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Debt bondage in human trafficking: US agriculture and Thailand fisheries primed for labour exploitation

Niewola za długi: rolnictwo Stanów Zjednoczonych i rybołówstwo Tajlandii gotowe na pracę przymusową

Abstract: There is a need for a transnational framework that would redefine labour trafficking in terms of debt bondage and challenge the privileges of legal contracts at the expense of migrant workers' human and labour rights. We argue that anti-trafficking legislation in the US and Thailand is expansive in definition, but its application is too restrictive to deliver justice to the victims. The debt-labour industry easily becomes a form of transnational labour trafficking. We examine Thailand as an origin and destination country for labour trafficking through two cases involving the US and Thailand though a Marxist and liberal analysis that considers critical race theory. The limitations in which these cases could not achieve full justice represent the challenges for transnational labour rights for noncitizen migrant workers. We examine the Global Horizons agricultural labour case, 2002–2012, and Thailand's fishing sector, which led to its Tier 3 ranking in the 2014 Trafficking in Persons Report. This report was used in international campaigns to pressurise corporate industries and retailers to change their code of conduct, necessitating considerations of the effectiveness of supply chain responsibility.

Keywords: trafficking, debt-bondage, corporate social responsibility, Global Horizons, Thailand, fishing, agriculture

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Abstrakt: Zarówno amerykańskie, jak i tajskie przypadki łamania praw pracowniczych i praw człowieka wykorzystywanych do pracy przymusowej opierają się na systemie związania długiem (debt bondage). Można wręcz powiedzieć, że oparty na umowach oraz czasowych wizach migracyjnych do pracy amerykański system imigracyjny jest częścią procedury handlu ludźmi do pracy przymusowej. Stąd istnieje potrzeba stworzenia ponadnarodowych ram, które zdefiniowałyby na nowo handel ludźmi do pracy przymusowej, uznając za jego element również związanie długiem (czy też inaczej niewolą za długi). Podważyłoby to legalność zawieranych obecnie umów naruszających prawa człowieka i prawa pracownicze osób migrujących. Przepisy dotyczące zwalczania handlu ludźmi w USA i Tajlandii są obszerne, ale ich stosowanie jest zbyt restrykcyjne i nie pozwala zagwarantować pokrzywdzonym poczucia sprawiedliwości. Związanie długiem dość łatwo jest wykorzystywane w międzynarodowym handlu ludźmi do pracy przymusowej. Autorzy artykułu badaniu poddali Tajlandię jako kraj pochodzenia i kraj docelowy handlu ludźmi. Przy wykorzystaniu analizy marksistowskiej i liberalnej, a zatem uwzględniając krytyczną teorię rasy, zbadali dwie sprawy dotyczące Stanów Zjednoczonych i Tajlandii. Zidentyfikowane w nich ograniczenia utrudniające wymierzenie sprawiedliwości stanowią wyzwanie dla transgranicznych praw pracowniczych pracowników migrujących. Są to sprawy dotyczące wykorzystania do pracy w rolnictwie przez Global Horizons w latach 2002–2012 oraz w tajlandzkim sektorze rybołówstwa, który w raporcie Trafficking in Persons z 2014 roku został sklasyfikowany w trzecim, najniższym poziomie ochrony (Tier 3). Raport ten został wykorzystany w międzynarodowych kampaniach mających na celu wywarcie presji na globalne korporacje i sprzedawców detalicznych, aby zmienili sposób postępowania i zastanowili się nad skutecznością oraz swoją odpowiedzialnością w ramach łańcucha dostaw.

Słowa kluczowe: handel ludźmi, niewola za długi, społeczna odpowiedzialność biznesu, Global Horizons, Tajlandia, rybołówstwo, rolnictwo

Introduction

According to the International Labour Organization (ILO 2017b), of the 40.3 million victims of human trafficking, 24.9 million people were in forced labour situations. Approximately half of those in forced labour were also in debt bondage, a proportion that increases to 70% for adult victims forced to work in agriculture, domestic work, or manufacturing. Labour and human rights violations in overseas labour trafficking cases are marked by the ease in which debt bondage relies on a system of contracts that use laws to legitimise its practices. We must change our analytical starting point toward a transnational justice framework, examining multiple countries' connectedness.

Debt migration bound by contracts is not free nor fair labour. Most labour debt contracts often charge exorbitant recruitment fees which far exceed the cost of migration and ordinary, legal recruitment services in the worker's country of origin for the purpose of profit. The assumption that economic migrants made the choice to migrate and willingly incur debt and enter deceptive work contracts ignores the macroeconomic structures that privileges the legitimacy of labour contractors over the migrant workers' human and labour rights. Moreover, the

assumption that consent is equated with free labour is based on the free market. Caraway stated that

the value of these conceptual critiques [against the free market] is their insistence on transparency in language and labour practices and their ability to expose the political implications of doing business as usual in the lean, mean, and mobile, global marketplace (Caraway 2006: 310).

