anti trafficking review

Special Issue – Everyday Abuse in the Global Economy

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ANTI-TRAFFICKING REVIEW

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EVERYDAY ABUSE IN THE GLOBAL ECONOMY

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Editorial: From Exceptional Cases to Everyday Abuses: Labour exploitation in the global economy

Joel Quirk, Caroline Robinson, and Cameron Thibos

We are living through an unprecedented global crisis due to the effects of the COVID-19 pandemic. Governments have closed their borders, heavily restricted commercial activities, and instructed people to shelter in their homes. As a result of these measures, hundreds of millions of workers have been deprived of their usual incomes. It has been estimated, for example, that 40 million jobs have been lost in the United States and 122 million in India.[1] While many governments have devoted resources to cushioning the effects of the pandemic, most efforts have narrowly focused upon their own citizens, leaving many migrant workers stranded far from home with little or no support. The crisis has also had a profound effect upon global supply chains. Workers and factories producing clothes for major fashion labels have not only lost income, but have also seen the cancellation of orders that were already in process.[2] In May 2020, it was reported that suppliers in Bangladesh had 'lost out on more than $3bn in payments for T-shirts, shoes and designer dresses already produced or sourced'.[3]

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[1]   L Aratani, 'US Job Losses Pass 40m as Coronavirus Crisis Sees Claims Rise 2.1m in a Week', *The Guardian,* 28 May 2020, https://www.theguardian.com/business/2020/may/28/us-job-losses-unemployment-coronavirus; N Inamdar, 'Coronavirus Lockdown: India jobless numbers cross 120 million in April', *BBC*, 6 May 2020, https://www.bbc.com/news/world-asia-india-52559324.

[2]   M Anner, *Abandoned? The impact of Covid-19 on workers and businesses at the bottom of global garment supply chains*, Center for Global Workers' Rights, 27 March 2020, https://www.workersrights.org/wp-content/uploads/2020/03/Abandoned-Penn-State-WRC-Report-March-27-2020.pdf.

[3]   P Nilsson and E Terazono, 'Can Fast Fashion's $2.5tn Supply Chain Be Stitched Back Together?', *Financial Times*, 17 May 2020, https://www.ft.com/content/62dc687e-d15f-46e7-96df-ed7d00f8ca55.

This Special Issue of the *Anti-Trafficking Review* was conceived long before anyone had heard of COVID-19, yet its effects have brought many of the pre-existing trends that we were hoping to explore within its pages into sharp relief. First and foremost, it has become clear that the burdens associated with the pandemic have fallen much harder on some categories of people than others. Familiar divisions associated with inequality, gender, race, discrimination, citizenship, and occupation have all played intersecting roles. In addition, we have also seen how companies benefit and workers suffer from specific labour practices. Thanks to subcontracting, outsourcing, and other strategies, many companies have insulated themselves from direct responsibility for their workforce, so when COVID-19 emerged they found it relatively easy to walk away.

A number of recent developments associated with the pandemic can be traced back to the overall design and operation of the global economy. As we explore in this Special Issue, recent decades have been defined by a sustained effort by political and economic elites to depress wages, working conditions, and institutional protections, with a recurring emphasis on deregulation, self-regulation, privatisation, subcontracting, and outsourcing. Other popular strategies have involved moving—or threatening to move—activities to other jurisdictions, and/or recruiting migrant workers who are compelled to work for less. These strategies have helped to create a global economy which is strongly predicated upon the vulnerability of precarious workers and migrants. Everyday abuses within this global economy do not necessarily stand out as exceptional or unusual, because they are built into the logic of larger economic and regulatory systems. The main effect of the COVID-19 pandemic has been to exacerbate, rather than create, patterns of vulnerability.

This Special Issue has four main goals: 1) to better understand the effects of global economic systems and regulations upon precarious workers and migrants; 2) to draw attention to lived experiences within these systems; 3) to explore the relationship between everyday abuses and interventions targeting human trafficking and modern slavery, and 4) to evaluate different attempts to improve the status quo. In pursuit of these goals, we have divided this Editorial into three main sections. The first offers an overview of key political, economic, and regulatory changes to the relationship between workers, migration, and economic systems. The second focuses upon the obstacles and opportunities associated with the emergence of recent high-profile campaigns targeting human trafficking and modern slavery, and contends that there are no perfect policy responses available to protect labour rights. The third outlines the main arguments of our contributors to the Special Issue.

Workers, Migrants, and Global Economic Systems

Over the past forty years, economic growth has been coupled with and often predicated upon the deregulation of labour markets. This trend is most strongly associated with the Thatcher and Reagan governments, which took major steps to decrease the size and power of trade unions, reduce public employment, increase labour flexibility, and privatise state-owned businesses. The key features of this agenda were expanded and exported, especially during the 1990s, as economic globalisation accelerated demand for cheap labour and 'just-in-time' production. This has in turn contributed to a global increase in the number of people in insecure employment or dependent self-employment.[4]

The concept of contract 'flexibility' also expanded during this same period, coinciding with the entrance of large numbers of women into the labour market for the first time. In this context, 'flexibility' primarily referred to the ways employers showed themselves to be accommodating of (women's) care work. However, these 'flexible' working arrangements frequently ended up favouring the needs of businesses over workers.[5] Flexibility is also closely associated with the gig economy, where self-employment and irregular working arrangements are the norm. All kinds of digital tasks are now outsourced to 'microworkers' around the globe. Despite claims that flexible working arrangements are mutually beneficial, these workers typically have 'no job security, in-work benefits, or labour rights, and are very vulnerable to the whims of employers'.[6] Platforms such as Amazon Mechanical Turk are able to leverage their market position to depress wages and conditions.[7] Not all digital work is inherently exploitative, but the deck is nonetheless heavily stacked against most workers thanks to the challenges associated with collective organising, competition, jurisdictional challenges, and limited regulation. Similar kinds of dynamics apply in relation to work-on-demand platforms, such as Uber, which connect people willing to do offline tasks, such as cleaning or delivery, with people who will pay them for their services. The vast majority of workers are

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[4]   J Berg *et al.*, *Non-Standard Employment Around the World: Understanding challenges, shaping prospects*, International Labour Organization, Geneva, 2016, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_534326.pdf.

[5]   Low Pay Commission, *A Response to Government on 'One-sided Flexibility'*, UK Government, London, 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765193/LPC_Response_to_the_Government_on_one-sided_flexibility.pdf.

[6]   J Webster, 'Microworkers of the Gig Economy: Separate and precarious', *New Labor Forum*, vol. 25, no. 3, 2016, pp. 56–64, p. 60, https://doi.org/10.1177/1095796016661511.

[7]   A J Wood *et al.*, 'Networked but Commodified: The (dis)embeddedness of digital labour in the gig economy', *Sociology*, vol. 53, no. 5, 2019, pp. 931–950, https://doi.org/10.1177/0038038519828906.

legally classified as independent contractors, but in most cases their activities remain centrally coordinated, remunerated, and 'algorithmically managed'.[8] The terms and conditions offered by work-on-demand platforms have been contested in various ways, including via strike actions in places such as Australia, Brazil, Kenya, and the United States, but there nonetheless remain significant barriers to effective organisation and regulation.[9]

Labour market deregulation is frequently justified in terms of increasing international competitiveness. Higher wages and regulations are routinely portrayed as a drag on economic performance, while lower wages and less regulation are held up as recipes for superior performance and economic growth. When one country deregulates, other governments can become concerned that they will be disadvantaged unless they follow suit.[10] For similar reasons, organised labour is frequently viewed as an impediment to competitiveness rather than as a legitimate representation of the interests of workers. Suppressing collective bargaining and worker rights consequently becomes a primary goal of growth-oriented national economic policy, while corporate interests and government policies end up being ever more closely aligned. One particularly stark example of this larger dynamic comes from India, where 'laws related to safety conditions, recognition of trade unions, and legal working hours' were recently suspended in many jurisdictions for a three-year period to help promote economic growth following COVID-19.[11] Another increasingly popular strategy for further reducing wages and conditions is to draw upon migrant labourers and labour intermediaries, since migrant labourers—both documented and undocumented—tend to have less bargaining power than their local peers, while intermediaries help create a

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[8]   K Vandaele, 'Will Trade Unions Survive in the Platform Economy? Emerging patterns of platform workers' collective voice and representation in Europe', Working Paper, European Trade Union Institute, 2018, https://www.etui.org/sites/default/files/Working%20Paper%202018.05%20Vandaele%20Trade%20unions%20Platform%20economy%20Web.pdf.

[9]   See, for example, A L Dahir, 'Uber and other ride-hailing apps are facing a major test in Kenya—from drivers themselves', *Quartz Africa*, 13 July 2018, https://qz.com/africa/1327568/uber-taxify-little-cab-kenya-drivers-end-strike.

[10]   See, for example, Z Wang, 'Economic Competition, Policy Interdependence, and Labour Rights', *New Political Economy*, vol. 23, no. 6, 2018, pp. 656–673, https://doi.org/10.1080/13563467.2018.1384452; K A Elliott, 'Labor standards', in K A Reinert (ed.), *Handbook of Globalisation and Development*, Edward Elgar, London, 2017, pp. 183–198.

[11]   A Bhat, 'Suspension of Indian Labor Laws to Hurt Low-Income Workers', *The Diplomat*, 23 June 2020, https://thediplomat.com/2020/06/suspension-of-indian-labor-laws-to-hurt-low-income-workers.

legal regime where workers are no longer employed directly.[12]

Many attempts have been made to classify and explain this evolving world of work. Guy Standing, for example, has theorised 'the creation of a global "precariat"', which he portrays as an emerging class within the global economy that is collectively defined by a shared lack of labour-related security.[13] While there is broad agreement that vulnerability and insecurity are foundational themes, Standing's critics have questioned the extent to which this singular framework smooths over differences in context and circumstances. One major line of critique has been that Standing 'contrasts precarious work with a non-precarious past defined by stable employment, welfare provisions and other features of Northern countries' histories which are virtually unknown in the history of Southern countries'.[14] In most parts of the world informal work has long been the norm, rather than the exception.[15] This means that local experiences of work and political organising can easily get lost or distorted when viewed against idealised Eurocentric benchmarks.

Further concerns have also been raised about the portrayal of the precariat as a singular class, since this can obscure numerous differences and divisions that are difficult to capture in class terms. As Louise Waite has observed, precarity can be 'conceived as both a *condition* and a possible point of *mobilisation* among those experiencing precarity'.[16] Transitioning from class to condition is more than a semantic exercise, since it helps to underscore the need for a less reductive and more relational approach, where precarity primarily appears as a 'method of inquiry that asks how unstable work relates to fragile conditions of life in

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[12] See, for example, P Deshingkar, 'The Making and Unmaking of Precarious, Ideal Subjects—Migration brokerage in the Global South', *Journal of Ethnic and Migration Studies*, vol. 45, no. 14, 2019, pp. 2638–2654, https://doi.org/10.1080/136918 3X.2018.1528094; H Shamir, 'The Paradox of "Legality": Temporary migrant worker programs and vulnerability to trafficking', in P Kotiswaran (ed.), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery*, Cambridge University Press, Cambridge, 2017.

[13] G Standing, *The Precariat: The new dangerous class*, Bloomsbury, New York, 2011.

[14] B Scully, 'Precarity North and South: A southern critique of Guy Standing', *Global Labour Journal,* vol. 7, no. 2, 2016, pp. 160–173, p. 161, https://doi.org/10.15173/glj. v7i2.2521. See also R Munck, 'The Precariat: A view from the South', *Third World Quarterly*, vol. 34, no. 5, 2013, pp. 747–762, https://doi.org/10.1080/01436597.2013 .800751.

[15] See, for example, M Chen and F Carré, *The Informal Economy Revisited: Examining the past, envisioning the future*, Routledge, London, 2020.

[16] L Waite, 'A Place and Space for a Critical Geography of Precarity?', *Geography Compass*, vol. 3, no. 1, 2009, pp. 412–433, p. 413 (italics in original), https://doi.org/10.1111/ j.1749-8198.2008.00184.x.

particular times and places'.[17] Accordingly, precarious work tends to intersect with and be further magnified by the effects of other factors, such as housing and health, public safety and private violence, and unemployment. Recent events in the United States have demonstrated yet again that structural racism cuts across class considerations, creating forms of precarity that are not reducible to socio-economic status.

More issues emerge when precarity is viewed as a platform for mobilisation. The first major sticking point here is the degree to which shared experiences of vulnerability, exploitation, and oppression translate into feelings of solidarity and common purpose. As theories of labour market competition have explored at length, workers are typically positioned in competition with their peers for work, advancement, and relative security. One obvious example here is the stigma and strain associated with unemployment, which can generate strong pressures to secure paid employment, no matter how precarious, especially in situations where social safety nets are either weak or weakening.[18] This competition impedes collective action, as potential bonds of solidarity are complicated by individual calculations. These challenges tend to be exacerbated by subcontracting, outsourcing, and tied migration schemes, which create further barriers to organising.

Labour market competition amongst precarious workers can also complicate efforts to sharply distinguish between free and forced labour. As Judy Fudge has argued, liberal accounts of labour markets as arenas 'of free exchange in which legally equal parties contract to their own mutual advantage' tend to obscure all the ways in which vulnerable individuals negotiate from legally enshrined positions of disadvantage.[19] Personalised forms of coercion, such as violence, debt, and threat, typically take place within larger structural contexts of precarity, insecurity, and competition amongst workers. Shared experiences of vulnerability and exploitation can sometimes create a valuable platform for collective mobilisation, but it can also be very difficult to mobilise effectively due to the effects of labour market competition and segmentation. The global economy is organised in ways that tend to leave precarious workers divided, rather than united.

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[17] K M Millar, 'Toward a Critical Politics of Precarity', *Sociology Compass,* vol. 11, no. 6, 2017, pp. 1–11, p. 5, https://doi.org/10.1111/soc4.12483.

[18] There are also further dynamics associated with wage labour relative to subsistence labour, including mixed livelihood strategies, but we cannot go into detail on this topic here.

[19] J Fudge, 'Modern Slavery, Unfree Labour and the Labour Market: The social dynamics of legal characterization', *Social & Legal Studies*, vol. 27, no. 4, 2017, pp. 414–434, p. 419, https://doi.org/10.1177/0964663917746736.

This Special Issue brings together these related issues under the rubric of everyday abuses within the global economy. Our approach is chiefly concerned with the design and operation of global economic and regulatory systems, and with the ways in which these intersecting systems create conditions that pave the way for vulnerability, precarity, and insecurity for both workers and migrants. We contend that increasingly integrated systems governing work and migration have had important effects on lived experiences of work, the regulation of that work, and the capacity of workers to effectively organise in support of political and economic change. We do not presume that informality and precarity are distinctively new phenomena. Instead, we focus upon how, where, and why experiences of precarity and informality have been reconfigured. Precarious workers within the global economy may not constitute a coherent and singular class, but many of their experiences and conditions can at least partially be explained and analysed in terms of recurring constraints, regulatory models, and economic dynamics.

Everyday abuse, as we understand it, refers to a wide range of lived experiences. By speaking in terms of the everyday, we seek to draw 'attention to a wide variety of practices, subjects, relations, [and] things that usually would not feature in political analysis'.[20] We are particularly concerned here with day-to-day and frequently mundane experiences associated with precarious work, which can be usefully described in terms of 'sociologies of the unnoticed'.[21] Most forms of everyday abuse taking place within the global economy do not stand out as unusual or exceptional. They instead comprise the largely unnoticed products of the regular and intended operations of larger economic and regulatory systems. We therefore need to understand abuse as more than egregious violations of applicable laws by corrupt, criminal, and/or cruel individuals. It is undoubtedly preferable to work for a kind employer rather than a cruel employer, but having a relatively kind employer does not necessarily provide sufficient protection against everyday abuse.

Workers experiencing everyday abuses rarely regard themselves as victims in need of rescue, but their capacity to defend their interests tends to be heavily constrained. Take, for example, the issue of global supply chains, through which over 80 per cent of global goods and services are now traded.[22] One crucial feature of supply chains is the disproportionate power exercised by lead firms at the head of the chain, especially in the case of multinationals. As

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[20]   X Guillaume and J Huysmans, 'The Concept of "the Everyday": Ephemeral politics and the abundance of life', *Cooperation and Conflict*, vol. 54, no. 2, 2019, pp. 278–296, p. 285, https://doi.org/10.1177/0010836718815520,

[21]   M H Jacobsen, *Encountering the Everyday: An introduction to the sociologies of the unnoticed*, Red Globe Press, Basingstoke, 2009, pp. 1–41.

[22]   Ford Foundation, *Quality Work Worldwide: An exploration of trends and strategies for transformative change*, Ford Foundation, 2018, p. 2.

Mark Anner has demonstrated, 'trade rules, technology and financialization have contributed to growing power asymmetries … which have deleterious effects on workers: a price squeeze and a sourcing squeeze'.[23] In the case of prices, this involves lead firms using their power to pressure their suppliers to depress wages and increase production targets. In the case of sourcing, lead firms use their clout to insist on accelerated production cycles and flexible order volumes, frequently obliging factories down the chain to resort to forced overtime and further subcontracting to accommodate quick and sharp fluctuations in demand. These business models do not exist in a vacuum, but are both legitimated and enabled by government (in)actions, raising challenging questions about the relationship between private and public governance.[24]

This brings our analysis back to the issue of state attitudes towards labour and the ways they (do not) regulate global and domestic supply chains. We cannot go into all of the relevant issues in depth here, but several key points need to be highlighted. At the top of the list is labour inspection. In many cases, public scrutiny of workplaces has struggled to keep pace with the changing nature of work, working relationships, and declining rates of unionisation.[25] Both the number of labour inspectors and frequency of inspections has declined in many jurisdictions, and their mandate tends to be complicated by other considerations, such as immigration enforcement and a lack of effective sanctions. This decline in labour inspections has also taken place alongside the proliferation of voluntary business compliance protocols, which are designed to encourage rather than enforce compliance. The many problems with self-regulation have been repeatedly documented, yet voluntary compliance and corporate social responsibility nonetheless continue to be widely championed. This continued support for a model which has such a consistently poor track record can be primarily traced to its political value as a strategy for deflecting calls for forms of public regulation less favourable to corporate interests.

Deregulation is usually said to involve the state getting 'out of the way' of the market, but this ideological formula has long suffered from a wilful blindness regarding the indispensable role played by states in both creating and sustaining markets in the first place. This role is especially pronounced when it comes to tied migrant labour schemes, where government regulations determine the criteria

23   M Anner, 'Squeezing Workers' Rights in Global Supply Chains: Purchasing practices in the Bangladesh garment export sector in comparative perspective', *Review of International Political Economy*, vol. 27, no. 2, 2020, pp. 320–347, https://doi.org/10.10 80/09692290.2019.1625426.

24   See, for example, R M Locke, *The Promise and Limits of Private Power: Promoting labor standards in a global economy*, Cambridge University Press, Cambridge, 2013.

25   ILO, 'Strategic Compliance Resource Page', ILO, Geneva, 2018, https://www.ilo.org/ global/topics/labour-administration-inspection/resources-library/training/ WCMS_620987/lang--en/index.htm.

and conditions that govern when migrants can travel, where and how they are permitted to work and live, how long they are allowed to stay, and what kinds of rights and protections they are ultimately entitled to. Tied and circular migration schemes have rapidly expanded globally, with migrants growing strawberries in Spain, tomatoes in Canada, and building skyscrapers in the United Arab Emirates. None of this would be feasible without governments creating and sustaining these labour markets. Policies to deter certain kinds of migration typically operate alongside other policies which promote large volumes of migrant labour on restrictive terms.[26] At both a national and international level, conversations about migration management have increasingly centred around efforts to regulate migration in ways which enable both sending and receiving states to extract profit from migrants. According to the International Labour Organization, there were roughly 164 million migrant workers globally in 2017, with '111.2 million (67.9 per cent) employed in high-income countries'.[27] While the challenges facing undocumented migrants are well known, comparatively little attention has been paid to the forms of everyday abuse associated with documented migration. Most abuses within the global economy primarily take place because of—rather than in spite of—existing economic and regulatory systems. It should also be clear, moreover, that these systems are hard to change, since economic and political elites benefit from their operations. While some voices and organisations have continued to champion the cause of migrant and worker rights, other voices have gravitated towards a new political cause.

Diversions and Distractions? Modern slavery and human trafficking

Most of the issues we have identified above are much broader in scope than more familiar concerns associated with human trafficking or modern slavery. We could have followed established conventions by treating human trafficking as our primary starting point, and then attempted to build outwards to discuss how these other issues relate to trafficking. Instead, we made a conscious decision to start with everyday abuses within the global economy, and to then go on to consider where and how human trafficking might fit within this

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[26] See, for example, J Quirk and D Vigneswaran, 'Mobility Makes States', in D Vigneswaran and J Quirk (eds.), *Mobility Makes States: Migration and power in Africa*, Pennsylvania University Press, Philadelphia, 2015, pp. 1–36; L Martin, 'Carceral Economies of Migration Control', *Progress in Human Geography*, 2020, https://doi.org/10.1177/0309132520940006.

[27] N Popova and M H Özel, *ILO Global Estimates on International Migrant Workers*, International Labour Office, Geneva, 2018, p. ix, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_652001.pdf.

picture. This overall approach is informed by a number of considerations. Firstly, and perhaps most obviously, we have questions of relative scale. Everyday abuses are integral to the lives of hundreds of millions of people throughout the globe, while practices which fall under the labels of human trafficking and modern slavery constitute a small subset within this larger whole. Secondly, the practices and systems creating the conditions that enable everyday abuses tend to be the same practices and systems that also enable the kinds of extreme abuses associated with human trafficking and modern slavery. It is not always possible to sharply separate human trafficking from everyday abuses, and problems arise when the former is singled out while the latter is pushed to the margins. Finally, the majority of trafficking interventions focus upon individual cases, rather than systems, thereby undermining their capacity to prevent and correct patterns of abuse arising from the smooth and regular operations of the global economy.

Human trafficking, as established within the framework of the *United Nations Convention against Transnational Organised Crime*, is predominantly understood as a criminal justice issue. In the early 2000s, most interventions focused on brothel raids by police units, reflecting a specific concern with commercial sexual exploitation, which has long been argued to have overshadowed potential investments in other spheres.[28] In recent years, however, attention has broadened and law enforcement officers regularly raid various businesses, such as farms, fishing vessels, and construction sites. One critique of this criminal justice approach is that it has involved 'raid and rescue' type responses, arresting criminals and rescuing victims, who are placed in support centres and, in some cases, enforced rehabilitation. By their very nature, criminal justice responses are not community-led, so interventions are carried out by external actors rather than driven by affected workers. This has contributed to a range of problems.[29] As this example demonstrates, the rapid elevation of human trafficking and latterly modern slavery to the front ranks of global policy conversations has created both opportunities and obstacles. Some organisations and campaigners focusing on issues relating to migrant and worker rights have taken advantage of the new funding streams, alliances, and access points associated with increasing global interest around trafficking and slavery. Others have used trafficking and slavery as a means of limiting the rights of workers, speaking on their behalf, and offering silver bullet solutions to complex and deeply political problems.

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[28] See, for example, L M Agustín, *Sex at the Margins: Migration, labour markets and the rescue industry*, Zed Books, London, 2007.

[29] See, for example, E Bernstein, *Brokered Subjects: Sex, trafficking and the politics of freedom*, University of Chicago Press, Chicago, 2018; and L Barnes, 'Live-Tweeting and Distant Suffering: Nicholas Kristof as global savior', *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, vol. 11, no. 2, 2020, pp. 147–164, https://doi.org/10.1353/hum.2020.0021.

Efforts to promote and protect worker and migrant rights have been strongly affected by the emergence of the political cause of ending human trafficking and modern slavery. Jackie Pollock, who worked in the 2000s at the MAP Foundation in Chiang Mai, Thailand, used to regularly use her rectangular office table to demonstrate the true scale of the human trafficking problem. She would draw a narrow slice at one end representing human trafficking, then show workers who suffered single or multiple labour abuses filling the wide middle, and finally show a thin slice representing those who were enjoying their labour rights at the other end of the table. The people that came through MAP's assistance centres, Jackie would frequently say, almost exclusively came from the middle of the table. Her point, rooted in years assisting workers at the MAP Foundation and working with sex workers at Empower Foundation, was that human trafficking happens in a context of widespread everyday labour abuses.[30] She also took pains to point out the great elephant in the anti-trafficking room: most of the suffering experienced at work is not human trafficking and could be addressed by allowing workers to organise and form unions; but this is seen as more threatening than treating people as helpless victims. Thus, many organisations working in the field of labour rights, activism, and support have found that the space for labour rights has shrunk as the anti-trafficking space has grown.[31] This in turn risks creating a hierarchy of victims,[32] where those who are labelled 'trafficked persons' become worthy of attention and support, while others who endure everyday labour abuses are instead positioned outside intervention efforts, since they are not considered 'victim enough'.

When editing this Special Issue of *Anti-Trafficking Review* we found that contributions frequently railed against the anti-trafficking or, more commonly, the modern slavery frameworks. The anti-trafficking framework was enshrined in international law by the United Nations Trafficking Protocol in 2003. It has subsequently been widely ratified and, by 2018, had inspired 168 countries to develop national legislation criminalising human trafficking.[33] The concept of

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[30] This concept was later documented in: Global Alliance Against Traffic in Women, *Beyond Borders: Exploring links between labour and trafficking*, GAATW, Bangkok, 2010, https://www.gaatw.org/publications/WP_on_Labour.pdf.

[31] See M Dottridge (ed.), *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, GAATW, Bangkok, 2007, http://www.gaatw.org/Collateral%20 Damage_Final/singlefile_CollateralDamagefinal.pdf.

[32] R Haverkamp, 'Victims of Human Trafficking: Considerations from a crime prevention perspective', in C Lernestedt, E Herlin-Karnell and R Haverkamp (eds.), *What is Wrong with Human Trafficking? Critical perspectives on the law*, Bloomsbury Publishing, London, 2019.

[33] J-L Lemahieu *et al.*, *Global Report on Trafficking in Persons*, United Nations Office on Drugs and Crime, Vienna, 2018, p. 45, https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf.

modern slavery has been used in popular discourse from the 1990s, but only entered the realm of public policy in the United Kingdom (UK) following the publication of a 2013 report entitled *It Happens Here* by the Centre for Social Justice (CSJ), a right-wing think tank. This report defined modern slavery as an umbrella term encompassing human trafficking, forced labour, slavery, and servitude.[34] It was attributed by then UK Home Secretary Theresa May as serving as a 'catalyst' for the UK *Modern Slavery Act* of 2015.[35] Importantly, the 2013 CSJ report looked closely at the potential for a focus on global supply chain governance to sit alongside the UK interest in reducing labour regulations and cutting labour inspection capacity, whilst shifting the focus towards corporate self-governance.[36] In this regard, the modern slavery agenda not only served to divert attention towards decent work deficits in global supply chains, but also distracted from the UK's weakened labour rights protection framework by developing a high-profile response to modern slavery.

Not all cases follow the same pattern, however. In contrast to the UK experience, where the deregulation agenda preceded a strong interest in modern slavery as a diversionary tactic, recent attacks on labour rights in Brazil have instead been defined by a direct attack upon existing anti-slavery laws to help pave the way for deregulation. The Bolsonaro government is currently in the process of deregulating major production sectors, diminishing the power and resources of their labour inspectorate, and directly attacking collective bargaining.[37] These efforts have undermined a long-term campaign Brazil has fought against work analogous to slavery. This commenced in the mid-1990s and was widely presented as a positive example of a country harnessing the language of slavery to challenge labour rights abuses in supply chains, hold lead firms to account, and ensure workers were awarded compensation. For President Bolsonaro, these anti-slavery protections now risk reducing Brazil's trade competitiveness and the national economy.[38]

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[34]   Centre for Social Justice (CSJ), 'It Happens Here: Equipping the United Kingdom to fight modern slavery', CSJ, London, 2013, p. 4, https://www.centreforsocialjustice. org.uk/core/wp-content/uploads/2016/08/CSJ_Slavery_Full_Report_WEB5.pdf.

[35]   CSJ, 'Major CSJ recommendation – the Modern Slavery Act – gains Royal Assent', Press release, 26 March 2015, https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/CSJ_press_release-Modern_Slavery-26_03_15.pdf.

[36]   CSJ, 2013, p. 26.

[37]   'How Big Beef and Soya Firms Can Stop Deforestation', *The Economist*, 11 June 2020, https://www.economist.com/the-americas/2020/06/11/how-big-beef-and-soya-firms-can-stop-deforestation.

[38]   'How Brazilian Law Defines Labour Analogous to Slavery', *Conectas*, 8 May 2019, https://www.conectas.org/en/news/how-brazilian-law-defines-labour-analogous-to-slavery.

Until relatively recently, Brazilian campaigns against forced labour were widely celebrated, but its model was not really emulated by other governments. This can be contrasted with the UK example, where Theresa May helped popularise the term modern slavery and its related paradigm around the world. Other countries have recently embraced the UK model, such as Canada and Australia. Modern slavery did not start with Theresa May, but she did play a pivotal role in ensuring that modern slavery was officially embraced and internationally shared as a political strategy by the UK government.

Both the human trafficking and modern slavery paradigms have this in common: they are frequently used by governments as a political cover for the harms perpetrated against migrant workers. As Julia O'Connell Davidson observed in 2010:

> anti-trafficking discourse calls on us to condemn as 'modern slavery' the application of coercive pressures on migrants without state sanction, but simultaneously to endorse the application of ever more coercive pressures on migrants by states, often in the name of protecting them from 'modern slavery'.[39]

The potency of modern slavery stems in part from the inaccurate parallels that are often drawn with the transatlantic slave trade. Furthermore, its amorphous nature outside of the UK legal context makes this particular term both highly attractive and deeply problematic. This is demonstrated by the wide array of actors and agencies that seek to engage with modern slavery, either to popularise its use or to decry its widespread application. Interestingly, both sides serve a common cause in further raising the profile of the term. However, there is currently scant information regarding the independent effects of modern slavery, for better or worse, on specific government approaches. Would governments have acted differently if modern slavery did not exist, or is this concept merely deployed in order to make deregulation and anti-immigration measures more palatable to key constituencies?

