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The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion

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Abstract

This paper provides an analysis of what trade unions can offer to reduce the vulnerability of migrant workers to forced labour and human trafficking in the Greater Mekong Subregion (GMS) and Malaysia as a key destination for GMS migrant workers. The exploration of the potential for the engagement of trade union partners is a timely contribution to the forced labour and anti-trafficking debate, given the shift towards a more holistic labour rights approach, and the ensuing search for more actors and partnerships to combat these crimes, which led to adoption of the Protocol of 2014 to the Forced Labour Convention, 1930, (Forced Labour Protocol) in June 2014. Examples from Malaysia and Thailand highlight the role that trade unions can play in policy development and service provision, and also some of the challenges associated with unionisation of a vulnerable, temporary, and often repressed, migrant workforce.

Keywords: International Labour Organization, migrant workers, forced labour, human trafficking, Greater Mekong Subregion, Cambodia, Lao PDR, Thailand, Vietnam, Malaysia, Myanmar, trade unions, labour rights

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Introduction

This paper argues for greater engagement of trade unions as partners in preventing human trafficking and forced labour and empowering workers to avoid these abuses, drawing on the authors' practical engagement with trade union partners in the Greater Mekong Subregion (GMS) and Malaysia. Migrant workers in the region, and across the world, are vulnerable to a spectrum of labour rights abuses—at the extreme end of which are trafficking and forced labour. Generally, anti-trafficking interventions have employed border control and criminal-justice-centric approaches that emphasise prevention, protection and prosecution, and focus overwhelmingly on women, children and sex work. Despite different intentions, this agenda has had the effect of taking away agency from identified victims while leaving others underserved; and diverting attention away from key structural inequities that make migrant workers especially exposed to abuses.

In recent years, acknowledging these shortcomings has resulted in a conceptual, if not practical, shift towards an approach that encompasses a labour rights perspective. This labour rights approach, now embodied in the Protocol of 2014 to the Forced Labour Convention, 1930 (Forced Labour Protocol)[1] opens (or perhaps, reopens) a plethora of new interventions and actors to address trafficking and forced labour, including trade unions. Until recently trade unions had not been considered key actors in the fight to combat trafficking, to the detriment of holistic and effective interventions. When taking a labour rights approach, trade unions seem an obvious partner, however this is less clear in the current GMS context, where those particularly affected are migrant workers. Despite this, and other challenges to the trade union movement in the region, trade unions have proven a key and innovative partner for the International Labour Organization's (ILO) efforts to protect migrant workers from all forms of labour exploitation in the GMS.

Driven by a labour rights outlook, a historical perspective on the trade union movement and drawing from the experiences of the Malaysian Trades Union Congress (MTUC) and the State Enterprises Workers' Relations Confederation (SERC) of Thailand, interviewed in February 2015, this paper assesses what trade unions can offer in

1 In full: ILO, *C029—Forced Labour Convention, 1930 (No. 29), Convention concerning Forced or Compulsory Labour*, 28 June 1930.

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the prevention and remedy of forced labour and human trafficking of migrant workers. Authors are situated in the ILO's Tripartite Action to Protect Migrant Workers within and from the Greater Mekong Subregion from Labour Exploitation (GMS TRIANGLE) Project.[2]

The Nexus Between Labour Migration, Forced Labour and Human Trafficking in the GMS

The GMS comprises countries bound together by the Mekong River. The GMS and neighbouring countries comprise one of the world's most dynamic migration and economic hubs, with major flows from the region into Thailand and Malaysia as key destination countries. There are between two and three million migrant workers in Thailand, and over four million in Malaysia. The Yunnan province of China shares its borders with Lao People's Democratic Republic (Lao PDR), Myanmar and Viet Nam, and has a long history as both a sending and receiving area for internal and international migrants. The number of people from Cambodia, Myanmar, Lao PDR and Viet Nam seeking work abroad continues to rise, matching the demand in destination countries. Economic growth, labour shortages in key sectors, and ageing populations in destination countries drive the need for low-skilled workers in labour-intensive jobs; and lack of jobs, geographical proximity, established migration networks and the profitable recruitment industry match this demand with a steady supply of migrant workers from countries of origin. The ILO's research[3] and practical experience have found that migrant workers in this region are vulnerable to varying labour exploitation abuses—vulnerabilities that are heightened for women, ethnic minorities, young workers and those who migrate through irregular channels. Migrants are experiencing the most extreme forms of labour exploitation, including child labour; forced labour (that may involve sexual exploitation); and trafficking.[4] Migrant workers are frequently employed in sectors where forced labour and trafficking are more likely to occur, including domestic work, entertainment, agriculture, fishing and seafood processing, manufacturing, the service industry and entertainment. There has been a recent increase in public attention on the exploitation of migrant workers in the run up to the 2022 World Cup in Qatar, as trade unions have highlighted abuses within the construction sector.

