

# *Legal Consciousness and Workers' Resistance in Đồng Nai Province, Vietnam*

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## **Abstract**

This article examines how labour law contributes to labour resistance in Vietnam through an empirical case study of the 'core workers' in Đồng Nai Province. These core workers are factory workers who have undergone legal training and who provide legal aid to factory workers in need. They have, at the same time, deployed their legal knowledge to demand access to justice for themselves and the factory workers. This article demonstrates that the core workers' legal consciousness is shaped by their mobilization of the law and their own workplace experiences. It then investigates in detail a core worker's engagements with individual and collective disputes, and discusses his views on legal aid, labour law, and workplace relationships. This article argues that the core workers' resistance is not only a fight against illegal practices, but that it also embodies a call for the management's moral obligations towards its workers.

More than twenty years since the introduction of the Vietnamese *Labour Code 2012* (Labour Code),<sup>1</sup> the main labour legislation in Vietnam, the actual implementation of the Code in the interests of workers and employees has been fraught with gaps and limitations. Meanwhile, the political representation of workers and employees remains unchanged, with the Vietnam General Confederation of Labour (VGCL) being the only legitimate trade union in the country.<sup>2</sup> Following the state's emphasis on promoting legal compliance and understanding in labour relations, the VGCL has taken steps to formalize and enhance the provision of legal aid activities to workers and employees. To date, there has been very little research on the relationship between legal aid activities and workers' resistance in Vietnam. However, in her recent book, *Ties that Bind*, Angie Trần briefly discusses the union's provision of legal aid and social support in workers' residential areas near industrial zones.<sup>3</sup> Trần recognizes the benefit of

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1. Bộ Luật Lao Động [Labour Code] (Law No. 10/2012/QH13).
2. Anita Chan (ed), *Labour in Vietnam* (Institute of Southeast Asia Studies 2011); Tim Pringle and Simon Clarke, *The Challenge of Transition: Trade Unions in Russia, China and Vietnam* (Palgrave 2011).
3. Trần Ngọc Angie, *Ties that Bind: Cultural Identity, Class, and Law in Vietnam's Labor Resistance* (Cornell University Press 2013).

union support in bringing labour law closer to ordinary workers and in helping them understand their legal rights; yet, she remains skeptical, arguing that it may just serve the state's interest to identify and pre-empt underground labour activism.<sup>4</sup> However, her research does not examine in detail how legal education contributes to raising workers' consciousness of rights and how their consciousness influences the way in which they take action to demand justice.

The provision of legal aid and legal education to industrial workers in Vietnam emerged in the early 1990s as part of the VGCL's working agenda. The VGCL issued its first guidelines for legal aid activities in 2004, the objectives of which are to guarantee the legal and legitimate rights and interests of union members and employees.<sup>5</sup> Legal aid activities include legal consultation, helping workers and employees to write petitions and complaint letters to relevant official bodies, preparing lawsuits, and representing workers in courts. Such activities are especially needed in cities and provinces that record a high employment of workers, most of whom are migrants, in labour-intensive industries.

This article explores the role of law in labour resistance through the case study of 'core workers' in Đồng Nai province, an industrial hub in the south of Vietnam. 'Core workers' refer to factory workers who have undergone legal training under a project once funded by Oxfam Solidarity Belgium, in partnership with the provincial-level union.<sup>6</sup> Following their legal training, these core workers went on to organize legal aid sessions and provide legal assistance to factory workers in their residential areas. They were concurrently able to employ their legal knowledge to demand justice for themselves and their co-workers in their own workplaces.

The key feature that distinguishes this project from legal aid activities in other industrial cities and provinces is that it was run by the workers themselves. For instance, the 'Legal Assistance to Migrant Employees in Vietnam' project in Hồ Chí Minh City is a partnership between different non-governmental organizations, social institutes, universities, and the local Youth Union organizations.<sup>7</sup> There are also similar legal aid sessions organized periodically at the residential areas of migrant factory workers, covering not only labour law but also migration law, family law, and civil law. However, the sessions and other social support activities are run by the aforementioned organizations and law students. Since both the deliverers and the beneficiaries of legal aid in Đồng Nai are workers, there is the assumption that they will have shared needs, interests, and values and, therefore, can easily interact with each other.

This article focuses on the following questions: How does legal aid influence the core workers' action or inaction towards injustice? In their demands for justice, how do the

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4. *ibid* 243.

5. Vietnam General Confederation of Labour, Decision 785/2004/QĐ-TLĐ on the organization and activities of the union's legal aid.

6. Legal Aid Centre, 'The project of mobile legal consultation for migrant workers in Long Binh ward, Biên Hòa city, Đồng Nai province' (Number 20/DA-TVPL, 2009).

7. Information obtained by the author at the 'Conference on experience sharing and developing models of support for migrant employees' (Organized by Centre of Research – Consultation for Social Work and Community Development and Southern Institute of Social Sciences, Hồ Chí Minh City, Vietnam, 17 December 2015).

core workers use the law, and how can we make sense of their legal consciousness? These questions will be addressed using information gathered from an investigation of the workers' involvements in legal training, legal activism, experiences at work, and the way they justify workers' demands. By shedding light on the development of legal consciousness among aggrieved workers, this article contributes to the scant literature on law and social disputes in Vietnam<sup>8</sup> and offers some reflections on existing studies on workers' rights consciousness in post-socialist countries.<sup>9</sup>

This article is structured as follows. In the first section, I will outline the existing literature on legal aid and its implications for labour resistance in authoritarian regimes. The discussion will be mainly drawn from the literature in China, a post-socialist country with comparable legal and political institutions. The second section is about the core worker project in Đồng Nai province from 2009 to 2014. I then discuss the significance of the space for legal aid, its potential contribution to the protection of individual workers' rights, and the core workers' views about labour law. The last section investigates, in further detail, the resistance journey of a core worker who has deployed labour law in individual and collective disputes to fight against abusive management.

## I. LEGAL AID, RIGHTS CONSCIOUSNESS, AND LABOUR RESISTANCE IN AUTHORITARIAN REGIMES

Scholars of labour studies in the authoritarian regimes of China and Vietnam have taken great interest in how workers act against injustices in such politically constraining contexts. Existing studies on protests and strikes emphasize the role of informal mobilization,<sup>10</sup> while those focusing on individual disputes emphasize the essential role of social networks in workers' sharing of grievances and resistance tactics.<sup>11</sup> These studies shed light on how workers employ legal language and legal channels to make their claims, while at the same time holding the state and management accountable to their rights and interests. In China, workers' strategic use of the law is attributed largely to the growth of legal aid activities.<sup>12</sup> Legal aid is often run by domestic and foreign-funded non-governmental organizations, which are

8. See John Gillespie, 'Social Consensus and the Meta-Regulation of Land-Taking Disputes in Vietnam' (2014) 9(3) *Journal of Vietnamese Studies* 91; John Gillespie, 'Narrating Land Disputes in Three Vietnamese Communities' in Hualing Fu and John Gillespie (eds), *Resolving Land Disputes in East Asia: Exploring the Limits of Law* (CUP 2014).

9. This will be discussed at length in the next section.

10. Ching-Kwan Lee, *Against the Law: Labor Protests in China's Rustbelt and Sunbelt* (University of California Press 2007); Chan (n 2); Trần (n 3); Eli Friedman, *Insurgency Trap: Labor Politics in Post-Socialist China* (ILR Press 2014); Parry Leung, *Labor Activists and the New Working Class in China: Strike Leaders' Struggles* (Palgrave 2015).