These labour contracts fulfil the demand for the global impoverished to find work abroad. They are predicated on buying jobs, paying high recruitment fees, and causing debt migration, which are situations in which workers and their households incur significant debt in order to find work abroad. Migrant workers searching for economic opportunities are then indebted to banks, brokers, or their employers. When the debt is connected to their brokers or employers – and workers are unable to quit their jobs or work for no pay or below average pay, yet must continue to work in order to service their debt – debt migration becomes debt bondage, a form of forced labour.

Furthermore, debt migration is a form of discriminatory, predatory inclusion of often racialised foreigners through systemic vulnerabilities of debt, dispossession, and the disciplining the potential of labour organising into a category of legally contracted ‘unfree labour’ that operates in a grey zone of regulated labour migration, recruitment fraud, and debt bondage (LeBaron 2014). A review of the state of knowledge about cases of trafficking in the United States reveals that most known labour trafficking is predominantly based on reporting systems which have reported cases on adult male victims from Mexico, India, and Thailand in commercial agriculture and the restaurant, tourism, and hospitality industry (Asanok v. Million Express Manpower 2007; Panigabutra-Roberts 2012: 143–144). From 2013 to 2016, 125 arrests of labour trafficking perpetrators the top three categories of victims in the United States confirms this fact with the addition of the group home care industry (Bracy, Lul, Roe-Sepowitz 2019). Scholars have become more critical in how international labour migration is predicated on a neoliberal political economy based on the exploitation of foreigners that actively cultivates precariousness in workers’ livelihoods, trading human and labour rights in exchange for remittances and corporate supply chain profiteering (Banki 2016; Schierup, Jorgensen 2016; Peksen, Blaton, Blaton 2017).

We argue that anti-trafficking legislation is expansive in definition, but its application is too restrictive an avenue for delivering justice to the victims and its liberal premises often leave the structures of discrimination and labour justice under-examined. The trafficking standards required by criminal law are often so high that many cases are not prosecuted at all. We focus on the social experiences of debt bondage, changes in the legal definitions of trafficking to include debt bondage and attempts at prosecuting corporations as a judicial anti-trafficking measure that should facilitate corporate social responsibility (CSR). We examine three different cases involving the US and Thailand that represent challenges for

transnational justice: 1) Global Horizons, 2002–2012; 2) Thailand's 2014 Tier 3 ranking in the Trafficking in Persons (TIP) Report due to the fishing and seafood industries; and 3) the use of international pressure to push industries toward responsible supply chain production and CSR.

We examine and challenge the theoretical assumptions of labour trafficking and its remedies of CSR by combining Marxist and liberal frameworks in anti-trafficking with critical race theory. Under the conditions of neoliberal global capitalism, migration is a political force that reorders society itself, a new structural racism that denies the democratic rights afforded by virtue of citizenship by targeting migrants, immigrants, and 'internally racialised others' (Bhambra, Medien, Tilley 2020; Jonsson 2020). The fundamental premise of modern neoliberal labour migration is that workers have a choice in signing contracts for work, debt accumulation, and international migration and that they accept their legal status as foreign noncitizen others working in another country, in which they will not be afforded the same rights as its citizens (Jonsson 2020). Simmons and Lloyd (2010) argued that states selectively implement competing dominant frameworks of anti-trafficking (as either victim protection, human rights, or transnational crime) only when aligned with the countries that they have the greatest economic and political incentives to do so, which is the case for Thailand after its designation of Tier 3 in the United States Trafficking in Persons Report (2014) and the subsequent impact on seafood exports. CSR remedies use a liberal framework that does not challenge the capitalist legal structure, enabling debt bondage.

1. Legislation defining debt bondage and labour trafficking

Anti-trafficking legislation's interpretive applications for victims rely on the interlocking liberal assumptions of the lack of choice, the threat to the victim or family members, and the narrow definition of a trafficking victim. However, the signing of a work contract can also be understood in Marxist terms as a legal fiction that assumes formal freedom informed equality between parties, but is in fact substantive inequality (Fudge 2018). Does the signing of contracts actually represent a choice? In contrast to Marxist frameworks, a liberal framing of anti-trafficking in modern-day slavery additionally assumes a state of being in which victimhood is defined by the criterion that victims are dominated by their traffickers (be they brokers, employers, etc.), but the economic and legal structures are left unquestioned (Bales 2008; Fudge 2018).

What follows are the international and national legal definitions that demonstrate how debt bondage and human trafficking are determined by concepts of choice/consent and assumed victim categories.

The Palermo Protocol defines trafficking in persons as:

The recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation' (U.N. Protocol to Prevent 2000: supra note 43, Art. 3a).

Article 3 states that 'the consent of a victim of trafficking in persons to the intended exploitation [...] shall be irrelevant'. Although circumstances where consent is achieved under duress are present in trafficking, legalised labour trafficking hinges on the consent provided via signed labour contracts.

Additionally, the Palermo Protocol's gendered language limits trafficking discourse around victimisation primarily to female victims and countries of origin, transit, and destination (Azis, Wahyudi 2020). The Protocol's Statement of Purpose specifically states that its primary purpose is 'to prevent and combat trafficking in persons, paying particular attention to women and children.' Exploitation is defined to 'include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery' (U.N. Protocol to Prevent 2000: Article 2, Article 9). By placing women and children and prostitution at the forefront of the minimum standards for anti-trafficking, adult male victims of labour trafficking become secondary, deprioritised victims.