The most significant recent example of the politics of slavery and trafficking in action revolves around the use of these paradigms in order to further an anti-migrant agenda. This is not a new issue. When the Global Alliance against Traffic in Women (GAATW) published *The Migrating Women's Handbook* in 1999, it noted how:

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[39] J O'Connell Davidson, 'New Slavery, Old Binaries: Human trafficking and the borders of "freedom"', *Global Networks*, vol. 10, issue 2, pp. 244-261, p. 255, https://doi.org/10.1111/j.1471-0374.2010.00284.x.

> Unfortunately, most countries do not aggressively protect the rights of migrant workers, and it is left to workers themselves and NGOs to ensure that migrant workers are not exploited and abused in their work.[40]

This frustration at the absence of tools to draw upon to support migrant women when they were abused and exploited during their journey led some feminists to advocate for greater protections in international law.[41] Through a human rights-based approach to human trafficking, they helped to ensure access to justice for trafficked persons, as well as tailored support, pre-departure advice, and measures to promote self-organising so that trafficked persons have a voice in anti-trafficking responses. One of the consequences of this advocacy is that there is now a wide gap between the support and remedies available to migrant workers subjected to human trafficking compared to those suffering other types of labour abuses. The questions this Special Issue seeks to address are what practical impact this chasm has on workers, what challenges this siloed approach poses, and whether the clock should be rewound to 1999 so that a better solution can be found.

Since the publication of *Collateral Damage*, which was the first review of government responses to the UN Trafficking Protocol, there have been moves by policy makers to highlight the link between exploitation and widespread abuse. The ILO Forced Labour Protocol of 2014 requires states to take steps to prevent forced labour. This includes ensuring the application of labour law to all workers in all sectors, strengthening labour inspection, preventing abuses in recruitment, and 'supporting due diligence' by the private sector. At the national level, some governments are also adopting alternative approaches to anti-trafficking, which include acknowledging that cases of severe exploitation falling under the human trafficking definition constitute just one of many workplace harms. The Scottish Government's Fair Work Action Plan[42] offers an example of an effort to tackle these issues, establishing a range of public, social, and private governance measures in order to achieve 'fair work' throughout the economy by

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[40]   GAATW, *The Migrating Women's Handbook*, GAATW, Bangkok, 1999, p. 7, http://www.gaatw.org/books_pdf/migrating_woman_handbook.pdf.

[41]   See M Wijers, 'Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol', *Anti-Trafficking Review*, issue 4, 2015, pp. 56-79, https://doi.org/10.14197/atr.20121544.

[42]   See Fair Work Action Plan, n.d., https://economicactionplan.mygov.scot/fair-work.

2025.[43] The framework is overseen by the Minister for Business, Fair Work and Skills and requires action by employers, supports and promotes trade unions, and establishes specific guidance for high-risk labour sectors. Alongside this the government has taken progressive practical steps to protect migrant workers within their devolved competences, including instituting a firewall between National Health Service Scotland and immigration enforcement to prevent the sharing of information. This is not labelled as an anti-trafficking response, but the Scottish government is seeking to create strong foundations to its labour market in order to prevent *both* everyday abuse and extreme exploitation.

The Scottish government's less public relations-oriented response to labour abuse and exploitation, and others like it by countries ranging from Spain to Sweden and New Zealand, do not receive the level of critique and celebration as those responses labelled modern slavery or human trafficking. Advocates, academics, authors, and activists could also challenge their own tunnel vision in this area and engage with and debate broader, labour rights-focused, lower-profile government agendas. In a prescient piece published for the 2020 World Day Against Trafficking in Persons, Bandana Pattanaik observed how 'anti-trafficking measures will be more effective if we recognise their strengths and limitations'.[44]

Could it be that, in seeking to complexify and critique anti-trafficking, we are at risk of over-simplifying the alternative? Each policy avenue has its pitfalls. They are all messy. The route to success is never reached through a single solution but by taking many bumpy paths simultaneously—small steps forward and some steps backward. This collection of articles serves to underline this dilemma. It presents case studies of people seeking solutions to complex problems, highlights the 'collateral damage' caused by policy interventions, and demonstrates the need for policy to keep pace with change.

This Special Issue

The articles featured in this Special Issue come at the topic of everyday abuse from a variety of angles. **Leanne McCallum** leads with a fascinating account of how opportunities for exploitation were both created and combatted in New

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[43] Fair work is defined as 'work that offers effective voice, opportunity, security, fulfilment and respect; that balances the rights and responsibilities of employers and workers and that can generate benefits for individuals, organisations and society', see Fair Work Convention, *Fair Work Framework*, 2016, https://www.fairworkconvention.scot/wp-content/uploads/2018/12/Fair-Work-Convention-Framework-PDF-Full-Version.pdf.

[44] B Pattanaik, 'Can Anti-Trafficking Measures Stop Trafficking?', GAATW, 29 July 2020, https://gaatw.org/blog/1057-can-anti-trafficking-measures-stop-trafficking.

Orleans in the aftermath of Hurricane Katrina in 2005. In a bid to accelerate recovery, the US government suspended key labour protections and oversight mechanisms, thereby enabling employers to further erode incomes and working conditions. The inevitable abuses that followed put wind into the sails of both the worker rights and the anti-trafficking movements in Louisiana. However, their markedly different approaches undercut potential alliances and collaborations. McCallum argues that the anti-trafficking movement received far more funding and official support, but its focus on criminal justice and its close relationship with law enforcement undercut relationships with workers seeking to counter abusive labour practices. The worker rights movement, by contrast, developed a multi-ethnic coalition between migrant and African-American workers grounded in shared experiences of labour abuse post-Katrina. McCallum concludes with lessons that the post-Katrina past might hold for the post-COVID-19 future.

Following this, **Benjamin Harkins** proposes shifting interventions to counter exploitation away from human trafficking and modern slavery and towards the everyday abuse of wage theft. Since wage theft is one of the most common forms of labour abuse, Harkins argues that migrant workers can more easily identify with not being paid than with being labelled as 'trafficking victims'. Interventions designed to recover lost wages and reduce the likelihood of wage theft thus not only represent a pragmatic, migrant-oriented response to a concrete problem. They also seek to address the inequitable distribution of resources that sits at the heart of neoliberal globalisation.

The next four articles investigate specific experiences of everyday abuse. **Ella Parry-Davies** sets the scene with a series of intimate and innovative soundwalks recorded with Filipinx domestic workers in the United Kingdom and Lebanon. These explore the slow grind of constant work, endless repetition, and routine abuse characterising these women's lives alongside their resistance to employers' overbearing demands. She argues that the twin spectacular narratives of 'modern hero' and 'modern slave'—which underpin labour export policies in the Philippines as well as anti-trafficking interventions in Lebanon and the UK—invisibilise the mundane reality of life as Filipinx overseas domestic workers and, in doing so, prevent a policy response to the abuses they experience.

Bama Athreya turns the light on the digital surveillance, information asymmetries, and algorithmic cruelty found within the gig economy. Her article examines the experiences of gig workers on platforms for ride-sharing and domestic work, as well as with one job aggregator. Drawing upon interviews with workers in multiple countries, she finds that gig work platforms tend to exacerbate the existing power asymmetries between employers and workers while adding new elements of control and exploitation. These include customer ratings that trigger automatic account suspensions, obscure algorithms that decide which workers receive better gigs, and unpaid 'data labour'. Importantly, Athreya points to the need to rethink the meanings of force, fraud, and coercion

in the gig economy, especially given its exponential growth.

Abigail Hunt and Emma Samman investigate platform-based domestic work in South Africa. They are particularly interested in how the business model of 'gigs' makes avoiding employment regulation an implicit part of the business proposition which platforms offer to their clients. They acknowledge that people working for platforms often have good intentions, that workers see certain advantages over the 'traditional' domestic work labour market, and that in South Africa job offers, even when exploitative, are often welcomed by the people accepting them. Nevertheless, they argue that the toxic combination of platforms' popularity and their reliance on regulatory avoidance for their operations threatens to undermine or exclude workers from legislative advances in this sector.

Frederico Parra introduces and analyses the world of waste picker activism in Colombia. He chronicles the twists and turns of how marginalised and informal waste pickers successfully organised to protect themselves and their livelihoods from neoliberalising policies and the state-backed privatisation of public services. Through strategic and repeated use of the Constitutional Court they achieved recognition as workers providing a public service, remuneration from end users (households), and sheltered access to recyclable waste. However, none of these gains are secure and they continue to be challenged on various fronts. Parra concludes that there is a fundamental tension between the protection of livelihoods for marginalised groups and neoliberalisation, and that the former is only possible if steps are taken to rein in the latter.

The last thematic article brings us full circle by presenting readers with another tale of two initiatives: one grounded in modern slavery and another in worker solidarity. Focusing upon interventions in India, **Lorena Arocha, Meena Gopal, Bindhulakshmi Pattadath, and Roshni Chattopadhyay** trace NGOs' attempts to emancipate bonded labourers in stone quarries by getting them officially recognised as bonded labourers, organising them into self-help groups, and then helping these groups to apply for independent mining leases. However, these efforts were largely unsuccessful, since the groups were inadequately prepared to either run their own mines or to withstand the state-backed encroachment of large mining concerns into their area. The authors contrast these events with the evolution of one waste pickers' movement. Primarily comprising Dalit women, this initiative was worker-led from the start and centred on—as with Parra above—protecting their area of work from state-led privatisation. It involved organisation into collectives and the articulation of a collective identity, as well as the cultivation of allies when needed to challenge forces greater than themselves. By contrasting the 'ways of seeing' associated with these two different approaches, they reveal how different diagnoses of similar kinds of problems—modern slavery or worker solidarity—shape the terms of political engagement.

These full-length research articles are followed by five responses in the Debate Section of this Special Issue. The debate statement we proposed was explicitly political: 'It is worth undermining the anti-trafficking cause in order to more directly challenge the systems producing everyday abuses within the global economy'. This question was designed to foreground the strategic and tactical considerations which influence how and why different organisations navigate the complex mixture of opportunities and problems associated with the rapid growth of efforts to combat human trafficking. How strong is the tactical case for attempting to ride the anti-trafficking wave, despite the now well-known problems, if anti-trafficking can help to amplify political arguments, secure funding streams, and facilitate access to power? Or are the problems associated with trafficking interventions now so fundamental that it has become necessary to embrace alternative forms of organisation and engagement which call into question the viability and legitimacy of the anti-trafficking cause? Is it better to stay in or opt out? Does this really boil down to a binary choice?

The majority of contributors to this debate, perhaps unsurprisingly, reject the zero-sum framing of the statement and instead argue for the third way of reform. **Ella Cockbain** argues that campaigns against human trafficking and against everyday abuse are not necessarily incompatible, and suggests that they could complement each other if anti-trafficking spaces became more inclusive and 'some of anti-trafficking's most positive aspects ... migrate from the margins to the mainstream'. **Sienna Baskin and Huey Hewitt** highlight how exceptionalising and individualising narratives of traffickers and victims frequently do damage while taking activists' eyes off the ball when it comes to systemic change. However, like Cockbain, they too find that corners of the anti-trafficking field have evolved to embrace a wider lens and a more critical perspective. They argue that this offers a path to creating a more comprehensive anti-trafficking movement that agitates against extreme and everyday exploitation simultaneously. **Kate Roberts** turns this strain of argument around using the lens of Overseas Domestic Worker visas in the UK. Instead of calling for a more comprehensive movement, she insists that the two causes are inseparable: 'anti-trafficking responses will only be effective when they ... includ[e] addressing the systems which produce everyday abuse'.

The two remaining contributions solidly declare themselves in favour of the debate's central proposition: topple anti-trafficking to refocus on everyday abuse. **Alison Clancy and Frances Mahon**, writing from the perspective of a sex worker-led organisation in Canada, explain how their past engagements with anti-trafficking interventions have led them to conclude that the 'human trafficking discourse in Canada is used [...] to legislate, limit and curtail the activities of sex workers'. Having concluded that anti-trafficking cannot be reformed, they are now seeking to improve access to rights for im/migrant sex workers by mounting a constitutional challenge against regulations prohibiting

temporary residents from providing paid sexual services in Canada. Finally, **Lisa Rende Taylor** details the summary lessons of thousands of interactions between the Issara Institute and businesses over claims of abuse of migrant workers in Thailand. She has seen where remedy is possible and where, all too often, it gets lost amidst excuses and other priorities. She sees directly challenging systems of everyday abuse as a moral imperative for the field and admits that 'the anti-trafficking community needs to let go of the dream of governments solving the problem of human trafficking by putting exploiters behind bars'.

These divergent responses to this Special Issue help to underscore the complexity of the underlying structural issues at stake, including the governance of migration, global commerce, labour market deregulation, human rights, social justice, and decent work. They also help to underscore the fact that there is never going to be a singular or straightforward solution to the problems associated with everyday abuse and extreme exploitation. It is instead necessary to take into account the way in which specific constraints, opportunities, and strategies inform our diagnosis and understanding of the problem.

Joel Quirk is a Professor of Politics at the University of the Witwatersrand, South Africa. His research focuses upon slavery and abolition, human mobility, social movements, repairing historical wrongs, and the politics and history of Africa. Email: joel.quirk@wits.ac.za

Caroline Robinson is an independent consultant based in Scotland. She co-founded the UK-based charity Focus on Labour Exploitation (FLEX) in 2012 and served as its Chief Executive Officer until 2019. She previously led global advocacy for the Global Alliance Against Traffic in Women, co-founding the *Anti-Trafficking Review* in 2011. She holds an MA in Development Studies with distinction from the Institute of Development Studies. Email: caroline@csrobinson.co.uk

Cameron Thibos is co-founder and Managing Editor of Beyond Trafficking and Slavery on *openDemocracy*, as well as Research Fellow on the WorkFREE project at the University of Bath. He previously worked as a Research Associate at the Migration Policy Centre at the European University Institute in Florence, Italy. He holds a d.phil (PhD) in International Development from the University of Oxford. Email: cameron.thibos@opendemocracy.net

Thematic Articles: Everyday Abuse in the Global Economy

Reflections from the Field: Disparate responses to labour exploitation in post-Katrina Louisiana

Leanne McCallum

Abstract

Hurricane Katrina was a devastating natural disaster that changed the landscape of the United States' Gulf Coast. This was followed by a human-made disaster of failed policies, poor governmental oversight, and rampant labour abuse. This article compares how the anti-trafficking and labour rights movements responded to the widespread labour abuse following Katrina. It examines how the worker rights movement responded to systemic issues impacting labourers, and explores the anti-trafficking movement's criminal justice response to severe forms of exploitation. It shows how the anti-trafficking movement failed to adequately address severe forms of labour abuse, as opposed to the more successful organising efforts of the worker rights movement. The article concludes by considering how the two movements may respond to conditions of labour exploitation emerging as a result of a new disaster impacting workers in Louisiana: the COVID-19 pandemic.

Keywords: labour exploitation, Louisiana, Hurricane Katrina, worker rights movement, anti-trafficking movement, disaster response

In August 2005, Hurricane Katrina devastated the United States' Gulf Coast. After the storm passed, a human-made disaster of labour protection deregulation, poor governmental oversight, and racial tension created a 'perfect storm' of conditions for pervasive labour exploitation. This article explores these conditions of labour exploitation in Louisiana in the decade after Hurricane Katrina, with a specific focus on two movements that developed during that time: the worker rights movement and the anti-trafficking movement. The article opens with an introduction to the genesis of these movements in the post-Katrina context. It then analyses these two movements through the lens

of their response to key conditions that enabled widespread labour abuses: labour protection suspension, enforcement failures, political tension, and racial strife. It explores how a grassroots worker rights movement blossomed in the post-Katrina context and fostered multi-ethnic worker-led efforts to combat labour exploitation. It also considers how the criminal justice-focused anti-human trafficking movement, which began around the same time, failed to adequately counter labour exploitation. The article then reflects on the lessons to be drawn from these movements during the post-Katrina era, and considers current barriers to collaboration between them. It concludes with a consideration of how those lessons may be applicable today as a new disaster, the COVID-19 pandemic, batters Louisiana.

The article is based primarily on secondary sources such as case studies, reports, and news articles. I combine this with my own experience of working at the intersection of the anti-trafficking and social justice movements in Louisiana. As the Coordinator of the Greater New Orleans Human Trafficking Task Force since 2017, I have worked directly with individuals and institutions within both movements that responded during the post-Katrina context and witnessed first-hand the disparate responses to labour abuses. I weave these sources together with the intention of formalising knowledge about interactions between these movements.

Labour Abuse Post-Katrina

Hurricane Katrina was a catastrophic natural disaster: more than 1,800 people died and millions were impacted by the storm. Half a million housing units in the state of Louisiana were damaged or destroyed.[1] In New Orleans, the largest city in the state, more than 80 per cent of the city flooded, resulting in damage to 70 per cent of all occupied housing units. However, this was not simply a natural disaster. Human-made conditions in the aftermath of the storm had a severe impact on labourers in the rebuilding period. With governmental oversight failing, contractors and employers provided lower wages, poor workplace safety, and unsanitary living conditions for workers.[2] Workers routinely experienced 'substandard conditions, homelessness, poverty, toxicity, [and were] under the threat of police and immigration raids, and without any guarantee of a fair

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[1]   A Plyer, 'Facts for Features: Katrina impact', Greater New Orleans Community Data Center, 26 August 2016, retrieved 5 September 2019, https://www.datacenterresearch. org/data-resources/katrina/facts-for-impact.

[2]   JJ Rosenbaum and R Watson, *Broken Levees and Broken Promises: Migrant narratives in their own words*, Southern Poverty Law Center Immigrant Justice Project, Montgomery, 2006, https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/ brokenlevees.pdf.

day's pay, if they [were] paid at all. They also [faced] structural barriers that [made] it impossible to hold public or private institutions accountable for their mistreatment'.[3]

One study found that 47 per cent of workers reported not receiving their full wages, and 55 per cent did not receive overtime payment.[4] Rebuilding contracts were defined by complex and confusing chains of contractors and subcontractors, so workers were often unaware of their employers and unable to hold them accountable for misconduct or non-payment. The National Guestworker Alliance (NGA), an organisation focused on protecting immigrant workers, estimates that they served more than 1,000 victims of forced labour and human trafficking between 2007 and 2014.[5] At least 3,750 potential labour trafficking victims were identified in the Gulf Coast between 2005 and 2010, with 704 of those cases occurring in the New Orleans metropolitan region alone.[6]

It is within this context that new iterations of worker rights and human trafficking movements emerged in Louisiana. There was significant overlap between the vulnerable populations that the two movements aimed to support, and both actively sought to address abusive and exploitative labour practices during this period. However, the largest labour trafficking cases championed during the post-Katrina era were the result of advocacy and efforts by the worker rights movement, not the anti-trafficking movement.

A Tale of Two Movements

Rebirth of the Worker Rights Movement

The post-Katrina worker rights movement was established in response to social, economic, and racial injustice in Louisiana following the storm. The failure of government institutions to respond adequately amplified an existing mistrust of authority. Black and Latinx workers who had previously viewed the other as competitors came to appreciate that workers were mistreated across ethnic identities and industries at the grassroots level. Both increased immigration

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[3] J Browne-Dianis *et al.*, *And Injustice for All: Workers' lives in the reconstruction of New Orleans*, New Orleans Worker Center for Racial Justice, New Orleans, 2005, p. 8.

[4] T Smukler, *Working on Faith: A faithful response to worker abuse in New Orleans*, Interfaith Worker Justice, Chicago, 2006, p. 10.

[5] L Murphy and B Ea, *Louisiana Human Trafficking Report*, Modern Slavery Research Project, Loyola University New Orleans, New Orleans, 2014, p. 16.

[6] S Hepburn, 'Dispatches: Labor conditions in New Orleans', *Americas Quarterly*, 2010.

enforcement and negative law enforcement encounters contributed to growing solidarity, and they began to band together to fight racial discrimination and labour abuses.[7] These groups focused not just on post-Katrina conditions, but on the broader everyday labour abuses and racial discrimination that existed prior to the storm. The New Orleans Worker Center for Racial Justice (NOWCRJ) was founded in 2006 in response to both the systemic exclusion of Black workers, and the exploitation of migrant workers after Katrina.[8] Groups like the Alliance of Guestworkers for Dignity (Alliance); Congreso de Jornaleros (Congress of Day Laborers; Congreso), a worker-led project organising migrant workers; and STAND with Dignity (STAND), a grassroots project that organises low-income residents and workers in New Orleans, were also formed after 2006.[9] The worker rights movement grew into a grassroots network of exploited and disenfranchised workers and ethnic minorities who partnered with civil society. A significant portion of civil society efforts centred on legal services and immigration advocacy that was done on a volunteer, pro-bono, or low-bono basis. This laid the foundation for grassroots responses to issues impacting workers, including racial bias, immigration enforcement, wage theft, and workplace safety conditions.

Establishment of the Anti-Trafficking Movement

At the time that Hurricane Katrina hit, anti-trafficking work in Louisiana had just begun. This movement, as in other states, focused exclusively on the crime of human trafficking, rather than broader social justice issues like racial justice, worker rights, or immigrant rights. The first human trafficking statute in Louisiana passed in 2005.[10] In 2006, the US Department of Justice (DOJ) awarded a USD 450,000 grant to the Louisiana Commission on Law Enforcement (LCLE) to establish the Louisiana Human Trafficking Task Force (LAHTTF), which funded state law enforcement such as the Louisiana Sheriff's Association, and victim service providers such as the Metro Center for Community Advocacy.[11] This task force was established with the intention of addressing the needs of

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7   L B Gorman, 'Latino Migrant Labor Strife and Solidarity in Post-Katrina New Orleans, 2005-2007', University of New Orleans Theses and Dissertations, 2009, p. 27.

8   'Adequacy of Labor Law Enforcement in New Orleans', Committee on Domestic Policy of the Committee on Oversight and Government Reform, US House of Representatives, 110th Congress, First Session, 26 June 2007, Serial No. 110-119, Washington D.C., p. 14.

9   'About NOWCRJ', New Orleans Workers' Center for Racial Justice, http://nowcrj. org/about-nowcrj.

10   'Human Trafficking', Louisiana Revised Statute §14.46.2, eff. 12 June 2005.

11   'Press Release: Attorney General Alberto R. Gonzales Announces Enhanced Programs to Combat Human Trafficking', US Department of Justice, 3 October 2006.

victims of all forms of trafficking, including migrant workers.[12]

This coalition consisted of high-ranking stakeholders in law enforcement, prosecution, and service providers from across the state. The US Attorney's Offices (USAO) in Baton Rouge and New Orleans established anti-trafficking working groups. The anti-trafficking movement primarily regarded labour exploitation as a product of Hurricane Katrina. As Attorney General Alberto Gonzales stated at a conference in 2006, the government provided increased funding for prosecuting traffickers to 'put a stop to the exploitation and abuse of laborers'.[13] This was a top-down approach to investigate and prosecute individuals engaged in labour exploitation. The two main focal points were the commercial sexual exploitation of children (CSEC) and extreme cases of forced labour. There were few service providers at the table in the first few years of anti-trafficking work. With the exception of the Catholic Charities Archdiocese of New Orleans (CCANO), a Catholic faith-based non-profit with a robust immigrant services branch, the service providers at the table in the anti-trafficking movement were from domestic violence, homeless response, and child protection services.[14] There were few survivor leaders or people with lived experience managing the anti-trafficking programmes. Affected communities like migrant workers and low-wage local workers did not have a stake in the anti-trafficking movement, but were strongly invested in worker rights coalitions. As a result, the anti-trafficking movement's trajectory and actions in the post-Katrina era were significantly different from those of the worker rights movement.

A Perfect Storm: Suspended labour laws and failed governmental protection

Prior to the storm, wages in Louisiana were far below the national average in the United States[15] and there were few state laws protecting workers. There existed no state minimum wage or overtime laws, employers were not required

12 A Farrell, J McDevitt, and S Fahy, *Understanding and Improving Law Enforcement Responses to Human Trafficking,* Northeastern University Institute on Race and Justice, Washington, D.C., 2008, p. 189.

13 Agence France-Presse, 'Louisiana: Human trafficking', *The New York Times*, 4 October 2006, retrieved 24 October 2019, https://www.nytimes.com/2006/10/04/us/04brfs-004.html.

14 J Bayhi-Gennaro, *Baton Rouge/New Orleans Area Assessment: Identification of domestic minor sex trafficking victims and their access to services,* Shared Hope International, PIP Printing, Springfield, April 2008, p. 58.

15 M Muro and R Sohmer, *New Orleans after the Storm: Lessons from the past, a plan for the future*, Brookings Institution Metropolitan Policy Program, Washington, D.C., 2005, p. 11.

to provide lunch or rest breaks, and employee benefits were discretionary. Employers could immediately fire an employee for nearly any reason at any time without repercussion.[16] Given these limited worker rights laws, most legal measures to defend workers were derived from federal laws.

The suspension of federal labour protections after Hurricane Katrina had dire consequences. As one report put it, 'powerful institutional actors shared the post-Katrina landscape and placed workers in situations of disadvantage and inequity.'[17] To address the storm's devastation, the federal government spent approximately USD 75 billion on reconstruction efforts.[18] However, President George W. Bush's administration suspended key worker protection laws with the intention of expediting the rebuilding process. Employers could bypass a requirement to confirm their employees were authorised to work in the US. Contractors and subcontractors hired by the government to complete construction projects were paying as low as the federal minimum wage of USD 5.15 per hour, which was USD 4.00 less than the prevailing wage in Louisiana. The Department of Labor (DOL), the agency mandated to enforce more than 180 federal workplace laws, suspended a provision which required contractors to submit written affirmative action and non-discrimination plans.[19] The Occupational Safety and Health Administration (OSHA) suspended job safety and health standard enforcement in hurricane-impacted parishes for several months.[20] Though these workplace protections were reinstated by the end of 2005, the majority of federal reconstruction contracts were awarded during the few months in which these laws were suspended. As a result, many contractors were not obligated to comply with basic workplace standards.

Labour regulation systems failed to hold exploitative employers accountable after the storm. As one advocate told Congress, 'the DOL lacked the capacity and strategic direction to deal with this crisis.'[21] In the wake of Katrina, the DOL became the lead agency investigating workplace violations but its investigations drastically decreased. In 2006, the New Orleans DOL office conducted merely forty-four investigations into workplace labour violations—down from seventy

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[16] 'Contract of servant terminable at will of parties', Louisiana Civil Code Art. 2024, Acts 1984, No. 331, § 1, eff. 1 January 1985.

[17] J Browne-Dianis *et al.*, p. 4.

[18] B Alpert, '$120 in Katrina Federal Relief Wasn't Always Assured', *The Times-Picayune*, 21 August 2015, retrieved 22 October 2019, https://www.nola.com/news/article_338b3dd9-30e5-576d-b52a-d91ee07a499a.html.

[19] 'Guidance Applicable to Acquisitions for Hurricane Katrina Rescue and Relief Efforts to include Class Deviations from Federal Acquisition Regulation (FAR)', US Department of Homeland Security, 28 October 2005.

[20] *Ibid.*

[21] 'Adequacy of Labor Law Enforcement in New Orleans', p. 10.

in 2004.[22] Furthermore, it employed only one Spanish-speaking investigator, and it took more than a year to hire a second one.[23] Organisers working with labourers claimed that there were no after-hours reporting options.[24]

More fundamentally, many workers did not know that the DOL existed to protect their rights,[25] while the DOL maintained until 2008 that it did not have the authority to enforce H-2B Guestworker Program regulations.[26] The substandard response of the DOL, coupled with the fear of blacklisting or deportation, left guestworkers vulnerable to abuse.[27] At the same time, the Louisiana Workforce Commission (formerly called 'Louisiana Works: Department of Labor') did not have a division that handled wage and hour claims because Louisiana does not have a minimum wage law[28]. Its role was limited by the lack of state worker protection laws in place that it could enforce. In short, workplace protection agencies failed to provide adequate oversight of workplace violations.

Worker Rights Movement Response

The worker rights movement responded to substandard labour conditions, suspended worker protection, and the ineffectiveness of state agencies by empowering workers through a variety of community-based activities. These included legal services, know-your-rights training, and leadership opportunities. The movement also actively advocated for improved legislation for workers. In 2009, for example, members of the Alliance of Guestworkers for Dignity and the NOWCRJ spoke in front of the House Oversight and Government Reform Committee at a hearing on the H-2B Guestworker Program.[29]

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[22] Hepburn, 2009.

[23] 'Adequacy of Labor Law Enforcement in New Orleans', p. 5.

[24] *Ibid.*, p. 12.

[25] Smukler, p. 5.

[26] Hepburn, 2009. H-2A and H-2B visas allow immigrants temporary agricultural and non-agricultural work with a single employer if a sponsoring employer can prove US citizens are unavailable. Guestworkers are highly vulnerable because their status is tied to a single employer, and the employer can place workers on a blacklist that bars them from being hired in the US in the future.

[27] Browne-Dianis *et al.*, pp. 45-49.

[28] Louisiana does not have an established state minimum wage, therefore employers are required to follow the federal minimum wage rate established under the Fair Labor Standards Act.

[29] 'The H-2B Guestworker Program and Improving the Department of Labor's Enforcement of the Rights of Guestworkers', House Oversight and Government Reform Committee, Domestic Policy Subcommittee, US House of Representatives, Congress, 21 April 2009.

As the years passed, organising efforts contributed to successful worker campaigns. One example was the C.J.'s Seafood case. The movement banded together to protest worker treatment at C.J.'s Seafood, a crawfish provider in Breaux Bridge, Louisiana that supplied seafood to major retailers such as Walmart. Workers who came to C.J.'s through the H-2B Guestworker Program were subjected to terrible working conditions. Some were forced to work sixteen to twenty-four hours per day or more than eighty hours per week, and they were threatened with violence if they did not work fast enough.[30] Workers began holding strikes and rallies in the Greater New Orleans area based on their training from the NOWCRJ and NGA. Representatives of the service industry, unions, community groups, and immigrant rights organisations organised to strike against employers' mistreatment of both immigrant and American workers. They filed multiple complaints with regulatory agencies and demanded reform in Walmart's labour supply chain standards. The NGA released a list of Walmart food suppliers with federal work citations to try and pressure the corporation to more strictly comply with work standards. The list generated investigations by Walmart, the DOL, and the OSHA. Walmart ended its relationship with the seafood company a month after the campaign started, and C.J.'s was fined nearly USD 250,000 for its workplace safety and wage violations. This case exemplified the way that workers organised at the grassroots level to fight labour violations.