11. Mary Gallagher, 'Mobilizing the Law in China: "Informed Disenchantment" and the Development of Legal Consciousness' (2006) 40(4) *Law & Society Review* 783; Jeffrey Becker, *Social Ties, Resources and Migrant Labor Contention in Contemporary China: From Peasants to Protesters* (Lexington Books 2014).

12. Gallagher (n 11); Eli Friedman, 'External Pressure and Local Mobilization: Transnational Activism and the Emergence of the Chinese Labor Movement' (2009) 14(2) *Mobilization: An International Journal* 199; Becker (n 11).

diverse in their activities and relationships with the unions and the state. These organizations have provided disadvantaged workers with free legal assistance, including claim-making strategies and social welfare support.<sup>13</sup>

Still, legal aid in China mostly targets individual rather than collective complaints. In a regime that is obsessed with order and stability, the political sensitivities of workers' collective actions can threaten the operation and survival of labour organizations.<sup>14</sup> Yet, there is another explanation that goes to the heart of the labour law regime. The provision of legal aid for migrant workers has emerged and developed at a time when the Chinese state promoted the rule of law rhetoric and consolidated its legal institutions. New laws on the resolution of labour disputes have come into effect alongside the existing Labour Law which, as many scholars have commented, endorses individual rather than collective rights.<sup>15</sup> The labour law system and its implementation in China has served to individualize and atomize workers' grievances by absorbing them into state and state-sanctioned bodies such as courts, the labour mediation committee, and the labour arbitration committee.<sup>16</sup> Endorsing individual labour rights and granting aggrieved workers arbitral or litigation rewards to honour these rights are part of the state's strategy to prevent workers from accumulating collective problems and taking them to the streets. In short, the delivery of legal aid, which directs workers to solve their grievances through formal dispute avenues, has mostly served the state's interest in containing workers' spontaneous collective actions.

However, the provision of legal aid may also contribute to collective resistance. A study has shown that besides offering legal assistance, labour organizations also provide social spaces for aggrieved workers to get together and share their grievances and resistance tactics.<sup>17</sup> The important and potential contribution of these organizations to labour resistance, however, is their role in raising workers' rights consciousness. For instance, Eli Friedman's research on the Guangdong Migrants' Association<sup>18</sup> highlights its success in the training and backing of potential worker-leaders, one of whom had been subject to managerial abuse and mistreatment.<sup>19</sup> Drawing from the two case studies of workers' organizations in two factories, he details how the workers learned about their legal rights and 'international human and labour rights discourses'<sup>20</sup> from the migrant labour organization. Subsequently, in their collective petitioning, while workers in one factory pressed for their legal

13. Friedman (n 12); Becker (n 11).

14. Chris King-chi Chan, 'Community-based Organizations for Migrant Workers' Rights: The Emergence of Labour NGOs in China' (2012) 48(1) *Community Development Journal* 6.

15. Ching Kwan Lee, 'From the Specter of Mao to the Spirit of the Law: Labor Insurgency in China' (2002) 31(2) *Theory and Society* 189; Feng Chen, 'Individual Rights and Collective Rights: Labor's Predicament in China' (2007) 40 *Communist and Post-Communist Studies* 59; Chloe Froissart, 'Using the Law as a "Harmonious Weapon": The Ambiguities of Legal Activism in Favour of Migrant Workers in China' (2014) 10(3) *Journal of Civil Society* 255.

16. Feng Chen and Xin Xu, "'Active Judiciary": Judicial Dismantling of Workers' Collective Action in China' (2012) 67 *The China Journal* 87.

17. Becker (n 11) 167.

18. A pseudonym.

19. Friedman (n 12) 208-11.

20. *ibid* 210.

demands, workers in the other case pressed for extra benefits and the formation of a trade union.<sup>21</sup> These workers' actions and subsequent activism, Friedman claims, would not have been possible without the transmission of knowledge about workers' rights, both enshrined in the Labour Law and international labour rights discourse, and strategic support offered by the labour organizations.<sup>22</sup> Friedman's research would have benefitted from further discussion on how workers' different understandings of rights interact with each other in their development of 'rights consciousness' and claim-making.

In the broader context, the notion of 'rights consciousness' has become a source of scholarly attention as the Chinese state began to promote the rhetoric of the rule of law and introduced a range of state legislation.<sup>23</sup> Existing literature on workers' rights consciousness in China had mostly referred to the way in which workers understand and perceive their *legal* rights. For instance, Linda Wong, quoting Michael McCann, considers rights consciousness as emerging from 'legal convention and discourses' and that those who are conscious of their rights are 'familiar with the laws and legal norms and can deploy such tools to contest parties who infringe on their rights'.<sup>24</sup> However, further discussion in the article and her quantitative survey method fail to do justice to the conceptualization of 'rights consciousness'. For instance, while the survey of migrant workers' experiences reveals a wide range of rights violations,<sup>25</sup> as can be expected, it does not tell us whether and how workers understand and interpret those violations through the lens of state laws. In another example, the finding that a large proportion of surveyed workers (about 35 percent) were willing to seek legal assistance says little about workers' attitudes towards the law as a means of seeking redress. This quantitative approach thus fails to address the dynamic process through which rights consciousness evolves and how it enables or constrains workers' strategies of resistance.

Mary Gallagher's article on legal aid plaintiffs in China<sup>26</sup> illustrates that workers' consciousness is varied and can be contradictory, rather than emerging and developing in a linear fashion. The article employs the notion of 'legal consciousness'<sup>27</sup> as part of the socio-legal approach to provide insights into aggrieved workers' use and perceptions of labour law. Based on interviews and participant observations of fifty worker plaintiffs, Gallagher shows how aggrieved workers develop a consciousness of 'informed disenchantment' through their legal experiences.<sup>28</sup> Having gained legal knowledge and access to legal institutions to fight for their rights, the workers in her study were subsequently disappointed by the inability of the court to deliver redress.<sup>29</sup>

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21. *ibid* 210–11.

22. *ibid* 211.

23. Elaine Sio-Ieng Hui and Chris King-Chi Chan, 'The "Harmonious Society" as a Hegemonic Project: Labour Conflicts and Changing Labour Policies in China' (2012) 44(2) *Labour, Capital and Society* 153; Gallagher, (n 11).

24. Linda Wong, 'Chinese Migrant Workers: Rights Attainment Deficits, Rights Consciousness and Personal Strategies' (2011) 208 *The China Quarterly* 870, 873.

25. *ibid* 877–82.

26. Gallagher (n 11).

27. *ibid* 787.

28. *ibid* 783.

29. *ibid* 803–4.

The plaintiffs' previously high expectations of the legal system were undermined by their real experiences of it as entailing complicated processes and being more favourable to their employers. Gallagher's study provides a more subjective and nuanced picture of what the law has come to mean for workers who turned to the law to solve their problems. Interestingly, this research found that despite their unsuccessful lawsuits, past litigant workers would still turn to the court and refer their disadvantaged fellow workers to it when facing further managerial abuses.<sup>30</sup>

The studies on 'legal consciousness' offer more analytical insights for my research than those on 'rights consciousness'. I understand legal consciousness as the way in which people 'draw on legal discourse to construct their understanding of and relation to the social world',<sup>31</sup> and 'make sense of the law and legal institutions'.<sup>32</sup> Research on legal consciousness is not exclusively concerned with how people engage with the law and law enforcement institutions, but also with how they perceive their social experiences, relationships, and activities through the lens of the law.<sup>33</sup> This concept is broader than that of rights consciousness as it incorporates the social environments in which rights understandings and perceptions take root, develop, and change. This social and cultural approach to studying consciousness helps us to appreciate the nuances, paradoxes, and even contradictions that are abound within workers' perceptions towards the law and its role in the delivery of workplace justice.

