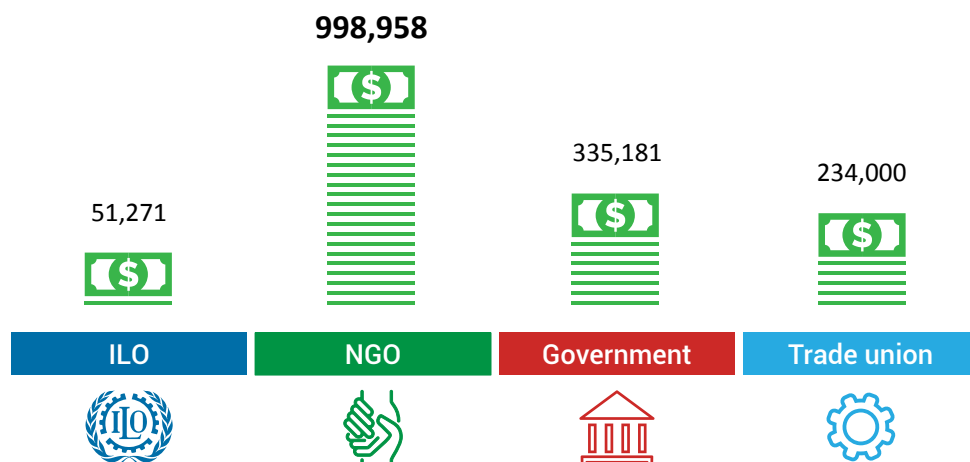
Figure 19. Mean and median compensation awarded by country (n=314) (US\$)



Note: Only amounts more than zero were included in calculating averages.

As shown in figure 19, the mean amount ordered across all complaint cases was US\$5,157. However, comparison with the median amount awarded of US\$668 suggests that the majority of cases resulted in three-figure compensation amounts and a few very large settlements skewed the average higher. This was true in all countries, but was most evident in Thailand and Myanmar, where US\$600,000 and US\$40,000 were awarded in single cases respectively.

Figure 20. Compensation awarded by type of service provider (n=314) (US\$)