Anti-Trafficking Movement Response

Meanwhile, the anti-trafficking movement was focused on responding to severe forms of labour abuse through criminal justice structures. The LAHTTF was mandated to address both trafficking for the purpose of forced labour and commercial sexual exploitation. In the years following its establishment it created strong investigative and prosecutorial frameworks for its members to respond to commercial sexual exploitation, with a specific emphasis on minors. However, the labour trafficking response proved to be ineffective. One of the main challenges that they faced was to establish evidence of force, fraud, or coercion to prosecute alleged abusers. In some cases, a lack of awareness of the types of coercion that could compel someone to stay in conditions of abuse became a barrier to pursuing cases. Lack of experience or knowledge also meant that few cases emerged. According to one survey in 2008, only 4.2 per cent of law enforcement in Louisiana had ever investigated a human trafficking case.[31] Ongoing worker mistrust of law enforcement led vulnerable people to choose not to cooperate with investigations, leaving agents struggling to understand why workers' representatives did not refer cases to them.

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[30]   S Greenhouse, 'Wal-Mart Suspends Supplier of Seafood', *The New York Times*, 29 June 2012, retrieved 21 October 2019, https://www.nytimes.com/2012/06/30/business/wal-mart-suspends-seafood-supplier-over-work-conditions.html.

[31]   Farrell *et al.*, p. 50.

Despite the challenges for criminal justice responses to labour exploitation, there were at least nine federal human trafficking cases born out of the post-Katrina reconstruction era, all of which involved immigrant labourers.[32] The USAO brought several major labour trafficking cases to court.

One example of a successful federal court case originating in Louisiana was the case of Nunag-Tañedo *et al.* v. East Baton Rouge Parish School Board *et al.* When school districts had a difficult time finding enough teachers after the storm, they turned to labour recruiters to find guestworkers.[33] Universal Placement International (UPI) supplied more than 360 Philippine teachers to a number of school districts. Those teachers paid exorbitant recruitment fees and were subject to a variety of other fees once they arrived in Louisiana. Their visas and passports were confiscated, and they were threatened with deportation if they spoke out against the horrific financial abuse and substandard living conditions. Eventually some of the workers fought back and sought support from legal service agencies to hold the labour recruiters and the school districts that hired them accountable for the abuse. The teachers eventually won a USD 4.5 million class action suit against the school district to recover damages and an injunctive relief against the fraudulent recruiters.[34] In addition, the Louisiana Workforce Commission awarded the workers a return of the money that UPI had confiscated from them.[35]

However, in many other instances, prosecutors required external pressure to take on cases, as illustrated by the case of Signal International. In 2005, hundreds of guestworkers from India came to the Gulf Coast in Pascagoula, Mississippi to repair oil rigs damaged by Hurricane Katrina. The workers paid thousands of dollars in recruitment fees because they were promised pathways to citizenship. Upon arrival, they were given H-2B visas, segregated by racial groups, and forced to live in a guarded work camp with substandard housing conditions. Their passports and visas were retained, and they were 'threatened, coerced and defrauded … believing that if they did not work for Signal under the auspices of temporary and Signal-restricted H-2B guestworker visas, they would suffer

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[32] S Hepburn and R Simon, 'United States', in *Human Trafficking Around the World: Hidden in plain sight*, Columbia University Press, New York, 2013, pp. 13-43.

[33] *Nunag Tanedo et al. v. East Baton Rouge Parish School Board et al.* (8:10-cv-01172), District Court, Central District of California, filed 5 August 2010.

[34] *Ibid.*

[35] S Dick, 'In RE: Complaint of the Louisiana Federation of Teachers and the American Federation of Teachers O/B/O certain Filipino teacher local members: Findings and Administrative Determination of the Louisiana Workforce Commission', Louisiana Workforce Commission, 14 April 2020, http://la.aft.org/files/article_assets/079D5835-BB59-61D7-4D0AE56F0C4856AD.pdf.

abuse'.[36] Legal service providers and workers attempted to garner support from federal law enforcement and prosecutorial entities in New Orleans to no avail. The Homeland Security Office in New Orleans was even accused of conspiring with Signal International to conduct immigration enforcement operations after workers demanded improved working conditions.

Members of the LAHTTF and other anti-trafficking working groups believed that there was not enough evidence to prove that the workers' experiences rose to the level of severe forms of human trafficking. The workers eventually conducted a high-profile march and public hunger strike that sparked international media attention. As a result, the DOL, the Equal Employment Opportunity Commission (EEOC), the OSHA, and the DOJ offered to open or reopen investigations into the claims of the workers. In 2012, a US district court found Signal International, a New Orleans lawyer, and an Indian labour recruiter guilty of labour trafficking, fraud, racketeering, and discrimination under the *Trafficking Victim Protection Act* and the *Racketeering Influenced and Corrupt Organizations Act*. While the recruiter and lawyer were each required to pay USD 915,000, Signal International was forced to pay USD 12 million in damages to the workers.[37]

The anti-trafficking movement did not actively advocate or respond to labour protection rollbacks or enforcement failures. Some members of the movement did not recognise the significance of these regulative policies and how they made workers vulnerable to abuse. Anti-trafficking service providers understood that race, immigration status, and socioeconomic status impacted a person's vulnerability to labour exploitation. However, they did not engage in advocacy on those issues as they related to workers. Worker abuse outside of the framework of illegal exploitation, such as forced labour or coerced labour, could not be addressed within criminal anti-trafficking investigations.

In addition to these institutional constraints, there were further complications associated with how the concept of human trafficking was understood and applied. Many within the criminal justice framework saw trafficking as victimisation occurring 'in a vacuum', devoid of historical, cultural, or regulatory context. This simplistic view saw the crime as a result of the acts of an abuser,

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[36]   *David et al. v. Signal International, LLC et al.,* US District Court, Eastern District of Louisiana, pp. 2-3, https://cases.justia.com/federal/district-courts/louisiana/laedce/2:2008cv01220/124306/1947/0.pdf.

[37]   *Ibid.*; see also 'David, *et al.* v. Signal International, LLC, *et al*', American Civil Liberties Union, 29 May 2013, https://www.aclu.org/cases/david-et-al-v-signal-international-llc-et-al; and 'Signal International lawsuits (re trafficking of Indian workers in USA)', Business and Human Rights Resource Centre, n.d., https://www.business-humanrights.org/en/signal-international-lawsuits-re-trafficking-of-indian-workers-in-usa.

rather than of conditions that manufactured the patterns of vulnerability within which exploitation occurred. Other figures in the movement were governmental agencies with limited means and flexibility to publicly disagree with federal policies, even if specific individuals may have recognised the harms associated with the suspension of labour protections.

It is worth noting that these groups were more pro-active when it came to issues related to CSEC. Members of the anti-trafficking movement were actively engaging in advocacy around the vulnerability of individuals in sex industries and of children who experience sexual abuse. In 2013, for example, anti-trafficking agencies supported the passage of safe harbour legislation, a policy of not charging people under the age of eighteen with prostitution-related offences.[38] This demonstrated that the anti-trafficking movement had the capacity to push back against established criminal justice practices for prioritised policy areas. There was a political investment among anti-trafficking actors when it came to policy changes to prevent CSEC, but the same kind of political will was absent for policy changes around labour exploitation.

Scapegoating: Cultural rifts and political tension

In addition to the erosion of worker protections, racial tension between native Louisianans and migrant workers increased during the rebuilding period. Reconstruction required a large number of workers, but more than one million displaced Gulf Coast residents did not return.[39] From August to September 2005, the number of Louisianan workers employed in construction and related industries dropped from 40,100 to 22,500.[40] In New Orleans, the storm disproportionately displaced poor and Black working class communities because they mostly lived in the city's lower-lying parts that had flooded.[41]

Migrant workers were willing to work for even lower pay than Louisianans, so employers began actively recruiting them. Migrants came to Louisiana en masse seeking employment in the burgeoning construction industry. The Latinx population in Greater New Orleans doubled after the storm: 45 per cent of

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[38] 'Safe Harbor for Sexually Exploited Children', Louisiana Children's Code, Article 725, Chapter 20, No. 429, § 3, eff. 24 June 2013.

[39] Plyer.

[40] 'American Community Survey Data', US Census Bureau, 2005.

[41] Muro and Sohmer, pp. 16-17.

construction workers were Latinx, of whom 54 per cent were undocumented.[42] Unscrupulous employers with federal contracts to rebuild took advantage of the suspension of labour regulations by hiring migrant labourers rather than local residents. Contractors found that migrants were willing to work for less and to endure harsher work conditions because of their fear of law enforcement and immigration retaliation. As the Southern Poverty Law Center pointed out, 'The recruitment of guestworkers is a lucrative business for the companies that help U.S. employers obtain cheap foreign labor.'[43] Emboldened by the lack of governmental oversight, contractors created a 'race to the bottom' for labourers. One case exemplifying this type of abuse is that of Decatur Hotels in New Orleans, where workers were fired and replaced by undocumented workers who earned USD 2 less per hour. Eventually these employees were also replaced by guestworkers on H-2B visas for an hourly wage of USD 4 less.[44] Ultimately, those guestworkers were in turn threatened with deportation for demanding better working conditions. These labour practices placed significant strain on worker solidarity and pitted ethnic groups against each other.

Political tension ignited as migrant workers became scapegoats for skyrocketing unemployment rates, which rose to 11.4 per cent by September 2005.[45] Louisiana residents demanded an explanation for high unemployment rates, poor wages, and unsafe working conditions. As a result, political figures positioned migrant labourers as culprits for the suffering of Louisianan labourers. Responding to public sentiment, Senator Mary Landrieu declared that 'it is unconscionable that illegal workers would be brought into Louisiana aggravating our employment crisis and depressing earnings for our workers.'[46] Political figures across the state called on the US Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) to dispatch immigration enforcement throughout the state to 'institute a zero tolerance policy for the use of illegal workers.'[47]

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[42] L Fletcher *et al.*, *Rebuilding After Katrina: A population-based study of labor and human rights in New Orleans*, International Human Rights Law Clinic University of California Berkeley, Human Rights Center University of California Berkeley, and Payson Center for International Development and Technology Transfer Tulane University, June 2006, ISBN: 0-9760677-2, p. 9.

[43] M Bauer, *Close to Slavery: Guestworker programs in the United States*, Southern Poverty Law Center, 2007, revised 2013, p. 10, https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf.

[44] Hepburn, 2009.

[45] 'Regional and State Employment and Unemployment Summary', Bureau of Labor Statistics, US Department of Labor, 21 October 2005.

[46] Letter from Senator M Landrieu to Secretary M Chertoff, Secretary of US Department of Homeland Security, dated 18 October 2005.

[47] *Ibid.*

There was little recognition that federal policies had essentially encouraged the employment of migrants in the first place.

This kind of discourse reinforced ideas that migrants caused Black labourers' exclusion from rebuilding, even though there was evidence that Black labourers had been systematically excluded by employers and contractors.[48] Louisianan workers and foreign workers 'suffer[ed] from a profound lack of awareness of and exposure to each others' [*sic*] plight. African Americans [did] not know that governmental policy and practice pushed workers into exploitative jobs. Immigrants [did] not know that governmental action and inaction [had] systematically excluded African Americans from work in New Orleans after Katrina.'[49] By weaving these narratives together, Louisiana residents blamed migrant workers for the outcomes of systemic racism and poor policy rather than the failure of systems meant to protect workers.

Increased immigration enforcement started nearly as soon as foreign workers began to arrive. Merely days after the government relaxed requirements related to the prevention of hiring undocumented migrants, the DHS announced that it had deployed 750 officials to the Gulf Coast, including Detention and Removal Operations staff.[50] ICE and local law enforcement would frequent locations where migrant workers congregated. Workers across race and industry reported numerous incidents of law enforcement abuse and violence at the hands of police and immigration authorities. Employers used the fear of deportation to compel migrant workers to stay in exploitative conditions.[51] Worker rights organisations decried the use of immigration enforcement, while key law enforcement agencies within the anti-trafficking network were engaging in immigration enforcement. In some cases, workers alleged that ICE coordinated with employers to arrest migrant workers when they spoke out against abusive employers or when payday arrived. Claims of law enforcement and immigration enforcement collaboration to benefit employers were rampant.[52] Both Black and immigrant labourers reported harassment on the street from law enforcement.[53] This added to the climate of fear in which workers were afraid to hold their abusers accountable through criminal justice frameworks.

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[48] Browne-Dianis *et al.*, p. 10.

[49] *Ibid.*

[50] 'Press Release: ICE Law Enforcement Support Proves Critical to Hurricane Rescue and Security Efforts', US Immigration and Customs Enforcement, 8 September 2005.

[51] Browne-Dianis *et al.*

[52] *Ibid.*, p. 45.

[53] *Ibid.*, p. 8.

Worker Rights Movement Response

The goal of the worker rights movement was to collaborate to 'build a new freedom movement: multi-racial; committed to racial, gender, and immigrant justice; and dedicated to building power at the intersection of race and the economy.' As Saket Soni, labour leader and founder of the NOWCRJ explained,

> STAND with Dignity—yes, they're fighting for inclusion and advancement but they're also fighting for racial justice. To overcome exclusion and win dignified decent work, they have to push against the criminalization of African Americans… Similarly, the Congress of Day Labourers wants to win dignified work but also wants to stop deportations in a country that asks for immigrants to work but then criminalizes them when they seek out work. These movements are intertwined and in many ways are one movement… human rights, civil rights and labor rights have always been very deeply intertwined, and they still are now.[54]

They attempted to address racial tensions between member groups by creating a multi-ethnic space to discuss shared experiences such as wage theft. The worker rights movement demonstrated against immigration enforcement, wage theft, and housing shortages. Representatives of the movement participated in Congressional hearings to discuss the failures of the DOL to protect workers. They worked together to bring back confiscated passports and pressure employers to enact safer working conditions for labourers.[55] Attorneys joined the movement to provide free and low-cost legal services to exploited workers. Between 2006 and 2011, the Wage Claim Clinic, an initiative of the Loyola University New Orleans College of Law's Workplace Justice Project, tried nearly 1,400 cases, won more than 60 wage-theft cases, and recovered hundreds of thousands of dollars in back wages.[56] Additionally, members of the worker rights movement facilitated engagement with law enforcement for exploited labourers to seek justice while mitigating risk of deportation. When the owner of Louisiana Labor, LLC withheld his workers' passports, for example, local residents and members of the Guestworker Alliance worked together to ensure that the Calcasieu Parish Sheriff's Office retrieved the passports and returned

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[54] A Lee, 'Organizing for a True Reconstruction in the Gulf Coast: An interview with labor leader Saket Soni', Facing South, 26 August 2015, retrieved 27 July 2020, https://www.facingsouth.org/2015/08/organizing-for-a-true-reconstruction-in-the-gulf-c.

[55] Hepburn, 2009.

[56] Hepburn and Simon, pp. 13-43; '2011 Provost Report: Loyola University New Orleans', Loyola University New Orleans, 23 March 2012, pp. 20-21.

them to the workers without taking any negative immigration actions.[57]

In the case of Signal International, mentioned earlier, multi-ethnic organising was a cornerstone of the workers' success. On 9 March 2007, 'Signal, in coordination with [private security guards], attempted to forcibly and unlawfully deport [workers] … in retaliation for speaking out against discriminatory conditions in Signal's labour camp'.[58] After a lack of action by local law enforcement and federal agencies to hold Signal accountable, more than 100 of the workers went on strike by marching from New Orleans to Washington, DC. They marched to demand just treatment and freedom from the exploitative labour conditions they faced. As the labourers travelled to Washington DC, Black workers and other allies travelled alongside the guestworkers to protect them from immigration enforcement.[59] African American religious leaders in North Carolina supported efforts to get congressional representatives interested, and a historically Black church in Atlanta provided sanctuary to the strikers after advocates asserted that ICE was following the marchers.[60]

Another example of the successful use of multi-ethnic organising is the case of Bimbo's Best Produce. Workers brought to Louisiana on H-2A visas faced horrific conditions after Bimbo's put them to work in some strawberry fields. Their immigration documents were confiscated, they faced physical and emotional abuse, and were threatened with deportation or blacklisting if they attempted to leave. However, 'when members of African-American and immigrant communities came forward to protect guestworkers, the guestworkers escaped the slave-like conditions of the Defendant's strawberry plantation'.[61] Cases like this exemplify how collective, community-based organising served as an effective strategy for workers to respond to their abuses. While tensions between different groups never entirely disappeared, the worker rights movement was able to build a broad coalition which helped to bring labourers together.

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[57] Hepburn, 2009.

[58] *Ibid.*, p. 3.

[59] JJ Rosenbaum, *et al.*, 'A Special Message to NGA Members on the Signal Victory', National Guestworker New Orleans Workers Center, 21 February 2015, http://www. guestworkeralliance.org/2015/02/a-special-message-to-nga-members-on-the-signal-victory-2-21-15.

[60] *Ibid.*

[61] *Antonio-Morales et al. vs. Bimbo's Best Produce et al.,* US District Court for the Eastern District of Louisiana, 10 December 2008, http://nowcrj.org/wp-content/uploads/2016/09/antonio-morales-v-bimbos-best-produce-085105.pdf.

Anti-Trafficking Movement Response

Leaders of the anti-trafficking movement were conspicuously absent from the initiatives undertaken by the worker rights movement described above. This was partly because they were not necessarily welcome. Representatives of law enforcement and government agencies were viewed as complicit in systems of oppression, to the point where they were sometimes accused of directly harming vulnerable people. Some non-profit immigrant service providers, however, were able to successfully navigate both the anti-trafficking and worker rights worlds. CCANO provided services to immigrants and distanced itself from law enforcement responses and case referrals. From 2009 to 2011, CCANO is estimated to have served approximately 125 people alleging they experienced labour trafficking.[62] However, this was the exception among anti-trafficking entities.

The anti-trafficking movement as a whole did not actively address systemic racism, immigrant rights, or other issues central to the interests of the worker rights movement. There is a body of literature that shows how the broader anti-trafficking movement has failed to take account of racism, and in some cases, perpetuates it.[63] This was also the case in Louisiana's anti-trafficking movement.

Some law enforcement agencies who participated in anti-trafficking work were actively engaging in activities that contributed to a climate of fear for labourers. Throughout Louisiana, law enforcement officials were deputised by ICE to conduct immigration enforcement. In Greater New Orleans, the Jefferson Parish Sheriff's Office, the Orleans Parish Sheriff's Office, and ICE were all members of the USAO's New Orleans Human Trafficking Working Group (NOHTWG), which also conducted immigration enforcement. Attempting to serve non-citizen trafficking survivors while simultaneously conducting immigration enforcement on workplaces created mixed messages for foreign victims of crime. These law enforcement agencies were inadvertently reinforcing mechanisms that abusive employers used to control vulnerable workers. The fear of deportation became a barrier for foreign workers to report their experiences of exploitation.[64]

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[62] Murphy and Ea, p. 16.

[63] See generally: T P Woods, 'The Antiblackness of "Modern-day Slavery" Abolitionism', *openDemocracy*, 10 October 2014, retrieved 28 May 2020, https://www.opendemocracy. net/en/beyond-trafficking-and-slavery/antiblackness-of-modernday-slavery-abolitionism; L Beutin, 'Black Suffering for/from Anti-trafficking Advocacy', *Anti-Trafficking Review,* issue 9, 2017, pp. 14-30, https://doi.org/10.14197/atr.20121792.

[64] Browne-Dianis *et al.*

Lessons of the Past

In recent years, both the anti-trafficking and the worker rights movement have largely continued the trajectories that began post-Katrina. Given that human trafficking intersects with worker rights and criminal justice responses, there was at least hypothetically a window for a novel response to labour abuses which saw the worker rights and anti-trafficking movements collaborating on issues of mutual concern. As we have seen, this potential was not realised in practice. For the worker rights movement, the storm gave rise to a multi-racial coalition to combat shared experiences of labour abuse and catalysed cooperation among impacted communities. While the anti-trafficking movement ostensibly shared similar concerns, their institutional positions and heavy investment in criminal justice models created barriers to collaboration and effective intervention. This mistrust led members of the anti-trafficking movement to view worker rights groups as unwilling to cooperate. Actors within the anti-trafficking movement felt that the worker rights movement could be difficult to work with because of its decentralised and worker-driven approach, which did not align with their top-down institutionalised approach. Meanwhile, worker rights movement members perceived key members of the anti-trafficking movement as complicit in systems of oppression and systemic racism, and as a result did not regard anti-trafficking groups as safe allies. Overall, these factors contributed to a stark divide between the two movements' efforts to address labour abuses.

Today, the worker rights movement continues organising through an intersectional lens, acknowledging that oppression and abuse happen across identity lines in the context of race and socio-economic status. Since 2015, the movement has protested against a variety of issues, including the deportation of migrants, police brutality, and mass incarceration.[65] In 2016, the movement celebrated a change in New Orleans Police Department policy to stop sharing immigration-related information with ICE. In 2017, Black labourers successfully campaigned to get a USD 10.55 per hour living wage ordinance for city workers.[66] In July 2020, the NOWCRJ sued the DOL for removing labour protections for immigrant victims or witnesses of workplace crimes and

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[65] A Woodward, 'Sen. Kennedy Calls on Mayor Cantrell to "Undo" NOPD Immigration Policy', *Gambit*, 9 August 2019, https://www.nola.com/gambit/news/article_c38a3ed4-5025-5afe-a0d6-c4e9f5081129.html; A Woodward, '"It's Time for Action": New Orleans joins nationwide call to abolish ICE and reunite families', *Gambit*, 30 June 2018, retrieved 29 July 2020, https://www.nola.com/gambit/news/the_latest/article_35613e44-b43c-55b5-9a3b-f4dac9de435b.html._

[66] A Woodward, 'N.O. Council Passes "Living Wage" Law', New Orleans Workers' Center for Racial Justice, 10 August 2015, http://nowcrj.org/2015/08/10/n-o-council-passes-living-wage-law-gambit-81015.

human trafficking.[67] The worker rights movement has achieved community-level victories, though the system-level changes needed for broader protection of labourers have perhaps eluded them thus far.

The anti-trafficking movement has expanded dramatically to include more service providers and have more options outside of the criminal justice system. Over the past decade, for example, the availability of services such as mentorship, housing assistance, and mental health support have increased for people who have experienced human trafficking. The anti-trafficking movement has also advocated to address vulnerabilities associated with trafficking of individuals in the sex industry, such as reforms to improve child protection systems, early childhood social services, and social services for sexual violence survivors. However, calls for racial justice, immigration reform, or labour rights have been conspicuously absent from their advocacy efforts. The movement has actively attempted to include more survivor leaders in its decision-making, but progress remains slow. To date, the Governor's Human Trafficking Prevention Commission and Advisory Board does not have a designated member from an organisation that primarily serves foreign nationals or labour trafficking survivors.[68]

Fifteen years after Katrina, it is clear that the roots of these movements have defined their trajectories. Despite the connection between labour rights and anti-trafficking issues, the two movements have not successfully collaborated. Some individuals within each of these movements see the potential for partnership, but the process of building trust will depend largely on the anti-trafficking movement's ability to engage with workers and reconsider how heavily it relies on the criminal justice system. Across the country, individual entities have begun to step forward to denounce anti-trafficking efforts that do not take an active role in promoting the rights of migrants, ethnic minorities, and workers.[69] Since 2017, leaders within the anti-trafficking movement in some communities, like New Orleans, have invited workers and organisations representing workers to educate members of the anti-trafficking movement on issues that workers face in Louisiana. However, without addressing institutional racism, immigration policy, and workers' rights, the anti-trafficking movement will continue to be siloed from the efforts of the worker rights movement. The worker rights

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[67]   *New Orleans Worker Center for Racial Justice v. United States Department of Labor*, US District Court for the District of Columbia, 7 July 2020.

[68]   *Executive Summary for the 2018 Annual Report*, Louisiana Human Trafficking Prevention Commission and Advisory Board, Baton Rouge, 14 March 2019, http://gov.louisiana. gov/assets/Programs/ChildrensCabinet/HTPC-2018-Exec-Summary-Annual-Report.pdf.

[69]   M Gira Grant, 'The Trump Administration Finally Broke the Anti-trafficking Movement', *The New Republic*, 18 February 2020, https://newrepublic.com/ article/156579/trump-administration-finally-broke-anti-trafficking-movement.

movement has demonstrated the ways in which workers from different cultural, ethnic, and professional backgrounds can coalesce to fight for broader social justice issues.

While Katrina did bring new and extraordinary challenges, it also highlighted the deep, systemic roots of everyday labour abuses. Rollback of federal worker protection laws had horrific outcomes, but then-existing state labour protection laws had already put workers at a disadvantage. Historic racism and cultural tensions among residents remain to this day. By responding only to the most egregious cases of abuse, enforcement agencies have failed to address the more widespread, 'everyday abuses' that workers experience. Certain forms of enforcement, such as immigration enforcement, have made the problems worse by silencing victims and making impacted communities less likely to come forward to report abuse. The guestworker visa program has not been reformed and continues to be a source of labour abuse and human trafficking to this day. These issues are deeply rooted and continue to make workers vulnerable to a broad spectrum of labour abuse.

Conclusion: History repeating

Fifteen years post-Katrina, many of the conditions highlighted by the storm remain unremedied. This is particularly concerning as a new disaster, the COVID-19 pandemic, ravages Louisiana. Parallels between the two disasters have already been drawn by residents and government officials alike.[70] Louisiana has been particularly hard hit by the virus: as of 1 July 2020, more than 61,561 Louisianans have been diagnosed with the virus and at least 3,147 have died.[71] The Latinx and Black communities have been disproportionately impacted by COVID-19, both where health disparities and workplace safety issues are concerned.[72] In New Orleans, allegations of substandard labour conditions during the pandemic echo the experiences of workers who lived in the aftermath of Katrina.

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[70] See generally: D Sevastopulo and B Greeley, 'Fifteen Years after Katrina, New Orleans Battles Coronavirus Storm', *Financial Times*, 3 April 2020, https://www.ft.com/content/28123b5c-837e-4357-9477-3454c840059cΔ.

[71] Louisiana Coronavirus (COVID-19) Information, Louisiana Department of Health, retrieved 1 July 2020, http://ldh.la.gov/Coronavirus.

[72] R Santana, 'New Orleans: Concern over coronavirus in Hispanic community', *AP News*, 25 May 2020, https://apnews.com/54c42dcb030cdc8f34ce384d7ad9f86c; K Curth, 'New Orleans Officials Say COVID-19 Disproportionately Affecting Hispanic and Latino Community', *Fox 8 WVUE New Orleans*, 20 May 2020, https://www.fox8live.com/2020/05/20/new-orleans-officials-say-covid-disproportionately-affecting-hispanic-latino-community.

As of July 2020, the Louisiana Department of Health (LDH) had identified more than 130 outbreaks, most of which occurred in workplaces such as food processing and industrial settings.[73] Sanitation workers in New Orleans have begun a strike to demand improved safety, increased wages, and hazard pay to accommodate their exposure to the virus.[74] Hospitality workers are on strike to demand adequate pay and workplace safety because they have been required to return to work as the state is reopening.[75] Within the seafood processing industry, guestworkers are decrying unsafe living conditions and a lack of workplace safety measures.[76] On 18 May 2020, the LDH announced it was investigating three seafood processing facilities where more than 100 workers had tested positive for COVID-19.[77] Reports from the field are already emerging of employers using the high unemployment to control labourers and keep them in exploitative work situations. On top of all this, racial tensions are at a boiling point in the US. The death of Black Americans at the hands of law enforcement—including George Floyd, an unarmed Black man killed by police officers in Minneapolis, Minnesota—have ignited worldwide protests calling for an end to police brutality and racism.[78] Thousands of Louisianans have taken to the streets in solidarity with these movements.

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[73] 'COVID-19 Outbreaks', Louisiana Department of Health, 8 July 2020, http://ldh. la.gov/index.cfm/page/3997.

[74] M Sledge, 'New Orleans Sanitation Workers, Police Demand Hazard Pay during Coronavirus Pandemic', *The Times Picayune and The New Orleans Advocate*, 18 May 2020, https://www.nola.com/news/coronavirus/article_e96a4e14-995a-11ea-87ed-cf029941ee9a.html.

[75] M I Stein, 'Some New Orleans Workers Scramble to Organize as They're Pushed Back into Frontline Jobs', *The Lens*, 29 May 2020, https://thelensnola.org/2020/05/29/some-new-orleans-workers-scramble-to-organize-as-theyre-pushed-back-into-frontline-jobs; M I Stein, '"We're Having to Choose to Put Ourselves at Tisk": Tough decisions for workers as city, state reopen', *The Lens*, 15 May 2020, https://thelensnola.org/2020/05/15/were-having-to-choose-to-put-ourselves-at-risk-tough-decisions-for-workers-as-city-state-reopen.

[76] S Karlin, '"Elbow to Elbow": Coronavirus outbreaks at crawfish plants highlight migrants' working conditions', *The Advocate*, 19 May 2020, https://www.theadvocate.com/baton_rouge/news/coronavirus/article_0bd1c0c4-9a26-11ea-b721-9f557eacd530.html.

[77] T Lux, 'Unsurprised by Outbreaks at Crawfish Facilities, Experts and Advocates Warn "It Will Happen Again"', *WWNO*, 22 May 2020, https://www.wwno.org/post/unsurprised-outbreaks-crawfish-facilities-experts-and-advocates-warn-it-will-happen-again.

[78] J Hernandez and B Mueller, 'Global Anger Grows Over a Death in Minneapolis', *The New York Times*, 1 June 2020, https://www.nytimes.com/2020/06/01/world/asia/george-floyd-protest-global.html.

Worker rights groups are already emerging to support strikes, demonstrations, fundraising, and advocacy efforts of labourers. Meanwhile, the anti-trafficking movement has laid somewhat dormant. The criminal justice system has been on hold: federal and local courts were closed for weeks, law enforcement officials limited investigations to essential operations—which do not include proactive human trafficking investigations—and service providers have shuttered in-person services to victims of crime.