Towards a Labour Rights Perspective on Trafficking and Forced Labour

Trafficking is defined under the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol), adopted by the United Nations (UN) General Assembly as one of the three Palermo Protocols that supplement the 2000 Convention against Transnational Organized Crime. There is a broad and rich literature of critique against the Trafficking Protocol and the national policy responses and non-governmental organisation (NGO) mandates that it has inspired. Criticisms have included the focus on individual criminals and victims, rather than on the structural causes of human trafficking and forced labour. An overt concentration on criminal justice and prosecution has also led to the neglect of the protection and prevention aspects of anti-trafficking interventions. Scholars and commentators have also disapproved of the significant gender bias in anti-trafficking interventions, with an observable focus on women and sex work. This has led to inadequate consideration of male trafficking victims' experiences and the industries in which they work, such as construction and fishing.[5] It has also paradoxically increased the vulnerability of women migrants, as a number of countries have

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2 The GMS TRIANGLE project works in Cambodia, Lao People's Democratic Republic (PDR), Malaysia, Myanmar, Thailand and Viet Nam.

3 The Asia-Pacific region accounts for the highest number of absolute victims of forced labour—11.7 million or 56%, according to the ILO. Globally, the ILO estimates that there are 20.9 million victims of forced labour, and 44% of these (9.1 million) have moved either internally or internationally (ILO, 'ILO Global Estimate of Forced Labour 2012: Results and Methodology', International Labour Office, 2012). See also: ILO Regional Office for Asia and the Pacific, 'Safe Migration Knowledge, Attitudes and Practices in Myanmar', ILO, 2015; GMS TRIANGLE project and Asia Research Center for Migration, 'Employment Practices and Working Conditions in Thailand's Fishing Sector', ILO, 2013; GMS TRIANGLE project and Asia Research Center for Migration, 'Regulating Recruitment of Migration Workers: An assessment complaint mechanisms in Thailand', ILO, 2013; ILO, 'Profits and Poverty: The economics of forced labour', International Labour Office, 2014, provides a theoretical overview on the determinants of forced labour, and an assessment of determinants of forced labour at the household level and among returned migrants, based on surveys carried out in eight countries. See also report by Verité using ILO methodology: Verité, 'Forced Labor in the Production of Electronic Goods in Malaysia: A comprehensive study of scope and characteristics', Verité, 2014.

4 In 2013 the ILO introduced 'unacceptable forms of work' as one of eight areas of critical importance. Unacceptable forms of work are defined as comprising 'conditions that deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of poverty.' ILO: 'The Director-General's Programme and Budget proposals for 2014–15', Supplement to Report II to the 102nd International Labour Conference, ILO, Geneva, 2013, para. 49.

5 The United Nations Office on Drugs and Crime (UNODC) 'Global Report on Trafficking in Persons', UNODC, 2009, identifies 18% of victims as being trafficked for forced labour and 79% for sexual exploitation, and suggests that this may be the result of statistical bias, as labour exploitation and male victims are less visible and relatively under-detected. In 2011,

responded to the risks associated with labour migration with placing further restrictions on women's migration.[6] Critics have also pointed to the sometimes disempowering nature of rescue and rehabilitation programmes for victims, with cases of abuse in women's shelters and limited access to justice well-documented.[7] These misguided policy responses are a result of trafficking and forced labour being viewed in isolation from the wider context of migration and work. Subsequently, this failure to consider the broader context conceals and even absolves the roles of states and employers in the labour and migration regimes that create conditions for forced labour and trafficking to occur.