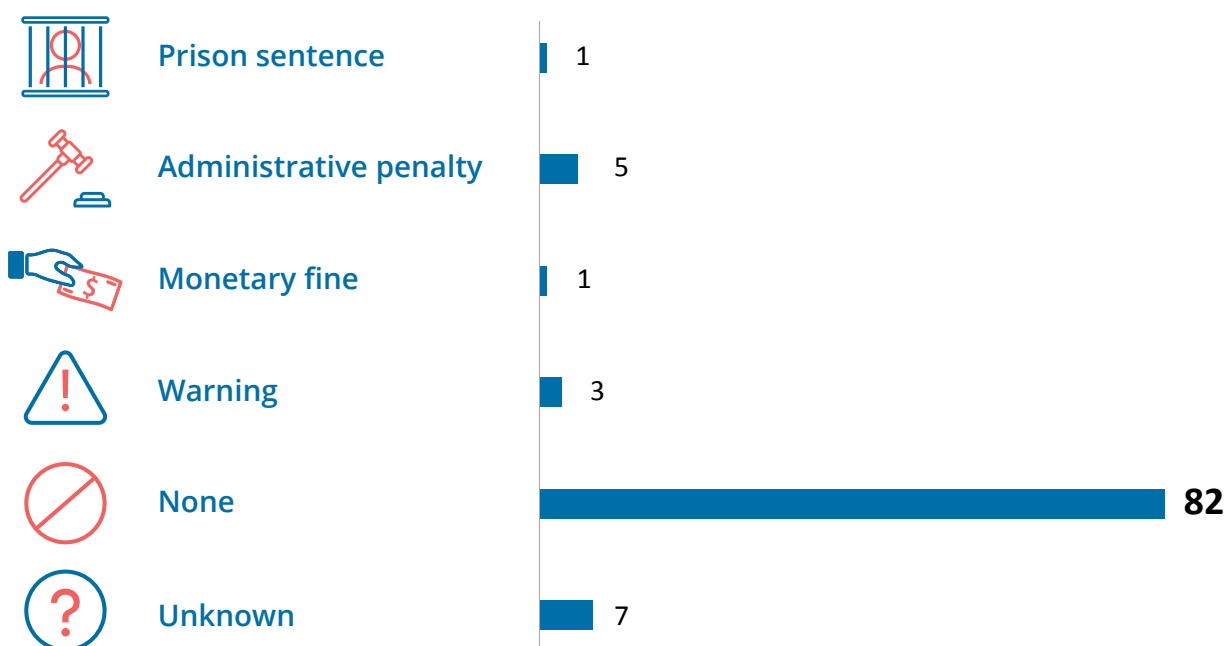


NGO partners were the most successful in obtaining compensation orders for migrant workers, securing nearly US\$1 million for 162 cases (figure 20). The MAP Foundation in Thailand was responsible for the largest individual amount awarded for a complaint (US\$600,568), involving a textile factory in Mae Sot where workers had not been paid the minimum wage and had their wages withheld for a substantial period of time.

The ILO assisted with obtaining the highest average settlements, with a median of US\$5,347, but this represents only four cases where compensation was ordered. This was followed by NGOs (US\$790), trade unions (US\$377) and government agencies (US\$300) in order of declining magnitude.

## 6.6 Sanction of offenders

Figure 21. Sanctions ordered regionally (n=1,014) (%)



As depicted in figure 21, no sanction was applied for the vast majority of complaints resolved within the region (82 per cent). It can also be assumed that no penalties were enforced for a large portion of those cases where sanctions were unknown.

The most common type of sanction that was ordered for offenders was an administrative penalty in 5 per cent of cases – typically a licensing sanction for recruitment agencies facilitating outbound or inbound recruitment. However, given that half of the complaint cases were resolved by government agencies for violation of laws and regulations, the scarcity of penalties suggests the need for stricter enforcement and greater publicity for the sanctions applied.

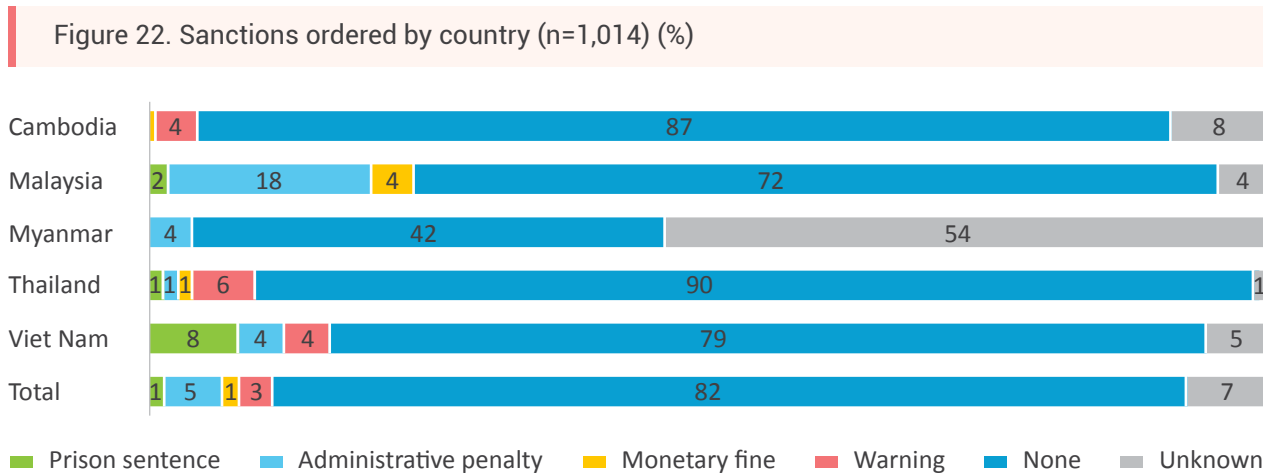


Figure 22 shows that Malaysia was the country where the largest share of sanctions were imposed (24 per cent). This may be the result of stricter enforcement of recruitment regulations for the large industry of outsourcing agencies responsible for placing migrant workers with employers in Malaysia – repeatedly identified as a major source of exploitation and abuse (Amnesty International, 2010; SOMO, 2011; Del Carpio et al., 2013; Harkins, 2016).