Further discussion in this article will unpack the core workers' legal consciousness in two ways. The first is through their opinions and attitudes towards the role of the law and legal aid. The second is through their actions (or inaction, as the case might be) toward abusive management, and their experiences following the process of dispute resolution. The analysis also explores, where possible, other sets of norms and morality in the core workers' demands and justifications.

## II. SOME RELEVANT TERMS OF THE LABOUR CODE

First, it is necessary to outline some articles in the Labour Code concerning workers' rights and interests that are relevant to this case study. The Labour Code, in principle, regulates employment relations on a contractual basis. There are three types of employment contracts, distinguished by the duration of employment: an indefinite term contract, a definite term contract for a duration of twelve to thirty-six months, and a contract for seasonal work or a specific task for a duration of fewer than twelve months.<sup>34</sup> When an employment contract expires and the employee continues to work, during the period of thirty days from the date of contract expiry, the two parties will

30. *ibid* 806.

31. Catherine Albiston, 'Legal Consciousness and Workplace Rights' in Benjamin Fleury Steiner & Laura B Nielsen (eds), *New Civil Rights Research: A Constitutive Approach* (Ashgate Press 2006) 56.

32. Patricia Ewick and Susan S Silbey, 'Conformity, Contestation, and Resistance: An Account of Legal Consciousness' (1992) 26 *New England Law Review* 731, 734.

33. David Engel, 'How does Law Matter in the Constitution of Legal Consciousness?' in Bryant G. Garth and Austin Sarat (eds), *How Does Law Matter?* (Northwestern University Press 1998); Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998).

34. Art 22, Labour Code.

have to sign a new employment contract.<sup>35</sup> If no new contract is entered into, the definite term contract shall become a permanent one, and the seasonal contract shall turn into a definite term contract.<sup>36</sup>

Article 38 allows employers to unilaterally terminate the employment contract when the employee repeatedly fails to perform his/her work, is sick or has an accident and remains unable to work after a specific time, or does not present himself or herself at work until after the temporary suspension expires. The provision also stipulates that a unilateral termination of a contract is possible when the enterprise is damaged by fire or a natural disaster, and the employer has to scale down production and reduce the workforce. The employer is also obliged to give employees advance notice ranging from three to forty-five working days, depending on the type of contract applicable.

Chapter VI of the Labour Code defines 'wage' as an amount of money paid to an employee to perform work as agreed between an employer and employee, according to the nature of the work or position. The employer must ensure that an employee's wage is not lower than the government's minimum wage; the wage shall be paid based on labour productivity, the quality of work performed, and on the basis of gender equality.<sup>37</sup> The minimum wage is 'the lowest payment for an employee who performs the simplest work in normal working conditions and must ensure the minimum living needs of the employee and his/her family'.<sup>38</sup> The minimum wage applies differently for the four different regions of the country, classified mainly through their average living costs. Each of the four regions includes different provinces, cities, and lower-level municipalities. The minimum wage in 2015, for region I, which is the highest of all four regions, is 3.1 million dong (around 139 US dollars) a month, an increase from 2.7 million dong (around 122 US dollars) in 2014.<sup>39</sup>

According to Article 93 of the Labour Code, the company shall also develop a wage table as the basis for wage payment. Briefly, this table consists of varying wage levels for employees, from technicians and supervisors to workers on the shop floor. The aim is to encourage employees to improve their skills or work capacity, and reward them accordingly. The wage table seeks to ensure fairness in the company's wage increases, with senior workers entitled to a higher rate than junior workers and newcomers.

Workplace discipline, similar to other work-related documents, must result from the employers' consultation with the employees' representative, be registered with the labour authority, and displayed within the enterprise.<sup>40</sup> In short, the employer can impose disciplinary measures on employees who are deemed to be in breach of workplace regulations with regard to production, business assets, and equipment,

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35. *ibid.*

36. *ibid.*

37. Art 90, Labour Code.

38. Art 91, Labour Code.

39. Nghị định 103/2014/NĐ-CP Quy định mức lương tối thiểu vùng đối với người lao động làm việc ở doanh nghiệp, hợp tác xã, tổ hợp tác, trang trại, hộ gia đình, cá nhân, và các cơ quan, tổ chức có thuê mướn lao động theo hợp đồng [Decree 103/2014/NĐ-CP on regulations of the regional minimum wages for employees working in enterprises, cooperatives, group work, farms, households, as individuals, and in organizations and agencies that employ labour according to the labour contract] (2014).

40. Arts 119 and 120, Labour Code.

provided that the employer demonstrates evidence about the employee's mistake. The employee is entitled to defend his/her behaviour in a settlement for disciplinary measures. Disciplinary measures can take the form of a reprimand, deferment of wage increases for a maximum of six months, demotion, and dismissal. Article 126 specifies that dismissal may be imposed when an employee commits an act of theft, embezzlement, uses illicit drugs, causes threats to the assets or interests of the employer, or has been absent from work for five cumulative days in a month or twenty cumulative days in a year without a proper reason.

The Labour Code has separate provisions for resolving different types of labour disputes.<sup>41</sup> An individual dispute shall be resolved through mediation by a labour mediator and litigation.<sup>42</sup> With regard to collective disputes, a distinction is made between disputes based on rights and those based on interests. An interest-based dispute relates to demands outside of the formal contracts and agreements between the workers and management,<sup>43</sup> such as bonuses, meal quality, or transport allowances. It is different from a rights-based dispute relating to the formal contractual terms that are legally binding on the employer,<sup>44</sup> such as a dispute over the employers' failure to comply with the national minimum wage. Bodies that are responsible for resolving collective disputes include the labour mediator, the Chairpersons of the People's Committee at the district, town, and provincial city levels, the labour arbitration committee, and the court.

Article 209 of the Labour Code defines a strike as 'a temporary, voluntary and organized stoppage of work by the workers' collective in order to achieve demands in the process of the labour dispute resolution.' It stipulates that a strike shall only be carried out in relation to an interest-based collective labour dispute, and when such a dispute has gone beyond the time limit for mediation and arbitration. In advance of any collective action, the union is responsible for obtaining at least 50 percent of the workers to support any action, before notifying the employer and relevant authorities in the area.<sup>45</sup> Almost all strikes that have occurred thus far in Vietnam are deemed illegal by the state as they break out spontaneously and without union organization, thereby contravening the applicable legal procedures.<sup>46</sup>

In practice, the channel for solving collective labour disputes remains out of touch with factory workers, who have instead taken their grievances to the streets.<sup>47</sup> An alternative to going on strike as a means of solving collective disputes is through the lodgement of complaints at the upper-level union offices,<sup>48</sup> or at the labour

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41. Chapter XIV, Labour Code.

42. Section 2, Chapter XIV, Labour Code.

43. Art 3.9, Labour Code

44. Art 3.8, Labour Code

45. See Section 3 on 'the resolution of collective labour disputes' and Section 4 on 'Strikes', Chapter XIV, Labour Code 2012.