These policy failures, and the search for more holistic and empowering approaches, have seen the emergence of the labour rights approach to trafficking and forced labour policy and practice. In recognition of the range and breadth (and arguably, the lack of specificity) of the crime of human trafficking, the scope of anti-trafficking efforts has broadened.[8] The labour rights approach views trafficking within the broader context of migration and work. Conceptually, it broadens the scope of the discussion beyond 'sex trafficking', and victim stereotypes; and practically, it strengthens the advocacy landscape to introduce new actors and advocates[9] including employers' organisations and trade unions. A labour paradigm shifts the discussion from sex work, 'powerless victims' and 'wicked traffickers', to look at the more subtle, insidious and non-violent forms of exploitation, including work permits tied to specific employers or industries in destination countries; insurmountable recruitment fees that contribute to situations of debt bondage and forced labour; complicated and expensive immigration regimes that contribute to irregular movement; and state-sanctioned restrictions on access to social protection, freedom of association and the right to collective bargaining for migrant workers. In acknowledging that some immigration regimes inadvertently *create* trafficking victims, forced labourers and undocumented migrants, the labour paradigm places the focus back on immigration and employment policies that leave certain occupations and sectors unregulated and outside the ambit of labour protection laws.[10]

The importance of an approach that addresses labour and migration structures, focuses on prevention and protection and emphasises multi-stakeholder collaboration was recognised by the international community through the adoption of the Forced Labour Protocol. The Protocol requires governments to take measures to prevent and eliminate the use of forced labour, to provide protection to victims and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced labour. It guides states to include employers' and workers' organisations in the development and implementation of national policies and action plans. The Protocol and its accompanying Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) also outline specific measures to protect migrant workers, including protection from fraudulent and abusive recruitment practices. The Recommendation also cites the promotion of freedom of association and collective bargaining to enable at-risk workers to join workers' organisations as a preventative measure, and recognises the role and capacities of workers' organisations to support and assist victims of forced labour.

Along with a range of other researchers and advocates, the ILO has aimed to support and encourage its constituents, including employers' organisations, workers' organisations, government and civil society organisations (CSOs) in the GMS to increasingly adopt the labour rights approach to human trafficking.

Challenges to Trade Union Engagement with Migrant Workers in the GMS

The trade union movement emphasises solidarity with workers' rights in social and economic concerns, and holds freedom of association and the right to collective bargaining as the main avenues for improving working conditions and increasing workers' share of the profits they help to create.[11] Unions are established to give voice to workers, to provide a channel for discussion with employers and government, and to promote the best interests of workers.

UNODC reported that trafficking for sexual exploitation had shrunk to 53%, and trafficking for forced labour and grown to 40%, acknowledging that 'the increasing detections of trafficking for forced labour has been a significant trend in recent years.' (UNODC, 'Global Report on Trafficking in Persons', UNODC, 2014).

6 Bans on sending nationals abroad to work as domestic workers have been imposed by Indonesia (in 2009; and planned again in 2015) and Cambodia (in 2011), and in August 2013, Nepal announced a ban on women under the age of 30 from migrating for domestic work to the Arab Gulf States.

7 See A T Gallagher and E Pearson, 'The High Cost of Freedom: A legal and policy analysis of shelter detention for victims of trafficking', *Human Rights Quarterly*, vol. 32, 2010; Global Alliance Against Traffic in Women (GAATW), 'Collateral Damage: The impact of anti-trafficking measures on human rights around the world' GAATW, 2007.

8 International Organization for Migration (IOM), Regional Office for Southeast Asia, 'Situation Report on International Migration in East and South-East Asia', IOM, 2008, p. 114.

9 J Chuang, p. 81.

10 B Anderson and R Andrijasevic, 'Sex, Slaves and Citizens: The politics of anti-trafficking', *Soundings*, vol. 40, 2008, pp. 141–2.