The COVID-19 pandemic has not yet reached its zenith, and the extent of the economic fallout resulting from the crisis remains undetermined. It is possible that conditions of widespread labour abuse, similar to that of the post-Katrina era, will be catalysed by the pandemic. With unemployment rates higher than they were in the post-Katrina era—skyrocketing as high as 15.1 per cent in April 2020[79]—issues around employment and workplace safety are increasingly important. This crisis offers the anti-trafficking movement an opportunity to work alongside the worker rights movement for an improved collaborative response to labour abuse in Louisiana—one that applies the lessons from the post-Katrina era to the present challenges facing workers and migrants.

Leanne McCallum is the Task Force Coordinator for the Greater New Orleans Human Trafficking Task Force. In this position, she facilitates multidisciplinary collaboration between law enforcement, social services, and community members to enhance evidence-based, human rights-driven anti-trafficking responses. Prior to that, she worked at the University of Denver's Human Trafficking Center as the Human Trafficking Index Project Manager. She earned an MA in International Studies from the Josef Korbel School of International Studies at the University of Denver and a BA in International Relations with a minor in Political Science from Linfield College in McMinnville, Oregon. Email: lmccallum@nolatrafficking.org

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[79] 'Louisiana Economy at a Glance: Unemployment data', US Bureau of Labor Statistics, 20 April 2020, https://www.bls.gov/eag/eag.la.htm.

Base Motives: The case for an increased focus on wage theft against migrant workers

Benjamin Harkins

Abstract

Since the adoption of the UN Trafficking Protocol, most of the efforts dedicated to eliminating exploitation of migrant workers have focused on human trafficking. Yet, there is limited evidence to show that this approach has been effective at reducing the scale or severity of abuses they experience. This article presents the case for increasing attention to a range of labour rights abuses falling under the category of wage theft. It considers the opportunities to shift the strategy for responding to exploitation, addressing the underlying pecuniary issues as a chief priority rather than as a matter of secondary concern. The analysis concludes that expanding engagement with the more 'mundane' vulnerabilities to abuse is essential to developing a pragmatic approach that enables migrants themselves to identify and denounce abuses. Interventions to prevent and remediate wage theft would contribute to better working conditions for the vast missing middle who experience more commonplace forms of abuse and help to diminish the enabling environment for severe exploitation to occur. Ensuring a more equitable distribution of wages would also redirect attention to a core issue at stake in the era of globalisation—the expansion of economic and social justice for migrant workers.

Keywords: wage theft, migrant worker, forced labour, human trafficking, modern slavery.

Introduction

The attention paid to exploitation within the global economy has never been greater. Since the adoption of the UN Trafficking Protocol, the lion's share of the efforts and resources have been focused on responding to human trafficking. Hundreds of millions of dollars are spent every year on counter-trafficking efforts,[1] with a specific emphasis on investigation and criminal prosecution, raids to 'rescue' sex workers classified as potential victims, shelter and 'rehabilitation' services for survivors, and trainings to raise awareness among those who might experience or encounter human trafficking.

More recently, the emergence of the modern slavery discourse has emphasised the role of businesses in perpetuating the exploitation of workers. Against the background of a worldwide pursuit of ever cheaper labour and reduced regulation, more responsible practices by the private sector have been widely heralded as a force for change.[2] In response, auditing of supply chains, certification regimes, and enactment of legislation that requires corporate disclosures on sourcing have increased dramatically.[3] Non-binding 'commitments' to pay a living wage in supplier factories have been made by some of the world's largest garment companies, such as H&M, Primark, and PVH.[4]

Technological solutions have also been posited as key to solving the problem of human trafficking.[5] Models for expanding 'worker voice' have made use of smart phone apps to encourage migrants to report cases of exploitation.[6]

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[1]   M Ucnikova, 'OECD and Modern Slavery: How much aid money is spent to tackle the issue?', *Anti-Trafficking Review*, issue 3, 2014, pp. 133-150, https://doi.org/10.14197/atr.20121437.

[2]   A Gallagher, 'Four dangerous assumptions about human trafficking', *World Economic Forum*, 16 August 2017.

[3]   International Corporate Accountability Roundtable and Focus on Labour Exploitation, *Full Disclosure: Towards better modern slavery reporting*, London, 2019.

[4]   R Edwards, T Hunt, and G LeBaron, *Corporate Commitments to Living Wages in the Garment Industry*, University of Sheffield, 2019.

[5]   K Guilbert, 'UK Royal, US Ambassador Tout Tech Tools to Tackle Human Trafficking', *Reuters*, 9 April 2019, retrieved 31 July 2020, https://www.reuters.com/article/us-global-trafficking-technology/uk-royal-us-ambassador-tout-tech-tools-to-tackle-human-trafficking-idUSKCN1RK2C1.

[6]   L Rende Taylor and E Shih, 'Worker Feedback Technologies and Combatting Modern Slavery in Global Supply Chains', *Journal of the British Academy*, vol. 7, issue s1, 2019, pp. 131-165, https://doi.org/10.5871/jba/007s1.131.

Satellite imagery has been employed to attempt to identify modern slavery situations from space through locating brick kilns.[7] Blockchain technology has been trumpeted as a potential solution to problems with contract substitution.[8] Big data is presented as a means for improving the evidence base for interventions to counter trafficking in persons.[9]

Yet, there is still limited evidence to show that these efforts have been effective.[10] The quality of empirical data available to justify anti-trafficking initiatives has lagged behind their ever-expanding scope. Due to the lack of rigorous evidence of a long-term impact, the rhetoric and hyperbole of anti-trafficking organisations continue to escalate to present a compelling case for additional funding and support. Anachronistically referencing the abolitionist movements of prior centuries, their beneficiaries are now described as having been 'liberated from slavery' in some cases.[11]

Many of these initiatives have specifically targeted migrant workers due to their heightened vulnerability to severe forms of exploitation. However, there is reason to believe that less acute abuses are much more common and have even become normalised in some contexts. For example, a recent study in Australia found that nearly half of all migrant workers were paid below the legal minimum wage.[12] These 'everyday' abuses have received much less attention in recent years. The relevant international labour standard, the Protection of Wages Convention, 1949 (No. 95), has become so outdated that it includes articles prohibiting 'payment of wages in taverns'. Nevertheless, estimates of the scale of wage violations suggest that they are one of the most significant forms of labour exploitation, costing low-wage workers USD 50

7   D Boyd *et al.*, 'Slavery from Space: Demonstrating the role for satellite remote sensing to inform evidence-based action related to UN SDG number 8', *Journal of Photogrammetry and Remote Sensing,* vol. 142, 2018, pp. 380-388, https://doi.org/10.1016/j.isprsjprs.2018.02.012.

8   G Chavez-Dreyfuss, 'Coca-Cola, U.S. State Dept to use blockchain to combat forced labor', *Reuters*, 17 March 2018, retrieved 31 July 2020, https://www.reuters.com/article/us-blockchain-coca-cola-labor/coca-cola-u-s-state-dept-to-use-blockchain-to-combat-forced-labor-idUSKCN1GS2PY.

9   T Sneed, 'How Big Data Battles Human Trafficking', *U.S. News & World Report*, 14 January 2015, https://www.usnews.com/news/articles/2015/01/14/how-big-data-is-being-used-in-the-fight-against-human-trafficking.

10   B Harkins, 'Constraints to a Robust Evidence Base for Anti-Trafficking Interventions', *Anti-Trafficking Review*, issue 8, 2017, pp. 113-130, https://doi.org/10.14197/atr.20121787.

11   *Ibid.*

12   L Berg and B Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Work survey*, University of New South Wales, 2017.

billion per year in the United States alone.[13]

This article examines the case for an increased focus on financial abuses against migrant workers under the rubric of 'wage theft'. It presents the key arguments for an emphasis on wage-related violations, including the structural vulnerabilities created by restrictive migration governance regimes, the unsuitability of the human trafficking and modern slavery frameworks for resolving these abuses, and the necessity of developing a more pragmatic approach to counter exploitation. The analysis concludes by considering strategies for shifting the response to the exploitation of migrants, addressing the underlying pecuniary issues as a chief priority rather than as a matter of secondary concern.

The article is based on a review of the relevant academic and practice-oriented resources and also draws on primary data collected on complaint cases for the report *Access to Justice for Migrant Workers in Southeast Asia*.[14] The findings were validated and improved through a review by several leading experts working in the fields of labour migration and anti-trafficking.

Many Forms of Wage Theft are Neglected

Although there is no internationally accepted definition of the concept of wage theft, it can be conceived as an amalgamation of a number of different types of labour rights abuses related to the denial of remuneration or benefits to a worker to whom they are owed or entitled. Not all forms of wage theft are considered to be indicative of forced labour or human trafficking, particularly those which are financially extractive but not explicitly coercive in nature (e.g. wages below the legal minimum or misclassification of employment). However, outright coercion or deception by employers may be unnecessary in contexts where migrants' rights are heavily restricted and few alternative livelihoods are available. This has created a practical gap in the legal and institutional frameworks addressing exploitation of migrants in many countries, where more routine wage abuses are often neglected or marginalised.

Descriptions of some of the more common types of wage theft committed against migrant workers and their relationship to ILO guidance on indicators of forced labour are provided below:

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13   C McNicholas, Z Mokhiber, and A Chaikof, 'Two billion dollars in stolen wages were recovered for workers in 2015 and 2016—and that's just a drop in the bucket', Economic Policy Institute, 13 December 2017.

14   B Harkins and M Åhlberg, *Access to Justice for Migrant Workers in Southeast Asia*, ILO, Bangkok, 2017.

<u>Non-payment of wages</u>: Not providing the full remuneration due for work performed at the end of a pay period. It is accepted to be an indicator of forced labour if the abuse is carried out in a 'deliberate and systematic manner'.[15] In such cases, non-payment is considered a form of coercion, with migrant workers unable to leave their employment due to wages owed.

<u>Lack of overtime pay</u>: Not paying, or not paying at a higher rate, for working hours that extend beyond the standard length of work day or week. It is a common form of abuse against migrant workers as they frequently are required to work long hours and may have difficulty determining when they are entitled to overtime pay. While excessive overtime is recognised as an indicator of forced labour, lack of overtime pay in itself is not considered to be sufficient.[16]

<u>Wages below the legal minimum</u>: Payment of wages at a level that does not meet statutory requirements. Enforcement is typically more limited for migrant workers and they are more commonly employed in informal sectors which are exempted from minimum wage requirements. They also frequently receive wages determined by piece work, a share system (e.g. share of the catch in fishing), or gratuities, which heightens the risk of under-payment. Not paying the minimum wage is not acknowledged to be an indicator of forced labour, though receiving very low levels of remuneration clearly constrains the mobility and welfare of migrants.

<u>Illegal wage deductions:</u> Deduction from the pay of migrant workers for various costs and fees that are not permitted under law, including charging for fraudulent expenses, applying exorbitant rates, or passing on costs meant to be borne by employers. These abuses are often difficult to identify as a wide variety of deductions are typically permitted—including recruitment and migration-related costs—and there may be a lack of transparency about the charges or balances due. Wage deductions are only considered an indicator of forced labour to the extent that they constitute 'debt bondage', though the distinction is not entirely clear.[17]

<u>Non-provision of benefits:</u> Not making required contributions to social protection schemes or providing direct benefits such as housing or paid leave that are stipulated under law. In particular, many employers avoid making compulsory payments for social security, healthcare, or compensation for workplace accidents due to lack of awareness of entitlements among migrant workers. These abuses are not formally recognised as an indicator of forced labour.

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[15] ILO, *ILO Indicators of Forced Labour*, ILO, Geneva, 2012.

[16] *Ibid.*

[17] *Ibid.*

<u>Discriminatory wage setting:</u> Paying a different wage to workers doing the same job (or a job of equal value) but who differ with respect to a personal characteristic such as nationality, race, gender, or sexual orientation. Although there is substantial research showing that inequitable wages are widespread for certain demographic groups—particularly women and migrant workers—proving that the differences are the result of discrimination is often challenging.[18] Discriminatory pay practices are not interpreted to be an indicator of forced labour.

<u>Misclassification of employment:</u> The intentional mischaracterisation of a worker's employment status as a contractor to avoid payment of higher wages or provision of entitlements. An increasingly common form of wage theft with the growth of non-standard forms of work, misclassification can result in grave repercussions for migrant workers by muddying the statutory responsibilities of their employers. However, it is not considered to be indicative of forced labour.

Wage Exploitation is a Key Motivation for Employing Migrant Workers

Traditional macroeconomic push and pull models for understanding migration flows use wage differentials between countries of origin and destination as a core variable for explaining migration. These theories predict that the number of individuals who consider migration to be an optimal choice increases in relation to discrepancies in pay.[19] Potential migrants are typically assumed to have the information available to accurately estimate the costs and benefits involved in migration and make a rational choice on whether to migrate.

Research has shown that these models are not borne out empirically and tend to be relatively poor predictors of international migration.[20] They have been criticised for isolating individuals from the surrounding social and political forces influencing their decisions, including the extent to which governments attempt to facilitate or block migration.

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[18] ILO, *Global Wage Report 2018/19: What lies behind gender pay gaps,* ILO, Geneva, 2018; C Bartolucci, 'Understanding the Native–Immigrant Wage Gap Using Matched Employer-Employee Data: Evidence from Germany', *ILR Review*, vol. 67, no. 4, 2014, pp. 1166–1202, https://doi.org/10.1177/0019793914546300.

[19] C Dustmann, 'Return Migration, Wage Differentials, and the Optimal Migration Duration', IZA Discussion Paper No. 264, Bonn, 2001.

[20] F Cuamea Velázquez, 'Approaches to the Study of International Migration: A review', *Estudios Fronterizos*, vol. 1, no. 1, 2000, pp. 137-168, https://doi.org/10.21670/ref.2000.01.a04.

While the decisions of workers to migrate cannot be reduced to the wages on offer, the motivations for employers to recruit migrants are in many cases easier to comprehend. Within a globalised economy, choices about where to source or manufacture products are frequently based on the availability of low-cost labour and a permissive environment for industry. As opposed to migrant workers themselves who often have very limited information available,[21] multinational companies conduct detailed assessments of labour markets and regulatory frameworks before making decisions about where and how to do business.

As labour is typically the largest cost of outsourced production, multinational firms actively comparison shop to find labour markets which offer the greatest reduction in worker wages.[22] This creates enormous pressure on their upstream suppliers to constantly pursue lower labour costs, making the employment of migrant workers at exploitative pay levels close to an economic necessity. In labour intensive industries such as sugar cane, garments, chocolate, seafood and electronics, these market forces create business models which are only able to remain profitable due to various forms of wage theft.[23]

The recent expansion of corporate social responsibility initiatives has not been successful in addressing these labour abuses,[24] and has had the effect of marginalising the plight of migrant workers outside global supply chains who are equally vulnerable. These efforts have sought to leverage a 'neoliberal ethics of the self', with the notion that abuses can be stopped through demands for greater corporate transparency and consumer activism.[25] However, only workers whose conditions are highlighted by their proximity to markets in the Global North are understood to deserve attention, and the power is placed in the hands of consumers and corporations to effect change rather than workers themselves.[26] Abuse of migrant workers in industries serving domestic markets is therefore rendered immaterial.

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[21] B Harkins, D Lindgren, and T Suravoranon, *Risks and Rewards: Outcomes of labour migration in South-East Asia*, ILO and IOM, Bangkok, 2017.

[22] O Knack, 'Side-by-side: Top 4 Asian countries for manufacturing garments', *Asia Quality Focus*, 15 August 2017, retrieved 31 July 2020, https://www.intouch-quality.com/blog/side-by-side-top-4-asian-countries-for-manufacturing-garments.

[23] G LeBaron *et al.*, *Confronting Root Causes: Forced labour in global supply chains,* openDemocracy and University of Sheffield, 2018, pp. 42-44.

[24] *Ibid.*

[25] S Molland, 'What Happened to Sex Trafficking? The new moral panic of men, boys and fish in the Mekong region', *Sojourn: Journal of Social Issues in Southeast Asia*, vol. 34, no. 2, 2019, pp. 397–424.

[26] E Shih, 'Worker organising can counter labour abuse in the Global South', *Al Jazeera*, 8 January 2020.

Migration for domestic work in Malaysia provides a case in point. In recent years, the Malaysian government has sought bilateral agreements with a growing number of countries to meet the demand for low-cost domestic services. This was necessary because Indonesia and Cambodia halted deployment of domestic workers to the country due to widespread reports of abuse. The impact of these bans was deeply felt in Malaysia as perceptions of a 'maid shortage' triggered deeper cultural anxieties about economic malaise.[27] In response, Malaysia held bilateral talks with Bangladesh, Nepal, and Myanmar to expand the number of domestic workers available but did not offer coverage by the minimum wage.[28] Without government efforts to maintain exploitative wage levels, the vast majority of Malaysians would simply be unable to afford full-time domestic workers living in their homes.

Restrictive Labour Migration Regimes Create Structural Vulnerabilities to Wage Theft

The basic premise for admitting migrant workers to a destination country is typically to address a labour shortage in a particular sector or geographic region. If admission of migrants can hold down wages in these industries or areas, the economy is seen as benefitting from the increased supply of low-cost labour. At the same time, governments are under competing pressure to prevent the wages of local workers from being depressed. Therefore, regulatory procedures for admission and employment are established to channel migrant workers into the specific jobs to be filled to support complementarity rather than competition with national workers.[29]

To maintain these objectives, policies on temporary labour migration in destination countries typically provide very limited flexibility for migrant workers to change jobs of their own volition. Their legal status is usually directly tied to their employer, preventing them from leaving their employment without losing permission to stay and work. There are few examples within OECD countries where migrants are granted unrestricted access to the labour market and the opportunities in many Asian and Middle Eastern countries are even more limited.[30]

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[27]   J Elias and J Louth, 'Producing Migrant Domestic Work: Exploring the everyday political economy of Malaysia's "maid shortage"', *Globalizations*, vol. 13, issue 6, 2016, pp. 830–845, https://doi.org/10.1080/14747731.2016.1155340.

[28]   B Harkins, *Review of Labour Migration Policy in Malaysia,* ILO, Bangkok, 2016.

[29]   M Abella and P Martin, *Manual on Measuring Migration Policy Impacts in ASEAN*, ILO, Bangkok, 2015.

[30]   S Kouba and N Baruah, *Access to the Labour Market for Admitted Migrant Workers in Asia and Related Corridors*, ILO, Bangkok, 2019.

These restrictions on the ability of migrant workers to change employers can lead to structural vulnerabilities to abuse by creating a dependency that can easily be exploited. As elaborated by De Genova in his concept of 'deportability', the ever-present threat of expulsion has a disciplinary effect on the behaviour of migrant workers.[31] They cannot easily leave situations of wage theft or register complaints without fear of retaliation and loss of legal status. In addition, the opportunity for migrants to organise into trade unions for collective bargaining is restricted within many destination countries, either by law or in practice.[32] Because of this imbalance of power within the employment relationship, migrant workers often have limited ability to negotiate over wages or benefits.

With these enabling factors in place, wage theft cannot be regarded as an unintended consequence of restrictive labour migration governance regimes. Systematic measures to decrease the ability of migrant workers to avoid, seek redress, or leave abusive situations have a calculated recoupment effect on wage payments. It has been argued that the cost of migrants' rights is in fact directly priced into the formulation of migration policies in destination countries.[33] Therefore, a rebalancing requires expanding the power of workers to demand fair wages and benefits and obtain satisfactory financial remedies if they are not provided.

Lack of Coverage by Wage Protection Enables Discriminatory Pay Practices

Migrant workers are more commonly employed in informal sectors of work which are not fully covered by labour laws than nationals.[34] As a result, they are exempted from key wage protections such as a legal minimum or overtime pay. This contributes to artificially low wages and segmentation within national labour markets. A substantial body of evidence shows that workers in the informal economy are among the most vulnerable to labour rights abuses due to their exclusion from these legal protections.[35]

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[31] N P De Genova, 'Migrant "Illegality" and Deportability in Everyday Life', *Annual Review of Anthropology*, vol. 31, no. 1, 2002, pp. 419–447, https://doi.org/10.1146/annurev.anthro.31.040402.085432.

[32] ILO, *Addressing Governance Challenges in a Changing Labour Migration Landscape*, ILO, Geneva, 2017.

[33] M Ruhs, *The Price of Rights: Regulating international labor migration*, Princeton University Press, Princeton, 2013.

[34] N Popova and M H Özel, *Global Estimates on International Migrant Workers*, ILO, Geneva, 2018.

[35] ILO, *Ending Forced Labour by 2030: A review of policies and programmes,* ILO, Geneva, 2018.

Globally, migrant domestic workers are recognised as facing some of the most abusive pay practices, including withholding, non-payment, and under-payment of wages.[36] Just as women are typically expected to do the majority of the household work without pay, migrant domestic workers—who are predominantly women—are expected to work for little pay. This reflects a devaluing of the occupation because it is traditionally viewed as an inherent responsibility of women rather than a form of work. Domestic workers are commonly expected to put in excessively long hours without overtime pay or paid leave since they are considered to be 'part of the family' rather than legitimate workers requiring formal labour and social protections.[37]

The fragmentation of employment relationships in recent decades has also led to a decline in wage protections within sectors that employ migrant workers. Research on migrant construction work in the Middle East has shown that delayed payment and wage theft are widespread; linked to obsolete payment systems that have not kept pace with the growth of non-standard forms of work.[38] Due to externalised working arrangements through outsourcing and temporary staffing agencies, the main employers of the migrant workforce often have less legal responsibility for the pay and benefits they provide. At the same time, increasingly competitive bidding for construction project tenders has ratcheted up pressure to reduce labour costs through any means necessary, including sub-legal wage levels, non-payment of wages, and misclassification of employment.

Even in sectors where high-profile steps have been taken to formalise the employment of migrant workers to ensure fair wages, enforcement often continues to fall short. In Thailand, for example, migrants make up the vast majority of workers in the USD 6 billion fishing industry, which has faced intense pressure to reform in recent years due to reports of severe abuses. In response, the Thai government made substantial efforts to amend its legislative frameworks to provide fishers with expanded labour protections, as they had previously been excluded from many of the labour rights afforded to workers in other sectors. However, recent research by the International Labour Organization (ILO) shows that systematic abuses against migrants persist and continue to be most commonly related to payment of wages.[39]

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[36]   E Menegatti, *Protecting Migrant Domestic Workers: The international legal framework at a glance*, ILO, Geneva, 2016.

[37]   B Anderson, *Worker, Helper, Auntie, Maid? Working conditions and attitudes experienced by migrant domestic workers in Thailand and Malaysia*, ILO, Bangkok, 2016.

[38]   J Wells, *Protecting the Wages of Migrant Construction Workers,* Engineers Against Poverty, London, 2016.

[39]   J Judd, S Chotikajan, and K Emmons, *Baseline Research Findings on Fishers and Seafood Workers in Thailand*, ILO, Bangkok, 2018.

Part of the challenge in reinforcing labour protection for migrants is that deeply entrenched discriminatory attitudes cannot easily be legislated away. Research in Asia suggests that negative public perceptions have a strong impact on the application of laws regulating the wages of migrant workers.[40] Authorities may react differently to cases of wage theft when they involve migrants as it is rationalised that they are still receiving better wages than they would in their countries of origin. In particular, officials may be less sympathetic towards undocumented migrant workers who are underpaid as they are viewed as having brought the problem upon themselves.[41]

Wage Abuses Regularly Feature in Forced Labour and Human Trafficking

Given the lack of reliable data on human trafficking and forced labour, there have been increased efforts to produce more robust macro-level estimates of prevalence. After several years of discursive competition between the two organisations, the ILO and Walk Free Foundation jointly produced the *Global Estimates of Modern Slavery* in 2017. However, researchers have continued to raise concerns about the validity of the methodological approach, noting problems with the limited source data to support extrapolation to the global level, the artifice created by dichotomising between free and forced labour, the uncomfortable fusing of forced marriage and forced labour, and other concerns.[42]

Putting these important questions aside, the large primary dataset of the *Global Estimates of Modern Slavery* does provide some interesting findings on the labour rights abuses faced by workers. Though the study makes a distinction that is difficult to justify vis-à-vis international labour standards—between 'forced labour exploitation' and 'forced sexual exploitation'—it does reveal that the most common form of abuse within the former is related to wages. Among the estimated victims of forced labour exploitation, nearly one-third of victims were coerced through forms of wage theft, including non-payment of wages and financial penalties. This data does not fully capture the range of everyday abuses experienced by migrant workers but it does suggest that a large portion of even the most severe cases of exploitation are fundamentally linked to wage theft.

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[40] M Tunon and N Baruah, 'Public Attitudes towards Migrant Workers in Asia', *Migration and Development*, vol. 1, issue 1, 2012, pp. 149-162, https://doi.org/10.1080/2163232 4.2012.718524.

[41] *Ibid.*

[42] D Mügge, '40.3 Million Slaves? Four reasons to question the new Global Estimates of Modern Slavery', *openDemocracy*, 17 October 2017.

An increasing number of sectoral studies are also being undertaken to assess the prevalence of forced labour in high-risk industries. The ILO released a survey of the Thai fishing sector in 2013, which identified a substantial number of fishers in conditions of forced labour and investigated the reasons why these situations occurred. This analysis contributed to an important change in understanding of the nature of exploitation in the fishing industry. High-profile media stories recounting how helpless migrants were deceived, drugged, or even physically forced to get on-board fishing boats and then taken out to sea were found to represent a very small portion of cases. In opposition to these narratives, the study found that nearly three-quarters of the workers experiencing forced labour were recruited willingly to work in fishing but had their wages withheld, preventing them from leaving until they were paid.[43]

One very direct source of data on the nature of exploitation experienced by migrant workers is the complaint cases they file with legal assistance providers. Since 2011, over 30 Migrant Worker Resource Centres (MRCs) have been set up in six countries across Southeast Asia to increase access to justice for migrant workers and provide other forms of assistance. The MRCs support migrants to seek remedies for abuses during recruitment and employment, including for cases of forced labour and trafficking.

As the MRC data became more robust, an action research project was initiated to make use of the improved evidence base. In total, primary data from over 1,000 complaints involving more than 7,000 migrant workers was analysed. More than half of the cases in destination countries were related to types of wage theft, including non-payment and underpayment of wages and wages below the legal minimum. This latter type of grievance was found to be particularly common for migrant workers, partially due to the enactment of highly publicised minimum wage legislation in Thailand and Malaysia. Establishing a clear statutory minimum provided an important means for migrant workers to assert their labour rights.[44]

A substantial portion of the complaints received by MRCs showed indications of forced labour, and many were explicitly identified as such by case managers. This suggests that efforts to identify more routine abuses are necessary to effectively identify and assist severely exploited migrants. Criminal justice responses to human trafficking are unlikely to be successful in addressing this need. This is partially because most migrants who are faced with situations of abuse tend to seek practical resolutions, such as disbursement of unpaid wages, rather than punitive sanctions for offenders. Inclusion of the right to pursue

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[43] S Chantavanich *et al.*, *Employment Practices and Working Conditions in Thailand's Fishing Sector*, ILO, Bangkok, 2013.

[44] Harkins and Åhlberg.

financial remedies as a knock-on to criminal prosecutions has not proven very successful as it is not a function that criminal justice systems are typically well-equipped to handle.[45]

Human Trafficking and Modern Slavery Frameworks are Ill-suited for Promoting Social Justice

Despite the rhetoric about human trafficking being a non-partisan issue, research has shown that anti-trafficking responses are frequently politicised.[46] A notable historical pattern has been the comfort with which conservative politicians and think tanks have adopted the issue to further their agendas. The Bush administration made trafficking a priority largely because it supported the promotion of the evangelical Christian position that all sex work is inherently coercive and must be abolished.[47] This policy was linked to the larger moral goals of reinstating traditional gender roles, the sanctity of marriage, and heterosexual norms within American society, as well as extending these arrangements around the world.[48] Though some efforts to establish a labour approach to anti-trafficking were made during the Obama presidency,[49] the puritanical fixation with 'sex trafficking' has proven to be an immutable feature of US policy.

More recently, the Heritage Foundation, a highly influential conservative think tank, has fought to keep attention on human trafficking within the Trump administration, recognising it as a key tool for promoting American foreign policy objectives.[50] Their concerns appear largely unfounded as the Trump White House has avidly embraced the human trafficking cause. President Trump

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[45]   N Wongsamuth, 'Thailand's human traffickers flout 99% of court orders to compensate victims', *Reuters*, 15 October 2019, retrieved 31 July 2020, https://www.reuters.com/article/us-thailand-trafficking-compensation-exc/exclusive-thailands-human-traffickers-flout-99-of-court-orders-to-compensate-victims-idUSKBN1WU00P.

[46]   J A Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law', *American Journal of International Law*, vol. 108, no. 4, 2014, pp. 609—649, https://doi.org/10.5305/amerjintelaw.108.4.0609.

[47]   Y C Zimmerman, 'Christianity and Human Trafficking', *Religion Compass*, vol. 5, issue 10, 2011, pp. 567-578, https://doi.org/10.1111/j.1749-8171.2011.00309.x.

[48]   *Ibid.*

[49]   D J Greuner, 'Counteracting the Bias: The Department of Labor's unique opportunity to combat human trafficking', *Harvard Law Review*, vol. 126, no. 4, 2013, pp. 1012–1033.

