

Viet Nam Policy Brief 2: Fair recruitment for Vietnamese migrant workers is key to eradicating forced labour

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Fair recruitment is critical to eradicating forced labour. Unfair recruitment practices can lead to forced labour conditions for migrant workers, including debt bondage and abusive working and living conditions.

To enable fair recruitment, the Government, working together with the private sector and other stakeholders, should:

1. Publish up-to-date, easily accessible and transparent information on regulated employment agents, including reviews of their service.
2. Improve regulation related to recruitment.
3. Increase the number, and build the capacity of labour inspectors, and support the Vietnamese Association of Manpower Supply (VAMAS) to strengthen its self-monitoring activities.
4. Increase stakeholder buy-in.
5. Strengthen dialogue with business representatives to compile information on national skills needs and availability for in-country employability.

This policy brief sets out that:

- Fair recruitment is key to eradicating forced labour.
- Viet Nam has made much progress in implementing the legal framework necessary for fair recruitment.
- Further improvements are possible by improving information flows and transparency, and effectively enforcing legislation

Fair recruitment is key to eradicating forced labour

Forced labour risks increase when workers are recruited through unfair practices. Examples of unfair recruitment include charging recruitment fees and related costs to workers, and deception and misinformation about working and living conditions and/or pay.

The ILO has published non-binding General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs, which are derived from a number of international standards and related ILO instruments. There are 13 general principles for fair recruitment, which include the following provisions:

- No recruitment fees or related costs should be borne by the worker.

¹ These policy briefs are intended to be living documents. Readers should regularly check for updates.

- Regulation of employment and recruitment activities should be clear and transparent and effectively enforced.
- Recruitment should respect relevant national and international laws.
- Terms and conditions of employment should be specified in an understandable manner and provided to the worker before departure.
- Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.

Viet Nam has taken important steps in implementing the legal framework necessary for fair recruitment but unfair practices persist.

Key Laws

- **Law No. 72/2006/QH11 Law on Vietnamese Migrant Workers:** provides for the rights and obligations of migrant workers and employment agents sending them abroad
- **Law No. 45/2019/QH14 New Labour Code:** prohibits the extraction of forced labour; and making enticement, false promises or false advertising to deceive a worker; or making use of employment service or activities on sending workers abroad to work on the basis of employment contract to commit illegal acts
- **Law No. 66/2011/QH12 on Human Trafficking Prevention and Combat:** prohibits transferring or receiving, recruiting, transporting or harbouring person for forced labour

- Common recruitment practices include the recruitment of workers before employment has been secured for them; in these instances, recruits may spend time in recruitment centres without papers or freedom of movement. Recruits are also commonly charged fees and related costs in excess of national law; and sent to their employment without a contract, or appropriate training and orientation.
- According to Law 72 (see above) the act of recruitment should be undertaken by a licensed agent and inspected by the Department of Labour. However, In a survey on recruitment, it was found that just over half of migrant workers were recruited by government or private registered agents in Viet Nam or overseas; almost half were recruited – or received the information on the potential migration opportunities – from individual recruiters, brokers, family members or friends.ⁱ Information from unregulated actors or personal contacts may be inaccurate or not up to date; and aspiring migrants find it difficult to know whether information sources are trustworthy and whether actors are “registered agents”.ⁱⁱ
- Where actors are not registered or regulated, there is limited ability to hold them accountable for their recruitment practices. Limited resources mean that Vietnamese Department of Labour (DOLAB) may only be able to inspect ten per cent of regulated employment agents per year.ⁱⁱⁱ
- The use of third-party brokers in the country of destination can result in additional fees and placement of workers in different employment to for which they were originally recruited.
- The Vietnamese Association of Manpower Supply (VAMAS) has developed a code of conduct and self-monitoring tool to improve consistency and quality of the activities of regulated agencies, but implementation is a challenge.

What can be done to increase fair recruitment?

- **Increase transparency and reduce informality:** Transparency of practices can be increased by eliminating the use of third-party brokers and unregulated actors. Publishing accessible and up-to-date information on regulated agencies, including reviews of their service.
 - Indonesia established a new website to monitor and review private recruitment agencies, in partnership between a civil society organisation and trade union, encouraging members to rank recruitment agencies online.
 - Myanmar has undertaken training of community leaders to provide safe migration information at the village level. This system is effective as the potential migrant is able to obtain information as and when they need it, without having to wait to speak to a recruitment agent or travel to a large city.
- **Strengthening regulation:** This can include extending the responsibility of recruitment agents to cover the workers' experiences throughout their migration experience; increasing the accountability of recruiters to the employment conditions.
- **Improving monitoring and enforcement:** Increasing the capacity of both the government inspectors, and VAMAS to increase monitoring activities and enforce against non-compliance, can elevate the standard for recruitment practices across the board.
 - The Philippine Overseas Employment Administration revised the rules and regulations governing the recruitment and employment migrant workers, introducing an incentive system for good practices of recruitment agencies.
- **Increasing stakeholder buy-in:** A recent study found that customer and business expectation drive supplier compliance with fair recruitment, and that this increases where the business case for fair recruitment is clear.^{iv}
- **Strengthen dialogue with business representatives to compile information on national skills needs and availability for in-country employability:** Better skills matching ensures, labour migration is a choice as well as meets in-country skills needs.

ⁱ ILSSA (Institute of Labour Science and Social Affairs). Unpublished. Synthesis Report: Returning Migrant Workers in Viet Nam and ILO.2017. Risks and rewards: Outcomes of labour migration in South-East Asia

ⁱⁱ IOM. 2020 [unpublished]. Qualitative research with Vietnamese returnees

ⁱⁱⁱ ILO (unpublished). Independent evaluation of the implementation of Law 72

^{iv} Responsible Business Alliance. 2020. Feasibility Study: Enhancing Fair and Ethical Recruitment to Address Modern Slavery including Trafficking and Forced Labor in International Migrant Work.