11 H Shamir, 'A Labor Paradigm for Human Trafficking', *UCLA Law Review*, vol. 60, no. 1, 2012, p. 95.

One of the most effective ways of preventing the exploitation of migrant workers is by guaranteeing the right to join trade unions in destination countries; in industries with strong trade union representation there are lower levels of labour exploitation, child labour, trafficking and forced labour.[12] Despite the trend of increasingly considering the broader labour and migration aspects of trafficking and forced labour, for many prominent anti-trafficking activists and organisations this shift has yet to translate into meaningful engagement with, recognition of, and advocacy for an expanded role of trade unions in anti-trafficking programmes.[13]

There are a number of reasons for the absence of trade union interventions in migrant labour and anti-trafficking efforts. At the conceptual level, there is a schism between the literature on labour migration and the literature on organised labour. Literature on labour migration primarily relates to disciplines of demography, geography and development studies, and has tended not to engage on issues of the position of migrant workers in relation to industrial relations systems, whereas literature on organised labour has generally ignored the increasing significance of temporary migrant labourers, and the role of non-union entities in organising these workers.[14] Migrant workers' right to join and lead trade unions is frequently denied in the GMS, either by the law of the destination country, the employment contract or immigration status. Migrant workers are largely employed in informal, hard-to-reach sectors, including in rural areas, on fishing vessels, or in private homes.[15] Migrant workers tend to have long and irregular working hours and may not be able to leave the workplace to seek help or join union activities. Frequently they face cultural and communication barriers, including language. Thus the factors that result in high incidence or risk of forced labour and trafficking in certain occupations are the same factors that lead to these sectors often having the lowest trade union density. Migrants in the GMS region are also often transitory and temporary—making investment in a union, for both the worker (with respect to payment of dues) and the union, seem problematic and untenable.

Reliable, comparable statistics on trade union density rates in the region are poor. The ILO suggests that in 2010, union membership (as a percentage of total employment) in Lao PDR was approximately 15.5%;[16] 16% in Viet Nam; 8% in Malaysia; and 3% in Thailand.[17] The higher rates in Lao PDR and Viet Nam can be attributed to the fact that these are socialist countries in which unions are state bodies. Rates of migrant unionisation in these countries is not officially measured.

Further challenges stem from current practices of trade unions. While historically trade union movements have been responsive to, and indeed driven by, the needs of migrant workers,[18] this became less true as the nation state became more focused on serving individuals through the lens of citizenship. Further, as global migration increased, rhetoric reframed migration as a problem to be managed, rather than acknowledging migrant workers as key participants in the workforce and noting their contribution to productivity. As this anti-migration stance gained momentum in the postcolonial era, some trade unions excluded migrant workers due to the real or perceived preconception that migrant workers have a negative effect on the availability of jobs and bargaining power of local workers.[19] Some unions began to consider nationality as crucial to membership, rather than the shared struggle of all workers of all nationalities.[20]

Funding structures and mandates of unions may also place limitations on how resources are allocated, especially if unions are quasi-state institutions. In the GMS region, noting the role of trade unions in ex-Communist states like Lao PDR and Viet Nam, trade unions have traditionally taken this nationalist, protectionist stance. Migrant worker concerns have been seen as beyond the scope of unions' responsibility and capacity. There remain questions in

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12 A T Gallagher, *The International Law of Human Trafficking*, Cambridge University Press, New York, 2012, p. 439; J Beirnaert, 'A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe', in C Rijken (ed.), *Combatting Trafficking in Human Beings for Labour Exploitation*, Wolf Legal Publishers, The Netherlands, 2011, p. 483.

13 H Shamir, p. 127; J Chuang, p. 32; N Piper and J Grugel, *Critical Perspectives on Global Governance: Rights and regulation in governing regimes*, Routledge, Oxon, 2007, p. 74.

14 M Ford, 'Organizing the Unorganizable: Unions, NGOs, and Indonesian Migrant Labour', *International Migration*, vol. 42, no. 5, 2004, p. 101.

15 M Ford, 'Migrant Labor NGOs and Trade Unions: A partnership in Progress?', *Asian and Pacific Migration Journal*, vol. 15, no. 3, 2006, pp. 304–5.

16 ILO, 'Trade union density rate by sex—as a percent of total employment (%)', available at ILO STAT, retrieved 2 August 2015, www.ilo.org/ilostat

17 S Hayter, forthcoming; 'ILO Statistics on Trade Unions and Collective Bargaining', in ILO, 'World of Work Report: Development with jobs', ILO, 2014, p. 92.

18 See especially the histories of unionisation in the plantation sector in Malaysia, and examples from Singapore, Fiji and Australia.

19 N Piper, 'Social Development, Transnational Migration and the Political Organising of Foreign Workers', *Contribution to the Committee on Migrant Workers, Day of General Discussion on the theme of 'Protecting the rights of all migrant workers as a tool to enhance development*, Office of the United Nations High Commissioner for Human Rights, 2005.