Questions remain, however, as to how to determine when debt labour also amounts to trafficking. In 2000, the United States passed the Trafficking Victims Protection Act of 2000 (TVPA). The Act itself is reauthorised every four years to refine definitions, set priorities, and ensure budget appropriations are in place to support the multitude of programmes and services that are fiscally supported by the Act. The Act initially set forth several key definitions of trafficking. The TVPA identifies labour trafficking in persons as

the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery [...] (United States of America 2000, Article 22 Section 7102: 8).

The TVPA further identifies that

Bonded Labour occurs when a debtor pledges personal services as security for debt and the reasonable value of those services is not applied toward repayment of the debt, or the length and nature of those services are not limited and defined (22 United States Code Statute § 7102: 4).

The TVPA defined forced labour to include psychological coercion through fraud, threats of deportation and criminal or civil repercussions, and limiting worker mobility through the taking of passports, which adversely affects commercial trade

and global labour markets.¹ Though the definition of trafficking was expansive and included both physical and psychological coercion, it did not acknowledge that initial consent of workers to enter into exploitative work conditions and debt bondage can be considered trafficking. Before debt bondage became acknowledged, the legal framework was coercion and fraud. In contrast to sex trafficking, the underlying premise assumes that trafficking cannot occur if there is evidence of consent.

Though the ILO (2009) developed an extensive list of indicators inclusive of issues of debt, many nations were slow to adopt debt bondage as an aspect of labour trafficking. In 2017, Thailand's 2008 anti-trafficking law was amended to include debt bondage as an additional means of defining forced labour in the Anti-Trafficking in Persons Act; No. 3; 2017 (Royal Government of Thailand, 2017; Liberty Asia 2017). However, it still fails to provide protection to victims of forced labour who have not been trafficked. Foreign workers in Thailand's fishing sector routinely incur debts due from fees for the cost of transportation, food, documentation, administration, and recruitment. In contradiction to anti-trafficking law, the Thai legislation to employ foreign workers that is discussed below makes it legal for employers or brokers to make 10% monthly salary deductions to pay for the costs of migration and recruitment fees, which include various costs of migration (Royal Ordinance 2017: section 49). Brokers and employers, however, often deduct more than the legal amount. The formal choices made by workers suggest consent, even when they are met with unacceptably exploitative circumstances abroad. Debt is also why victims are reluctant to leave their employers even when they are unpaid and abused in the workplace. This reluctance is often mistaken for consent and is key to understanding the psychological and economic coercion at hand.

Given the gaps in the research and against the assumptions of the dominant liberal market that labour migration under debt is voluntary, we examine the dual industry of debt migration and labour subcontracting (the hallmark of labour trafficking), by examining anti-trafficking legal practices with regard to situations of debt bondage and supply chain responsibility in the United States and Thailand.

2. Methodology

We ask three questions about debt bondage in labour trafficking: 1) How have definitions of labour trafficking been applied in debt bondage cases? 2) To what degree

¹ TVPA (2000), 22 U.S.C. § 7101., Sec. 102 (3, 4). Trafficking in labor includes peonage, slavery, and involuntary labor, servitude, or forced labor. TVPA (2000), 22 U.S.C. § 7102., Sec. 103 (8B) TVPA (2000), 22 U.S.C. § 7109., Sec. 112, Stat. 1589 (2, 3). TVPA (2000), 22 U.S.C. § 7101., Sec. 102 (12). TVPA (2000), 22 U.S.C. § 7109., Sec. 112, Stat. 1592.

is labour justice delivered through prosecution? and 3) How can we understand the limitations of corporate liability remedies for supply chain CSR?

This paper examines two case studies in labour trafficking involving Thailand as the origin or destination country for labour trafficking. The first case uses both primary research and secondary reports, Global Horizons Agricultural Thai workers in the United States, is an analysis of documents, an ethnography with 45 in-depth, semi-structured interviews with 1) former workers conducted in Thailand, Utah, and Hawaii, 2) NGOs and legal aid organisations in Utah and Los Angeles, and 3) law enforcement and social workers working on the case in Thailand conducted from 2013 to 2015 by the first author. The second author utilises practical experience and knowledge gained working as an attorney at the Thai Community Development Center in Los Angeles from 2007 to 2012. The reference materials include the organisational files and individual case files of approximately 300 workers, containing case work notes, interviews, and civil and immigration documents (Institutional Review Board). By examining key reports, court cases, and media coverage, the second case study focusses on how corporate liability was relatively unsuccessful after Thailand became a Tier-3 country in the US TIP Report in 2014 due to forced labour and severe abuses in the longshore fishing industry.