Severe penalties in the form of prison sentences were most frequently handed out in Viet Nam (8 per cent), primarily against unlicensed brokers who were prosecuted for deceptive recruitment practices amounting to human trafficking. These types of cases appear to be referred to police for follow-up investigation of human trafficking offenses more frequently than those involving licensed recruitment agencies, though such agencies are also known to be involved in complaint cases where migrant workers reported being severely deceived (CSAGA, 2013).

Examining sanctions applied by subject of complaint, cases involving overcharging on fees/unlawful wage deductions were the most likely to receive sanction (33 per cent), followed by forced labour (23 per cent) (box 6), and occupational safety and health complaints (21 per cent).

**Box 6**

**Arrest for trafficking of Cambodian workers on a Malaysian fishing boat**

In April 2014, 13 men from Tbong Khmum and Prey Veng provinces of Cambodia met a broker who promised them lucrative jobs in Malaysia. The men were informed that the work was on a fishing boat and that the broker would arrange all of the necessary documents and transportation. They were told that if they worked hard, they could earn large sums of money working as fishers.

Although the men did not travel together, they all recounted similar experiences. After a first stop in Poipet they travelled on to Kuala Lumpur and finally to Kuching, where they ended up working.

Upon arrival, the gruelling reality of the work became apparent, involving excessive hours, very little rest, and wages below what had been promised. They were paid between US\$300–900 for up to nine months of work. It became clear to the workers that they could not leave the boat and that they would have to find a way to escape if they were going to survive. While in port for a brief stop, the men managed to call home for help.

### **Box 6 (cont.)**

In late December 2014, the MRC run by the Cambodian Labour Confederation in Prey Veng received the fishers' complaint case through family members. With the information collected by the MRC, Legal Support for Children and Women (LSCW) worked with the relevant authorities and NGOs in Malaysia to rescue the fishers.

By January 2015, all 13 of the men had been rescued after nine months of forced labour and were able to return to Cambodia. They filed a complaint with the Anti-Human Trafficking Department and Juvenile Protection Unit and returned to their home villages the following day. They wished to move on with their lives as soon as possible so that they could find new jobs and provide for their families.

After the case was referred to the police, the local broker was arrested and tried in Prey Veng Municipal Court. LSCW continued working with other NGOs to ensure that the men were provided with further support services, including psychosocial support and vocational training.

As the data analysed in this report shows, migrant workers' complaints rarely lead to the arrest or imprisonment of perpetrators. However, training for labour authorities and other key stakeholders could increase referrals to criminal justice authorities and ensure that recruiters cannot deceive migrants with impunity.

Source: Adapted from progress report of Legal Support for Children and Women (2015).



## 7. Conclusion

The results of the study show that measurable progress has been achieved during the last few years in increasing access to justice for migrant workers in some of the countries of South-East Asia. The experience in Cambodia and Thailand in particular demonstrate that holding employers and recruiters more accountable for labour rights violations against migrants is possible through holistic intervention on policy and legislative development, capacity building of stakeholders, and provision of direct support service.

In spite of these improvements, migrant workers continue to face major obstacles to lodging and resolving complaints in all of the locations studied. In countries of origin, only blatant violations of migrants' rights are typically rectified, such as collecting recruitment and documentation fees for non-existent jobs. Other forms of abuse that are known to be widespread, including overcharging migrant workers on recruitment fees and misrepresenting the terms of employment, continue to go unchallenged. Unequal power relations between migrants and recruiters are supported by ineffective mechanisms for addressing unlawful practices.

The situation in destination countries is similar, though compounded by language barriers and employer-tied visas and work permits. As a result, most migrant workers do not risk making a complaint unless their livelihoods or basic dignity as human beings are clearly threatened. It is well-understood by migrants that lodging a grievance is likely to mean the end of their employment, and thus long-term improvements to wages and working conditions are currently out of reach. Most migrant workers view their income and well-being as dependent upon maintaining deferential relationships with those in positions of power rather than the ability to assert their labour rights.