20 M Ford, 'Migrant Labor NGOs', p. 304.

former communist states about whether citizens can join trade unions in other countries. Given the political space occupied by unions in these countries, states need to ensure that their laws enable migrant workers to join trade unions in destination countries and that this action does not risk their membership of the state union. States further need to encourage that migrant workers join unions in destination countries, allowing these workers to reflect the core values of the country of origin. It is further worth noting the divergent, highly politicised spaces that trade unions occupy within the region, where trade union membership in some countries is a dangerous statement of political opposition.

While some progressive unions drove the discourse on migrant workers forward in the 1950s and 60s, little traction (except with the ILO through the constituent voice of these unions) in improving the protections and conditions for migrant workers across the region was achieved. While these progressive unions encouraged engagement with migrant worker populations, efforts were often thwarted by restrictive legislation. For example, despite notable efforts by the (then) Federation of Trade Unions of Burma and the (then) Seafarers' Union of Burma in exile, working with the State Enterprises Workers' Relations Confederation (SERC), Thai trade unions have still faced challenges in adequately representing the voices of migrant workers from Myanmar and the voices of other minority migrant worker populations. While union efforts in certain sectors have been more successful than others (sectors such as fishing and port work that by their nature operate across borders, and sectors with strong historical engagement with migrant workers seem to have achieved greater migrant worker engagement), many trade unions appear absorbed with national concerns and less willing to engage with more challenging issues around migrant work, especially where trade unions do not enjoy public support. It is further noted that trade unions do not have significant presence in some sectors dominated by migrant women, including sex work and domestic work sectors.

However in recent years, with the emergence of the labour rights approach and, in part, working through the ILO's tripartite structure, trade unions in the region have dramatically increased their engagement with migrant workers, arguably once again, internationalising the shared needs and challenges facing workers worldwide. Unions have proven flexible, innovative and effective partners in protecting migrant workers from falling victim to forced labour and human trafficking, and providing legal and support services to remedy these crimes.

Table 1: Key trade unions and workers' organisations in the GMS region (plus Malaysia)

Country	
Cambodia	Cambodian Confederation of Trade Unions (CCTU) Cambodian Labour Confederation (CLC) National Union Alliance Chamber of Cambodia (NACC)
China	All-China Federation of Trade Unions (ACFTU)
Lao PDR	Lao Federation of Trade Unions (LFTU)
Malaysia	Malaysian Trades Union Congress (MTUC)
Myanmar	Agriculture and Farmers Federation of Myanmar (AFFM) Myanmar Trade Unions Federation (MTUF) Myanmar Maritime Trade Unions (Formerly Seafarers' Union of Burma) Confederation of Trade Unions of Myanmar (CTUM)
Thailand	Labour Congress of Thailand (LCT) National Congress of Private Industrial Employees (NCPE) State Enterprises Workers' Relations Confederation (SERC) Thai Labour Solidarity Committee (TLSC) Thai Trade Union Congress (TTUC)

Viet Nam	Viet Nam General Confederation of Labour (VGCL) Vietnam Women's Union (VWU)

What can Trade Unions Bring to the Anti-Trafficking Movement?

Trade unions bring significant advantages to the anti-trafficking and forced labour movements. Progressive anti-trafficking interventions have pointed to the empowering nature of unions' approach, through facilitating negotiations and lobbying for improved conditions. In doing so, they take a systematic rather than individual perspective to the issues. Formalised tripartite structures for workers' (and employers') organisations allow unions to closely cooperate at the policy level. In the GMS region, trade unions have increasing legitimacy and voice with governments in countries where there is a fear that the civil society space is shrinking (Cambodia, Malaysia and Thailand) or is historically restricted (Lao PDR, Myanmar and Viet Nam). Unions also have strong connections with affiliates globally, providing a large network of partners for cooperative efforts and shared information. Trade unions also have strong representational legitimacy, due to membership structure and international affiliations.