3. The challenges of justice for victims in anti-trafficking prosecution: The case of Global Horizons Manpower

Debt migration is an industry where labour recruiters, including their transnational agents, obtain cheap labour and profit by charging exorbitant fees from workers who have no bargaining power in the fee structure. In 2003, hundreds of Thai migrant workers began migrating to the US via H2A (temporary agricultural guest worker) visas to perform agricultural work for the labour recruitment company Global Horizons. The workers recruited from rural villages in Thailand were guaranteed jobs in exchange for illegally high recruitment fees. Workers with dependent families were targeted because they had access to land that they could use as collateral to obtain bank and black-market loans to pay the recruitment fees and a strong desire for higher earnings due to their household needs (Thai Community 2003–2012).

When the Thai workers arrived in the US, many found that there was little pay or no work. All workers' passports were confiscated to prevent escape. With the stress of paying off their debts, the workers escaped, seeking help when there was not enough work or pay or when they were abandoned on remote farms. The nature of the work and living conditions varied by location. Some workers were under 24-hour armed guard and without running water or food; in other cases,

when there was no work they were simply abandoned on isolated rural farms. Some escaped to find undocumented work in desperation to pay off their debts at home (TCDC 2003–2012; Bowe 2010). According to several intake interviews with the Thai Community Development Centre (TCDC), if the workers had known the true working hours and pay, they never would have consented to working in the US. Once overseas, the workers were bound by debt. However, the rigid nature of the liberal anti-trafficking framework makes the burden of proof for the variation of each individual case very difficult to prosecute (United States v. Orion, 2010; Zimmerman 2012).

Most often, fraud and deception combined with debt leads to debt-bondage forms of labour trafficking, but signed contracts suggest consent of free labour. Additionally, proving the monetary connections between Thailand-based brokers and Global Horizons was difficult. Lastly, another obstacle to prosecution was that most workers were in fear of Global Horizons; they did not report problems to the US or Thai authorities because termination of their employment would have led to deportation with no guarantee of the debts being resolved (TCDC 2005–2011; Martin, Ruhs 2011: 177–178).

The workers escaped from various farms throughout the US and sought assistance at the Thai CDC, a Los Angeles-based NGO that provided victim-centred social services, including legal assistance for T Visas. Receiving a T Visa indicates that the US Citizenship and Immigration Services recognises the worker as a victim of trafficking, though successful prosecution is not guaranteed. Even though the case was reported in 2003, it was not seriously investigated until 2009, signalling an increased interest in prosecuting forced labour trafficking in the US. In the six years that had passed, Global Horizons deported workers, hid financial assets, and closed their United States operation. Workers fearing Global Horizons became informants for the company, thereby hindering the investigation and limiting the success of prosecution (TCDC 2005–2011).

In 2010, the United States Department of Justice issued an indictment against Global Horizons for trafficking 400 Thai migrant workers, in what is described as the largest human-trafficking case ever brought forward by the US government (Chatterjee 2010; Kerr 2010; Niese 2010). In 2011, a federal grand jury indicted the eight defendants on forced labour and other charges in connection with an intentional scheme to charge high recruitment fees to indebted Thai villagers, and to use the fear of debt and the loss of home and land to coerce labour. In 2012, in light of the dismissal of a related case, *United States v. Sou* (2011), despite the six defendants pleading guilty, prosecutors filed for dismissal due to a lack of evidence (Zimmerman 2012), concluding that trafficking and debt bondage could not be proven beyond a reasonable doubt (Moosy 2012).

Whilst sex trafficking cases are easier to indict, labour cases are more difficult. In 2012, the United States 'initiated a total of 128 federal human trafficking prosecutions Of these, 162 defendants engaged predominately in sex trafficking and [only] 38 engaged predominately in labour trafficking' (United States Department

of State 2013: 382). Cases like Global Horizons are important because they demonstrate the limits of governments' capacity to prosecute and define the extent to which transnational debt constitutes a 'threat' to person and safety.

According to LeBaron (2014: 773),

The July 2012 US District Court judgement on the global case underlined employers' use of debt as a coercive form of labour discipline in the US market. [...] the judgement stated that after the workers complained to Global and Valley Fruit that their pay was insufficient to pay off their substantial debt, Valley Fruit reduced their hours of work and Global threatened to deport them and transfer them to a different farm.

When the workers complained about their work and living conditions, 'they received lesser hours at work and continued to suffer from Global's harassment.' Further, the Thai workers were forced to 'engage in orchard tasks that were more difficult than those assigned to the workers of Mexican descent' as well as working longer hours' (Equal Employment 2011: 2).

Central to the case were the issues of deception, the broker company's knowledge and use of debt, and the workers' under-payment. The recruiter promised in addition to the high wage a guaranteed full-time work contract for a period of three years, when in fact they often deported workers after their three-month work period of part-time work, especially if they did not pay a renewal fee to Global Horizons.² Recruiters further deceived workers by promising a wage of approximately 9–10 USD per hour, with the loan taken out for the recruitment fee supposedly being paid back over the course of one year, when in fact the workers often earned less. The Thai workers had each paid a recruitment fee of 10,000–29,688 USD to the Thailand-based recruiter by acquiring loans inside and outside of traditional banks, sometimes with interest rates in the triple digits (TCDC 2005–2011; Davidson 2010).