46. Kaxton Siu and Anita Chan, 'Strike Wave in Vietnam, 2006-2011' (2015) 45(1) *Journal of Contemporary Asia* 71; Tim Pringle and Simon Clarke, *The Challenge of Transition: Trade Unions in Russia, China and Vietnam* (Palgrave 2011).

47. Chang-Hee Lee, 'Recent Industrial Relations Developments in China and Vietnam: The Transformation of Industrial Relations in East Asian Transition Economies' (2006) 48(3) *Journal of Industrial Relations* 415.

48. These are VGCL branches established at district levels or in industrial zones. VGCL branches at the city and provincial levels are called the city/provincial Labour Federation.

inspectorate of the Department of Labour, Invalids and Social Affairs. Only resolution outcomes delivered by the labour inspector are legally binding on employees and employers.

### III. CORE WORKERS PROJECT

The core workers project was initiated and funded by Oxfam Solidarity Belgium in 2009. However, it was mostly run by staff at the Legal Aid Centre (LAC) of the provincial-level union in Đồng Nai province. Since its establishment in 1993, the LAC has provided free legal services and consultation to employees and factory workers, mostly in the province, and, at times, it has also organized legal training for workers and union officers. The pilot project by Oxfam, entitled 'Mobile Legal Consultation for Migrant Workers in Long Bình Ward, Biên Hòa City', was approved by the provincial People's Committee. Long Bình ward was the first location selected for a trial run of the so-called 'mobile legal consultation sessions' (*buổi tư vấn pháp luật lưu động*). These sessions were mobile because they took place at, and moved around, different workers' rental units. According to the project plan written in 2009, Long Bình ward had the most workers across the province, and more than half of the 74,700 residents in this area were migrant workers.<sup>49</sup> Even though the project's main targets were migrant workers, the legal sessions were open to all interested local employees in the neighbourhood. The first nine sessions in this area were reported to have attracted more than 800 participants.<sup>50</sup>

With very limited staff, the LAC decided to train and develop a team of core workers (*công nhân nông cốt*) to help organize and run legal sessions. LAC staff and some officials at the provincial labour federation took charge of the recruitment and training. The training materials for core workers, which they could take home, included shortened and simplified versions of the Labour Code and the *Law on Social Insurance 2006*.<sup>51</sup> The training also included social skills improvement initiatives such as public speaking, organizing group activities, and facilitating group discussions. The core workers then further consolidated their skills and knowledge through a 'learning-by-doing' process, together with assistance from the LAC staff and senior core workers.

The next section draws upon my interviews and conversations with an LAC lawyer and fourteen core workers – five females and nine males – who have been involved in the Đồng Nai core workers' programme for at least four years.<sup>52</sup> The core workers are all migrants, mostly from the northern and central provinces of Vietnam, who have lived in Đồng Nai for five to fifteen years. All but one currently reside in Đồng Nai. This individual, a male core worker, is now living and working in Hồ Chí Minh City, but he still maintains connections with the LAC and the core workers' group.

49. Legal Aid Centre (n 6).

50. *ibid.*

51. Luật Bảo Hiểm Xã Hội [Law on Social Insurance] (Law No. 71/2006/QH11).

52. Fieldwork for this research was conducted from December 2014 to March 2015 and from December 2015 to February 2016. To ensure confidentiality, I will be using pseudonyms when referring to participants.

All the interviews and conversations took place at the core workers' rental units or in a coffee shop. I often began my interviews with general questions about the core workers' workplace experiences and their involvement in legal aid. I believe that these experiences are crucial in shaping the way they perceive and make sense of the law. I generally framed my questions in broad terms, such as 'What is good about the core workers' project?'; 'How do you feel about your work?'; 'What do you think is the workers' most common grievance?'; and 'What do you think about the labour laws, the state, and unions?'. Issues about law, justice, and moral norms often came up in their responses to my broad questions. I also examined – in my subsequent analysis – the complaint letter obtained from a core worker, materials obtained from the LAC and the local labour newspaper, and my own observations of a legal session.

Most core workers recalled their early experiences in the project with joy. Back then, they happened to join a mobile legal session run by LAC lawyers in their rental areas. The session typically included a short lesson about a section of the Labour Code and a question-and-answer session. In the question-and-answer session, the lawyers raised questions to assess the legal knowledge of the participants and answered questions from the participants regarding their problems or queries about the law. The participants who responded correctly to the speakers' questions were rewarded with small gifts. The core workers delightedly recalled their active participation and the number of gifts they had received. Active participants, including those who raised many questions or good questions to the speaker, were considered as potential trainees for the legal aid project. The lawyers then asked for their contact numbers, before inviting them to join free training classes about labour laws and later, the Oxfam project.

During the Oxfam-funded period, from 2009 to 2013, the number of core workers grew to 667.<sup>53</sup> They organized mobile legal sessions across four of the most populated industrial regions in the province where labour disputes were also high: Biên Hòa, Trảng Bom, Nhơn Trạch, and Long Thành. Each session covered one to several topics in the Labour Code or the *Law on Social Insurance*, such as labour contracts, wages, working hours, unemployment benefits, and social insurance. During peak periods, Oxfam organized up to fifteen legal sessions in a month. According to the LAC report, there were 510 sessions from 2009 to 2013 with the participation of more 24,600 employees.<sup>54</sup> Each session lasted from 1 to 1.5 hours, or even longer, and had the same format as previous sessions run by the lawyers. Each consisted of a short legal lesson of about 15 to 20 minutes, followed by a question-and-answer session. The lesson could be interactive depending on the speakers' speaking skills. The speakers were also willing to respond to questions that were not related to the topic being covered. The organizers then handed out leaflets relating to the presented topics to participants at the end of the sessions.

The Oxfam funding ceased at the end of 2013, resulting in the declining vigour of the core workers and a serious decline in the number of core workers participating in

53. Information obtained by the author from the 'Conference on experience sharing and developing models of support for migrant employees' (n 7).

54. Legal Aid Centre (n 6).

the programme. Besides funding problems, work and family commitments also prevented the core workers from participating in the programme. As of early 2015, the number of core workers had shrunk significantly to fewer than forty.

#### IV. CORE WORKERS' LEGAL ACTIVISM

The main factor that made the core workers' legal aid an effective means of raising awareness was the spaces in which the mobile legal sessions took place and where legal advice was given. Organizing legal sessions at the workers' residence allowed the core workers to openly address the participants' grievances, alert them to legal violations, and share tactics to shield the workers' rights and interests against potential managerial abuses. Outside these legal sessions, the core workers also offered legal advice in person (where workers in the same neighbourhood approached them at their rental units), or over the phone. All these spaces were outside the companies' compounds. Thus, the core workers and workers in need were able to openly converse with each other without any pressure or monitoring from the management.