Within the framework of the GMS TRIANGLE project, trade unions have been reaching out to migrant workers to provide information and support services; organising migrant workers into unions or worker associations; providing case management and legal support; and contributing to the development of legislation to better protect all workers. Much of this work has been driven by the trade union manual 'In Search of Decent Rights: Migrant Workers' Rights' that was published by the International Labour Office (the permanent secretariat of the ILO) in 2008, developed in partnership with the Bureau for Workers' Activities (ACTRAV), the International Trade Union Confederation, global union federations and national unions.[21] This manual, on which trade union action plans in the GMS countries and Malaysia were based, calls for union action to address migrant worker issues on four pillars: promoting a rights-based migration policy; creating alliances with trade unions in other countries; educating and informing union members; and reaching out to migrant workers.

In Cambodia, Lao PDR, Malaysia, Myanmar and Thailand, trade unions are running Migrant Worker Resource Centres (MRCs), delivering safe migration training and generally acting as a trusted information source for migrant workers and their families before departure, within the destination country, and upon return. In countries of origin, trade unions have an important role to play in facilitating complaints processes and addressing recruitment agency malpractice. In a recent case in Myanmar, workers who were charged exorbitant fees by a local recruitment agency sought support from the Confederation of Trade Unions Myanmar (CTUM). CTUM coordinated with the anti-trafficking police and the Complaints Centre of the Migration Department in the Ministry of Labour; and while the case is ongoing, the recruitment agency was forced to give a refund to the complainants.

Trade unions have also demonstrated their ability to work collaboratively with other unions and NGOs. In Cambodia, the Cambodian Confederation of Trade Unions (CCTU), the Cambodia Labour Confederation (CLC), and the National Union Alliance Chamber of Cambodia (NACC) have formed the Cambodia Trade Union Committee on Migration (CTUC-M) as an informal network to share information and put forward areas of common concern. This group made contributions to the Technical Working Group tasked with drafting eight *prakas* (ministerial orders) supporting Sub Decree 190 on the Management of Sending Cambodian Workers Abroad through Private Recruitment Agencies; and also facilitated the signing of the Memorandum of Understanding between Trade Unions in Cambodia and Trade Unions in Thailand on Protection of Migrant Workers' Rights in 2013.

Trade unions in the region are also working towards significant bilateral cooperation, with Memoranda of Understanding signed between trade unions in the important migration corridors between Cambodia and Thailand; Lao PDR and Thailand; and Viet Nam and Malaysia. A further area of collaboration is between NGOs and trade unions. In Thailand's fishing sector, the Foundation for AIDS Rights (FAR) and the Eastern Trade Union are working together to improve organising of people working in the fishing industry. Through this broad scope of actions, trade unions in the region are increasingly able to successfully represent the rights and interests of migrant workers at the enterprise level, in the community and in policy dialogue.

[21] ILO, 'In Search of Decent Rights, Migrant Workers Rights', International Labour Office, 2008, retrieved 2 August 2015, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_115035.pdf

A Case Study from Malaysia: The Malaysian Trades Union Congress Experience

Migrant workers' vulnerability to human trafficking and forced labour in Malaysia has been noted multiple times by the ILO Committee on Experts on the Application of Conventions and Recommendations (CEACR).[22] While nationals and migrant workers are guaranteed equal protection under Malaysian law, in practice, migrant workers are frequently subject to rights violations and are unlikely to report violations to the authorities, largely due to fear of losing their jobs or the threat of deportation. The conditions of migrants' work permits restrict them from changing their employer—forcing many migrant workers to remain in forced labour conditions or face falling into irregular immigration status. Employers may also curtail workers' freedom of movement by withholding identity documents with the aim of preventing them from absconding. Migrant workers have the right to join trade unions under the Trade Union Act, but often this right is violated through explicit prohibitions in workers' employment contracts.

MTUC[23] was compelled to begin working with migrant workers over ten years ago, as migrant workers began to approach the union to seek advice and explore the benefits of union membership. In a recent interview, Florida Sandanasamy, Migrant Workers Project Coordinator at MTUC,[24] said the general MTUC belief is that the key benefit trade unions can bring to the anti-trafficking and forced labour agenda is to create a forum for dialogue and negotiation with employers, as well as the possibility of collective bargaining. Sandanasamy states that patterns of abuses against migrant workers arise when the worker does not have the ability to air their grievances with their employer. The MTUC does not differentiate between migrant workers and local workers in their activities—noting the negative impact that sidelining migrant workers would have on the working population as a whole.