The legal limit for recruiting fees in Thailand was 65,000 THB (approximately 1,548 USD in 2005); the employment contracts excluded any mention of the actual fees charged. In particular, the recruiting fee was paid to local regional recruiters either in cash and/or promissory monetary loan contracts with banks through another layer of third-party agents of the recruiter, who acted as loan sharks. Family members were often guarantors of the bank loans, with property as collateral. Furthermore, contract fees and other costs for migrant work were passed through illegal deductions to the H2A Global Horizons worker, rather than the employer. The calculations revealed that the wages received never took them out of debt, even after they had fulfilled their period of contracted work. If their farm employers had paid the minimum amount necessary, with consideration of the

² An excellent source for profiles on Thai labor recruiting companies is *Understanding Recruitment Industry in Thailand* (Nitthat Theeravit et al. 2010).

contract fee, the real wage would have been well over 400 USD/hour for at least 12 months (Schmitt 2007: 180–181).

The confluence of capitalist structures for banking, international labour subcontracting, and restrictive immigration mechanisms contributed to the debt bondage industry. Debt bondage forms of labour trafficking prey on vulnerable, desperate workers who are unaware of the exact terms of their visas and contracts. The Thai workers who were recruited were particularly vulnerable due to the illegal recruitment fees, large bank debts, short work periods, poor literacy and English language skills, and the risk of deportation due to expiring work visas. The workers were routinely deported for this reason (TCDC 2007–2010). Motivated by profit, Global Horizons would allow their work visas to expire and deliver the workers for deportation, only to recruit again them and charge new contract fees months later.

Whilst the criminal case is predicated on the liberal framework of demonstrating absolute terms of being dominated and the lack of choice, some of the tenets of the civil labour violation case were rooted in a more Marxist framing of justice for the workers. Multiple civil cases were also pursued. The US Department of Labor won 347,000 USD in unpaid wages on behalf of 88 Thai workers (Equal Employment 2011). The US Equal Employment Opportunity Commission (EEOC) utilised civil laws on employment discrimination to combat human trafficking and deliver justice with multi-million-dollar settlements between various farm growers in Hawaii and Washington for hundreds of workers. Despite the criminal case's dismissal, the civil case brought by the EEOC was able to recompense the Global Horizon workers via various monetary settlements from the farms directly (US EEOC 2016). Labour discrimination laws thus became a tool to deliver compensation as a form of justice. Foreign worker quotas created incentives and expectations for employers to seek out and receive higher quotas.

For example, recruiter global Horizons was found by the US Department of Labor to have rejected qualified US workers to fill apple picking jobs because Global preferred Thai guest workers. Mordechai Orian, the president of Global Horizons, testified during a July 2007 trial that Thais were preferred because 'they work really hard' and were less likely to abscond or leave their employers than local workers, who leave to earn higher wages elsewhere (Martin, Ruhs 2011: 177–178).

The EEOC cases in both Hawaii and Washington ended in settlements, providing a type of justice for workers outside the criminal setting. However, not all workers were included as EEOC claimants due to the dates and locations of the work they performed. The Hawaii settlements included a 2.4 million USD payout for over 500 workers, whilst the Washington settlement amounted to 325,000 USD for 105 claimants (US EEOC 2014, 2016, 2020).

Aside from the juridical aspects, the Global Horizon case was instructive in understanding the implementation of the TVPA. In the United States, recent TVPA legislation demonstrates that 'adjusting' one's legal status from trafficked

victim to legal permanent resident appears on the surface to protect victims of trafficking. The conditions for qualification, however, function to control commerce and immigration. There were over 1,000 Thai workers subcontracted by Global Horizons and over 600 workers were involved in the anti-trafficking prosecution; approximately half received T Visas (TCDC 2005–2012). From 2008–2018, 477 Thai citizens received T Visas (United States Citizenship 2020).

Furthermore, the TVPA continues to emphasise policing over protection (Sharma 2005). In addition to the requirement to report and cooperate with law enforcement toward prosecutions, the permanent resident regulations require a demonstration of ‘good moral character’, and when failing to do so, the migrant – categorised as a victim under the TVPA – would potentially be deported. US legal scholars suggest that the enforcement of the TVPA has focussed on law enforcement and the procurement of witnesses for prosecution at the detriment of providing services and protection for the victims of trafficking (Sadruddin, Walter, Hidalgo 2005; Chacón 2006). NGO groups in the United States have also called upon law enforcement to re-examine their anti-trafficking policing practices, as they have resulted in the wrongful arrest and conviction of victims (Alliance to End Slavery and Trafficking 2020).