##### A. *A Legal Session*

A legal session at a workers' residence that I observed in March 2015 provides a good illustration of how such knowledge-sharing can take place outside the management's purview. The session covered labour contracts and unemployment benefits. After a brief overview of different contracts and their conditions, the speaker moved on to speak briefly about general regulations on wage increases. This issue was not part of the planned list of topics, but I understood from the speaker that it was an important concern for most workers and thus worth mentioning. His explanation on wages was as follows:

A company is supposed to raise wages for workers according to the government's minimum wage standards and the company's own wage table. This means that the longer one works, the higher one's wage would be, in relative terms. Let [us] take the example that the government raises the minimum wage by 400,000 dong. If the company applies that amount to the new wage for all the workers across the company, that is wrong. Instead, senior workers deserve a higher wage increase. The rates of wage increases should add up in further years of employment.<sup>55</sup>

Instead of explaining to the participants about the wage table, the speaker sent a simple message that the senior workers legally deserved a higher rate of wage increases as compared to the junior workers. I was surprised at the participants' silence after his explanation. As wages are a common source of grievance and are important to workers' livelihoods, I had expected the participants to ask follow-up questions about their own companies' cases. Their silence would have implied that they either understood the lawful measures of a wage increase, or that the management teams in all of the companies were compliant. However, from my conversations with ordinary respondent workers and from the core workers' accounts, the wage table is

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55. Author's observation at the legal session (Đồng Nai province, Vietnam, March 2015).

unknown to ordinary factory workers.<sup>56</sup> I also doubt that the companies are compliant, as the issue of wage differentials is a common reason for strikes and disputes. Following the participants' passive reaction, the speaker, without hesitation, prompted: 'You can now judge if your company issues the right amount of wage increase for you. Please feel free to see us if you encounter any problems.'<sup>57</sup>

Later, the speaker returned to the topic of labour contracts. He gave examples about the company's illegal termination of contracts and advised participants to sue the management when faced with such situations. He also told them to 'not be afraid of doing so', and specified the amount of compensation that litigants could claim. His bold statement not only reminded the workers of the law as a potential tool to act against injustice, but also instilled in them a spirit of resistance.

In that same session, the speaker reminded the participants about the legal regulations regarding employees' behaviour at work. As he specified:

The Labour Code ensures not only our rights and interests but also those of the company. When we violate any rules, the company can sack us. For instance, if we have five days off without permission in a month, or twenty days a year, the company can sack us. Do any of you remember that provision?<sup>58</sup>

One participant then asked: 'How about annual leave?' The speaker responded: 'Of course you can take your annual leave. What I mentioned was leave without permission.' He then continued: 'Let's assume that we have had nineteen days or nineteen and a half days off so far in a year. If the company sacks us, it is wrong. Then we can sue the company. If we sue, we are sure to win.'

The speaker frequently used the pronoun *chúng ta* throughout the session. While Vietnamese pronouns *chúng ta* and *chúng tôi* refer to plural first persons and have the same English translation, their uses are slightly different. While *chúng tôi* refers to 'me and them', not the singular 'you', *chúng ta* refers to 'me and you'. In other words, the former is exclusive while the latter is inclusive. This use of an inclusive pronoun illustrates the sense of a shared identity between the speaker and the audience. He spoke of the potential problems and the actions of the audience as something that he also shared and engaged with, albeit only in spirit. This connection between the core worker-speaker and the worker-audience indicates a sense of collectiveness, which emerges out of the former's empathy and shared interests with the latter, despite their different workplace and production relationships.

## B. Legal Aid

Besides the legal sessions, core workers also offered legal advice to disadvantaged workers over the phone or in person. This was possible as core workers were willing to

56. Interviews with 24 ordinary workers (Đồng Nai province, Vietnam, 20 December 2014, 28 December 2014, 14 February 2015, 8 March 2015, 17 April 2015, 13 December 2015, and 31 January 2016) and fourteen core workers (Đồng Nai province, Vietnam, 22 January 2015, 30 January 2015, 5 February 2015, 18 March 2015, 11 April 2015, and 28 December 2015; Hồ Chí Minh City, Vietnam, 27 February 2015, 22 March 2015). Identities of the ordinary workers have been withheld to ensure confidentiality.

57. Author's observation at the legal session (n 55).

58. *ibid.*

share their contacts, alongside the LAC contact information, to participants at the legal sessions. Conversations about labour laws and policies took place at the core workers' rental units. As of 2015, two of the interviewed core workers have moved out to their new houses, but they still pay visits to migrant workers' rental areas when convenient during the weekend. One of them said that he and his family had 'emotional ties' to the old place, where his migrant relatives and friends are still living and might need legal assistance.<sup>59</sup>

Core workers that I interviewed also claimed to have offered legal advice to fellow workers in the same company, which often happened during breaks, lunch time, or after work. While most of them spoke comfortably about their knowledge-sharing, two of the core workers told me that they had to be careful to make sure that they were not being watched by their bosses.<sup>60</sup> In particular, they specified that they did not reveal to their co-workers that they were 'core workers,' or that they belonged to the legal aid project. One of them, Mr Hải, also tried to keep this fact hidden from the company union and management, and even went so far as to lie to a manager when asked how he was so knowledgeable about the law. Another core worker, Mr Lê, was willing to share general legal issues with his fellow workers during break time, but preferred to talk through a specific case with a disadvantaged colleague after work and outside the factory. They both believed that concealing their roles would allow them to continue to maintain close and good relationships with their co-workers while keeping themselves safe from the management's surveillance.

In most cases, following the core workers' verbal advice to ordinary workers, the LAC also offered subsequent assistance with the lodging of complaints and lawsuits. Only one core worker, Mr Anh, had directly engaged with other workers' lodging of disputes and lawsuits. When I conducted fieldwork in December 2015, Anh had successfully helped a few workers in the Long Thành municipality to claim their benefits from the company managers, and he was in the process of assisting another worker with her claim. Disadvantaged workers learned of Anh's legal assistance through word of mouth. They appointed Anh as their legal representative, who acted on their behalf throughout the whole dispute resolution process from completing the paperwork to mediation and litigation. During litigation, Anh attended the court hearings, where he was able to 'defend' the litigant worker himself without the need for any lawyer. Therefore, it is understandable why Anh told me that 'I sued company X' when he recalled his involvement in other workers' lawsuits.<sup>61</sup>

Anh has also been successful in helping other workers to obtain redress. In October 2015, he represented a male senior worker in his lawsuit against the company for illegal dismissal and won the case. Anh told me that the company in question 'sacked people in a reckless manner'.<sup>62</sup> The senior worker managed to claim full compensation from the company, and he was also reinstated to his previous position.

59. Interview with core worker Nam (Đồng Nai province, Vietnam, 7 May 2015).

60. Interviews with core workers Lê and Hải (Đồng Nai province, Vietnam, 5 February 2015 and 28 February 2015).

61. Interview with core worker Anh (Đồng Nai province, Vietnam, 18 January 2016).

62. *ibid.*

The senior worker's niece-in-law, Mrs Lan, who also worked in that company, had faced the same problem and was likewise referred to Anh for help. In January 2016, Anh succeeded in representing Lan in the labour mediation process. Anh told me: 'As we had won against the company in the previous case, it was much easier to solve this one. The company management agreed to mediate with us and we reached a resolution quickly.'<sup>63</sup> Anh's involvement in these cases illustrates the role of social networks in informing workers' resistance tactics, and indicates the possibility of employing legal measures to assist disadvantaged workers in contesting managerial behaviour.

I had the chance to accompany Anh to Mrs Lan's rental unit where they talked through the resolution outcome. The outcome was that the company had to pay Lan compensation equal to the income she would have earned for the number of days she was out of work and to reassign her to her previous role in the company. In response to Lan's worry that the manager might exert pressure on her after she returned to work, Anh told her 'not to worry or be afraid' and that he was willing to offer further help in the event that the company caused her any trouble. Outside the purview and surveillance of the management, the workers' residential areas became a breeding ground for the core workers to help their co-workers make sense of injustice and, where possible, take measures to improve their working conditions.