The unionisation of migrant workers is a key strategy of MTUC—and a significant and constant struggle. Sandanasamy states that it can take between five and seven years to achieve official government recognition of a new trade union. MTUC affiliates have faced legal challenges to its organising activities; union-busting activities, intimidation and deportation of union leaders, and challenging of secret ballot outcomes have all been observed. Several, long-running cases have gone to the Industrial Relations Department and the High Court of Malaysia to adjudicate whether employers have illegally interfered with a fair voting process. Recognising the unique challenges in organising labour, much less migrant labour, MTUC has developed guidance and strategies on the organisation of migrant workers. For example, certain MTUC affiliates have introduced strategies including waiving membership dues until a collective bargaining agreement has been signed at the members' workplace, as a means of encouraging migrants to join the union, particularly if workers are warned of a threat of dismissal for joining a union. Despite these challenges, MTUC affiliates have achieved some successes in organising migrant workers at a number of enterprises throughout the country. For example, in Penang, at an electronics manufacturing company in which the majority of employees are migrants, MTUC helped to organise 500 workers to join the Electronics Union.

The MTUC has also been active in pursuing complaints against companies for labour rights abuses such as unpaid wages, no rest days, inadequate accommodation, unfair dismissal, medical insurance issues, lack of compensation for injury and the withholding of identity documents. Between September 2011 and December 2014, MTUC was successful in receiving awards of over USD 65,300 in compensation for migrant workers. This was achieved through action in labour courts, industrial relations courts and through direct negotiations. MTUC also works with trade union partners in migrants' countries of origin—aiming to reduce the vulnerability to human trafficking and labour exploitation before departure. In Viet Nam and Nepal, MTUC is developing partnerships with the Vietnam General Confederation of Labour (VGCL) and the General Federation of Nepalese Trade Unions (GEFONT). A Memorandum of Understanding between MTUC and VGCL was signed in 2015, and MTUC has also developed a union 'internship programme', where a union representative from the origin country will work with MTUC in Malaysia, boosting union workers' skills and bilateral partnerships. This type of cross-border collaboration enhances the opportunity for end-to-end (from pre-departure to return and reintegration) support services and strengthens the trade union movement in the region.

In attempting to organise domestic workers, MTUC has faced numerous challenges. A proposal to officially register a group of domestic workers has failed twice—with no sufficient reason offered. MTUC is reluctant to instead establish an informal organisation, as this will weaken the scope and impact of their actions and further differentiates between domestic workers and other workers.

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22 Most recently in 2015, see ILO, 'Application of International Labour Standards 2015 (I)', Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), International Labour Office, 2015, p. 164.

23 The MTUC is a federation of trade unions and registered under the Societies Act (1955). It is the oldest national organisation representing Malaysian workers. Unions affiliated to MTUC represent all major industries and sectors with approximately 500,000 members. The MTUC has been recognised as the representative of workers in Malaysia and is consulted by government on major changes in labour laws through the National Joint Labour Advisory Council. MTUC also represents Malaysian workers at the International Labour Conference.

24 Interview over Skype, February 2015.

A Case Study from Thailand

The 2014 Observations on the Forced Labour Convention reported by the ILO CEACR expressed concern over the vulnerability of migrant workers to forced labour in Thailand, making special note of the experiences of irregular migrant workers during the Nationality Verification (NV) process, and of conditions in the fishing sector.[25] In Thailand, the Labour Protection Act B.E. 2541 (1998) applies to all workers, regardless of nationality or legal status. However, the Act does not fully extend to many of the industries in which forced labour practices and human trafficking are most common, including agriculture, sea fisheries work and domestic work.[26] Migrant workers often earn less than the minimum wage, and are subjected to illegal wage deductions, excessive working hours and poor living and working conditions. While migrant workers can legally join Thai unions, they frequently work in jobs or regions that are not traditionally unionised. Moreover, the Labour Relations Act B.E. 2518 (1975) states that only Thai nationals can serve as union leaders and committee members, thus prohibiting migrants' active involvement in existing unions or establishment of their own trade union to serve their needs.

