

The migrant fishermen of Phuket, Thailand.
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Combatting human trafficking in East Asia and beyond

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Human trafficking is a phenomenon that attracts much public attention, owing to the flagrant nature of the exploitation involved when individuals become lucrative commodities. The reality of human trafficking, however, is complicated. The underground nature of human trafficking, especially where it involves the clandestine dynamics of irregular migration, can lead to a poor understanding of its causes, processes and consequences and, resultantly, impede efforts to combat it. Human trafficking can be transnational, spanning different countries, or wholly domestic. In fact, most cases of human trafficking are domestic in nature and thus do not fall within the typology of ‘country of origin, transit and destination’ that is often used to describe trafficking when border crossings are involved.¹ The purpose of exploitation can encompass different forms and involve different victim profiles. Furthermore, human trafficking is a crime, but it can take place within legal channels of immigration and employment. In reality, the issue of trafficking and exploitation is multifaceted because migration is a process that can change over time in the types of facilitation and exploitation as experienced by the individual migrant.² The challenge of anti-trafficking, therefore, is based on the fundamental recognition that there is still much to learn—and much to do—to combat human trafficking.

The roundtable

The imperative of learning from each other about emerging trafficking dynamics and best anti-trafficking practices led to the hosting of a Chatham House regional roundtable, titled ‘Combatting Human Trafficking: The Situation in East Asia’, on 16 September 2019 in Taipei.³ Jointly funded by the Taiwan Foundation for Democracy, the Asian Exchange Foundation, University of Portsmouth and Chatham House, the roundtable provided a timely opportunity to examine and compare various domestic contexts with respect to the protection of trafficking victims, the role of recruitment

agencies in state-sanctioned labour migration systems and the responsibility of the private sector to address labour exploitation in their global supply chains.

At the roundtable, participants—activists, practitioners and scholars from Germany, Hong Kong, Indonesia, Japan, Malaysia, the Philippines, Taiwan and the UK—exchanged views on labour trafficking in different domestic contexts across Asia, legal and policy frameworks, the role of business and recruitment agencies and best practices in the prevention of trafficking in East Asia. Participants referenced the annual publication and ranking of countries based on their

anti-trafficking responses in the Trafficking in Persons Report by the U.S. Department of State. From this exchange of views at the Chatham House roundtable derives the scope of this Focus section, where we asked our contributors from different fields to reflect on the theme of combatting human trafficking in East Asia and beyond the region. The Focus consists of their reflections and contributions from these cross-disciplinary perspectives, including Richard B. Allen as a historian of slavery in the Indian Ocean, Michiel Hoornick as an advocate to eliminate global statelessness, Lisa Ko-En Hsin and Anna Tsalapatanis as scholars of law, Dennis Kwok as

a legislator in Hong Kong, Franziska Plümmer and Gunter Schubert as scholars of Asian studies, Tsai Tsung Lung as a documentary filmmaker and interviewed by Evelyn Hsin-chin Hsieh as a scholar of literature, Neil Wilkins and Sumitha Shaanthinni Kishna from international civil society organisations that work on business and human rights and migrant rights advocacy, Gabriel Webber Ziero as a private sector analyst for corporate responsibility, and lawyer and photographer Ewa Dąbrowska who selected the photos to accompany our essay on the plight of migrants in Malaysia during the COVID-19 lockdown.

Continued overleaf

Contributions to this Focus

Tsalapatani begins with an analysis of why human trafficking is difficult to define in practice and even more challenging to arrive at reliable estimates of the extent of the global situation. She stresses the methodological difficulties associated with attempts to obtain a clearer understanding of the human trafficking landscape. Different purposes of exploitation, different victim profiles and different migratory dynamics depending on the elements of voluntariness and coercion can make statistical captures of the extent of human trafficking extremely difficult. Allen picks up on these themes of conceptual and methodological challenges inherent in studies of human trafficking. He ambitiously sketches a sense of the scale of human trafficking in Asia before the turn of the twentieth century, thereby providing the historical context to current discourse of combatting human trafficking in all its forms. Conceptually, Allen's essay connects the anti-trafficking challenge of today to the wider historical and comparative context of global slavery and of its abolition. In so doing, it serves as an important reminder that while the present-day imperative to address human trafficking is urgent, it is by no means a new phenomenon that the world has never seen. Instead, the intensity of our present-day anti-trafficking discourse is but the latest chapter in a long history of labour exploitation embedded in different migrant labour systems of slavery or practices and institutions similar to that of slavery.