Within the migrant worker population, there are manifest differences between women and men in access to justice for labour rights abuses. Due to the informal and unrecognized nature of much of women's migration and employment within the region, their opportunity to voice grievances is reduced exponentially. A domestic worker in Malaysia would have to contend with physical isolation, restricted movement, lack of coverage by labour laws, and the possibility of being made homeless in attempting to lodge a complaint. Even with explicit efforts made to reach women migrants in all countries where MRCs were established, the results suggest that access remains deeply inequitable in many areas.



The critical role of NGOs and trade unions in providing an access point for migrants to seek redress is clearly evidenced by the data. These organizations provide the doorway that the majority of migrants walk through when they need assistance. Particularly for women migrants, the overwhelming preference for NGO services highlights their importance in ameliorating the gender gap in access to justice. The limited availability of such providers in the Lao People's Democratic Republic and Viet Nam was undoubtedly a key factor behind the inability to assist more women complainants in those countries.

An overall conclusion drawn from the delivery of legal assistance to thousands of migrant workers in South-East Asia is that there is a substantial and largely unmet demand for fair and responsive remedies. Most migrant workers who are faced with situations of exploitation and abuse seek practical resolutions, such as disbursement of unpaid wages, deployment to destination countries, and return of identification documents. It is clear that these demands are not adequately met through enforcement of labour and human trafficking laws currently, as evidenced by the small amounts of compensation awarded to migrant workers in response to severe abuses. Continued efforts to improve the accessibility and effectiveness of complaint mechanisms for labour rights violations are needed to ensure that migrant workers are provided with just remedies.

## 7.1 Recommendations

- 1. Establish clear legal and institutional frameworks:** Additional instruments and legislative amendments are needed to reinforce the legal basis for complaint mechanisms. The Lao Government should consider enacting sub-laws under the Labour Law passed in 2013 to elaborate a clear complaint process and institutional mandate for implementation. In Myanmar, the Law Relating to Overseas Employment requires amendment to ensure effective operation of the complaint mechanism managed by Labour Exchange Offices. In Malaysia and Thailand, the Private Employment Agencies Bill and the Recruitment and Job Seekers Protection Act respectively should be revised to encompass regulation of outsourcing agencies and sub-contracting.
- 2. Provide capacity building training to service providers for improved implementation:** In all six countries, the officers and officials responsible for resolving complaints from migrant workers require additional training to develop greater knowledge of the relevant laws, procedures, and resources available for migrant worker complaints. One approach that has proven effective in Cambodia is cascaded training from provincial authorities to local leaders and organizations. Training and recruitment of additional female officers are also needed to improve the gender-responsiveness of services – particularly for government agencies – if access for women migrants is to improve.
- 3. Allocate government funding for trade unions and NGOs to deliver legal assistance services:** In Thailand, Malaysia and Cambodia, donor funding for NGOs and trade unions have been a key reason that access to complaint mechanisms has increased for migrant workers in recent years, particularly among women. To make the services sustainable in the long-term, government grants should be provided to help support the operation of MRCs by these organizations, including in countries such as Viet Nam and the Lao People's Democratic Republic where service delivery is dominated by the Government.
- 4. Support networking and referral of cases between stakeholder organizations:** Improved cooperation between government, trade unions, and NGOs – including across borders – is necessary to provide an effective response to migrant worker complaints. This should include formalizing the referral process from front-line service providers to organizations and institutions with the capacity to resolve more difficult and severe cases, allowing for a multi-disciplinary approach in increasing access to justice. Cooperation with the diplomatic missions of countries of origin should also be increased to provide interpretation services and reassure migrant workers about the impartiality of complaints processes. To enable resolution of cases after migrant workers have returned home, cross-border networks between caseworkers should be strengthened.
- 5. Conduct more effective outreach to women and men migrant workers:** Government authorities should be more active in informing migrant workers in destination countries of their labour rights and how to access complaint mechanisms, including providing information through post-arrival trainings and during regularization processes. To support direct outreach within communities, trade unions and NGOs should deliver training for migrant paralegals to identify labour rights violations and provide advice and referrals for assistance.