4. Debt bondage in Thailand’s fishing sector

In contrast to the US, Thai labour recruitment debt contracts paid through deductions is legal. Even though Thailand’s anti-trafficking law was amended in 2017 to include debt bondage as an additional means in which people can be placed into forced labour, it still fails to provide protection to victims of forced labour who have not been trafficked (Human Rights Watch 2018). Several characteristics that may create challenges to enforcement for anti-trafficking state government in the fishing sector in many countries include 1) pervasive Illegal Unreported and Unregistered (IUU) fishing practices leading to difficulties in international and domestic waters enforcement, 2) unregulated multiple labour broker and cross-border smuggling practices, 3) loopholes and contradictions between international seafaring labour contract law, national laws, and local provincial port practices for immigration and labour standards protection, and 4) the lack of traceability for catches in an industry featuring subcontractors and middlemen (ILO 2013; Greenpeace 2016; Marschke, Vandergeest 2016).³ Thailand’s challenges for enforcement stem from

³ Illegal longshore fishing vessels will register multiple national flags to ‘fly a flag of convenience’, making use of international treaties that may prohibit some countries from boarding and inspecting other countries’ vessels. In other cases, if there are any contracts at all, these longshore contracts might be signed in other countries using lower minimum standard laws. Additionally, as in the agricultural sector, labor standards for the fishing sector is often exempt from regular national labour standards and protections for wages and hours

the fact that although national laws exist, provincial ports often practice local registrations outside the national system (i.e. creating village-level documents, fees, and foreign worker registries for undocumented individuals, local police immunity fees using sticker/card systems). This paper focusses on the fourth challenge with regard to CSR.

In the fishing industry cases, traffickers usually exploit foreign male workers aged under 15 to over 50 through debt-based coercion, deceptive recruitment practices, and other means (ILO 2013; Jampawan 2018). Vessel owners, brokers, and senior vessel crew traffickers engage in forced labour on Thai and foreign-owned fishing boats. Some workers are paid little or irregularly, incur debts from brokers and employers, work as much as 18 to 20 hours per day for seven days a week, and do not have adequate food, water, or medical supplies. Some boat captains threaten, beat, and drug fishermen to work longer (United States Department of State 2020). In Thailand, the typical flow of labour migration in the sector is as follows: 1) a local broker offers a job in construction or manufacturing for a recruitment fee of 3,000–8,000 THB (100–268 USD);⁴ 2) lacking the financial means, the workers therefore agree to wage deductions without documentation (employers often work with the broker to make debt bondage arrangements); 3) broker #1 takes workers to the Thai border to meet broker #2; 4) broker #2 houses (with guards), transports, and sells workers to an employer, who is a boat owner or captain (here they realise they are to be sent into fishing); 5) the work crew is taken by tour boats for approximately 8 days to deep-sea vessels; and 6) the workers discover they are to work for at least one or two years with no days off. The workers had no idea that they would work in the fishing sector; the data show that the majority of Myanmar and Cambodian workers in Thailand's fishing sector (average 90%) were working on boats for the first time and that approximately 93.8% never signed a contract (ILO 2013: 30, 45–51). Furthermore, 55.3% of workers were undocumented (ILO 2013: 36).

The Thai Royal Ordinance (2017: section 42) proposes zero recruitment fees for migrant workers in Thailand, which typically means that employers going through official channels will pay the costs of migration and/or recruitment to the broker company. However, in practice, those costs are often either paid in the home country or later paid by the workers through deductions. Both in Thailand and neighbouring countries, definitions of the recruitment fee are unclear; the costs of migration and the work permit fees are often included in the fees. Industries marked by high numbers of undocumented workers, like in the seafaring sector, are even more vulnerable to debt bondage. Many of the victims in the Thai fishing

due to the claim that this is temporary, seasonal work that relies on environmental factors in harvesting/catching and cannot follow regular working hours (ILO 2013; Greenpeace 2016).

⁴ The authors estimate that in 2016, the average daily minimum wage in Myanmar was approximately 2.70 USD and the average monthly salary with no days off was 81 USD. Therefore, the recruitment fee of 268 USD is almost 3.5 months' minimum-wage pay. Available online: <https://tradingeconomics.com/myanmar/minimum-wages>.

cases arrived indebted to their employers or brokers from Myanmar and Cambodia, looking for economic opportunities which they could not find in their home country. Thailand's relatively robust economy and bilateral Memorandum of Understanding (MOU) foreign employment programmes allow migrants to be indebted upon arrival to pay for broker and migration fees associated with securing their employment. Employers are allowed to deduct 10% of monthly salaries for these costs (Royal Ordinance 2017). Most MOUs have broad agreements about sending/receiving quotas and procedures for regularising migration, but they rarely specific labour protections, which most states regulate by using country-specific labour laws.

Additionally, the Labour Protection Act of Thailand excludes sectors which most migrant workers dominate, such as fishing, agriculture, and domestic work. Most labour-originating countries do not support work on Thailand's fishing boats. In 2011, the Cambodian Prime Minister made a public statement discouraging registered Cambodian recruitment companies from the industry, but workers still found a way to work in that sector (ILO 2011a). Huguet (2014) documented 25 formal and informal procedures that took approximately 89 days to send a worker from Myanmar to work in Thailand through the MOU procedures. Sectors like fishing need workers on a much quicker timeframe, which builds incentives towards hiring undocumented workers (Chantavanich et al. 2020). Working 18–20 hours with little time for sleeping or eating, foreign fishermen live in cramped quarters, face shortages of fresh water, and must work even when fatigued or ill. Workers may face physical abuse, denial of medical care, and – in the worst cases – maiming or death (ILO 2011a).