Framing contemporary human trafficking challenges within the broader history of slavery is increasingly more important in light of the labelling of human trafficking as a modern form of slavery, ushered in by legislation like the UK Modern Slavery Act of 2015. The Act establishes a framework for a robust criminal justice response against egregious labour exploitation, known broadly as human trafficking, whose international definition encompasses the various purposes of exploitation such as "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".⁴ Involving the private sector, the Act notably establishes a mandatory requirement for commercial organisations operating in the UK with a turnover greater than £36 million to publish an annual statement on slavery and human trafficking. The momentum generated by the UK Modern Slavery Act has brought in similar legislation in other jurisdictions that call for mandatory human rights due diligence. Webber Ziero discusses the wave of regulatory developments worldwide to combat contemporary slavery-like practices and hold businesses responsible for negative human rights impacts of their activities. Webber Ziero observes this growing momentum in Asia, notably Hong Kong with its proposed Modern Slavery Bill, and opines that we may see similar legislation in member states of the Association of Southeast Asian Nations (ASEAN) owing to growing cooperation between ASEAN and Australia, which has its own Modern Slavery Act since November 2018.

The essays from Kwok and Hsin provide detailed analyses of the Hong Kong Modern Slavery Bill, which is the most developed version of such regulatory developments in Asia to combat human trafficking. Hong Kong legislator Kwok provides a commentary for why he and fellow legislator Kenneth Leung proposed the bill outside the government's legislative agenda, notwithstanding the unlikelihood that it would be adopted by the government. Hsin argues in her essay that with Hong Kong's status as an international financial centre, a modern slavery law for the territory modelled after the UK Modern Slavery Act of 2015 could have considerable impacts in the Asia Pacific. It would bring Hong Kong into better alignment with other major international financial centres with similar legislation and also alleviate the city's poor rankings on the U.S. Department's Watch List in its annual Trafficking in Persons Report. In 2018, the U.S. threatened to lower Hong Kong's grading from Tier 2 Watch List to Tier 3, the worst possible ranking. In 2009, the 'downgrading' of Taiwan from Tier 1 to Tier 2 led to an enhanced inter-agency coordination and the final adoption of the Human Trafficking Prevention and Control Act in 2010.⁵



Man brandishing his passport at the Migration Resource Center in Kathmandu, wishing to receive a visa in order to go abroad for work. © ILO/Crozet M.

Plümmer and Schubert examine the state-sanctioned labour migration systems in East Asia and argue that governments in East Asia should improve their regulatory frameworks towards labour migration and asylum protection to prevent migrants and refugees from being exploited by crime syndicates or unscrupulous recruiters. Specifically, they note how immigration policies of China, Hong Kong, Japan, Korea and Taiwan can exacerbate human trafficking risks. Meaningful efforts to combat human trafficking therefore can provide an indication of how willing these governments are to address victimisation in migration industries and migration-related exploitation. Wilkins' essay addresses the theme of combatting trafficking in regulated labour regimes and the fundamental flaws in the current labour recruitment system, where migrant workers are expected to pay heavy recruitment fees up front for the opportunity to work abroad and remit money home. This means that migrant workers are heavily indebted and begin their employment in a position of vulnerability. Wilkins writes of the urgency to move to a different industry norm, whereby the recruitment fee is borne by employers rather than the migrant workers, in what is known as the 'Employer Pays Principle'.