[50]   O Enos and M Lagon, 'The Fight against Human Trafficking is Too Important for Trump and Pompeo to Ignore', The Heritage Foundation, 4 June 2018, https://www.heritage.org/civil-rights/commentary/the-fight-against-human-trafficking-too-important-trump-and-pompeo-ignore.

has justified his policies militarising border management and dramatically expanding immigration enforcement by making repeated references to women being trafficked across the border from Mexico 'tied up, with duct tape on their faces, put in the backs of vans'. The rhetoric in no way reflects the circumstances of the vast majority of identified trafficking cases in the United States and is particularly ironic given that the administration has made it increasingly difficult for migrant trafficking survivors to seek visas and protection services to remain in the country. [51]

Staking its own claim within the anti-trafficking discourse, the United Kingdom has sought to reference its historical legacy in the abolitionist movement against slavery by supporting the rebranding of all forms of exploitation under the umbrella term 'modern slavery'. Former UK Prime Minister Theresa May promoted efforts to combat modern slavery as a key focus of her foreign policy agenda. However, the bitter taste left by these efforts in countries where the United Kingdom holds a violent and exploitative colonial legacy has not gone unnoticed by scholars.[52] Moreover, implementing the policy while at the same time promoting a hostile environment towards migrants within its borders has only been reconciled through semantic obfuscation. The embrace of modern slavery language has been described as a 'discourse of depoliticization', raising the bar for what can be classified as unacceptable working conditions and absolving the state from responsibility for its role in creating the vulnerabilities that lead to exploitation, particularly for migrant workers.[53]

The ease with which the human trafficking framework fits with a conservative political agenda suggests that it is largely unsuitable for promoting the expansion of economic and social justice for migrant workers. Extensive ratification of the UN Trafficking Protocol continues to be lauded for increasing global attention to exploitation.[54] However, its framing of the issue as resulting from criminality has served as a convenient distraction from a global economic model reliant upon acceptance of an immensely uneven distribution of wealth. Rather than highlighting these structural inequalities, the trafficking discourse rationalises

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[51] J Krajeski, 'The Hypocrisy of Trump's Anti-Trafficking Argument for a Border Wall', *The New Yorker*, 5 February 2019, https://www.newyorker.com/news/news-desk/the-hypocrisy-of-trumps-anti-trafficking-argument-for-a-border-wall.

[52] S Okyere, 'Fielding the wrong ball – culture as a cause of "modern slavery"', *openDemocracy*, 8 October 2014, https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/fielding-wrong-ball-culture-as-cause-of-modern-slavery.

[53] B Anderson and R Andrijasevic, 'Sex, Slaves and Citizens: The politics of anti-trafficking', *Soundings*, no. 40, 2008, pp. 135-145, https://doi.org/10.3898/136266208820465065.

[54] A T Gallagher, 'Two Cheers for the Trafficking Protocol', *Anti-Trafficking Review*, issue 4, 2015, pp. 14-32, https://doi.org/10.14197/atr.20121542.

exploitation of migrant workers to be an aberration, diverting attention from the more systemic changes to labour relations that are required.

Need for a More Pragmatic Response to the Exploitation of Migrant Workers

Problems with the lack of clarity on what constitutes human trafficking have been a major obstacle to identification since the UN Trafficking Protocol was first adopted.[55] The three elements of 'act', 'means', and 'purpose' are inevitably interpreted in a range of different ways when applied in practice. In the real world, there is no easy opposition to be found between free and unfree labour. A binary separation of human trafficking from other forms of labour requires a judgement to be made about whether various conditions are considered exploitative or not, and what practices rise to the level of coercion, in a vast number of different contexts.[56]

Another obstacle to operationalising the concepts of forced labour, human trafficking, and modern slavery, is that they are too abstract for survivors to self-identify. As noted in the ILO's survey guidelines on forced labour: 'Self-identification of victims of forced labour is not possible, mainly because the concept is too complex. Even in countries where campaigns have raised awareness of the issue using a specific terminology (such as "slave labour" in Brazil), it is not possible to rely on selecting respondents with a filter question using self-identification, as most victims do not recognize themselves as victims of forced labour or trafficking.'[57] The conceptual intricacies involved require that cases be identified by a third party, significantly limiting the agency of survivors themselves to denounce abuses. This has also contributed to a lopsided focus on exploitation in the sex industry due to moral panics created by some of the actors involved.[58]

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[55]   *Ibid.*

[56]   J O'Connell Davidson, 'New Slavery, Old Binaries: Human trafficking and the borders of "freedom"', *Global Networks*, vol. 10, issue 2, 2010, pp. 244-261, https://doi.org/10.1111/j.1471-0374.2010.00284.x.

[57]   ILO, *Hard to See, Harder to Count: Survey guidelines to estimate forced labour of adults and children,* ILO, Geneva, 2012.

[58]   E Bernstein, *Brokered Subjects: Sex, trafficking, and the politics of freedom,* University of Chicago Press, Chicago and London, 2018.

Key to addressing a larger share of the abuses occurring is that migrants clearly understand when they have experienced a violation of their rights and are able to come forward to lodge a complaint. In that regard, wage-related abuses can be considered a much more straightforward offense than human trafficking. In many cases, basic numeracy skills would be sufficient for a migrant worker to understand when they do not receive the wages they were promised. While indirect forms of wage theft can be more complex, they are still not comparable with the cryptic process for identification of victims of trafficking. This requires application of loosely defined concepts such as 'exploitation', which is not provided within the UN Trafficking Protocol itself nor typically well-understood by trafficked persons or criminal justice officials.[59]

In addition, addressing wage theft does not sensationalise the abuse of migrant workers, which could contribute to more cases being lodged and remedied. Part of the problem with enforcing modern slavery legislation is that it has had the effect of increasing the threshold for what can be considered exploitation to dizzying heights. The concept carries with it such baggage in its connection with historical chattel slavery that it may be considered inappropriate to pursue such a case if the abuse is not extremely severe. While being found guilty of wage theft would certainly hold stigma for an employer, it does not carry the same risk of hyperbole in describing the abuse. Moreover, it does not force migrants to accept being branded a 'slave', a particularly sensitive term in countries which were directly affected by the historic phenomenon.[60]

Effective Strategies to Reduce Wage Theft against Migrants are Available

Unlike the enigmatic issue of human trafficking, proven approaches for addressing wage theft against migrant workers already exist.[61] They only require the political will to shift the response to exploitation towards enabling a fairer distribution of income, rather than penalising criminal transgressions. Fundamentally, this involves increasing the power of migrant workers within their employment relationships so that they are less dependent on employers and can assert their rights to equitable wages and working conditions.

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[59]   A T Gallagher and M McAdam, *The Concept of 'Exploitation' in the Trafficking in Persons Protocol*, UNODC, Vienna, 2015.

[60]   M Dottridge, 'Eight Reasons Why We Shouldn't Use the Term "Modern Slavery"', *openDemocracy*, 17 October 2017.

[61]   D J Galvin, 'Deterring Wage Theft: Alt-labor, state politics, and the policy determinants of minimum wage compliance', *Perspectives on Politics*, vol. 14, issue 2, 2016, pp. 324-350, https://doi.org/10.1017/S1537592716000050.

One clear starting place is ensuring that effective preventative measures against wage theft are enacted through labour protection laws. Establishing robust wage protections that apply equally to migrants, such as fair and inclusive minimum wage setting, rules on regularity of, limitations on allowable wage deductions, requiring written pay slips/electronic payments, addressing discriminatory pay practices, adopting chain liability rules, and protecting workers from retaliatory dismissal are proven regulatory means for reducing wage theft. In the State of New Jersey, for instance, a Wage Theft Act was recently passed which requires the provision of a written statement of wage rights and stipulates that any disciplinary action taken against a worker within 90 days of filing a complaint is presumptively considered retaliation. Under Brazil's Labour Code, contractors can be held accountable for wage violations committed by their sub-contractors based upon a system of joint liability.[62]

Extending social protection coverage to all migrant workers is also needed to provide a financial safety net so that they can leave situations of wage theft. Social security systems around the world were typically designed to provide protection to workers on a territorial basis. As a rule, they have not been sufficiently adapted to the changes in global labour markets that have increased the volume and impermanence of labour migration across international borders. As a consequence, many of the eligibility requirements to receive benefits either explicitly exclude or create significant obstacles for migrants to avail themselves of their rights (e.g. citizenship, legal documentation, minimum qualifying periods, and sectoral exclusions). When compounded by common problems with compliance, a large proportion of migrants are left without access to protection and are vulnerable when faced with a sudden loss of income.[63]

Coupling these statutory protections with proactive and targeted labour inspections to ensure enforcement would have a substantial impact if inspectorates were provided with sufficient resources and firewalls with immigration status were maintained. Research on wage compliance has found that employers decide on whether to follow wage regulations by balancing the expected costs of the mandated wage against those of non-compliance.[64] However, the likelihood of substantial financial penalties has steadily reduced in many countries due to the heavily stretched staffing and resources of inspectorates. For example, decades of declining enforcement capacity in the

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[62]   J Well and M Graça Prado, *What Can Be Learned From Systems of Wage Protection in China, EU, US and Latin America?*, Engineers Against Poverty, London, 2019.

[63]   B Harkins, 'Social Protection for Migrant Workers in Thailand', in J W Huguet (ed.), *Thailand Migration Report 2014*, UN Thematic Working Group on Migration, Bangkok, 2014.

[64]   B Rogers, 'Toward Third-Party Liability for Wage Theft', *Berkeley Journal of Employment and Labor Law*, vol. 31, issue 1, 2010, pp. 1-64, https://doi.org/10.15779/Z38RS77.

United States means that just 1,100 investigators in the Wage and Hour Division of the Department of Labor are now responsible for protecting 135 million workers.[65] The global trend of increased outsourcing of business operations and misclassification of employment status requires greater investment in labour market enforcement to support investigation and prosecution of companies seeking to evade their financial responsibilities as employers.[66]

Even so, the vast differences between *de jure* wage protections and the realities experienced by migrant workers suggest that the problem of wage theft is not likely to be resolved through government regulation alone. Changing public attitudes towards migrants in destination countries has also proven essential to reducing illegal pay practices due to the high prevalence of discriminatory views.[67] Reviews of the source of these attitudes have found them to be heavily influenced by representations of migrants as a symbolic threat.[68] Substantively altering this perception requires building greater understanding of the positive contributions of migrants within the public sphere and increasing social cohesion through the full inclusion of migrants in the socio-cultural life of their communities.

Labour organising has also proven to be an effective strategy for responding to wage theft against migrant workers.[69] Research in Australia, where underpayment of wages is a systemic problem faced by migrant workers, has pointed to the central importance of trade unions in providing migrants with access to redress. While the study found that the number of migrant trade union members is relatively low, those who had joined a union were nearly three times as likely to pursue a case to recover wages due.[70] As a supplement to more traditional approaches, worker-driven social responsibility has recently emerged as a potentially promising new model for migrant worker organising, involving legally binding agreements between workers and corporate buyers to help

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[65] Galvin.

[66] D Weil, *The Fissured Workplace: Why work became so bad for so many and what can be done to improve it*, Harvard University Press, Cambridge, 2014.

[67] ILO, *Public Attitudes towards Migrant Workers in Japan, Malaysia, Singapore and Thailand*, ILO, Bangkok, 2019.

[68] J Hainmueller and D J Hopkins, 'Public Attitudes Toward Immigration', *Annual Review of Political Science*, vol. 17, no. 1, 2014, pp. 225-249, https://dx.doi.org/10.1146/annurev-polisci-102512-194818.

[69] E Marks and A Olsen, 'The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion', *Anti-Trafficking Review*, issue 5, 2015, pp. 111–128, https://doi.org/10.14197/atr.20121557.

[70] B Farbenblum and L Berg, *Wage Theft in Silence: Why migrant workers do not recover their unpaid wages in Australia*, Migrant Worker Justice Initiative, Sydney, 2018.

ensure fair wages.[71] However, the significant obstacles to migrants unionising will need to be overcome, including the extensive outsourcing, informality, and precarity of their employment.

Liberalising labour migration governance regimes is another well-established measure for reducing the risk of wage theft. Eliminating tied-visas and work permits provides migrant workers with the opportunity to lodge grievances and freely pursue other employment when they are not properly remunerated for their work. Although unrestricted labour market access for migrants is a relatively rare policy position, more flexible systems in countries such as Sweden and Canada show that greater labour mobility can lower the potential for abuse without substantially depressing the wages or productivity of the labour force as a whole. Conversely, in countries like Malaysia where no changes of employment are permitted, exploitation of migrant workers continues to flourish.[72]

A final key means for reducing wage abuses is ensuring that fair remedies are accessible in the form of recovery of unpaid wages and financial compensation. A significant part of the reason why migrants are reluctant to participate in criminal prosecutions of trafficking cases is that they tend to be time-consuming, legalistic, and focus primarily on achieving penal sanctions against offenders, which is typically not the outcome migrants are concerned with. Research has shown that many migrants experiencing abuse seek financial remedies so that they can move on with their lives.[73] In addition to ensuring timely and equitable settlements, migrant workers should be provided with compensatory amounts for the abuses suffered. Establishing substantial financial penalties for wage theft would provide a meaningful deterrent, helping to discourage repeat offenses by making them cost-prohibitive.

Conclusion

There is very limited evidence that the adoption and application of the UN Trafficking Protocol has been successful in ameliorating the scale or severity of exploitation experienced by migrant workers. Addressing the problem more effectively requires a clearer focus on the basic reasons why these abuses occur. In the vast majority of cases, it is not because of the actions of transnational criminal syndicates who abuse migrant workers as part of a clandestine enterprise, as suggested in the framing of the Protocol. Rather, it is the result of deeply inequitable power relations between migrant workers and employers,

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71   M Åhlberg, 'Worker-Driven Social Responsibility: Exploring a new model for tackling labour abuse in supply chains', Focus on Labour Exploitation (FLEX), London, 2020.

72   Kouba and Baruah.

73   Harkins and Åhlberg.

which supports the defrauding of wages as a standard function of labour migration governance regimes.

Interpreting exploitation of migrant workers as a criminal abnormality within this imbalanced system of exchange has obstructed the development of more practical and effective responses. It is no secret that the basic motivation for employment of migrants is to keep wages low in order to maximise the profitability of firms. However, this is obscured by the human trafficking framework, which identifies individual cases of extreme exploitation as unacceptable—with the effect of justifying the inequities of the global economy as a whole.

A more transformative approach to these issues cannot be limited to severe cases of exploitation that make international headlines and trigger corporate social responsibility initiatives. Instead, it would necessarily have to engage with the 'everyday' vulnerabilities to abuse that currently exist for the vast majority of migrant workers. These are principally the result of illiberal migration governance systems, exclusions from labour and social protections, lack of opportunities for worker organising, limitations in access to justice, and other structural factors that reduce the likelihood of migrants receiving their fair share of the benefits of their labour.

To be sure, an increased focus on wage theft would not provide a comprehensive response to all forms of exploitation of migrant workers covered by the frameworks of forced labour, human trafficking, and modern slavery. Ideally, expanded efforts to address wage theft would be part of a broader shift towards a labour rights approach to these issues, as there would still be a need to bring other tools to bear for abuses that fall outside the scope of wage-related matters. However, the specificity of the concept can be considered a key strength in that the identification of abuses and provision of remedies is clearer than for the existing frameworks for countering exploitation. As a result, improving the response to wage theft against migrants would lead to better working conditions for the vast missing middle who experience more commonplace forms of abuse and help to diminish the enabling environment for severe exploitation to occur.

Most importantly, the focus on a more equitable distribution of wages would redirect attention to a core issue at stake in the era of globalisation. Greater efforts to address wage theft against migrant workers would contribute to an expansion of economic and social justice for a large segment of the world's most vulnerable workers. The extent to which this will be realised is not likely to be dependent on prosecutions by specialised anti-trafficking police forces, the social responsibility of multinational corporations, or the technological solutions of Silicon Valley, but rather the ability of migrants to voice meaningful demands for fair remuneration of their work.

Benjamin Harkins is Senior Programme Manager for the Livelihoods and Food Security (LIFT) Fund in Myanmar, where he established LIFT's Decent Work and Labour Mobility programme. Since 2008, he has worked across Southeast Asia on migration research and interventions for United Nations agencies, non-governmental organisations, and research institutes. Prior to his current role, Benjamin was Technical Officer for the ILO TRIANGLE project, where he provided assistance to governments and social partners on enhancing the protection of migrant workers' labour rights. Email: benharkins@gmail.com

Modern Heroes, Modern Slaves? Listening to migrant domestic workers' everyday temporalities

Ella Parry-Davies

Abstract

This essay draws on multi-sited, performance art-led research with Filipinx migrant domestic workers in the UK and Lebanon. It explores a dichotomy at work in the portrayal of some workers as *bagong bayani* or 'modern heroes'—a phrase coined by then Philippine president Corazon Aquino—and as 'modern slaves', a term more recently associated with the humanitarian and state processing of survivors of human trafficking and labour abuse. Simultaneously victimising and venerating workers, I argue that both terms spectacularise experiences of migrant domestic work, untethering it from lived, material conditions. In so doing, the everyday nature of exploitation and abuse encountered by many migrant domestic workers is obscured, as well as the everyday expertise that enables them to evade, de-escalate, and survive it. Through making collaborative soundwalks with migrant domestic workers—a creative form similar to site-specific audio guides—my research identifies ways in which performance methodologies can be attentive to the specific temporalities of their lived experiences and to their decisions about self-representation.

'This song is for OFWs!' Bess cries, over the opening chords of *Kahit Konting Awa*, a ballad made popular by Nora Aunor in the 1995 film *The Flor Contemplacion Story*.[1] It is a noisy Sunday in a Beirut karaoke bar frequented by Filipinx domestic workers.[2] Cast in blue by the neon striplights overhead, Bess's friends raise their bottles of Almaza beer 'to OFWs'—Overseas Filipino Workers—and pass on the microphone.

This particular karaoke performance of *Kahit Konting Awa*, and Bess's identification with the state-deployed acronym 'OFW', reveal how migrant subjectivities can coalesce in relation to the discursive, administrative, and economic practices of nation states, even as they are enacted in specific ways by individuals and communities.[3] The ballad's poignant refrain *'bagong bayani',* commonly translated as 'modern hero',[4] reflects the now-dominant narrativisation of Flor Contemplacion, a Filipina domestic worker who was controversially convicted and hanged in Singapore in 1995 for the murder of a fellow domestic worker and their young ward. Since her death, Contemplacion has become a 'martyr' for the Philippine nation state,[5] and (following consultation between education authorities and the Philippine Overseas Employment Administration) appears in school textbooks as a national hero.[6] *Bagong bayani*, used in a 1988 address to workers by then president Corazon Aquino, glorifies overseas labour, providing a framework of identification for workers like Bess in one of the top remittance receiving nations in the world,

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[1] Joel Lamangan (Dir.), *The Flor Contemplacion Story*, Viva Films, 1995.

[2] I use the term Filipinx to reflect the multiplicity of gender expressions I encountered in my research, and forthwith Filipina/o when citing others or to reflect individuals' self-identifications.

[3] Though space is too limited to discuss this scene in detail, we might think of it as an example of the 'serious work of karaoke', one that has prompted me to 'listen against' reductions of popular karaoke to hollow mimicry and instead explore what else is performed in (or by) this rendition; see C Bacareza Balance, *Tropical Renditions: Making musical scenes in Filipino America*, Duke University Press, Durham and London, 2016, pp. 56–86.

[4] The translations 'modern-day heroes', 'new heroes' and 'national heroes' have been variously used elsewhere.

[5] N X M Tadiar, 'Domestic Bodies of the Philippines', in F V Aguilar Jr. (ed.), *Filipinos in Global Migration: At home in the world?*, Philippine Social Science Council, Quezon City, 2002, p. 284.

[6] A R Guevarra, *Marketing Dreams, Manufacturing Heroes: The transnational labor brokering of Filipino workers*, Rutgers University Press, New Brunswick and London, 2010, p. 62.

with 5,000 Filipinos currently leaving to find work abroad each day.[7]

This essay draws on multi-sited, performance art-led research with Filipinx domestic workers conducted between 2018 and 2020 in the United Kingdom and Lebanon, two destination countries with comparable 'tied visa' systems for migrant domestic workers.[8] I explore how Aquino's term 'modern heroes' operates today in relation to other dominant identifications available to migrant workers in these contexts, in particular those associated with modern slavery. The rubrics of modern heroism and modern slavery hold significant sway over public opinion and policy-making, with consequences that can be life-transforming. Together, they form a binary that both victimises and venerates migrant workers. Although distinctive in provenance, I argue that the terms perform a mirrored rhetorical device that dehistoricises and spectacularises workers' experiences, prompting certain 'bureaucratic performances' within the context of labour migration.[9] For theatre scholar Alison Jeffers, bureaucratic performances 'interpellate' migrant and asylum seeker subjects *as such*, prompting them to take on these categories for legal, administrative, and humanitarian authorities rather than describing or reflecting their chosen identifications.[10] In this sense, migration discourses (and their material effects) are performative, setting the stage for migrants' own enactments and identifications in specific historical contexts. Following Butler's succinct definition, such discourses have the power to 'produce that which [they] name', conditioning how subjects live through and embody processes of migration as 'a manner of doing, dramatizing

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7   World Bank, 'Data Release: Remittances to low- and middle-income countries on track to reach $551 billion in 2019 and $597 billion by 2021', World Bank, 16 October 2019, retrieved 3 March 2020, https://blogs.worldbank.org/peoplemove/data-release-remittances-low-and-middle-income-countries-track-reach-551-billion-2019; Commission on Filipinos Overseas, 'Stock Estimates of Filipinos Overseas', Experts Group Meeting 'Strengthening the demographic evidence base for the post-2015 development agenda', United Nations Headquarters, New York, 5-6 October 2015.

8   The *kafala* (sponsorship) system is in place in Lebanon, meaning that migrant domestic workers' visas are tied to specific employers, and domestic workers are not included in national labour laws. In the UK, a tied visa system was introduced in 2012 and was partially relaxed in 2016, meaning that domestic workers can now only move employers during an initial six-month visa period. Neither the UK nor Lebanon have ratified the International Labour Organization's Convention 189 on domestic work.

9   A Jeffers, *Refugees, Theatre and Crisis: Performing global identities*, Palgrave Macmillan, Basingstoke, 2012.

10   *Ibid.*, p. 39.

and *reproducing* a historical situation.'[11]

This article looks beneath the pervasive binary of modern heroes/modern slaves, and seeks to learn from migrant workers who have struggled against its reproduction, and sought to 'dramatize' or perform migration against its grain. Through making collaborative soundwalks with migrant domestic workers (a creative form similar to site-specific audio guides), my research suggests ways in which performance-led methods can be attentive to the lived experiences and interventions masked by the binary. Specifically, I seek to shift the focus from spectacular temporalities to the everyday exploitation that many domestic workers face. Building on this issue's theme, I further emphasise the everyday *expertise* that enables them to evade, defy, and survive it.

Methodology

The research method of soundwalk-making on which this article is based aims to generate a mode of listening that is attentive to participants' experiences and their decision-making about how to represent them to a wider public: I herewith refer to the co-producers of the soundwalks as collaborators. Making a soundwalk involves going for a walk and recording a conversation in a place a collaborator has chosen for its personal significance, an activity that usually takes place in the context of spending time together on several informal or community-based occasions. The recording is then co-edited with the collaborator, who learns how to use sound editing software and whose time and creative labour is appropriately remunerated.[12] The finished soundwalk is uploaded to the project website (homemakersounds.org) along with instructions and a map so that listeners can return to the place in question, playing the edited soundwalk through headphones as they re-trace our walk.

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[11] J Butler, 'Critically Queer', *GLQ*, vol. 1, issue 1, 1993, pp. 17–32, p. 17, https://doi.org/10.1215/10642684-1-1-17; J Butler, 'Performative Acts and Gender Constitution: An essay in phenomenology and feminist theory', *Theatre Journal*, vol. 40, issue 4, 1988, pp. 519–531, p. 521, https://doi.org/10.2307/3207893 (emphasis in original).

[12] In the UK, this was calculated at GBP 12.50/hour (approx. USD 15) in line with fair pay rates promoted by the Independent Theatre Council and the performing arts' trade union Equity. In Lebanon, the honorarium was calculated at USD 10/hour plus travel expenses, in consultation with members of the Alliance of Migrant Domestic Workers, as well as current local rates for sound and video editors. These calculations were intended to remunerate collaborators fairly, without placing pressure on them to participate. Remuneration could only be granted for the time collaborators spent on editing, since institutional ethics guidelines prohibit paying research subjects for interviews or other forms of participation.

The website was made public in October 2019 and at the time of writing is still growing, with more soundwalks to be uploaded in the coming months as collaborations continue (with an anticipated total of around twenty). While the soundwalks are designed to be site-specific, customisable options are offered so as to ensure inclusivity for listeners with varied mobility, and as online artefacts they can be downloaded around the world—for example by collaborators' activist colleagues, friends, and family in countries of origin. Prior to commencing the research, I co-facilitated a workshop on research ethics with students and members of the Filipinx community in London in order to integrate their perspectives into the design of the project. In addition to the importance of co-editing the soundwalks, workshop participants emphasised prioritising collaborators' agency in guiding the structure, pace, and focus of conversations, especially when these involved painful experiences that may have already been interrogated (for example by immigration officials).[13] The walking conversations begin with my question 'Why this place?', but are then directed by collaborators. As a result, they are markedly diverse, focussing on topics such as activism, gender and sexual orientation, music, faith and family relationships, in addition to migration and domestic labour itself. While the majority of collaborators were Filipinx, I took up their invitations to colleagues and friends from other countries of origin, including Madagascar and Côte d'Ivoire, to participate. The soundwalks therefore include speech in English, French, and Tagalog, with Arabic terms interspersed in the case of Lebanon-based walks, reflecting the mixed vernacular of many migrant workers (and the scope of my own language proficiencies).

Although soundwalks are a well-established art genre, they have much less commonly been used as a collaborative research method for the purposes of gathering empirical findings.[14] One collaborator remarked on her discovery of

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[13] The workshop took place at the Royal Central School of Speech and Drama in March 2015. My co-facilitator was John Lumapay, a Filipina community theatre-maker and palliative care nurse. A full consideration of research ethics is beyond the scope of this article; for more information, see https://homemakersounds.org/about.

[14] By comparison, the research project *Walking Interconnections: Researching the lived experiences of disabled people for a sustainable society* used walking and sound as method, although in this case the raw recordings were edited and made into an audio play by one individual (Heddon): see D Heddon and S Porter, 'Walking Interconnections', *CSPA Quarterly*, issue 18, 2017, pp. 18–21. The site-responsive play *Nanay* was based on interviews including with Filipinos in Canada under the Live-In Caregiver Program, but subsequently dramatised and performed as a testimonial play by professional actors; see G Pratt, C Johnston, and V Banta, 'A Traveling Script: Labor migration, precarity, and performance', *TDR*, vol. 61, issue 2, 2017, pp. 48–70, https://doi.org/10.1162/DRAM_a_00647.

how editing could alter a story in 'systematic' ways.[15] Comparing the method to other researchers she had had contact with, she noted: 'I see the difference in the transparency and the honesty. You say "this is your voice", and first of all we work together. I feel I am inside and I am involved, really inside that story.'[16] Soundwalk-making demands sustained relationships with a small number of collaborators, which I supplemented by spending time in less formalised ways with a greater number of migrant domestic workers in social, community, activist, and one-on-one settings. At the time of writing, ten collaborators had spent between two and fourteen hours each editing, and all individuals mentioned in this article decided on the pseudonyms used. Soundwalk-making thus aims to frame time together in a way that prioritises close listening at a location and pace chosen by collaborators, as well as their considered, creative decision-making about how to share this with other audiences through co-editing. One key insight afforded by this research concerns the temporalities at stake in the conditions of migrant domestic work; notably, the routines, rhythms, and continuities of the everyday. In the following section, I explore how such temporalities become masked by the spectacular modern heroes/modern slaves binary.

The Spectacular 'Modern'

While the qualifier 'modern' may seem to refer to a specific form of periodisation, it is my argument that it operates in both 'modern hero' and 'modern slave' to de-historicise and spectacularise the figures it refers to. As performance scholar Diana Taylor has shown, these 'universal and unifying' spectacles eclipse lived temporalities and material conditions. In this particular case, the hyper-visible, transhistorical figure of the modern hero/slave erases specific (and diverse) realities of migrant labour.[17] Spectacles are constructed to 'essentialize […] even as they "disappear" the traces of the performativity of that construction.'[18] The spectacular modern hero/slave script thereby polarises experiences of migrant labour into a reductive binary, and at the same time presents this binary as a given. Yet exposing the performative construction of the spectacle points us towards its limitations.

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[15] Reflection on process with Sara and Rose, 5 October 2019.

[16] *Ibid.*

[17] D Taylor, *The Archive and the Repertoire: Performing cultural memory in the Americas,* Duke University Press, Durham, 2003, p. 145. An important reference for Taylor is G Debord's *Society of the Spectacle*, Zone Books, New York, 1995 [1967].

[18] D Taylor, *Disappearing Acts: Spectacles of gender and nationalism in Argentina's 'Dirty War'*, Duke University Press, Durham, 1997, pp. 24–25.

For Guevarra, the term *bagong bayani* maps onto a landscape of national heroes that rhetorically positions overseas Filipino workers alongside celebrated figures such as the nineteenth-century author José Rizal.[19] As Encinas-Franco adds, Cory Aquino's own presidency was predicated on heroic and sacrificial rhetorics (not least the martyr-like death of her husband), reinforcing the spectacular trope into which overseas workers would be now included.[20] *Modern* heroes (like the more literal translation 'new') therefore implies 'unifying and universal' commensurability, rather than historical specificity. Originally addressed to an audience of domestic workers in Hong Kong, Aquino's term and the heroism and sacrifice it indexes are today woven into the everyday language and self-perceptions of many migrant domestic workers in Lebanon and the UK.

Current president Rodrigo Duterte notably gave special mention to OFWs as 'everyday heroes' on National Heroes Day 2018.[21] The protection of 10 million OFW 'modern-day heroes' was more recently reiterated in the House of Representatives in relation to the proposed creation of a special Department of Filipinos Overseas and Foreign Employment.[22] Even activists I worked with who vehemently criticised Duterte and the Philippine state's labour export policies found it a conscious challenge to break with traditions such as giving plentiful gifts from abroad (*pasalubong*), which (re-)enact the overseas worker's performance of success and generosity. Through the affectively-charged normalisation of performances such as this, the *bagong bayani* trope both recasts specific experiences of migration in a transhistorical mould of heroism, and—as Rodriguez argues—concurrently emphasises individual self-sacrifice to disguise the material role of the state in brokering out-migration.[23] As Gibson, Law, and McKay have noted of Philippine class processes, coupling rhetorics of heroism with those of victimisation further serve to obscure specific material

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[19]   Guevarra, p. 54.

[20]   J Encinas-Franco, 'Overseas Filipino Workers (OFWs) as Heroes: Discursive origins of the "bagong bayani" in the era of labor export', *Humanities Diliman*, vol. 12, issue 2, 2015, pp. 56–78.

[21]   Staff Report, 'Duterte Salutes OFWs on National Heroes Day', *The Filipino Times*, 27 August 2018, retrieved 3 March 2020, https://filipinotimes.net/news/2018/08/27/duterte-salutes-ofws-national-heroes-day.