5. Thailand's fishing industry: Difficulties in supply chain liability

According to an ILO (2013) fishing sector study in Thailand,

approximately one third of the migrant fishers surveyed were recruited into the industry by brokers who charged for their transfer and placement with employers [...] many of those who reported to have paid their broker up front had in fact secured a loan either from their employer, broker, or family.

Employers often seize the indebted migrant workers' identity documents or restrict their movement to prevent them from fleeing before their debts are repaid in full (Human Rights Watch 2018). Regardless, workers must fulfil the terms of their agreement by paying off debt to the broker or employer, thereby binding them despite the lack of any legally binding documents and regardless of the exploitative circumstances that befall them in the course of the work.

Thailand's fishing sector involves a global supply chain of labour from more impoverished countries in Southeast Asia and food production that is then imported to the US and European markets. The US positioned itself as a global watchdog for anti-human trafficking by committing foreign aid and publishing the annual TIP Report, used internationally in trade sanctions.⁵ Both the TIP Report and US anti-trafficking budgets are framed according to the liberalist assumptions present in the TVPA, which uses the strategies of prevention, protection, and prosecution – a criminal justice framework, not worker justice. Crime prevention, though usually interpreted as anti-trafficking education and public relations campaigns – is also about corporate responsibility through control of production in the global supply chain. The US government encourages private corporations to develop CSR policies with some guidance (United States Department of State 2016: 10; Responsiblesourcingtool.org n.d.). However, court cases involving the fishing sector in Thailand reveal how the shortcomings of CSR have so far been ineffective in granting prosecutions, let alone worker justice.

Thailand's Tier 3 ranking in the 2014–2015 TIP Reports was due to court cases in the fishing and seafood industries. The TIP Report combined with the use of international pressure appeared to have changed some industry practices in Thailand as producers, but not necessary from buyers abroad. Even as Thailand's corporations manage their image through fair labour initiatives, i.e. cooperation with NGOs like the Labour Promotion Network (Thai Union n.d.), the financial auditing that is required by international buyer government laws are limited to products produced within its supply chain, not bought from outside the production line (The Nation 2019; CP Foods 2019).

The US and the EU remain the largest buyers of Thailand's seafood products and demand high labour and environmental standards. However, there still is a gap between good intentions in legislation and actual industry practices, which cannot be fully monitored. Additionally, when punitive measures are legislated, they cannot fully be enforced. For example, the California Supply Chain Transparency Act (2010) created a framework in which corporations valued at over 100 million USD must report slavery-tainted products, but do not necessarily have to prohibit their suppliers from engaging in forced labour, labour trafficking, or debt bondage (State of California 2010). California retailers buy large quantities of seafood from Thailand. However, the cases that were filed were not successful because the plaintiffs could not prove connections between the products and slave labour used

⁵ In 2008, the US government provided nearly 100 million USD to fund anti-trafficking programs worldwide. Approximately 76 million USD of these funds went to 140 international anti-trafficking projects benefiting over seventy countries, and approximately 23 million USD funded eighty-two domestic anti-trafficking projects. For fiscal year 2009, G/TIP [the US government's fund for Trafficking in Persons] will provide 22 million USD more in grant monies, which is 5 million USD more than the previous year. Despite funding increases, G/TIP's funding requests will continue to far exceed available resources for the foreseeable future (Godsey 2011–2012: 49–50).

to make those products. Aside from supply chain accountability, there are loopholes in the laws and regulations on labour standards when migrant workers never technically set foot on land (Mendoza, Mason 2016). Even in Hawaii, fishermen working for American-owned vessels under forced labour conditions caught fish labelled 'local' and/or 'product of the USA' (ibid.). In Thailand, third-party code of conduct certifications (especially without social and labour standards) are yet to have an effect (Vandergeest, Marschke 2020).

California's Supply Chain Transparency Act (California Legislature 2010) and the UK's Modern Slavery Act (2015) indicate an awareness that debt bondage is human trafficking (Raigrodski 2016). CSR legislation assumes that once corporations are liable for exploiting labour abroad, they will be more selective of whom they do business with, therefore allowing the free market to regulate itself for better fair-trade products. However, the decisions in cases against Costco and Nestle indicate that civil cases brought against these major corporations make little impact on the seafood industry (Sud v. Costco 2017; Barber v. Nestle 2018). In *Sud v. Costco* (2017), consumer plaintiffs alleged that shrimp and seafood sold at Costco were sourced from Thai fishing boats that used slave labour. Similarly, *Barber v. Nestle* (2018) alleged that a Nestle brand of cat food, Fancy Feast, used the remains of the catch from similar Thai fishing boats that used forced labour. The high visibility of this type of forced labour was pervasive in the media for the last decade, and it was well known that fishing boats were able to maintain hundreds of workers in slave-like conditions at sea by having them remain in international waters on other boats while the boats with the catch went to dock (Mendoza 2015). Ultimately, the Nestle case was also unsuccessful as the court found that Nestle's disclosures were protected under California's safe harbour doctrine and that Nestle did not have a duty to disclose every instance of trafficking on its product if it had previously been disclosed (Kelly 2016).