For migrant workers without documentation or the necessary permit for authorised entry, residency and employment, their position in the labour market is even more precarious. Hoornick observes in his essay that vulnerability in the labour market can be greatly exacerbated by the status of statelessness. Hoornick examines how the lack of a citizenship can be a risk factor for human trafficking and how lessons learnt in Thailand to combat trafficking by reducing statelessness are important for other countries in the region with significant stateless populations. For instance, in Thailand, poverty or illiteracy may lead to a child's birth not being registered. The subsequent lack of legal documentation for the child can become an impediment for him or her to later access the formal employment sector and more willing to take risks with dubious employers or employment agents.

Tsai, Hsieh and Cheng's contribution is an exploration of the precarity of undocumented migrant workers through a discussion of the documentary, 'See You, Lovable Strangers'. Filmmaker Tsai discusses with Hsieh the documentary he made in 2016 with Nguyễn Kim Hồng, which follows the plight of four undocumented Vietnamese agricultural workers who absconded from their arranged employment in Taiwan and instead found work in the informal agricultural sector. They speak of the exploitive nature of their work, the false promises made by job recruiters, their anxieties caused by the heavy debts they took on to secure an employment contract in Taiwan, the precarity of living conditions and the haunting fear of police raids. The documentary is a powerful testament for

why the current migrant recruitment industry whereby heavy fees are charged upon migrants for their employment is deeply flawed and must be changed, as echoed by Wilkins' essay.

Migrant workers under lockdown

Shortly after the Chatham House roundtable on 'Combating Human Trafficking: The Situation in East Asia' took place in Taipei in September 2019, the global community saw the outbreak of an unknown virus. By the end of March 2020, about one-fifth of the world population went into lockdown as governments worldwide sought to control the spread of COVID-19.⁶ Many of the contributions in this Focus were prepared during lockdown, whilst the COVID-19 pandemic and the exceptional measures undertaken to control the outbreak foregrounded the inequality between migrant workers and citizens, particularly with regard to the issue of health. For migrants who continued to work as frontline and key workers during the pandemic in the care, agricultural and other sectors in Italy, the U.K, the U.S and countries elsewhere, their insufficient, or lack of, entitlement to healthcare exposed them to a higher health risk. For those who were summarily dismissed from their jobs or have their wages held by their employers, such as Indonesians and South Asian migrant workers in Malaysia, their livelihoods were at stake when they were suddenly faced with the compounded threat of job and food insecurity.

As foretold by Michiel Baas in the previous edition of The Newsletter (#86; Summer 2020), COVID-19 and, more specifically, how governments' pandemic responses affected the rights and lives of migrant workers worldwide, will be an active ground of research for the years to come. Exclusion of migrant workers, especially those who are undocumented, will likely become even more contentious, as countries reel from the measures taken in the name of public health to control mobility and restrict the rights of those seen as vectors of the viral transmission. In ASEAN, the rights of undocumented migrant workers within the framework for the promotion and protection of migrant workers will need to be re-examined, since current standards of the ASEAN regional human rights system on the rights of migrant workers excludes most undocumented migrant workers from its scope.⁷

The last essay of our Focus is a photo-essay that attempts to capture the sense of uncertainty, frustration and urgency felt by migrant rights advocates as they watched how the lockdown measures adversely affected migrant workers in Kuala Lumpur. Originally posted on an NGO social media

site to bring awareness to the plight of migrants, the photos that accompanied the essay by Kishna and Ling were later taken down by the organisation due to the intensity of the negative reactions they generated amongst those who disagreed with the humanitarian actions undertaken to help migrant workers. We include the photo-essay on COVID-19 and migrants in Malaysia as a reminder that the challenge of anti-trafficking must be framed within the wider context of protecting the rights of all migrant workers.

With expected prolonged effects of an economic downturn worldwide, the pandemic has intensified the misery of those who were already marginalised and living in precarity. How we seek to better the situation of those most affected and meet the anti-trafficking challenge in light of the growing socioeconomic inequality will be the hallmark of our shared humanity in the post-COVID world.

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Notes

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