[22]   Too complex to be sufficiently explored in this article, the proposed creation of the Department (House Bill No. 5832) is a key instrument in the shaping of state-OFW relations under Duterte. C Luci-Atienza, 'House approves on 2nd reading the bill creating a department for OFWs', *Manila Bulletin*, 5 March 2020, http://news.mb.com.ph/2020/03/05/house-approves-on-2nd-reading-the-bill-creating-a-department-for-ofws.

[23]   R Magalit Rodriguez, *Migrants for Export: How the Philippine state brokers labor to the world*, University of Minnesota Press, Minneapolis and London, 2010, p. 84.

histories at stake.[24]

It is important to interrogate the paradigm of modern slavery alongside that of modern heroism. Taken at face value, the former can merely exacerbate the narrative of victimhood and self-sacrifice already present in the latter.[25] Modern slavery has been forcefully criticised as the chosen headline of a 'deep-pocketed, high profile and increasingly glamorous [anti-]"modern slavery" club',[26] which strategically brands forced labour as an issue pertaining to 'deviant individuals' and their 'victims', concealing its relation to the same structural labour exploitation that enabled 'philanthrocapitalists' invested in the movement to amass their wealth in the first place.[27] Modern slavery rhetoric has specific consequences when it comes to gender, which are arguably a residue of the focus on trafficking for sexual exploitation within early anti-trafficking movements.[28] A majority of Filipinx domestic workers identify as female, and their profiling as victims intersects with racist, misogynistic narratives of passive Asian women.

In Lebanon, the term 'modern slavery' has provided leverage in the critique of the *kafala* (sponsorship) system, which has consistently been denounced as exploitative and violent by organisations and migrant domestic workers

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24   K Gibson, L Law, and D McKay, 'Beyond Heroes and Victims: Filipina contract migrants, economic activism and class transformations', *International Feminist Journal of Politics*, vol. 3, issue 3, 2001, pp. 365–386, https://doi.org/10.1080/14616740110078185. The authors forecast some of the same problematics in the heroism/slavery binary that I analyse in this article; while my intention is to explore what this masks about the texture of domestic workers' everyday experiences, theirs is to theorise class processes and 'economic activism' in histories of Philippine out-migration.

25   The Canadian documentary film *Modern Heroes, Modern Slaves,* for example, presents a critique of Philippine labour export via stories of OFWs' plight (centring on interviews with Flor Contemplacion's daughter), yet does not contextualise 'modern slavery' as a humanitarian paradigm or challenge representations of victimhood and passivity. It instead presents Filipino women as trapped in an almost inevitable cycle of exploitation orchestrated by the state. Marie Boti (Dir,), *Modern Heroes, Modern Slaves*, Productions Multi-Monde, 1997.

26   A T Gallagher, 'What's Wrong With the Global Slavery Index?', *Anti-Trafficking Review*, issue 8, 2017, pp. 90-112, p. 92, https://doi.org/10.14197/atr.20121786.

27   J A Chuang, 'Giving as Governance? Philanthrocapitalism and modern-day slavery abolitionism', *UCLA Law Review*, vol. 62, issue 6, 2015, pp. 1516–1556, p. 1525, p. 1520.

28   *Ibid.*, p. 1522.

themselves.[29] In May 2019, incoming labour minister Camille Abousleiman admitted problems with the *kafala* system, describing it as 'modern slavery in its extreme.'[30] In the UK, former home secretary and prime minister Theresa May has been particularly vocal in committing to abolish the 'barbaric evil' of modern slavery.[31] In this rhetoric, 'modern' similarly works to create historical commensurability rather than particularity, positioning Britain as a moral crusader in the footprints of nineteenth-century abolitionism. Not coincidentally, however, May was also responsible for the anti-immigration 'hostile environment' policy, the implementation of a tied visa system for domestic workers, and the removal of permanent settlement for domestic workers.[32] These contradictions are captured in Fudge and Mantouvalou's

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29 See, for example: Amnesty International, *Their House is My Prison: Exploitation of migrant domestic workers in Lebanon*, 2019, retrieved 24 June 2020, http://amnesty.org/download/ Documents/MDE1800222019ENGLISH.pdf; Insan Association, *Trapped: Migrant domestic workers in Lebanon*, 2016, http://insanassociation.org/en/images/Trapped. Compressed.pdf; KAFA (Enough) Violence and Exploitation, *Policy Paper on Reforming the 'Sponsorship System' for Migrant Domestic Workers: Towards an alternative governance scheme in Lebanon*, 2012, http://kafa.org.lb/sites/default/files/2019-02/Reforming_ JKafalaSystemLeb_0.pdf; Human Rights Watch, *Without Protection: How the Lebanese justice system fails migrant domestic workers*, 2010, http://hrw.org/node/93006.

30 Cited in R Hall, 'How migrant workers have become victims of "modern slavery" in Lebanon', *The Independent*, 2 May 2019, https://www.independent.co.uk/news/world/ middle-east/lebanon-kafala-migrant-workers-labour-minister-camille-abousleiman-a8894056.html. Activist groups in Lebanon have responded to criticisms of modern slavery and anti-trafficking paradigms; for example, a recent collaboration between the Global Alliance Against Traffic in Women (GAATW) and the Lebanon-based Anti-Racism Movement instead focussed on 'safe and fair migration', noting problematic (if unintended) associations between anti-trafficking and anti-immigration programmes. See Anti-Racism Movement and GAATW, *Migrant Domestic Workers' Community Organizing within the Lebanese Socio-Legal Context: A feminist participatory action research*, GAATW, Bangkok, 2019, http://gaatw.org/publications/Safe_and_Fair_ FPAR/FPAR_Report_ARM.pdf.

31 T May, 'My Government will lead the way in defeating modern slavery', *The Telegraph*, 30 July 2016, https://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modern-slavery

32 J Kirkup and R Winnett, 'Theresa May interview: "We're going to give illegal migrants a really hostile reception"', *The Telegraph*, 25 May 2012, https://www.telegraph.co.uk/ news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html; A Travis, 'New visa rules for domestic workers "will turn the clock back 15 years"', *The Guardian*, 29 February 2012, https:// www.theguardian.com/uk/2012/feb/29/new-visa-rules-domestic-workers; House of Commons Debate, 29 February 2012, Co. 34–36WS, https://publications.parliament. uk/pa/cm201212/cmhansrd/cm120229/debindx/120229-x.htm.

analyses of the UK's *Modern Slavery Act* of 2015.[33]

Caught in the crosshairs of these paradigms, the double interpellation of some Filipinx migrant domestic workers as modern heroes and modern slaves has powerful correlates in legal and administrative systems in the Philippines and destination countries. Yet rhetorically—and through its material effects—this binary masks migrant workers' own accounts of the temporalities of everyday abuse and survival.

Temporalities of Everyday Abuse

> We are in Holland Park. I choose this place because this is my memorable place when I decided to run away from my employer[s]. And my employer[s], now I know that they are here again. They come here again for vacation, for holiday. I know that they are here. I decided to go here because I want to see them now. I want to see them. I want to see their face, if they see me what their reaction. I want to prove to them now that I'm not nothing. I can do anything, for me and for my family.[34]

So opens the soundwalk *not nothing*, recorded and co-edited with Ann, who migrated as a domestic worker from the Philippines to Qatar in 2015, and then escaped in London when she was brought there on her employers' family holiday in 2017. At the time of writing she is undergoing assessment through the UK National Referral Mechanism, set up in 2009 for the purposes of 'identifying and referring potential victims of modern slavery.'[35] Though I had invited Ann to show me a place that was memorable or meaningful to her, she surprised me by using the occasion of our walk to inscribe the space with a new significance. Ann's employers had frequently brought her to Holland Park, and it was a site

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[33] J Fudge, 'Modern Slavery, Unfree Labour and the Labour Market: The social dynamics of legal characterization', *Social and Legal Studies*, vol. 27, issue 4, 2018, pp. 414–434, https://doi.org/ 10.1177/0964663917746736; V Mantouvalou, 'The UK Modern Slavery Act 2015 Three Years On', *Modern Law Review*, vol. 81, issue 6, 2018, pp. 1017–1045.

[34] Ann, *not nothing*, 2019, retrieved 14 November 2019, https://homemakersounds.org/not-nothing.

[35] UK Government, 'What the National Referral Mechanism is' in 'National referral mechanism guidance: adult (England and Wales)', retrieved 14 November 2019, https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales.

associated with memories of routine overwork, and physical and mental abuse. Though we did not encounter her employers that day, Ann's intention was to demonstrate her growing sense of self-worth to them, to herself, and perhaps also to me and the audience the soundwalk implied—the potential 'earwitnesses' to her act.

At first glance, in choosing Holland Park, Ann seems to emphasise a pivotal event: one associated with the most severe incident of physical abuse at the hands of her employer and her consequent decision to escape. On a closer reading, however, the visit to Holland Park foregrounds other temporalities of everyday abuse characterising Ann's experience. As the passage cited above suggests, the decision to return there in the hope of seeing her employers was more about attesting to her continuing survival and growing sense of agency than it was about commemorating a particular incident of abuse. Additionally, our walk was punctuated with embodied recollections of routine trips to the park stimulated by Ann's return to the space, layers of memory which the listener would later add to in their own journey through the park's sonic landscape. The slow, comfortable pace of walking side-by-side also allowed for other repetitions to emerge. Ann began to discuss how the feeling that she was 'nothing' had started in childhood following her parents' separation. It was later consolidated by the violence her employers perpetrated, which extended not only to specific incidents but also to everyday abuse and humiliation that can be harder to describe. Ann survived on leftovers from her employers' plates, and weighed just 37 kg when she arrived in London. As a nanny in a house of eight children, also tasked with cleaning, ironing and cooking, she frequently mentioned 'not having time' to sleep, take a shower or even go to the toilet. The imperative to get back to work was paramount, as evident in her description of the seven-year-old child she cared for: 'He called me *kaka* [shit] every day. "Go away kaka." […] What can I do? Just cry, go to the toilet, cry, and after crying wash the face, stand up again and go work again. That's my life.'[36]

Creating the soundwalk was intended to make time for Ann to share her experience during the walk and in the process of editing. Unlike an ethnographic interview or observation, the notoriously slow and time-consuming practice of sound editing allowed her to make considered decisions about how she wanted to represent her experiences. In addition to the initial walk, Ann spent more than seven hours over multiple days editing a soundwalk that ended up shorter than fourteen minutes. Notably, she chose to remove many of the more legible markers of abuse (such as the extent of her weight loss, which I refer to above) in favour of attending carefully to the repetitions, routines, and continuities of the everyday. These are reflected, as I describe above, in her attention to the attritional exhaustion of work and the ways in which labour abuse recalled

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36   Audio-recorded conversation with Ann, 13 July 2019.

difficult family relationships from her childhood. Understanding violence as an everyday practice—whose effects intersect with other life experiences and self-perceptions—allows us to recognise forms of abuse that are less legible within the spectacular terms outlined by the modern hero/modern slave paradigm, yet which for Ann were crucial to convey to listeners. Moreover, reflecting on her decision to take up my invitation to collaborate on a soundwalk, Ann stressed her motivation to expose the ongoing and little-known nature of abuse in the UK: 'To show to the people of London, especially in the government, to let them know that there is happening abuse, like me, maybe not only me, maybe there's a lot like me but we don't know. That's my intention.'[37] The soundwalk, then, began by recalling a pivotal moment, but ultimately offered a way for Ann to make time to attend to everyday temporal frames and ongoing, invisible practices of normalised abuse.

Ann's experiences recall the everyday temporalities narrated by other participants, some of whom also chose to highlight the long-term effects of their work. Helen, who is 52 years old, has a comparatively consensual and stable employment relationship. Yet she works a 60-hour week supplemented by part-time work on evenings and weekends because she is not paid the UK minimum wage. Moreover, she cannot effectively negotiate her salary or change employers because of the UK's tied visa system. In her soundwalk *let the people know, let them feel*, Helen states:

> In cleaning we always use chemical stuff, and we are not really protected by the health insurance. But our health is suffering. Not in one year, not in two years. But as we grow older. For example, in our lungs. As the years pass by, using chemicals every day, it will affect our health. And then you're thinking too much that if you're sick, you will be terminated by your employer; they don't need you anymore. So the worries are there. There's no security for the migrant domestic worker.[38]

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[37] Reflection on process with Ann, 27 August 2019. The aspirations of collaborators were diverse. While not all sought the high-level visibility that Ann suggests here, the soundwalks have been disseminated for advocacy purposes by groups campaigning for migrant domestic workers' rights, such as the Alliance of Migrant Domestic Workers in Lebanon, and Kanlungan and the Filipino Domestic Workers' Association in the UK: see http://homemakersounds.org/press. In approaching collaborators, I was careful not to over-promise the reach of the soundwalks or their influence on policy-making.

[38] Helen, *let the people know, let them feel*, 2019, https://homemakersounds.org/let-the-people-know.

The long-term damage to physical and mental health brought about by precarious, uninsured domestic labour is not visible as spectacular violence or enslavement. Nor does the image of the ageing and unwell female body fit within the persona of the heroic OFW, whose desirability in part arises from her economic productivity and consumer power. While examining this would fall within the scope of a different research project, it is also worth noting that the effects of long-term illness and employment 'termination' extend not only to domestic workers themselves, but frequently to their families and economic dependents, and thus intersect with other structures of 'slow violence,' poverty and ecological damage in countries of origin and elsewhere.[39]

Everyday Expertise

The spectacular temporalities associated with the terms modern slavery and modern heroes also obscure migrant domestic workers' everyday *expertise*. While the Philippine state is keen to impress the value of their skills on overseas domestic workers through pre-departure orientation seminars and other pedagogic apparatuses, critics have noted that this can be couched in a nationalist or racialising framework that, likewise, simultaneously lionises workers and conceals entrenched structures of exploitation and abuse. The expertise I am referring to is distinct, for example, from the 'three Ms' scrutinised by Guevarra (*masipag,* hardworking; *matalino*, intelligent; and *may abilidad*, highly skilled), since I am not only describing the skills workers demonstrate within the bounds of domestic labour.[40] Instead, I am interested in an embodied expertise developed around how to live with the conditions of migration and undervalued labour, in particular for live-in domestic workers for whom 'home' is the site of exploitation.

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[39] The term 'slow violence' is associated with Rob Nixon and emphasises the attritional and anonymous disasters hidden behind 'spectacular' catastrophic events. R Nixon, *Slow Violence and Environmentalism of the Poor*, Harvard University Press, Cambridge, 2012. In scholarship on the Philippines, Nixon's concept has been effectively engaged in a 2018 collection of articles on Typhoon Haiyan, see: N Curato, 'Beyond the Spectacle of Mega-Disasters: The Philippines five years after Haiyan', *Critical Asian Studies*, vol. 50, issue 1, 2018, pp. 58–66, https://doi.org/10.1080/14672715.2017.14 07249.

[40] Guevarra, p. 64. For an analysis of how Filipina domestic workers understand being 'racially distinguished from other domestic workers', see R S Parreñas, *Servants of Globalization: Women, migration and domestic work,* Ateneo de Manila University Press, Manila, 2001, pp. 174–179.

Lina's soundwalk *kaya natin ito* (a Tagalog expression similar to 'we can do it'), describes being undocumented in Beirut following her escape from an employer. Those who are *walang papel*—without papers—risk being detained, deported, and fined by the Lebanese authorities. The Philippine government, meanwhile, considers all domestic workers who have arrived in Lebanon since 2006, when it banned them from going there to work, as victims of human trafficking or illegal recruitment.[41] Yet neither of these legal-bureaucratic categories—criminal or victim—correspond to Lina's self-identification. Instead, with confidence and even humour, she stressed her *expertise* evading both exploitation and detention. Hiding her mobile phone and charger in her underwear, she escaped after being told she would have no day off and be paid just USD 150 per month. After contacting friends and finding undeclared work in a hotel, she purchased an all-white hospital uniform that she wore when travelling around the city, so that she would be assumed to be a documented employee. She learnt to predict exactly where and when police checkpoints would be set up, and how to stay alert when travelling on buses. In this way, Lina successfully avoided being caught for three years, until she found an employer who legalised her stay in Lebanon. She has now lived in Beirut for twenty-five years. She speaks Arabic fluently and describes herself as 'adventurous' in the city. She stressed her determination to survive and stay in Beirut, and refusal to be scared by the threat of detention: 'I said no, I'm here! And I know which areas I'm safe.'[42] While it is important not to downplay the violence perpetrated by abuse, trafficking, and detention, Lina's account suggests that we should not allow narratives of victimisation to stop us recognising migrant workers' expertise.

Just as Lina's expertise is embedded into her daily practices, for many domestic workers I engaged with struggles around abuse and labour rights operated through daily, weekly, or monthly routines rather than one-off events. My research with Lina and others in Lebanon reflects recent scholarship noting that such struggles take place at both everyday and organised collective levels, though I found fluid relationships across these, enacted by people who may or may not self-identify as activists, rather than the more rigid categorisations noted

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[41]   The ban was initially imposed due to security issues around the 2006 war, along with inadequate legal protection of workers' rights. More recently, see Embassy of the Philippines in Beirut, 'PH Embassy Boosts Advocacy Against Human Trafficking and Illegal Recruitment to Lebanon', 6 November 2018, https://beirutpe.dfa.gov.ph/newsroom/embassy-news/326-ph-embassy-boosts-advocacy-against-human-trafficking-illegal-recruitment-to-lebanon; also K Hamill, *Trafficking of Migrant Domestic Workers in Lebanon: A legal analysis*, KAFA (Enough) Violence and Exploitation, Beirut, 2011, pp. 35–36.

[42]   Lina, *kaya natin ito*, 2019, https://homemakersounds.org/kaya_natin_ito.

by scholars such as Mansour-Ille and Hendow.[43] As scholarship on domestic work more broadly has documented, its 'intimate labour' can be conducive both to pernicious everyday abuse and to resourceful everyday negotiation on the part of the worker.[44] As Parreñas describes, employers' perceptions of domestic workers as 'one of the family', for example, can exacerbate exploitation, but can also be used by workers to 'manipulate employers and resist the inequalities that this myth perpetuates.'[45]

In the soundwalk *one day the kafala system will change*, Sara describes confrontations with her first employer in Lebanon, who would add hours to her work by bringing extra piles of clothes to iron for members of the extended family, or would make excuses to withhold Sara's salary at the end of each month. Sara described the exhaustion of demanding respect and rights, both through negotiations with her employers and through ten years of activism on a national scale. Her account points out how, as the temporal frame of feminist and anti-racist struggle, the everyday can bring about a feeling of being 'worn out or worn down' (to use Sara Ahmed's terms) by routine confrontations, even alongside the hope of incremental change.[46] Her soundwalk re-traces the route of the migrant worker Labour Day marches of 2018 and 2019 from Sodeco Square. As Sara reflects, 'It's difficult to fight for ten years and nothing's changed. Really, sometimes we can say *khalas*—finished—I don't want to do it anymore. But, as activists we have that hope: one day it will be changed. […] So I keep that in my mind, so like this time I feel strong again. To face all the problems and to continue again and again and again, every year and every day.'[47] While Sara and Rose, her collaborator, made the decision to open their soundwalk with a statement about domestic worker fatalities—which have been reported at

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[43] D Mansour-Ille and M Hendow, 'From Exclusion to Resistance: Migrant domestic workers and the evolution of agency in Lebanon', *Journal of Immigrant & Refugee Studies*, vol. 16, issue 4, 2018, pp. 449–469, https://doi.org/10.1080/15562948.2017.140063 1. See also A Pande, 'From "Balcony talk" and "Practical Prayers" to Illegal Collectives: Migrant domestic workers and meso-level resistances in Lebanon', *Gender and Society,* vol. 26, issue 3, 2012, pp. 382–405, https://doi.org/10.1177/0891243212439247; F Kobaissy, 'Organizing the Unorganized: Migrant domestic workers in Lebanon', *Cairo Papers in Social Science*, vol. 34, issue 3, 2016.

[44] E Boris and R S Parreñas, *Intimate Labors: Cultures, technologies, and the politics of care*, Stanford University Press, Stanford, 2010; B Anderson, *Doing the Dirty Work?: The global politics of domestic labour,* Zed Books, London, 2000.

[45] Parreñas, p. 180.

[46] S Ahmed, *Living a Feminist Life*, Duke University Press, Durham and London, 2017, p. 162.

[47] Sara and Rose, *one day the kafala system will change*, 2019, https://homemakersounds. org/one-day.

a shocking average of two instances per week in Lebanon[48]—the soundwalk also spent time listening to the everyday rights infringements encountered by its makers. Their descriptions impress on listeners that daily gestures perform and normalise subordination through practices that can also serve to rationalise more spectacular forms of abuse and humiliation. Sara described defying this through the daily routine of fetching her employers' breakfast:

> Every morning also, when she say, "Go buy croissants": two, for them only. Me? No. I'm not have right to eat croissants. When I have my salary I keep little money with me. When she told me to go buy croissants, I go bought for them, I go bought for me also. In my money! […]. "And for who these two croissants?" she told me. I say, "For me. Me too I have right to eat croissants!" So I eat my croissant in front of her. Really, I eat it well, well, well![49]

While the example was narrated with animated laughter, the performance of relishing the croissant in full view of her employer stretched beyond breakfast itself. It had wider implications for redressing her employer's lack of respect and presaged other negotiations around hours of work and punctual payment. As Rose reiterates at the close of the soundwalk, 'They have to learn how to respect that we are here as workers, and we are not here like we are a threat for them. We are here to help them, and respect them, and also in return that they will respect us also.'[50] It is worth noting that expert, everyday negotiations around employment situations and migratory conditions by domestic workers like Sara and Rose often result in respectful relationships as well as financial gain. Despite its understandable prominence within popular and media narratives of domestic work, abuse is not the only story told by domestic workers nor by the collection of soundwalks I co-produced.

We Are Workers

The statement 'we are workers' was powerfully asserted in several of the soundwalks produced for this project. It holds particular resonance in the context of legal-administrative systems couched in the modern heroes/modern slaves dichotomy. In particular, the latter insists on portraying survivors of abuse as 'victims'. In the UK, these 'victims' are identified and processed through the

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[48] R Hall, 'Suspicious death of domestic worker in Lebanon sparks debate over racism', *The National*, 24 September 2018, https://www.thenational.ae/world/mena/suspicious-death-of-domestic-worker-in-lebanon-sparks-debate-over-racism-1.773588.

[49] Sara and Rose, *one day the kafala system will change*.

[50] *Ibid.*

National Referral Mechanism (NRM). Yet the assessment process—which can involve interviews as well as medical and police reports—can last months, if not years.[51] Despite this time frame, those referred to the NRM after their initial six-month visa expires do not have the right to work. From then on, they must make do on the GBP 5 (approx. USD 6) per day that they receive for subsistence. As one domestic worker told me bitterly, this is spent every fortnight on transport to a compulsory check at an immigration reporting centre. Amara, who also escaped from her employers while they were on holiday in the UK, vehemently criticised the NRM towards the end of our initial recorded conversation. She later decided to use parts of the following passage at the beginning and end of her soundwalk in a way that would frame her autobiographical narration with a forceful critical message.

> And I just want that the world knows, or the government if this reaches the government, that this National Referral Mechanism is really not for domestic workers. […] We don't want to be treated like victims because, though we experienced to be abused, to be exploited, still we are not like in other sectors. We want to be recognised as workers. Workers who can contribute to the economy here in UK. That's what we want: to be recognised as workers, and not to be recognised as victims who can be supported for five pounds [GBP] a day. Because no one can survive for five pounds a day. To the listeners, I will ask them if they can survive for five pounds a day.[52]

The assessment process coordinated by the NRM demands that survivors of abuse present themselves to immigration officials as victims by definition, spectacularising their experiences in the context of interviews and reports through markers such as emotive narration and physical signs of abuse. The language of performance I use in this article by no means suggests that these markers are inauthentic or that the abuse is not real. On the contrary, understanding how 'modern slavery' pre-empts or demands certain bureaucratic performances from potential 'victims' allows us to attend to the conditions under which such performances are produced. Likewise, it helps us recognise that experiences of everyday abuse are more complex and less legible than spectacular paradigms can capture. As Amara explains, 'it's so hard for us to

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[51] On average, potential victims referred to the NRM by the NGO Kalayaan in 2018 waited twenty-four months for a decision as to whether they were deemed a victim of trafficking or modern slavery. The longest wait was thirty-seven months. See A Sharp and N Sedacca, *Dignity Not Destitution: The impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism*, Kalayaan, London, October 2019, p. 7, retrieved 24 June 2020, http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf.

[52] Audio-recorded conversation with Amara, 6 July 2019.

prove that we were abused, that we were trafficked, that we were… Because no one knows. No one knows what happens inside closed doors.'[53] For her, the consequences of the inadequacy of the system—that is, of its failure to listen attentively to the needs of its supposed beneficiaries—are grave. Forbidden from working and travelling out of the UK, at the time of our collaboration she had been stuck in 'limbo' in the NRM for almost three years, while her three children in the Philippines (and other loved ones and economic dependents) moved through key life events such as graduation and illness at what seemed like an entirely asynchronous pace.

Amara was one of the most computer-literate and autonomous collaborators, spending more than thirteen hours editing her soundwalk and developing a range of technical skills in audio software. Her reflections on the process of making her soundwalk revealed effects that I had not clearly foreseen in devising the method. Calibrating the volume levels between different parts of the recording (to account for her forceful critique of the NRM, versus the more pensive autobiographical sections) prompted her to reflect on how she had shaped the listener's experience through the editing. She noted:

> While I'm hearing this story, I put myself to the shoes of the listener, and not the one who's really telling the story. So I find out how effective it is; how it will affect the listeners. I find ah ok, this tone, this loudness, it also affects the listener. […] I'm proud of myself! If I would be the listener and I can meet this person, I can tell her that "you made it, I'm proud of you, you made it, you're so strong." I'm proud of myself.[54]

The finished soundwalk reflects Amara's expertise and the complexity of her self-identification. To reiterate, at the time Amara was awaiting a decision from the National Referral Mechanism about whether she had been determined a victim of modern slavery. Simultaneously, the expectations that her family (and she herself) had of her as a breadwinner evoked the 'modern hero' Overseas Filipino Worker. Paradoxically then, the rhetorical tropes that set the stage for her migration placed her in the double-bind of performing as a modern hero *and* a modern slave. Yet Amara's pride and self-admiration in this instance came from the dramatic distance that making the soundwalk affords, and a nuanced recognition of her expertise as a domestic worker, as a survivor of abuse, and as a skilled storyteller and sound editor.

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[53]   Amara, *we are workers*, https://homemakersounds.org/we-are-workers.

[54]   Reflection on process with Amara, 26 August 2019.

Conclusion

The binary scripts of modern heroism and modern slavery dissociate migrant domestic work from material conditions of exploitation, and risk making workers' realities into essentialised spectacles of hyper-visible abuse and sacrifice. In so doing, they conceal or ignore other lived experiences and temporalities. In particular, the unspectacular, routine exploitation to which migrant workers can be subjected, and the everyday practices of expertise through which they survive them, can go unnoticed. The modern heroes/modern slave binary— the discursive framework of policies surrounding both labour export in the Philippines and humanitarian and state action in Lebanon and the UK—is limited in its capacity to understand and respond sensitively to such lived experiences. As a creative, collaborative practice, soundwalk-making conversely seeks to listen to migrant domestic workers on their own terms, and to prioritise their agency in deciding how to articulate their experiences, reflections, and demands. In my research, the soundwalk method has in turn revealed a contrast between the lived temporal experiences of participants, and the scripts through which they are portrayed and regulated. Exposing the performative construction of the spectacular modern heroes/modern slaves binary makes visible (or audible) that which it conceals, allowing us to listen carefully to migrant domestic workers' own accounts of everyday exploitation, survival, and expertise.

Ella Parry-Davies is a British Academy Postdoctoral Fellow at the Royal Central School of Speech and Drama, University of London, and prior to this was a Visiting Scholar at De La Salle University Manila. She holds a jointly-funded PhD from the National University of Singapore and King's College London. Her broader research looks at performance in contexts of transnational migration and has been published in journals such as *Theatre Journal* and *Nationalism and Ethnic Politics,* and as book chapters in *Performing Care* (Manchester University Press, 2020) and the *Routledge Companion to Theatre and Politics* (Routledge, 2019). She is an editor of *Contemporary Theatre Review Interventions.* Email: Ella.Parry-Davies@cssd.ac.uk

Slaves to Technology: Worker control in the surveillance economy

Bama Athreya

Abstract

Technology is enabling new forms of coercion and control over workers. While digital platforms for labour markets have been seen as benign or neutral technology, in reality they may enable new forms of worker exploitation. Workers in precarious conditions who seek employment via digital platforms are highly vulnerable to coercion and control via forms of algorithmic manipulation. This manipulation is enabled by information asymmetries, lack of labour protection, and predatory business models. When put together, these deficits create a perfect storm for labour exploitation. This article describes how digital platforms alter traditional labour relations, summarises case data from several existing studies, and details emerging forms of worker control and barriers to worker agency. It explores current definitions of forced labour and whether digital spaces require us to consider a new conceptualisation of what constitutes force, fraud, and coercion. It concludes with a summary of possible responses to these new forms of abuse in the global economy, including alternative models for business and for worker organising.

Keywords: gig economy, surveillance capitalism, platform work, precarious work, forced labour, labour markets

Introduction

Workers living through what is variously called digital economy, surveillance capitalism,[1] or the 'fourth industrial revolution' face new forms of coercion and control. Jobseekers, particularly those who are already precarious and cannot rely on social capital, are looking online and turning to digital platforms.

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[1]   S Zuboff, *The Age of Surveillance Capitalism: The fight for a human future at the new frontier of power*, Profile Books, New York, 2019.

Platforms—web-based intermediaries which offer to link workers with jobs—are a key site for new forms of rights abuse and exploitation.

The promise of technology for development has inspired several well-intended digital interventions targeting precarious workers, such as Kormo in Bangladesh[2] or Lynk in Kenya,[3] which are designed to match informal sector clients with self-employed workers. However, the designers of these interventions may not fully understand their human rights implications. Moreover, 'future of work' discussions on the role of technology in labour markets have largely centred on formal labour markets in developed economies, without understanding the extent to which digital intermediaries have been entering labour relations in developing countries and altering informal work.