## V. CORE WORKERS' VIEWS OF LEGAL AID

The core workers whom I spoke with shared common views about the role of legal aid in promoting the workers' interests, and almost all of them agreed on what constituted rightful resistance. They regarded the Oxfam project as useful and effective in bringing the law closer to the workers in the province and wished for the continuation of the project. One core worker remarked: 'The LAC and the legal aid programme have helped bring some improvements to the plight of workers in general. Without them, many of our co-workers would continue to be exploited and mistreated.'<sup>64</sup> The core workers also felt positive about their roles and the legal knowledge that they had obtained. Some said that they felt 'responsible' for helping disadvantaged workers, while others saw themselves as contributing in a small way to society. Their other commendations of the project's positive impacts include that it raised workers' 'understanding' (*hiểu biết*) of their rights and interests, helped workers 'face less coercion' (*đỡ bị chèn ép*), and made their lives 'less miserable' (*đỡ khổ hơn*).

In short, the core workers saw the law as a potential 'weapon of the weak'<sup>65</sup> that puts the workers in a good bargaining position vis-à-vis their supervisors and managers. A male worker proudly said: 'The company's management in general should be wary because workers now know more about the law.'<sup>66</sup> The core workers especially emphasized that the possession of legal knowledge allows the workers to

63. *ibid.*

64. Interview with core worker Hải (Đồng Nai province, Vietnam, 28 February 2015).

65. James Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (Yale University Press 1985).

66. Interview with core worker Hải (n 64).

'protect themselves' or 'protect their rights and interests themselves' – expressions which echo the VGCL's legal aid objective.

The core workers' beliefs in the law were also influenced by their interactions with LAC staff and their observations of the staff's commitment. They did not see the LAC as a part of the state or as holding corporatist interests. The core workers regarded the LAC as genuinely responsive to workers' interests as evidenced by their approachable manner, (free) generous support, and the high success rate of labour litigation. When encountering tricky issues and queries from fellow workers, the core workers always, and exclusively, refer them to the LAC and not to the official unions. In observing and experiencing the dedication of LAC staff, the core workers placed their trust in the LAC without regard to the practical limitations that it might face in holding the state authorities accountable for law enforcement. Among all the core workers interviewed, Mr Hải was perhaps the most positive about the LAC. He spoke of an LAC legal counsellor, who trained him during the early days of the project, as a source of inspiration because of her outstanding dedication towards the workers' plight. He said that, just like a lawyer, the counsellor had always 'tried to demand something beneficial for the workers', even though an informed outsider might not judge those workers to necessarily be right.<sup>67</sup>

The core workers' attachment to the law has shaped their critical view of strikes, especially spontaneous strike actions which contravene legal procedures. This does not mean that they are against the workers' collective actions, but that they support actions that follow a proper procedure informed by the law. For instance, one of them opined:

In some circumstances, some workers get so hot-tempered that they instigated strikes without any procedure.<sup>68</sup> They called upon workers to go on strike but *did not really raise workers' voices*. Instead, if someone wants to mobilize their fellow workers, they should *stand up, state their aim of representing workers, and take the initiative to collect workers' demands*. They can seek help from the LAC to write a complaint letter and send their complaints forward. (emphasis added)<sup>69</sup>

This excerpt gives a vivid depiction of a workers' representative, who acts in an overt rather than an covert manner, and whose course of action is based on collective interests rather than the individual's immediate needs. This depiction demonstrates the core workers' awareness of the law and the realities of the under-representation of workers' interests. With little faith in the current union-based system, they see the potential for the workers' resistance to take root in an awareness of collective interests and the capacity for a collective voice, as well as to be enabled by an institution that they trust.

During the interviews, I was concerned about the previous depiction of workers' representatives. In the broader context, aggrieved workers often refrain from speaking

67. *ibid.*

68. The people referred to here are different from informal strike leaders who mobilize workers around certain complaints and sometimes may be asked to get involved in the process of strike resolution.

69. Interview with core worker Nhân (Đồng Nai province, Vietnam, 18 March 2015).

up against the management for fear of losing their jobs, or choose not to disclose their names in their complaint letters to the unions. In the broader context of strikes, a worker whom the management considers to be a strike instigator or finds to be vocal during a strike can easily face retaliation.<sup>70</sup> That worker can either be dismissed, or transferred to a different work position in the company until he or she is bored and eventually ‘chooses’ to quit.

I raised the issue of retaliation to the three respondent core workers mentioned above: ‘I think that if the workers exposed themselves or went through the complaint process, they can be easily identified by the boss and face some form of punishment. So, the workers prefer not to stand up and act in an overt manner.’<sup>71</sup>

Two of them thought that retaliation would engender further resistance. For instance, one said:

Workers who stand up and act against the management should not be afraid. If they are sacked, they can sue the employer for the illegal unilateral termination of contract. If they are transferred to a different position in the company, this process must follow what is stipulated in the Labour Code. Briefly, the transfer must result from a negotiation between the employer and employee, and the employee must be notified within three days before the actual transfer. Also, the total duration of transfer must not exceed sixty days.<sup>72</sup> So if any of those conditions is violated, a worker can also sue [his/her boss].<sup>73</sup>

Rather than directly addressing my concern, another core worker raised a complaint relating to his previous unsuccessful attempt to mobilize his fellow workers against their company’s failure to increase wages:

I told my fellow workers about the company’s failure to increase wages but they continued to keep their silence because they did not want to risk their jobs. Their thinking is not right. How can they lose their jobs when they are in a labour contract, a labour relationship with the employer, and their rights and interests still apply?<sup>74</sup>

In short, these core workers believed that workers who resist would be able to mobilize their co-workers against the company’s legal violation *and* protect themselves against illegal acts of retaliation by the management, if they knew the law. They did not use the exact words which translate to ‘strike leader’ or ‘strike organizer’, but instead referred to them as ‘the one who stands up/rises up’ (*người đứng lên*) to indicate the ideal person capable of contesting managerial abuses. They believed that the law would do justice to law-abiding acts and is the only right way to seek justice.

70. Pringle and Clarke (n 2).

71. Interviews with core workers Hải, Nhân, and Minh (Đồng Nai province, Vietnam, 28 February 2015, 18 March 2015, and 11 April 2015).

72. Art 31 of the Labour Code specifies the conditions and obligations of an employer with regard to the temporary transferral of an employee to perform a task that is different from the one agreed on in the labour contract.

73. Interview with core worker Hải (n 64).

74. Interview with core worker Phú (Đồng Nai province, Vietnam, 11 April 2015).

## VI. THE STORY OF MR ANH'S RESISTANCE

This section investigates the resistance journey of Mr Anh, who has been employed with a steel company in Hồ Chí Minh City (HCMC) since 2013.<sup>75</sup> Before moving to the city, he worked in a garment company in Đồng Nai province and therefore had a chance to join the core workers' project.