6. **Ensure timely resolution of migrant worker grievances:** Migrant worker complaints must be resolved swiftly given the temporary nature of their employment in destination countries. Government agencies should set targets for the maximum time allowable for resolution of complaints, with under three months as an initial starting point.
7. **Provide fair compensation amounts and award punitive damages:** In addition to providing more equitable settlements for due wages and refund of unlawful fees and deductions charged, migrant workers should be provided with compensatory amounts for abuses suffered. Establishing substantial financial penalties for such practices will help to discourage repeat offenses by employers and recruiters against migrant workers.
8. **Establish joint and several liability for offenses committed by recruitment agencies and employers:** The difficulties in holding recruitment agencies in countries of origin accountable for placing migrant workers in abusive employment situations is a key obstacle to fair recruitment of migrant workers. Labour authorities should enact legislation that makes recruitment agencies fully liable in the event that the working conditions provided to migrant workers at destination do not adhere to the terms of their employment contracts.
9. **Systematically enforce appropriate sanctions against offenders:** Inadequate enforcement of penalties for abuse of migrant workers' rights has established a culture of impunity in countries of origin and destination. Sanctions should be applied impartially, and increasingly stringent penalties handed out to repeat offenders. To act as a deterrent against abuse, the sanctions applied should be widely publicized.
10. **Amend labour migration governance policies that undermine migrant workers ability to obtain remedies:** To increase the opportunities for migrant workers to seek redress, policy frameworks in destination countries should provide greater flexibility in changing employment; allow domestic workers the option of living outside their employers' households; and permit migrant workers to remain in country and work while their cases are being resolved.
11. **Develop national databases to collect and analyse data on complaints:** The development of a database system and provision of training to relevant agencies are necessary to raise the quality and timeliness of complaints data available for analysis. After completion, the data on complaints should be aggregated and analysed to inform policy and practice, and the statistics openly shared.

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# Appendix I. Legal assistance outcome record

1. Number of complainants? \_\_\_\_Men/\_\_\_\_Women

2. Subject of the assistance provided? (Select all that apply and provide the number of men/women assisted)

Non-payment/underpayment of wages

Wages below legal minimum

Living conditions

Occupational safety and health

Job duties

Excessive work hours

No work leave

Insurance not provided

Workers' compensation

Harassment

Retention of identification documents/work permit

Disciplinary action/termination of employment

Delay in deployment/job not provided

Passport not provided

Overcharging on fees/unlawful deduction of wages

Contract substitution

Missing persons

Stranded/detained in receiving country

Forced work

Other (specify)\_\_\_\_\_

3. Total amount of financial compensation/reimbursement requested?\_\_\_\_\_

4. Duration of the case?

- Less than 1 month
- 1–3 months
- 4–6 months
- 7–12 months
- More than 1 year

5. Case resolved through?

- Court hearing
- Administrative process
- Informal mediation
- Case dropped (specify why) \_\_\_\_\_

6. Remedy obtained? (Select all that apply and provide the number of men/women receiving remedy)

- Monetary compensation/reimbursement
- Better working conditions/wages
- Better living conditions
- Reinstatement to work
- Deployment to destination country
- Missing person located
- Return/provision of identification documents/work permit
- Return to country of origin
- None
- Other (specify) \_\_\_\_\_

7. Total amount of financial compensation/reimbursement awarded? \_\_\_\_\_

8. Sanction applied to offender?

- Prison sentence
- Administrative penalty
- Monetary fine
- Warning
- None



# Access to justice for migrant workers in South-East Asia

Providing migrant workers with fair access to justice in South-East Asia is a key gap remaining in protecting them from exploitation and abuse. Because of the obstacles that they face to obtaining assistance through official mechanisms, migrants are often highly dependent on informal support, even when the abuses they endure are severe in nature. As a result of this informality, the data collected on migrant worker complaints within the region has been very limited to date.

This report helps to fill the knowledge gap by analysing data on complainants assisted by Migrant Worker Resource Centres from 2011 to 2015. Over 1,000 cases involving more than 7,000 women and men migrant workers were documented across five countries, establishing the largest regional dataset of migrant worker complaints compiled within South-East Asia. The analysis reveals that progress has been achieved in facilitating access to justice for migrants but that major challenges remain in providing them with fair and responsive remedies.

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