This article focuses on the ways in which surveillance capitalism, i.e. the expansive access to and trade in individual data as a basic raw resource driving global markets and economic life, expands the means for coercing and controlling labour. It draws upon evidence from two recent case studies on digital platforms for domestic work in India and South Africa and their effects on workers' agency. It begins with a discussion of how traditional labour relations are altered in the digital space. Citing recent research on algorithmic management and control, it offers a detailed discussion of platform-mediated work and platforms' roles as brokers, gatekeepers, supervisors, and as jobbers. It also looks at the implications of the platform model for worker agency, particularly for migrants and highly isolated workers. It concludes with recommendations for programme design and policy interventions to mitigate risks, while calling for an expansion of our understanding of the elements of forced labour in the digital economy.

Labour Relations in the Digital Economy

A small handful of platform companies now dominate the entire globe, and are transforming our economic life.[4] A 'platform company', per Gray and Suri, is a corporate entity whose business model relies on a two-sided application

2   S Khalasi, 'How Kormo and Bangalink are Helping the Urban Youth of Bangladesh Connect to Jobs and Develop Their Careers', *Future Startup*, 19 September 2019, retrieved 22 June 2020, https://futurestartup.com/2019/09/26/how-kormo-and-banglalink-are-helping-the-urban-youth-of-bangladesh-connect-to-jobs-and-develop-their-career.

3   No author, 'Lynk, A Kenyan Startup Transforming the Informal Sector', *Proparco*, n.d., https://www.proparco.fr/en/actualites/grand-angle/lynk-kenyan-start-transforming-informal-sector.

4   K F Lee, *AI Superpowers: China, Silicon Valley, and the new world order*, Houghton Mifflin Harcourt, Boston, 2018.

programming interface (API) and the internet to 'source, schedule, manage, ship, and bill task-based, project-driven work'.[5] Work is fragmented into digitally intermediated 'gigs' that in many ways resemble piece-work.

Some have hailed the rise of platform companies as an antidote to rising inequality and a harbinger of a 'sharing economy.'[6] As Evgeny Morozov points out, platform companies present themselves in the United States and Europe as facilitating options for a struggling middle class. They claim to provide a platform for unemployed or underemployed people to monetise their existing assets and call themselves entrepreneurs.[7] In countries with well-developed formal labour markets, the fiction of being part of an emerging 'tech' economy has helped these workers mask the stigma associated with entering the informal economy as cleaners, drivers, or factotums. In the rest of the world, where such precarious employment has long been the norm, workers have no such illusions.

Informal workers generally face well-documented vulnerabilities, such as lack of regular income or social protection. In addition, platform work may enable new forms of control over workers through the extraction and commodification of individual workers' data. It is important to understand how not only labour but data are now being appropriated and commodified under what a growing number of digital rights advocates are calling data colonialism.[8] This has profound implications for workers' agency and rights. As Couldry and Mejias describe, 'whereas historical colonialism appropriated land, resources, and bodies, today's new colonialism appropriates human life through extracting value from data.'

Data Labour' and Lack of Consent

Producing data is a form of labour that has been broken into such minuscule pieces that anytime a reader 'likes' a social media post, or geo-tags an image as part of a 'captcha' or challenge-response test, they have created something of value in the digital economy.[9] There is no meaningful consent between the provider and the corporate beneficiary of what has been termed 'data

5   M L Gray and S Suri, *Ghost Work: How to stop Silicon Valley from building a new global underclass*, Houghton Mifflin Harcourt, Boston, 2019.

6   E Morozov, public lecture at Impakt Festival 2018, available at https://youtu.be/nkReZuU5mxc.

7   *Ibid.*

8   N Couldry and U A Mejias, *The Costs of Connection: How data is colonizing human life and appropriating it for capitalism*, Stanford University Press, Stanford, 2019.

9   J Lanier, *Who Owns the Future?*, Simon & Schuster, New York, 2014.

labour.' This and other forms of data extraction have major implications for the continued and potentially exacerbated commodification of labour. One is that it is acceptable for companies to profit from unwittingly provided data labour, which they may use to train algorithms or sell to data aggregators who know how to monetise it further. The result is the commodification of a much greater range of human activity beyond consensual work.

Worker rights advocates have yet to develop a response to the challenge of data extraction, where workers are compelled to provide data labour without their informed consent. Companies bank billions on the trade in personal user data,[10] and harvest worker data as inputs for algorithms that determine how to further optimise their operations. For example, ride-hailing apps use driver and rider data to create increasingly sophisticated models and projections of human mobility and to inform the development of self-driving vehicles.[11] On the surface we may see this as benign, and hope this research contributes to better mobility for more people. However, gig workers are generally compelled to sign exceedingly broad agreements for access to their personal data as a condition of employment. Drivers have no meaningful way to opt out of providing this data to the company, nor are they in any way compensated for this data labour.

Ride-hailing apps have also been exposed as having harvested other data (not covered under these agreements) from drivers' phones without their knowledge or permission. For example, Uber was found to have surveilled its drivers' phone calls to learn if they were also driving for the competitor company Lyft.[12] This information was then used to manipulate drivers into dependency on Uber both through incentives (offering marginally better rates) and coercion (risk of being denied opportunities). In addition to using algorithms to push workers to accept sub-standard conditions and further externalise costs, there are reasons to be concerned about other ways in which worker data may be harvested, sold, and used by others. There is ample evidence of how algorithms may be used to engage in behavioural manipulation, including manipulating people's opinions, and luring people into extreme or illicit behaviour.[13]

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[10] See, for example: European Commission, 'Fair Taxation of the Digital Economy', n.d., https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en.

[11] Lee.

[12] M Isaac, *Super Pumped: The battle for Uber*, W. W. Norton & Company, New York, 2019

[13] Center for Humane Technology, 'Your Undivided Attention Podcast, Episode 4: Down the Rabbit Hole by Design', 10 July 2019, transcript available at https://assets.website-files.com/5f0e1294f002b1bb26e1f304/5f0e1294f002b144fee1f411_CHT-Undivided-Attention-Podcast-Ep.4-Down-the-Rabbit-Hole.pdf.

In recent years, digital rights advocates have begun to push back on the lack of consent involved in data extraction and data labour, resulting in occasional policy reforms such as the European Union's General Data Protection Regulation. With this legislation, rights advocates in Europe have succeeded in calling attention to right to privacy issues or the 'right to be forgotten.'[14] However this approach fails to challenge the corporate right to commodify and benefit from individuals' data labour. As data is fundamental to the platform business model, human rights advocates should consider the ethical implications of the continuous extraction of this resource from a population that serves both as consumers and labour.

Digital Labour Arbitrage

Another way in which platform companies disrupt labour relations is through digital labour arbitrage. Alarcon and Gray describe how platform companies tacitly structure and may even expand precarity in labour markets by mediating tasks that might previously have constituted formal jobs.[15] Digital platforms subdivide work into ever smaller bits or 'micro-tasks.' For example, Amazon's Mechanical Turk platform outsources tasks that may take performers only a few seconds to perform, such as tagging images, and for payment that may be only a fraction of the smallest denomination of a country's currency. Platforms are then able to engage in micro-negotiations over these bits, called 'gigs,' to further externalise costs surrounding each task onto workers. This alters labour relations by breaking down wage labour into ever smaller fragments and exerting new forms of control over each fragment of work. This has given rise to new use of the term 'gig worker' to mean one who derives income from participation in digitally-mediated tasks and micro-tasks.

Gray and Suri point out that this kind of digital mediation builds on longstanding practices of labour arbitrage, or the infamous 'race to the bottom', wherein jobs are shifted toward geographies with the lowest wages and weakest labour protection.[16] What is qualitatively different is that technology accelerates the pace of this competition to an inhuman level. For example, they describe workers on Amazon's Mechanical Turk who must monitor their accounts constantly, as desirable 'gigs' may disappear minutes or even seconds after they are posted. Gig workers based in high-wage economies are in constant competition with

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14   B Wolford, 'Everything You Need to Know About the Right to Be Forgotten', FAQ on GDPR.EU available at https://gdpr.eu/right-to-be-forgotten.

15   A Alarcon and M L Gray, *Future of Work Global Labor: Literature review*, USAID, Washington, D.C., September 2019, https://pdf.usaid.gov/pdf_docs/PA00W54D. pdf, p. 1.

16   Gray and Suri.

workers from low-wage economies competing for the same tasks. Workers must also patch together a multitude of 'micro-tasks' in order to reach an adequate level of employment. The search costs to find each micro-task are externalised onto workers. Prices for tasks are fixed and non-negotiable. This is another way in which labour relations have been fundamentally altered.

Algorithmic Cruelty

A third important alteration to labour relations is the disappearance of the human relationship between employer and worker, as platforms impose algorithmic intermediaries between requesters and providers to establish compensation and terms and conditions of work. Gray and Suri refer to this as 'inadvertent algorithmic cruelty', since it removes the possibility of empathy between service provider and client. Algorithms are based on codes that necessarily rely on binary choices. These do not allow for consideration or understanding of human exigencies, such as the need to care for a sick family member or an unforeseen road blockage. Platforms may not have humans available to respond to workers who cannot meet the exact terms of a gig for some reason, and may therefore impose harsh penalties on the worker for non-performance. Yet the choice to allow a code to determine a reward or penalty is ultimately intentional. The implications of the removal of a human interlocutor for worker agency are discussed with respect to the cases detailed below. As researchers noted in one of the reports discussed:

> (Platforms are) reflecting and reproducing existing structures of exploitation. Yet, it is also important to recognize the differences that arise from the digital and algorithmic intermediation of domestic work. Domestic work involves not only physical work but also affective labor—it involves relationship building, trust, and negotiation... Much of this is rendered impossible with work mediated through digital platforms.[17]

Worker Agency in Platform Labour

In most of the world, economic activity in the informal sector dwarfs that in the formal sector. Nearly half of all workers in developing countries are self-employed

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[17] Z Mawii and U Aneja, *Gig Work on Digital Platforms. Case Study 3: SweepSouth – Platform-Based Domestic Work*, USAID, March 2020, https://pdf.usaid.gov/pdf_docs/PA00WHJ9.pdf, p. 15.

and/or engaged in small-scale farming.[18] Many more are underemployed and in insecure or precarious work, and the International Labour Organization (ILO) suggests that the trend in all countries is away from stable and long-term employment and toward non-standard work.[19] In other words, many workers around the world are already 'gig workers', although they traditionally rely on social capital and word-of-mouth to obtain jobs. Furthermore, amid the recent economic shock caused by COVID-19 and the ILO prediction that up to 300 million jobs may be lost,[20] coupled with the dramatic rise in demand for contact-free services, it is now certain that the post-COVID recovery period will likely see an irreversible worldwide shift toward platform-enabled non-standard work.

In recent years, development practitioners have been lured by the promise of technology as a fix for information asymmetries inherent in labour markets. As a consequence, they have heavily invested in platforms intended to enhance transparency of information in labour markets. Platforms targeting low-wage jobseekers like Kormo (Bangladesh), Lynk (Kenya), and Bong Pheak (Cambodia) have proliferated; indeed, Bong Pheak was launched with a grant from the US Agency for International Development (USAID) in order to provide better information to jobseekers who might otherwise be vulnerable to trafficking and exploitation.[21]

To be sure, the problem of imperfect labour markets is an important developmental challenge. There is a clear need for interventions to address the information asymmetries that make it easy to exploit workers. Since the early 1990s, my work as an anthropologist and development practitioner has examined the flow of low-skilled young women from rural to urban areas in search of jobs. These workers have entered factories, restaurants, domestic work, and, in some cases, sex work. In all scenarios they have suffered from information deficits: most have relied entirely on word-of-mouth assurances regarding the terms and conditions of their work, and faced a very high risk of exploitation as a result of their inability to know, let alone control, their ultimate work situations. Many have felt compelled to work through brokers and entered some form of debt bondage to these middlemen. The brokers, by controlling information, have also controlled workers.

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[18]   World Bank, *World Development Report 2013: Jobs*, World Bank, Washington, D.C., 15 October 2012.

[19]   R Torres *et al.*, *World Employment Social Outlook: The changing nature of jobs*, ILO, Geneva, 19 May 2015.

[20]   International Labour Organization, *ILO Monitor: Covid-19 and the world of work. Third edition*, ILO, Geneva, 29 April 2020.

[21]   P Ford, 'Bong Pheak – Combating human trafficking through an employment information website', *Geeks in Cambodia*, 29 August 2018, retrieved 24 April 2020, http://geeksincambodia.com/bong-pheak-website.

Well-meaning advocates have sought to mitigate these issues by providing 'awareness-raising' training regarding risks to prospective migrants. Their hope is that with better information migrants can make better choices regarding employment placements. This has included promoting online labour brokers such as Cambodia's Bong Pheak. Unfortunately, the replacement of informal networks of labour brokers with online labour brokers may be an emblematic example of how power asymmetries cannot be fixed by technology.

By the early 2000s, the use of information and communications technology for development was hailed as having great promise to crack complex challenges. Even rural communities seemed to be connecting online. Donors and advocates seeking to disrupt human trafficking networks were keen to use platforms to supplant informal and often unscrupulous middlemen for prospective rural-urban and cross-border migrants. USAID and other donors invested in platforms designed to provide more and better information to jobseekers.

Concerned with the possibility that outcomes for workers might not all be positive, USAID commissioned an evidence review and a series of case studies in 2019 to examine the experience of low-wage and vulnerable workers on platforms. It focused on the extent to which platforms corrected for labour market information asymmetries, how they affected basic labour protections and rights at work, and what consequences they had for worker agency. The case studies were carried out by the India-based firm Tandem Research. The Overseas Development Institute (ODI) simultaneously undertook a similar study.[22]

The following section details findings regarding control and agency confirmed by two of these case studies, on platforms targeting domestic work in South Africa (SweepSouth) and India (QuikrJobs, previously Babajob). These findings are supplemented by my own interviews under a fellowship with Open Society Foundations. I conducted life history interviews with approximately two dozen individuals working for ride-hailing and domestic service platforms in South Africa, the United States, United Kingdom, and India, and shorter interviews with driver representatives from Indonesia, Australia and Cambodia. I obtained additional material from the Brazil-based human rights organisation Reporter Brasil regarding their interviews with delivery, ride-hailing, and domestic service platform workers, and material from interviews with labour union representatives and labour policy experts in India, South Africa, and

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[22] A Hunt *et al.*, *Women in the Gig Economy: Paid work, care and flexibility in Kenya and South Africa*, Overseas Development Institute, London, November 2019, https://www.odi.org/publications/11497-women-gig-economy-paid-work-care-and-flexibility-kenya-and-south-africa.

the United States. All interviewees cited in this article have provided consent to share their names and the content of the interviews.

Platforms as Brokers: Information asymmetry by design

Platforms act as gatekeepers between prospective employers and prospective workers. Thus, in principle, they are positioned to address information deficits among both employers and workers. This is the principle behind both the SweepSouth and QuikrJobs platforms. However, the cases suggest that the platforms may exacerbate rather than alleviate information asymmetries.

The two platforms represent two different types of intermediaries. SweepSouth is a *gatekeeper*. It functions as an active intermediary by assigning workers to specific jobs, determining remuneration, controlling other terms and conditions of work, and retaining the right to disallow or 'deactivate' users from the platform. QuikrJobs' operating model is different: it is a job *aggregator*. All interactions between jobseekers and employers, including negotiations over remuneration and other terms and conditions of work, take place outside the platform.

In principle, both models increase workers' access to information about prospective jobs and clients and decrease bias in labour markets through seemingly neutral placement criteria. Yet, it may be impossible to have truly neutral gatekeepers as algorithms may reinforce existing power dynamics. In South Africa, for example, where household employment relationships are rooted in apartheid-era race relations, both the Tandem interviews and my own suggested a high share of recent migrants, particularly from Zimbabwe, are entering the domestic work sector. Migrants are more likely to favour use of online platforms than native South Africans since they do not have access to the other forms of social capital that local workers use to obtain jobs. In addition, migrants generally face discrimination in the South African job market, which creates barriers to job placement through traditional channels. Even skilled migrants reported both to the Tandem team and to me that they were unable to access jobs at their skill and qualification levels and were subject to employment discrimination. Platforms allowed them to bypass these discriminatory barriers they faced in seeking employment.

However, Tandem found that design features of SweepSouth intentionally reinforced information asymmetries. While employers were provided with full biographical details and ratings of the prospective workers, workers were not shown any details of the clients they were matched with. Thus, employers were in a position to apply bias to their choices while workers had neither information nor choice. Further complicating matters, workers were also penalised for not accepting jobs. This type of information asymmetry was also present in ride-hailing platforms. Drivers in my interviews confirmed that they could not make

informed choices about which rides to accept. The algorithms were designed to prompt drivers to accept rides without providing any information about fares or destinations.[23] Only after the client was in the vehicle would the platform provide the driver with information about the destination. Even then, some drivers were not provided with information regarding the fare until after the ride was complete.

Because QuikrJobs is a job aggregator, it is in principle well-positioned to correct for information asymmetries. As the Tandem case study notes, jobseekers on the platform commonly lack data on what appropriate salaries or terms and conditions of work are, and this limits their ability to bargain. This information asymmetry is 'heightened by the fact that jobseekers may be looking for jobs in locations different from where they previously lived or worked and could possibly be applying to different job roles.'[24] Job aggregator platforms could potentially improve workers' agency by providing more fulsome information about and choice among prospective employers, wages, and terms and conditions of work, and by reducing barriers to entry to labour markets. However, these features require active design choices. The study noted,

> QuikrJobs management did mention that they create a report on salary and hiring trends, demand for job roles, and market conditions. However, this is not released publicly. Having such data could help jobseekers negotiate better employment terms and conditions and avoid being exploited. It is worth noting that BabaJob used to have a feature that allowed jobseekers to see the average salary range for the particular job in that locality. This feature is not present on QuikrJobs.[25]

The study also found that jobseekers have no way of reviewing employers or reporting fraudulent job postings. QuikrJobs reported that jobseekers can and do make complaints via the platform's social media channels. However, this was insufficient to hold fraudulent posters or unfair employers accountable. Indeed, jobseekers' comments suggested that the platform may be enabling fraudulent recruitment. The report states,

> Some workers did note that they had come across fraudulent postings on the platform and some had even paid money when contacted by these fraudulent posters. QuikrJobs has processes in place to screen and remove fraudulent postings, but some

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[23] Interviews, Cape Town and Johannesburg, July 2019; San Francisco, September 2019.

[24] Mawii and Aneja, *Case Study I: QuikrJobs – India*, p. 10.

[25] *Ibid.,* p. 11.

> still remain... With most fraudulent postings, the aim is to convince workers to pay some money to the prospective recruiter.[26]

This again highlights the importance of intent and design choices. In February 2019, I interviewed the staff managing the Bong Pheak platform. They indicated that they also lacked a sufficient guardrail to protect jobseekers against fraudulent postings—a particularly ironic design flaw given that Bong Pheak sought investment as an anti-trafficking intervention.

These two models suggest that platforms must choose between allowing workers to negotiate freely while exposing them to risk of fraud and deception (the QuikrJobs model), or providing more clarity around the terms of work while offering less autonomy and choice to workers. Yet alternatives are possible. In 2014, the organisation Centro de los Derechos del Migrante (CDM) in Maryland launched a platform called Contratados. It is intentionally designed to provide employer information to prospective workers, verify the *bona fides* of employers, and allow workers to post safe and anonymous reviews of employers. Aggregated data on patterns and practice are also used to inform advocacy on behalf of workers. There is some evidence that this approach has been successful in enhancing worker rights and worker agency.[27]

Platforms as Supervisors: Rating systems as a means of coercion and control

Rating systems are commonly used by platforms of all kinds and represent another example of how platforms can undermine workers' agency. A simple one-to-five-star rating system is a common way for clients or users of a platform to rate anything from a product they have purchased online to a service such as an Uber ride or AirBnB stay. The system is ostensibly couched as 'crowdsourcing', enabling the product or service to continuously improve as a result of customer feedback. In reality, it is often used as a control mechanism, instilling gig workers with fear of 'deactivation' from the platform that may coerce them into accepting unsafe or exploitative conditions of work.

Deactivation is a term used to describe the suspension of an account used by a worker to access gigs; it is effectively an electronic blacklist. Workers are penalised for receiving low ratings, and may be deactivated from the platform

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26   *Ibid.,* p. 8.

27   L Rende Taylor and E Shih, 'Worker Feedback Technologies and Combatting Modern Slavery in Global Supply Chains: Examining the effectiveness of remediation-oriented and due-diligence-oriented technologies in identifying and addressing forced labour and human trafficking', *Journal of the British Academy,* vol. 7, no. s1, 2019, pp. 131-165, https://doi.org/10.5871/jba/007s1.131.

on the basis of client complaints or low ratings. This invisible and impersonal form of control is critical to consider in the context of human trafficking as it may represent a form of force or coercion where the agent of coercion is an algorithm. This raises serious challenges regarding accountability.

This system of rewards and punishments acts coercively to prevent workers from speaking out when laws are violated. A domestic worker interviewed in the Brazilian documentary *A Uberização do Trabajo* described how the platform Rappi would determine how many hours a gig would take based on the work described by the client. However, she would often find additional cleaning tasks at the assigned location, and fearful that she would receive a poor rating if she did not complete them, would put in the extra time and work for no additional payment.[28] Researchers who have documented app-based domestic work in the US and Europe share similar stories.[29] Similarly, drivers I interviewed stated that they feared negative ratings from clients as it could trigger deactivation. Thus, they felt compelled to undertake assignments of dubious legality, such as transporting minors. One driver in California explained how she rejected a ride when she realised she would be picking up two minors (illegal in California), reported the incident to the platform, only to witness the same individuals being picked up immediately afterward by another driver for the same platform. She was deactivated after filing the report.[30]

In this system, clients become unwitting instruments of control. In the case of SweepSouth, workers reported that they are encouraged to maintain a rating of 4.75 (out of a possible 5). Low ratings prompt warnings from the platform and three consecutive ratings of below two stars results in worker accounts being deactivated. Workers have little to no ability to contest or negotiate these ratings.[31]

The Tandem team found that clients may not understand the rating system, and their ratings may be based on a whim, or deeply ingrained racial and class stereotypes. They observe that:

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28   C J Barros, C Angeli, and M Monteiro Filho (Dirs.), *GIG – A Uberização do Trabalho [The Uberization of Work]*, documentary film by Reporter Brasil, 2019, https://reporterbrasil.org.br/gig.

29   A Mateescu and A Nguyen, *Explainer: Algorithmic management in the workplace*, Data & Society, 6 February 2019, https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf.

30   Interview, September 2019.

31   Mawii and Aneja, *Case Study 3*, p. 10.

> The one-sided nature of the ratings systems creates a structural domination of the platform over workers which is dependent on worker fungibility. Although workers can also leave ratings for clients, the workers we spoke to did not seem to feel that this was of much consequence […]. Workers do not have the option of picking their clients or declining those with low ratings. Nor do they have the option to freely cancel appointments—SweepSouth deactivates their account if they cancel more than four appointments in a month. Workers are also unlikely to cancel bookings because of the loss of earning potential. Autonomy is thus constrained both because of platform design and broader labor market conditions.[32]

This finding is common across studies of labour market platforms. Consumer-sourced rating systems place additional pressures on workers to comply with clients' demands, as poor ratings factor into algorithmic decisions on gig assignments. The fear of deactivation acts to coerce workers to accept undesirable gigs and hours. It can leave workers with little choice but to forego workplace safety interests, such as declining to report sexual harassment out of fear of receiving a poor rating from a client.[33]

In their study on Uber drivers in India, Raval and Dourish found that drivers felt companies were using ratings in ways that clients themselves might not intend; nor did they perceive that clients understood the implications of the rating system. They cite the following driver interview:

> As a driver mentioned, 'Most passengers don't understand Uber rating system. They are led to believe Yelp style rating. With Uber anything less than 5 stars is a failure.' As has been widely reported from the data released by Uber, 4.6 is the lower limit below which drivers are given a warning and a stipulated time period to improve their ratings, failing which they get deactivated. … While Uber's report mentions the top five complaints associated with low ratings, it does not comment on whether passengers are aware that within their rating system, unlike other known reputation systems, the rating threshold is much higher.[34]

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[32] *Ibid.*

[33] Mateescu and Nguyen, p. 8.

[34] N Raval and P Dorish, 'Standing Out from the Crowd: Emotional labor, body labor, and temporal labor in ridesharing', *CSCW '16: Proceedings of the 19th ACM Conference on Computer-Supported Cooperative Work & Social Computing*, 2016, pp. 97-107, https://doi.org/10.1145/2818048.2820026.

Gig workers I interviewed in South Africa were extremely concerned with deactivation, and virtually all of the ride-hailing app drivers who participated in my interviews had been deactivated at least once.[35] A deactivated worker can no longer access any jobs through the platform. The workers described the action as one in which their apps simply ceased to function, with no notification or warning. These platform workers typically only interface with the app and not with a person, so they have limited recourse to protest the deactivation. Interviewed drivers presumed that a low customer rating was the reason for the deactivation, but they were unable to obtain their files from the company to verify this. Some drivers were successful in calling the company and having their accounts reinstated, but felt that this, too, was arbitrary. One driver reported having her account mysteriously reactivated two weeks after the deactivation.[36]

Platforms as Disruptors: Undermining labour protection

In addition to the challenges described above, evidence of new forms of worker control has emerged around algorithmic management, the latest refinement of Taylor's famous 'time and motion' approach. Algorithmic management uses artificial intelligence (AI) for data collection and continuous surveillance of workers to further extract or 'optimise' labour in what amounts to an extreme form of labour arbitrage.[37] This data enables platforms to control ever more fragmented bits of a worker's time, agency, and labour and use behavioural 'nudges' to incentivise workers to work harder, faster, or provide labour at all hours. One example of this is Upwork, a company that matches freelancers to gigs, which has 'developed software—cheerfully called the "Private Workplace"—that provides minute-by-minute logs of contractors' computer keystrokes, tracks mouse movements, and secretly snaps periodic screenshots, so that the employers can ensure that their potential cyber slacker is on task.'[38]

Algorithms acting as managers are not programmed to stop nudging for ever more efficient work. The algorithms are coded to continue optimising behaviour even when rates of work and rates of compensation are clearly in violation of local laws. If a worker is willing to accept a task at below minimum wage, or even to take on debt to be selected for a task, most platform algorithms will reward rather than prevent this from taking place. One egregious example of this is the US-based household cleaning app Handy, which openly uses a system

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[35] Interviews with Uber drivers in Cape Town and Johannesburg, July 2019.

[36] Interview with Uber driver, Cape Town, July 2019.

[37] Mateescu and Nguyen.

[38] S Hill, *Raw Deal: How the 'Uber economy' and runaway capitalism are screwing American workers,* St. Martin's Press, London, 2015, p. 104.

of imposed fees on workers, leaving some in debt bondage.[39] The examples shared by Reporter Brasil of domestic workers on Rappi also emphasise this point. This is an intentional design choice. As Isaac and others have described, the business model of many platform companies is to disrupt existing labour markets precisely by disrupting employment laws.[40] The listing of gigs at well below local and national minimum wage rates is a known feature of many platforms.

The companies are able to openly flout labour laws because they have successfully argued that they are not employers but simply job aggregators. Pinto and Smith describe the challenge in the US context. As they state,

> Handy, Uber, and several other gig companies have mounted a multijurisdictional policy campaign to rewrite the rules of worker classification to carve themselves out of labor standards and to codify misclassification. At the federal and state levels, they are pushing both legislative and administrative changes that designate all workers who find work via so-called 'marketplace platforms' as independent contractors who are not covered by labor and employment protections.[41]

The issue of disguised employment is salient in jurisdictions where labour protection is relatively strong. In countries where the informal sector dominates, however, the issue of regulation regarding self-employment is also salient. In Indonesia, drivers have been able to organise successfully because they were able to win protection under Indonesia's laws covering self-employed workers who form cooperatives.[42] In South Africa and India, however, interviewees who were previously self-employed as private car hire service providers, and were therefore already independent contractors, lost autonomy and status once they no longer had access to their own independent client base.[43]

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[39] N van Doorn, 'Late for a Job in the Gig Economy? Handy will dock your pay', *Quartz*, 3 October 2018, https://qz.com/work/1411833/handy-charges-fees-to-its-workers-for-being-late-or-canceling-jobs.

[40] Isaac.

[41] M Pinto, R Smith, and I Tung, *Rights at Risk: Gig companies' campaign to upend employment as we know it*, National Employment Law Project, 25 March 2019, https://s27147.pcdn.co/wp-content/uploads/Rights-at-Risk-4-2-19.pdf.

[42] Interview, Indonesian drivers in London, January 2020.

[43] Interviews, Cape Town, South Africa, July 2019, and via telephone to Chennai, India, February 2020.

Platforms also further externalise costs onto precarious workers. Thus, even when platforms like SweepSouth guarantee workers a minimum wage, such platforms simultaneously exploit a business model that places responsibility for all search, transit, and other costs onto workers. There are significant hidden costs for SweepSouth workers. Those interviewed reported they spend around ZAR 50 on transport per booking, and upwards of ZAR 35 on data and airtime per week. These hidden costs often amount to as much as ZAR 350-400 (approx. USD 20) per week.[44] High transport costs also reflect the spatial segregation of Cape Town, with clients and workers typically living in different parts of the city. While platforms like SweepSouth are easily able to collect the data on each worker to adjust for such costs, not only do they generally avoid doing so, but they may even be using algorithms to experiment with workers and determine how far they are willing to go to obtain a gig. Virtually every Uber driver I interviewed, in every city, reported that typically the first gig they would be offered when they logged on for a shift would be far from their starting point. Researchers have speculated that this is an intentional experiment to see how far drivers could be pushed to take on the costs they would incur to reach their first gig.[45]

Correcting for Techno-optimism

Human rights advocates have now amply documented ways in which social media platforms have been directly responsible not only for disseminating but pushing content that inflamed sectarian tensions in several countries.[46] The firm Cambridge Analytica has purchased and sold data to political actors who have used it to exacerbate social tensions and manipulate voter behaviour in in several countries.[47] As trade in data is not regulated, it is critical that we ask who else can purchase this data. Low-wage workers, and particularly those who are highly isolated such as migrant workers, have been identified as a population

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[44] Per Hunt *et al.*, the Sectoral Determination of Minimum Wages for Domestic Workers (December 2018) stipulates that domestic workers in 'bigger metropolitan areas' working more than 27 hours per week are entitled to a minimum hourly wage of ZAR 13.69, while those working fewer than 27 hours are entitled to ZAR 16.03 per hour. For a 35-hour workweek, a domestic worker would earn approximately ZAR 479.