### A. Past Experience with Managerial Abuse

His dispute with his previous employer started when he refused to obey the order of an officer who was not in charge of supervising the task he performed. This female officer later arbitrarily accused Anh of threatening to report her to the human resource manager. Subsequently, the human resource manager transferred Anh from his manual task to an administrative position, which he deemed to be ill-suited to his skills and educational background. After refusing the transfer, Anh was ordered to sit in the security office. He was subject to strict surveillance and left with nothing to do for the whole day. He appealed verbally and in writing to the union of the industrial zones and the provincial-level union; his case was also made known to a labour journalist. The journalist reported his story in detail, expressing the sympathetic attitudes of union officials who hinted at intervening if the company's management persisted in its disciplinary measures against Anh.<sup>76</sup>

After the publication of his case, the company's management reassigned him to his previous position, although he was placed under strict control. At the start of the work day, he received a task 'report', which showed the number of tasks that he had to finish within a day. Then he had to report on his task completion at the end of the day. He said: 'It made me bored and angry.'<sup>77</sup> Not long afterwards, he was dismissed upon returning from the New Year holidays. The company claimed that he took extra leave days without any notice. He did not dispute the company's decision and quit.

In recounting his story, Anh told me: 'An employer could sack an employee if the employee took five days off in a month or twenty days off in a year, in an undisciplined way. That is not my case.'<sup>78</sup> It is unclear to me whether Anh had any knowledge about labour laws at the time when he quit, but he recalled clearly his decision to sue his former employer about ten months after his dismissal. With the LAC's assistance, he won the case and received full compensation from his employer: wages for the days he was out of work, insurance benefits, and a two-month wage penalty. His successful action in litigation, together with the assistance and moral support of the LAC lawyer, contributed to Anh's belief in the enforcement of labour laws. Anh joined the core workers' project shortly after. Subsequently, he relied on his own experience and legal knowledge to bring a collective labour dispute.

75. The name of the company is not disclosed to ensure confidentiality.

76. I have withheld the reference to the news to protect Anh's identity.

77. Interview with core worker Anh (Hồ Chí Minh City, Vietnam, 27 February 2015).

78. *ibid.*

### B. *Small-Scale Mobilization and Complaint Writing*

The steel company, his new employer, was formerly a state-owned company and became a joint-stock company in the 2000s. However, the company continued to apply the common minimum wage, which is the legal wage for the state's employees, rather than applying the minimum wage set for foreign and private business sectors. In this and his previous companies, the unions failed to stand by the workers or speak up on their behalf. With consultation from the LAC, Anh learnt that the company's wage policy was illegal and decided to act against the company's management.

The following account from our interview summarizes the situation of Anh's fellow workers: 'You know, many workers have been employed for more than ten years but their wages are very low, standing somewhere between 3 or 4 million dong.'<sup>79</sup> His statement hinted at the imbalance between the workers' long service to the company and the low wages that they receive. Anh then continued: 'Those workers don't know about the labour law and have so far accepted the amount given by the company.'<sup>80</sup> He attributed the disadvantaged situation of his co-workers to their lack of legal knowledge and their passive compliance towards the company's wage policy. He seemed to see the issue as one of workers' ignorance rather than the company's malpractice and as such, decided to embark on his resistance by taking his time to inform other workers about their legal rights.

Apart from his legal knowledge, there was another reason concerning workers' livelihoods that explained Anh's decision to initiate the workers' actions:

I stand up [against the company] since I know the law and I am not afraid of being sacked. It is possible that the company management will sack me if I sue them. But I am not so wanting or desperate for this job. If I quit this job, I can find a new job at some other place. Other workers are different: they are older than me and switching jobs is difficult, so they need to attach themselves to this company.<sup>81</sup>

Anh's explanation sees other workers' acceptance of the company's wage rate as relating to job security and seniority. He understood that losing one's job is a possible outcome when one resists and realized that his flexibility in terms of finding another job would allow him to better overcome such a scenario as compared to other workers. However, this extract does not indicate a trade-off between workers' resistance and one's own livelihood. Instead, it shows that the workers' needs and lawful rights should be fulfilled without workers falling into exploitative relationships with the company's management.

As I mentioned in a previous section, the core workers are aware that going on strike is illegal, and Anh is no exception. He even went further by articulating his attitudinal change towards strikes as a result of the legal training he had received: 'Before I learned about the law, I thought that going on strike is a right. Later I know that it is wrong,

79. Interview with core worker Anh (Hồ Chí Minh City, Vietnam, 22 March 2015).

80. Interview with core worker Anh (Hồ Chí Minh City, Vietnam, 27 February 2015).

81. *ibid.*

because it goes against the procedure.'<sup>82</sup> His attitude subsequently influenced his plan to act:

After I talked to my fellow workers about the company's wage policy, they really wanted to go on strike but I talked them out of doing so. I told them, 'I will stand up to work out the paperwork and procedure [to act against the company]. I told them to wait until after the Lunar New Year. Then, if the company did not raise our wages, I would ask for some advice and write the complaint letter.'<sup>83</sup>

The Lunar New Year holiday had passed when I had this conversation with Anh in 2015. What he meant by his conversation with his fellow workers was that they should wait until receiving their first payslips after the holiday. Anh's discouragement of strikes is a result of both his legal understanding and moral integrity. In his view, it is problematic to condone a wrongful reaction, or to act in a wrongful manner, in response to unfair conduct. He therefore believed that the rightfulness of the workers' resistance would stand them in good stead in their pursuits, despite being aware of the fact that the complaint process would take a long time. He said: 'I understand that the time taken for the authority to address our letters is long and is *disadvantageous* to employees. For instance, if I write the letter and lodge it at the end of March, it may not be addressed until May. However, we have to accept that.'<sup>84</sup> Anh's critical judgement of the lengthy legal process as being disadvantageous to aggrieved workers does not affect his legal compliance. Consequently, his further actions, including garnering the support of his fellow workers, were taken within the administrative channel sanctioned by the Labour Code.

After our conversation, there was some delay in the writing of the complaint letter, due to the company management's verbal promise to increase workers' wages following their concerns and queries. The complaint process did not start until October 2015, when Anh and fourteen co-workers working in the same group and shift collectively signed and lodged a complaint letter to the company's management. The letter read:

We are a collective of workers in company X. Together we are writing this letter to request the company management to consider increasing the basic wages for workers according to the Government's regional minimum wage regulations. Our understanding is that the regional minimum wage for HCMC is 3,100,000 dong. If employees have manual skills and have worked for a long time, their wages should be at least 7 per cent above the minimum wage. However the basic wages of many workers like us are currently below this level.

Government decree number 103/2014 (issued on 11 November 2014) has been in effect since 1 January 2015, but up until now the company has not increased basic wages for workers. Therefore, the contribution towards our social insurance based on such wages is too low and does not guarantee the rights and interests of employees.

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82. *ibid.*

83. *ibid.*

84. *ibid.*

With due respect, we request the company management to consider this issue, otherwise we have no choice but to send our letter to the state agencies.<sup>85</sup>

This letter explicitly referred to government policy and employed legal reasoning to justify the workers' demands. As this letter was directed at the company's management, it read like a gentle request and reminder, while also indicating that further administrative measures would be taken if no move was made on the management's part. The inaction and silence from the management later led these fourteen workers to forward their complaint to the labour inspector of the Department of Labour in HCMC. I did not get to read the second letter but according to Anh, the contents of both letters were the same.

### *C. The Resolution of Complaints and Workers' Plight*

In this section, I investigate the process of resolution and the outcome of Anh's petitioning. We have seen that Anh expressed his conformity to the stipulations in the Labour Code and was obliged to take actions and frame his demands as the law prescribed. By choosing to engage with the official channels, Anh subjected himself to the power and authority of the state, while at the same time exposed himself and his underground struggles to the management. The next question I explore is whether his experiences after lodging the complaints changed or confirmed his existing legal consciousness.