There are several limitations to the use of CSR in anti-trafficking, including difficulties in product and money tracing and governments' capacity to prosecute when faced with a lack of transparency. The Costco case was dismissed with prejudice in 2017 because the plaintiff could not prove that the purchased prawns came from Thailand; thus, there was no obligation to label the supply chain (Malo 2017). The fact that high-profile cases like those against Costco and Nestle are unsuccessful and that participation in such cases is also dangerous produces a chilling effect in which many workers may never come forward due to fear and a lack of transnational justice in the US and Thailand. According to the TIP report on Thailand, there were 67 prosecutions in 2012, 27 prosecutions in 2013, and 483 prosecutions in 2014. However, the government practices impunity; it did not hold corporations, ship owners, captains, or complicit government officials criminally accountable for labour trafficking in the commercial fishing industry (Barber v. Nestle 2018). The Thai bureaucratic state courts use an authority of law that imposes limitations on indigent victim legal advocacy. According to legal scholar Frank Munger, 'patron-client relationships and other customary relationships

make establishing the authority of law more complex' (2015: 71). While the TIP Reports emphasise prevention, protection, and prosecution as the *de facto* rubric for anti-trafficking in global governance, the fact of the matter is that it is states which ultimately play the integral role in anti-trafficking prosecutions and civil cases for labour justice and ensuring human rights.

Conclusion

To pursue justice for victims through anti-trafficking legislation, prosecution, and corporate social responsibility mechanisms, we must question some of the theoretical assumptions in labour trafficking by combining Marxist analysis with liberal frameworks alongside a critical racial awareness. Investigation of debt-bondage forms of forced labour helps in understanding how cases of migrant workers in the agricultural and seafaring sectors are structurally exploited and reveals their particular vulnerability as racialised foreigners, unable to speak the language of their employers and host country. Most importantly, we must rethink notions of consent in the context of poverty and dispossession. This study reveals the micro-details of how anti-trafficking definitions were expanded to later include debt bondage, but still too restrictive to ensure worker justice. Furthermore, anti-trafficking laws were contradictory to labour immigration regulations that were unclear and ultimately enabled forms of debt bondage. The following recommendations are based on our fieldwork and secondary sources. They allow for improved victim identification in debt bondage in line with the paradigm of prevention (CSR, education awareness, lowering migration costs), prosecution, and protection in combatting human trafficking.

1. Adopt human and labour rights as the foundation for measuring the success of anti-trafficking by signing the ILO Work in Fishing Convention of 2007, No. 188, the Migrant Workers Convention of 1975, No. 143, the Forced Labour Convention of 1930, No. 29, and its 2014 Protocol for implementation and enforcement in order to address the gaps between international labour migration and immigration laws and labour rights (ILO 2011b, 2013).⁶
2. Lower the cost of migration by excluding migration and processing fees (ILO 2020).
3. Produce and distribute updated educational materials for combatting debt bondage and distribute at e/migration villages, banks, and consular offices during visa interviews (ILO 2014; Agencies of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons 2019).
4. Work with NGOs to train law enforcement, social services, and immigration

⁶ Whilst Thailand has signed and ratified the Forced Labour Convention and Protocol, the United States has not signed any of the remaining ILO conventions.

police on ILO operational indicators of trafficking in human beings for increased debt-bondage victim identification (ILO 2009).

5. Ensure victim-centred and trauma-informed social services and immigration status relief upon identification (Trauma-Informed n.d.; Victim-Centered n.d.).
6. Increase government's role in protecting overseas migrant workers to decrease black market and private ventures in the debt-labour system by creating a system of checks and balances between Departments of Employment's visas/permit offices, Ministries of Labour's labour inspections and protections unit, immigration police and border patrol units, anti-trafficking police and immigration units, and anti-corruption units.
7. Increase governmental investment and forensic accounting in criminal and civil cases for victim restitution.
8. Ensure personal legal representation for victims to secure labour rights and pursue legal remedies against traffickers.
9. Combat root causes by recognising the complex social and economic forces that propel people into exploitative circumstances, particularly highlighted by the ILO and the Special Rapporteur's report; call attention to the compelling profitability of trafficking (Inglis 2001: 101–103).
10. Increase government surveillance of recruitment and employment of workers to prevent economic coercion, including interviewing workers without their employers, brokers, or law enforcement personnel being present (ILO 2013).

Going forward, debt bondage research should question the framework of restrictive rights afforded to foreign migrant workers and victims of labour trafficking on the basis of presumed choice, free labour, and morality used to judge which victims deserve the protection of the law and states. There are many experiences that make certain populations particularly vulnerable to debt bondage (ILO 2009). Whilst existing legislation addresses who may be a victim of trafficking, blatant exploitation is easy in a system in which debt bondage can rely on a legal framework that supports work contracts and neglects to enforce an equitable system for those contracts. Workers are forced to 'choose' a debt bondage situation due to their placement in a world where free markets are often mistaken for freedom itself.

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