SERC[27] began to work on migrant worker issues over fifteen years ago, in collaboration with the Thai Labour Solidarity Committee (TLSC) and NGOs. Sawit Kaewvarn, SERC's General Secretary,[28] states that it was their NGO partners who drew unions into the debate, recognising the legitimacy of trade unions' voice among employers' groups and the government. Kaewvarn states that there were initially many challenges in garnering support from SERC affiliates to begin work on migrant worker issues—citing negative perceptions towards migrant workers, and concerns that better rights would encourage migrant workers to remain permanently, as the key reasons.

SERC and TLSC have been active in lobbying for greater protection of migrant workers—both before departure and while at work in Thailand. The two trade unions have collaborated in investigation of recruitment practices and working conditions at specific Thai enterprises, by interviewing workers who were previously employed at factories. The findings were used to make recommendations to both the enterprises and the Thai government, and to lobby for legislative reform.

SERC has also taken its advocacy for migrant workers' rights to the international arena. In September 2011, SERC made a submission of a petition to the ILO's CEACR regarding the Thai government's policy to deny migrant workers access to the Social Security Office's Workmen's Compensation Fund. The submission argued that this was in contravention of the Equality of Treatment (Accident Compensation) Convention,[29] which Thailand has ratified.[30] This engagement signals the naissance of a trade union movement in Thailand that will be better able to combat trafficking and forced labour from within workplaces.

Conclusion

The efforts and initiatives above demonstrate the continuing shift towards a labour rights approach, under which the role of trade unions in preventing and responding to trafficking and forced labour is increasingly prevalent. Trade unions have the unique knowledge, representational legitimacy, and capacity to deal with these concerns.

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25 ILO, 'Application of International Labour Standards 2014 (I)', Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), ILO, 2014, p. 160.

26 In 2012, Thailand issued Ministerial Regulation No. 14 on domestic work to the Labour Protection Law providing some protections including annual holidays and one day off a week for domestic workers but failing to regulate working hours and pay. Ministerial Regulation No. 10 on work in fishing (2015) includes a minimum age of 18 years and requires regular rest hours and written contracts for all workers.

27 SERC was formed by eight public enterprise-based unions in 1980. Currently, SERC has firty-two member unions from both private sectors and public enterprises throughout Thailand.

28 Interviewed in Bangkok, Thailand, in February 2015.

29 In full: ILO, *C019—Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents*, 5 June 1925.

30 Following the submission by SERC, the ILO Committee of Experts on the Application of Conventions and Recommendations adopted several observations expressing 'deep concern over the situation', and requested explanation, legislative review and improved implementation. These requests were left unanswered by the Thai government in 2012 and 2013, before a report was submitted in 2014. The report outlined plans to conduct research into the possibility for a social insurance scheme for inbound and outbound migrant workers (B Harkins, 'Social Protection for Migrant Workers in Thailand' in United Nations Thematic Working Group on Migration in Thailand, 'Thailand Migration Report 2014', United Nations Thematic Working Group on Migration in Thailand, 2014.).

When supported, as activities in the GMS region demonstrate, they can form part of a multi-stakeholder response to the issue.

There are however, several areas in which unions can expand their work to become more effective and proactive in the fight against forced labour and trafficking of migrants. Origin and destination country unions must continue bilateral cooperation, creating the opportunity for end-to-end services. There is also room for unions to expand their activities in the realm of return and reintegration, for example through sector-specific trade unions supporting skills recognition and job placement. More effort needs to be made to reach the most vulnerable groups of workers, such as fishers with transient workplaces, and domestic workers with workplaces in private homes. In efforts to expand opportunities for unionisation, the emergence of initiatives to encourage flexible and sustainable unionisation for migrant workers, such as the option for portable union membership through sector-based unions or union partnerships, is becoming evident.

Engaging in the concerns of forced labour and human trafficking is not only beneficial to those at risk, but arguably essential for the trade union movement. Unionising the 'unorganisable' is seen as a key part of ensuring the future relevance of trade unions in the face of globalisation and the worldwide decrease in union membership. When migrant workers and survivors of trafficking and forced labour are trained and supported to be advocates, they bring a critical new vitality to the trade union movement fighting for vulnerable workers' rights in the region as a whole. The trade union movement is well-placed to capitalise on work with anti-trafficking actors, the increasing numbers of migrant workers within the global care economy and rising consumer awareness of goods produced by migrant workers to reinvigorate the movement in the GMS region.

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