The resolution of Anh's complaint was impeded by the management's stalling tactics. He faced strict disciplinary action at work after lodging the complaint letter. In October 2015, he took a day off work without seeking managerial permission. The management later called him in for a meeting with the human resource manager and union chairman. He recalled:

They discussed with me three options. First, I might write a resignation letter of my own accord. Second, the company will unilaterally terminate my contract with a thirty-days advance notice. Third, the company will sack me. Given my mistake, are they right in giving me those options?<sup>86</sup>

This rhetorical question that he raised illustrates that legal provisions have become a benchmark for him to judge the management's conscience and conduct. Following the meeting, Anh did not dispute any of the management's proposals and quit his job. Three weeks later, in mid-December 2015, someone from the company came to his place and offered to re-employ him,<sup>87</sup> to which Anh finally agreed. The company also paid him compensation for the number of days he was out of work, and an additional two months' wages.

85. The letter was signed by Anh, who shared it with the author and fourteen co-workers. The letter is undated.

86. Interview with core worker Anh (Đồng Nai province, Vietnam, 27 December 2015).

87. The company's efforts to re-employ Anh took me by surprise. Anh did not know exactly why: 'I don't know how or why the company knew that it was in the wrong. Maybe because the company was afraid that I would later take it to the court. It could be because of our petition letters. Maybe the labour bureau called the company and asked about me. The municipal labour bureau has known me well through my legal aid to other workers.'

During the time that Anh was out of work, the labour inspectors had a meeting with the management with regard to the complaint letter. However, this meeting was conducted without any participation from the workers. After that, the management held individual meetings with all the workers who had signed the letter, excluding Anh. The management asked these workers to sign a paper in which they agreed to the company's plan to increase wages for them, with effect from 1<sup>st</sup> January 2016. Anh was unhappy that his fellow workers followed the management's order, but it was too late for him to change the outcome. Again, in Anh's view, his fellow workers' passive consent to the management's order was largely to blame for the workers' failure to successfully resolve their wage issue with the management:

I wasn't there to tell other workers not to agree to what the management told them, and therefore they all accepted it. If I were to be called upon at the meeting, I wouldn't agree with the management. I would present to them the government decree. You know, the company kept saying to employees that its business has difficulties, but *employees' lives are also difficult*. There are people employed for more than ten years but their wage level is really low. (emphasis added)<sup>88</sup>

Again, Anh firmly believed that he was able to employ legal regulations as a buffer against the company's excuse for its non-compliance with the law. He seemed to expect that legal language carries sufficient weight for the management to attend to his concerns and rectify their conduct accordingly. Anh also criticized the lack of morality on the part of the management: the management's excuse for its evasion of the law also meant an ignorance of their moral obligations to the workers' lives. Here, his general framing of the workers' wages as low was quite similar to the justification given by ordinary respondent workers and letter writers. It represented a subjective and comparative judgement of income levels based on the workers' seniority and their working lives at large. Broadly speaking, Anh's account suggests that the labour-management relationship should function on the basis of both legal and moral considerations. The narratives that surround his bold actions have effectively brought to life a moral principle within the Labour Code, that is, that wages shall provide for the employees' living needs. This core worker has effectively pushed the boundaries of the law and legal rights to call for an honouring of workplace ethics.

Throughout his resistance and experience with labour law, Anh has developed a form of legal consciousness which I coin 'critical consent' – that is, an adherence to the ideals and principles of law coupled with an acute recognition of its practical limitations. The word 'consent' incorporates what Ewick and Silbey describe as acts of deference to legal procedures and authority,<sup>89</sup> but also speaks more broadly to one's value system. Such consent to the law does not just relate to the functioning of the legal system, but also to how the law should work in shaping the behaviour of workers, management, unions, and the state. The word 'critical' is used to highlight the core workers' evaluation as to how and why the implementation of law is not impartial and just, rather than their feeling of disappointment. Such evaluation results in a

88. Interview with core worker Anh (Hồ Chí Minh City, Vietnam, 14 January 2016).

89. Ewick and Silbey (n 32) 47.

need for a moral role to be taken up by the agencies and actors in charge of its implementation.

Up until this point, with the exception of his previous complaint about the lengthy petitioning process, the practices of law had re-enforced Anh's position vis-à-vis the management and proved to be on the side of the workers. In this new job, his role in mobilizing complaints against the management (by lodging the complaint letter) led to his dismissal, but at the same time, Anh also believed that this role, as well as his legal knowledge, were the reasons behind the management's decision to re-employ him. He kept mentioning to me the necessity of knowing and keeping up-to-date about government decrees and changes in the labour laws, as they allow him to effectively and confidently 'talk' (*nói chuyện*) with the management.

After the 2016 Lunar New Year, Anh and more than fifty other workers had their contracts terminated. The reason cited was that the company was undergoing restructuring and had to reduce its staff. Anh knew that the company's actions were illegal, but he did not dispute its decision. He seemed to be discouraged from looking for future factory work and had instead taken up some temporary casual jobs to get by.

## VII. CONCLUSION

This article has analyzed the ways in which legal aid influences workers' views towards law and justice, and how such views influence their resistance tactics. With the benefit of their legal training and access to legal aid, the core workers have come to appreciate the role of legal aid, perceive workplace grievances as legal problems, and consider the law to be a potential 'weapon of the weak' against abusive management. This article has also delved into the case study of a core worker, Anh, who has actively engaged with the law and official channels to tackle violations of workers' rights. His small-scale mobilization demonstrates that collective resistance is still possible within the boundaries of the law, whereby workers can escalate their grievances and bring the infringement of their rights and interests to the attention of law enforcement bodies. However, their language of resistance does not stop at a call for the proper implementation of the law. It also brings out the moral values in a management's legal obligations and asserts a broader call for workplace ethics through the legal rights claims.

The core workers' legal consciousness of critical consent, therefore, entails a moral conviction in acting in accordance with the law, while at the same time recognizing its weaknesses in their pursuit of justice. While I do not attempt to make generalized statements about the legal consciousness and resistance of different legal aid recipients in Vietnam, I believe that the story and narratives of my respondents may resonate elsewhere in the country.

The findings in this article concur with existing studies that cast doubts on the role of the law in labour advocacy, due to the legal constraints placed upon the collective actions of workers and labour activists.<sup>90</sup> These scholars argue that law-based actions

90. Anita Chan and Kaxton Siu, 'Chinese Migrant Workers: Factors Constraining the Emergence of Class Consciousness' in Beatriz Carrillo and David S G Goodman (eds), *China's Peasants and Workers: Changing Class Identities* (Edward Elgar 2012); Stephanie Chok, 'Labour Justice and Political

are reactive rather than proactive, in the sense that they only occur following acts of violation, rather than in the pursuit of broader labour rights beyond the law. In addition, state legislation also places restrictions on the types of claims that workers and activists can make and thus outlaws demands or actions that contravene its content or procedure. It is evident that Anh's legal understanding has led him to refrain from actions that go against legal procedure; he has instead persisted in engaging with official channels of dispute resolution that may put him at a disadvantage. Yet, this study also acknowledges that state law has become a benchmark for him and other core workers to judge and identify exploitative conduct, and has offered a potential pathway for them to break their silence. Aside from the outcomes or effectiveness of their actions, what is important is that the law does not constrain labour resistance per se but influences the way in which workers choose to act against injustice.

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Responsibility: An Ethics-Centred Approach to Temporary Low-Paid Labour Migration in Singapore' (PhD dissertation, Murdoch University 2013).