[45] Interview with Michelle Miller, Director of Coworker.org, 4 February 2020, Washington, D.C.

[46] S Kelly *et al.*, *Freedom in the World 2017: Manipulating Social Media to Undermine Democracy*, Freedom House, New York, November 2017, https://freedomhouse.org/sites/default/files/2020-02/FOTN_2017_Final_compressed.pdf; see also D Swislow, 'The Distributed Denial of Democracy', *Medium*, 9 November 2016, https://medium.com/@dswis/the-distributed-denial-of-democracy-23ce8a3ad3d8.

[47] Kelly *et al.*

that may be highly susceptible to online manipulation by violent extremists.[48] Are platforms designed to forestall such possibilities?

Development practitioners who were originally optimistic about the promise of technology now realise that they failed to see the consequences of enabling a business model premised on luring people into risky situations and extreme behaviours. Internet governance advocates have exposed a predatory business model whereby platform companies seek to monopolise markets, often knowingly breaking local laws.[49] Platform firms engage in predatory behaviour not because of the need to compete for consumers, but to compete for access to data, as their business model relies on their ability to hoard and monetise data.

The promise of technology to overcome labour market asymmetries has not been realised. Platform companies have been allowed to concentrate information and control over data. Information asymmetries may actually be exacerbated in the digital economy, as data extraction and algorithmic management enable new forms of control over workers.

As the Tandem team notes, platforms need not be inherently exploitative, but it is critical that measures to provide transparency and enable worker agency be built into their design. In its early stages and prior to its acquisition, QuikrJobs' predecessor, Babajob, was intended to improve opportunities for informal workers. This meant that certain design features were built into the platform to provide prospective workers with information about prevailing wages and conditions of work, which enabled them to negotiate with employers. In addition, as Babajob's funder USAID enforces an 'open data' policy, the company was unable to monopolise or monetise data extracted from its users. QuikrJobs continues to collect market and personal data, but no longer makes this information available to workers.

Can we build a better mousetrap? One example of a platform intentionally designed to support worker agency and rights, Contratados, was noted above. A number of 'ethical' alternatives to platforms for domestic work, ride-hailing, and the like have been launched recently, such as Well-Paid Maids (cleaning), Bzzt (transportation), and Fairbnb (short term rentals). These companies have embraced formal employment relationships with their workers, and, as Riggs and Batstone noted, have rejected the data-extractive business model of their peers. Instead, these companies 'use the value generated from their technologies not to expand the workforce to a vast peer-to-peer network, but to make drivers and

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[48] Institute for Policy Analysis of Conflict (IPAC), *The Radicalisation of Indonesian Women Workers in Hong Kong*, IPAC, 26 July 2017, http://file.understandingconflict.org/file/2017/07/IPAC_Report_39.pdf.

[49] Isaac.

mechanics more efficient and to educate, train and retain them as employees.'[50] A movement to organise platform workers into cooperatives, incubated at the New School in New York, is also providing a vitally useful alternative to the data-extractive business model described.[51] While such models provide helpful alternatives to workers, it will be difficult for any of them to reach scale in a market where the imperative is toward data monopolisation.

A new set of organisations that are focused on organising gig workers, such as Gig Workers Rising (US) and Worker Info Exchange (UK), are beginning to explore issues of data privacy and data sovereignty. But they have yet to reach consensus on an alternative, worker-centred data ownership model. Some have pushed for the need for governments and municipalities to gather data from platform companies and create public data trusts; others have argued for worker ownership of worker data.[52]

Kellogg, Valentin and Christin document examples of 'reverse surveillance', or 'sousveillance', as another strategy that supports collective action. This tactic requires pre-existing networks of workers capable of recording and uploading information about what is occurring in their work to make managers accountable via documentary evidence that, when shared, exposes patterns of misconduct. As they note, employers have already pushed back against such tactics, for example by forbidding employees from utilising personal smartphones in workplaces.[53]

We will need more research and a solid evidence base beyond the existing case studies to enable effective and worker-centred alternatives. Further studies should create evidence that enables labour advocates to better understand how algorithms may be working to modify behaviour among such workers, and analyse the rights implications of behavioural nudges, coercive ratings systems, and unpaid data labour with respect to existing definitions of force, fraud, and coercion, and to labour arbitrage.

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[50]   W Riggs and D Batstone, 'Balancing Profits and Human Dignity in the Gig Economy', *The Hill*, 31 December 2019, https://thehill.com/opinion/finance/476344-balancing-profits-and-human-dignity-in-the-gig-economy.

[51]   New School, 'The New School Announces the Launch of the Institute for the Cooperative Digital Economy', Press Release, 21 May 2019, https://www.newschool.edu/pressroom/pressreleases/2019/ICDElaunch.htm; see also T Scholz, 'Platform Cooperativism vs. the Sharing Economy', *Medium*, 5 December 2014, https://medium.com/@trebors/platform-cooperativism-vs-the-sharing-economy-2ea737f1b5ad.

[52]   T Scholz, *Uberworked and Underpaid: How workers are disrupting the digital economy*, Polity, Cambridge, 2016.

[53]   K C Kellogg, M A Valentine and A Christin, 'Algorithms at Work: The new contested terrain of control', *Academy of Management Annals,* vol. 14, no. 1, 2020, pp. 366-410, https://doi.org/10.5465/annals.2018.0174.

Creating an enabling environment that supports collective action will also require new approaches for a digital economy. Researchers and advocates will need to analyse the relevance of existing frameworks for labour law protection, and in particular the applications of frameworks for organising and bargaining collectively. These frameworks have never adequately covered non-standard work, and with the further fragmentation of work in the platform economy, new protections for these rights will be essential. As Alarcon and Gray note, 'traditional organizing models of collective disruption through strikes and work slowdowns will have to be rethought. The platform economy generates a labour market of peers and independent workers distributed around the globe.'[54] This means there is no single professional identity, no physical space, and no single regulatory framework to serve as an organising principle.

Platforms themselves have in some cases sought to replicate and create a virtual water cooler for gig workers, but with limited success. Mawii and Aneja of Tandem found that although SweepSouth management created a WhatsApp group for workers, most reported that they were inactive in the group. They felt that the presence of a manager in each group prevented them from freely speaking to each other. However, on their own, workers do use WhatsApp to connect with one another.[55] Domestic workers and Uber drivers I interviewed had set up their own groups to communicate, share information, and on occasion, organise solidarity actions. This organic, spontaneous organising needs better legal and institutional protection.

Conclusion

Under surveillance capitalism, workers are faced with new forms of coercion and control. As these jobseekers look for information about possible jobs, and particularly in light of the current economic crisis and the major dislocations it has caused in labour markets worldwide, it is likely that work itself will be further fragmented and an increasing number of platforms will emerge to replace traditional labour brokers. More and better research is needed to understand how digital platforms affect workers' rights and agency. Yet given what we already know, it is also important to act now on several fronts. We must address the problem of worker data ownership and control and promote more democratic forms of data governance. We need to reconceptualise the employment relationship and create new ways to classify non-standard workers to ensure platform companies can be held accountable for worker exploitation. Finally, we need to consider further investment in interventions that directly enhance workers' ability to connect with one another and act collectively.

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[54] Alarcon and Gray, p. 21.

[55] Interview, Cape Town, November 2018.

To date, well-intended donors have failed to understand the human rights implications of their investments in platforms for labour markets, which may have expanded the means for coercing and controlling workers. As in the traditional economy, those workers who are in precarious or exploitative conditions, such as migrants and highly isolated workers, are also most vulnerable to digital exploitation. Putting workers at the centre of design of such interventions, as subjects rather than objects, is critical. As gig workers begin to organise, it should become more possible to find credible worker representatives to inform or even participate in governance of new initiatives, as is happening in the platform cooperative space. Correcting the practices of the market leaders, however, and ensuring they do not usurp space for promising alternatives will require a substantial change in regulatory environments around the world. While the European Union has taken the first steps toward better regulation of the gig economy, the governance challenge remains immense.

More work is needed to determine what advocates, donors, policymakers, and other stakeholders might do to support organising and collective action for this growing segment of the global workforce. In the surveillance economy, protecting workers requires redefining rights at work, to take into account new critical questions of accountability and autonomy. The platform economy is recommodifying labour. We need to democratise it.

Bama Athreya, Ph.D. is a Fellow at the Open Society Foundations and at Just Jobs Network. Her Open Society Fellowship is focused on worker agency in the digital economy. Most recently she worked for USAID where she assisted field missions around the world to develop programming to address labour rights, counter-trafficking, and promote women's economic inclusion. She has developed and led multi-country projects and written and spoken extensively on the rights of working women, on forced and child labour, and on ethical business practices. Email: athreyaosf@gmail.com

Domestic Work and the Gig Economy in South Africa: Old wine in new bottles?

Abigail Hunt and Emma Samman

Abstract

Based on innovative, mixed-methods research, this article examines the entry of on-demand platform models into the domestic work sector in South Africa. This sector has long been characterised by high levels of informality, precarity, and exploitation, though recent regulatory advances have provided labour and social protections to some domestic workers. We locate the rise of the on-demand economy within the longer-term trajectory of domestic work in South Africa, identifying the 'traditional' sector as a key site of undervalued labour. On-demand domestic work platforms create much-needed economic opportunities in a context of pervasive un(der)-employment, opportunities that come with some incremental improvements over traditional working arrangements. Yet we contend that platform models maintain the patterns of everyday abuse found elsewhere in the domestic work sector. These models are premised on an ability to navigate regulatory contexts to provide clients with readily available, flexible labour without longer-term commitment, therefore sidestepping employer obligations to provide labour rights and protections. As a result, on-demand companies reinforce the undervalued and largely unprotected labour of marginalised women domestic workers.

Keywords: domestic work, South Africa, gig economy, informal economy, labour regulation, social protection, platform economy

1. Introduction

The gig economy, in which Uber-like digital platforms unite workers and purchasers of their services, is expanding globally. The model requires workers to perform task-based 'gigs', mediated through digital platforms, without the security or benefits usually associated with formal employment.[1] Though exponential growth is forecast in traditionally female-dominated sectors—notably on-demand household services including cooking, cleaning and care work[2]—relatively little research to date has focused on gendered experiences of gig work outside of North America and Europe.[3] This article discusses on-demand domestic work in South Africa. It explores platform models' effects on working conditions, their impact on the three key constituents of the gig economy (workers, platform companies, and clients), and the implications of their rise for the valuation of domestic work.

Domestic work is persistently undervalued in South Africa (as elsewhere), where it is overwhelmingly the preserve of poor black African women. However, the domestic work sector is relatively large, occupying 6 per cent of the country's workforce,[4] and advocacy by unions and allies has led to incremental improvements to the regulatory framework governing the sector. Though these regulations are neither comprehensive nor generous—the relatively low entitlements they stipulate reinforce the marginal status of domestic workers—they have given advocates a foundation from which to argue that working conditions could be further improved through additional formalisation. The

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[1]   See V De Stefano, 'The Rise of the "Just-In-Time Workforce": On-demand work, crowd work and labour protection in the "gig-economy"', *Comparative Labor Law and Policy Journal*, vol. 37, issue 3, 2016, pp. 461–471; A Hunt and E Samman, *Gender and the Gig Economy: Critical steps for evidence-based policy*, Working Paper 546, Overseas Development Institute, London, January 2019, https://www.odi.org/sites/odi.org.uk/files/resource-documents/12586.pdf.

[2]   Projections by PricewaterhouseCoopers, for example, forecast that 'on-demand household services will be the fastest growing sector' of the gig economy in the European Union (EU), 'with revenues estimated to expand at roughly 50% yearly through 2025'. (See J Hawksworth and R Vaughan, 'The Sharing Economy—Sizing the Revenue Opportunity', *PricewaterhouseCoopers*, 2014, http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/the-sharing-economysizing-therevenue-opportunity.html; R Vaughan and R Daverio, *Assessing the Size and Presence of the Collaborative Economy in Europe*, Publications Office of the European Union, 2016, cited in Hunt and Samman, p. 10.)

[3]   *On-demand* services are provided locally, with the purchaser and provider in geographic proximity (in contrast to *crowdwork*, which takes place online).

[4]   'Quarterly Labour Force Survey: Quarter 3', Statistics South Africa, Pretoria, October 2018, retrieved 13 July 2020, http://www.statssa.gov.za/publications/P0211/P02113rdQuarter2018.pdf.

ostensibly different operating model underpinning the gig economy has the potential to undermine this effort, and thus it is important to understand the impact of its entry into the domestic work sector.

We begin by examining the characteristics of traditional and 'on demand' domestic workers, and then explore the undervaluation of domestic work within South Africa. We argue that while on-demand platforms offer some improvements to workers over traditional employment arrangements, their goal of facilitating flexible labour leads to the continued normalisation of the labour exploitation of domestic workers. We conclude that both models undervalue domestic labour and perpetuate breaches in workers' labour rights, leaving workers in a highly precarious position.

Characteristics of Domestic Workers

Traditional and on-demand domestic workers share many common characteristics. This is unsurprising, given that many on-demand workers have previously worked under traditional domestic work arrangements or have continued with traditional work alongside platform-mediated gigs. The domestic workforce is overwhelmingly comprised of poor black African women.[5] Indeed, 98 per cent of our survey respondents were female and 97 per cent were black African.[6] Migrant workers from South Africa's rural areas or from adjoining countries furthermore form a significant share of the paid domestic workforce, especially in its less formalised segments.[7] Finally, we should note that domestic workers are relatively young, although we found that platform-based workers are on average slightly younger. In our sample, on-demand workers had a median age of 35, while traditional domestic workers had a median age of 41.[8]

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[5]   L Orr and T van Meelis, 'Women and Gender Relations in the South African Labour Market: A 20-year review', Labour Research Service, Cape Town, 2014, pp. 2–27.

[6]   See footnote 29 below for details of the survey methodology, including the sample size.

[7]   S Meny-Gibert and S Chiumia, 'Factsheet: Where do South Africa's international migrants come from?', *Africa Check*, 16 August 2016, retrieved 13 July 2020, https://africacheck.org/factsheets/geography-migration.

[8]   J Budlender, M Leibbrandt, and I Woolard, *South African Poverty Lines: A review and two new money-metric thresholds*, Southern Africa Labour and Development Research Unit, Working Paper Series No. 151, University of Cape Town, Cape Town, August 2015, http://www.opensaldru.uct.ac.za/bitstream/handle/11090/784/2015_151_Saldruwp.pdf?sequence=1.

The Undervaluation of Domestic Work

The historical undervaluation of domestic work is evident in both the traditional and on-demand models. At its core, this undervaluation stems from the gendered way in which the dominant economic concepts of 'productive' and 'unproductive' work are differentiated. Unpaid domestic work—mostly carried out by women—is categorised as an element of the 'household and care economy', and as a result domestic work is not seen as having intrinsic economic value. This undervaluation persists when domestic work is commodified: 'The gender stereotyping of unpaid care work, and the association of care with women's "natural" inclinations and "innate" abilities, rather than with skills acquired through formal education or training, lies behind the high level of feminization of care employment'.[9] Consequentially, 'the fact that women's unpaid domestic work has been undervalued has had a negative impact on the salary and working conditions of remunerated domestic workers'.[10] In other words, paid domestic work, which is disproportionately carried out by women, is perceived as an extension of the unpaid work within the household. This has contributed to the frequent exclusion of domestic work from formal labour relations frameworks, and therefore to its perception as 'undeserving' of good working conditions, including decent remuneration.

The undervaluation of domestic work relates to the characteristics of domestic workers, who are typically marginalised and subject to intersecting inequalities alongside continued systematic discrimination. These women experience sites of power disparity that go beyond gender to include race, migratory status, and social class.[11] In South Africa, 'the low social status and undervalued nature of domestic work has roots in the historical use of specific racial and cultural groups as servants and slaves',[12] exacerbated by the racialised nature of relations

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[9] L Addati, U Cattaneo, V Esquivel, and I Valarino, 'Care Work and Care Jobs for the Future of Decent Work', International Labour Organization (ILO), Geneva, 2018, p. 8, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf.

[10] G Labadie-Jackson, 'Reflections on Domestic Work and the Feminization of Migration', *Campbell Law Review*, vol. 31, issue 1, 2008, pp. 67–90, p. 82.

[11] On intersectionality in the context of domestic work in South Africa, see D Gaitskell, J Kimble, M Maconachie, and E Unterhalter, 'Class, Race and Gender: Domestic workers in South Africa', *Review of African Political Economy*, vol. 10, issue 27/28, 1983, pp. 86–108. On migratory status, see L Griffin, 'Unravelling Rights: "Illegal" migrant domestic workers in South Africa', *South African Review of Sociology*, vol. 42, issue 2, 2011, pp. 83–101, https://doi.org/10.1080/21528586.2011.582349.

[12] D du Toit and E Huysamen, 'Implementing Domestic Workers' Labour Rights in a Framework of Transformative Constitutionalism', in D du Toit (ed.), *Exploited, Undervalued – and Essential: Domestic workers and the realisation of their rights*, Pretoria University Law Press, Pretoria, 2013, p. 79.

between black domestic workers and their white 'madams',[13] a pattern that has lingered despite Apartheid ending.[14]

With growing black affluence, class has featured more prominently in domestic worker-employer relations. Nonetheless, '[t]he result of the complex interplay between gender, race and class is, in many cases, a perception amongst employers that the domestic worker is a lesser creature'.[15] One outcome is the persistence of paternalist relationships between domestic workers and their employers.[16] Another is that the mobilisation of women, which is 'generally a necessary condition for changes in care-related policies', becomes less likely.[17] The location of domestic work also contributes to its undervaluation. Domestic work is largely conducted by isolated workers in the private sphere, which makes worker organising for better conditions with employers or stronger government regulation more difficult.[18]

It should be clear from this analysis that there are many obstacles to raising the value of domestic work in South Africa. They go well beyond the gig economy. However, we argue that existing intersecting inequalities, discrimination, and power differentials tend to be reinforced in the on-demand economy, deepening the existing analysis of domestic work and care platforms in the

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[13] The seminal study of this theme is J Cock, *Maids & Madams: A study in the politics of exploitation*, Ravan Press, Johannesburg, 1980.

[14] See S Archer, '"Buying the Maid Ricoffy": Domestic workers, employers and food', *South African Review of Sociology*, vol. 42, issue 2, 2011, pp. 66–82, https://doi.org/10.1080/21528586.2011.582354; I du Plessis, 'Nation, Family, Intimacy: The domain of the domestic in the social imaginary', *South African Review of Sociology*, vol. 42, issue 2, 2011 pp. 45–65, https://doi.org/10.1080/21528586.2011.582740; E Jansen, *Like Family: Domestic workers in South African history and literature*, New York University Press, New York, 2019.

[15] *Ibid.*, p. 191.

[16] du Toit and Huysamen.

[17] P Domingo, R Holmes, N Jones, and E Samman, *Bridging Policy Insights: Care responsibilities and women's leadership*, Policy Brief, Overseas Development Institute, London, December 2016, p. 4, retrieved 13 July 2020, https://www.odi.org/sites/odi.org.uk/files/resource-documents/11189.pdf.

[18] However, see also S A Ally, *From Servants to Workers, South African domestic workers and the democratic state,* University of KwaZulu-Natal Press, Scottsville, 2010. Ally argues that the post-Apartheid state's regulation of domestic work 'depersonalised' employer-employee relations, thereby threatening domestic workers' use of personal relations to negotiate their working conditions, which is itself a unique characteristic of the nature of domestic work.

United States[19] as well as India, Kenya, Mexico, and South Africa.[20]

In the remainder of this article, we demonstrate that the current operating model of platforms in South Africa is likely to perpetuate the labour exploitation of domestic workers. The next section explores working conditions for traditional domestic workers. This is followed by our analysis of the emergence of the on-demand economy. This section includes our methodology, outlines our empirical findings on labour conditions within the on-demand sector, and analyses the 'winners and losers' under this new model. We conclude with reflections on the policy implications of this research.

2. Labour Conditions in the 'Traditional' Sector

Working conditions for domestic workers in South Africa have been historically poor, characterised by informality and exploitation. There have, however, been recent attempts to improve the situation. Unions such as the South African Domestic Service and Allied Workers Union (SADSAWU) have been leading sustained campaigns for decent wages and adequate workers' protection. Government attempts to establish a regulatory framework include the introduction of 'Sectoral Determination 7' in 2002, which mandated a minimum wage and basic working conditions such as formal employment contracts and the compulsory registration of workers with the Department of Labour—a change that enables them to benefit from the Unemployment Insurance Fund (UIF). In 2013, South Africa ratified ILO Convention 189 on Domestic Work, setting a new benchmark for improved conditions in the sector based on the key pillars of 'decent work'. These include recognition of domestic work as 'real work', formalisation through contracts, adequate wages, social protection, health and safety in the workplace, and rights to organising and social dialogue.[21] In 2018, the Department of Labour proposed extending workers' compensation to domestic workers, and in May 2019, the Pretoria High Court ruled that their exclusion from the Compensation for Occupational Injuries and

19   N van Doorn, 'Platform Labor: On the gendered and racialized exploitation of low-income service work in the "on-demand" economy', *Information, Communication & Society*, vol. 20, issue 6, 2017, pp. 898–914, https://doi.org/10.1080/136911 8X.2017.1294194; J Ticona and A Mateescu, 'Trusted Strangers: Carework platforms' cultural entrepreneurship in the on-demand economy', *New Media & Society*, vol. 20, issue 11, 2018, pp. 4384–4404, https://doi.org/10.1177/1461444818773727.

20   A Hunt and F Machingura, *A Good Gig? The rise of on-demand domestic work*, Development Progress Working Paper 7, Overseas Development Institute, London, December 2016, https://www.odi.org/sites/odi.org.uk/files/resource-documents/11155.pdf.

21   International Labour Organization, *Convention C189: Domestic workers convention*, 16 June 2011.

Diseases Act of 1993 (COIDA) was unconstitutional. As of early March 2020, the Constitutional Court began proceedings over whether to instruct Parliament to amend COIDA to include domestic workers.[22]

Nonetheless, significant challenges remain. While the National Minimum Wage Act of 2018 specified a minimum hourly wage of ZAR 20 (approx. USD 1.40 at the time), as of January 2019, the minimum wage for domestic workers was set at only 75 per cent of the national minimum.[23] SADSAWU and other labour rights organisations continue to highlight the insufficiency of this wage to meet the cost of living, as well as its symbolism for the undervaluation of domestic work vis-à-vis other forms of work to which a higher minimum wage applies.

Implementation of regulation also remains patchy. An unknown (but presumably sizeable) number of domestic workers continue to work informally, and several categories of domestic workers remain excluded from social protection provisions.[24] For example, one recent estimate suggests that approximately one-third of the domestic workers who work the requisite 24 hours or more per month remain unregistered with UIF.[25] These include foreign individuals working on contracts, as well as individuals employed for less than 24 hours a month by a single employer—a key barrier given that many domestic workers work part-time for multiple employers.[26] Employer non-compliance and domestic workers' limited awareness of their rights further impede

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[22] 'Why the Concourt Case for Domestic Workers is So Important – for Employers Too', *Eyewitness News*, 10 March 2020, https://ewn.co.za/2020/03/10/why-the-concourt-case-for-domestic-workers-is-so-important.

[23] The Sectoral Determination of Minimum Wages for Domestic Workers (December 2018) adds detail based on location and weekly hours worked. As of 20 March 2020, the minimum wage was raised to ZAR 20.76 for most workers and ZAR 15.57 for domestic workers. See 'This is South Africa's New Minimum Wage', *Business Tech*, 18 February 2020, https://businesstech.co.za/news/finance/374890/this-is-south-africas-new-minimum-wage.

[24] du Toit.

[25] Statistics South Africa, cited in K Liao, 'One third of domestic workers are still not registered for UIF', *GroundUp*, 13 June 2019, https://www.groundup.org.za/article/one-third-domestic-workers-are-still-not-registered-uif.

[26] Department of Labour of South Africa, 'Unemployment Insurance Act No. 63 of 2001', *Republic of South African Government Gazette*, vol. 439, no. 23064, 28 January 2002, pp. 1–66, https://www.gov.za/sites/default/files/gcis_document/201409/a63-010.pdf.

implementation.[27] Other persistent protection gaps include medical care, pension, employment injury benefit, and family benefit.[28]

3. The On-Demand Economy: Labour conditions, winners and losers

The entry of digital platforms into the domestic work sector in South Africa builds upon an established model while also adding new features. Compared to other options open to domestic workers (notably but not exclusively traditional domestic work arrangements), digital platforms offer some positive features that workers value and which improve their working conditions. However, workers also identified several ways in which the on-demand model perpetuates their precarious working conditions.

The data that informs this article was collected as part of a broader two-year research project exploring gender and the gig economy in Kenya and South Africa.[29] In South Africa, novel methods of data collection included a nine-round, automated voice response (AVR) survey with workers active on a domestic work platform, and the analysis of data from this same company.[30] It should be underlined that while the platform provided access to its data and contact information for registered workers, the study was fully independent: the survey was conducted through an independent company who secured consent from workers to survey them and anonymised the data that was collected. The

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[27] J Gobind, G du Plessis, and W Ukpere, 'Perceptions of Domestic Worker Towards the Basic Conditions of Employment Act of South Africa', *Journal of Social Sciences*, vol. 37, 2013, pp. 225–235, https://doi.org/10.1080/09718923.2013.11893221.

[28] I Ortiz (ed.), 'Social Protection for Domestic Workers: Key policy trends and statistics'*,* Social Protection Policy Papers No. 16, International Labour Organization, Geneva, 2016, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_458933.pdf.

[29] A Hunt, E Samman, S Tapfuma, G Mwaura, R Omenya, K Kay, S Stevano, and A Roumer, *Women and the Gig Economy: Paid work, care and flexibility in Kenya and South Africa*, Overseas Development Institute, London, 2019, https://www.odi.org/sites/odi.org.uk/files/resource-documents/women_in_the_gig_economy_final_digital.pdf.

[30] Nearly 650 workers (around one-third of the total) who were on the platform as of August 2018 responded to an invitation to complete the first round of a survey covering their background and motivations for engaging with the platform. We could not investigate self-selection into the survey nor non-response comprehensively because, for privacy reasons, the platform deliberately collected minimal personal details regarding registered workers. Subsequent response rates varied between 25% and 42% for the first five rounds of the survey, after which we had to reduce the sample size due to budgetary restrictions and a rise in the price of mobile phone airtime. See Hunt *et al.* for more details.

study also involved qualitative interviews with workers who were active or had previously been active on gig platforms (16 direct interviews and one focus group discussion comprised of 10 participants). We also conducted three key informant interviews, with a team of academics, one domestic worker union representative, and one platform representative.

Several domestic work-focused platforms exist in South Africa. Although platforms evolve and change regularly, they typically offer a smartphone-operated app that allows clients to access the profiles of workers whose availability and profile match their preferences for domestic service provision. These same apps also offer ways for workers to sign up, manage gigs, and receive payment. At the time of data collection, the platform studied for this research enabled clients to make bookings of three hours or more and gave them a way to tip workers. On the worker side, it offered an hourly rate based on their tenure with the platform and a premium for taking on gigs cancelled by others. The platform's method of recruitment included an application and selection process, migration status and criminal record checks, and orientation sessions on using the platform. It covered the cost of cleaning supplies, while workers paid for transport and the cost of their airtime (the platform has since developed a data-free app, eliminating airtime costs for workers).[31]

Labour Conditions in On-Demand Domestic Work

Our exploration of the conditions of gig work focused on: earnings and income stability; flexibility in the location and timing of work; safety and security; social protection; opportunities for learning and the professionalisation of service provision; and possibilities for collective organisation and bargaining. We briefly outline our findings on each in turn.

Earnings and Income Stability

Our analysis demonstrates that, as of December 2018, workers on the platform with five days of availability were earning ZAR 900 (USD 65) on average per week. This was around 45-50 per cent higher than the minimum wage for domestic workers (working at least 27 hours per week) of ZAR 616 (USD 45), but it still falls short of the amount needed for a family of four to exceed the poverty line (estimated at between ZAR 1,031 and ZAR 1,319 per week per

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[31] Detailed information is provided in Hunt *et al.*

member).[32] Moreover, the overhead financial costs of gig work—e.g. airtime and transport costs between gigs—depress platform-based earnings.

Most survey respondents (84 per cent) reported being their household's primary earner, while nearly all (95 per cent) had financial dependents. Many also signalled that their household incomes were insufficient to meet their basic needs and financial responsibilities. Utilisation rates for 'full-time' workers (those available for work five or more days weekly) averaged around 60 per cent over a one-year period.[33] In addition, the irregularity in receiving bookings meant that some gig workers experienced significant changes in their incomes from week to week, as demonstrated in average variation from mean earnings of close to 50 per cent weekly. Some workers fared better than others on the platform. The top 10 per cent of full-time workers were taking on around one quarter of the available hours of work carried out by full-time workers, with this 'success' linked to ratings, length of tenure on the platform, and being relatively more available to take up gigs.

Nevertheless, over half of survey respondents (56 per cent) reported being satisfied or very satisfied with their pay. A significant share also reported that their hourly earnings were higher than they would have been in other types of work: 37 per cent reported that working through the platform was more lucrative than other jobs on an hourly basis, and 40 per cent indicated this was 'sometimes' the case.

Once registered, gig workers tended to engage in other forms of paid work alongside platform work. Around half (52 per cent) of survey respondents reported having an additional job or business, or that they also worked for another platform. However, the platform typically provided the bulk of workers' income: 73 per cent identified the platform as the main source of their earnings in the previous month. Participants in face-to-face interviews mentioned having recently undertaken other types of casual or informal work, with several reporting street vending, working in shops, and commercial cleaning work. However, paid domestic work was the most frequently cited work engaged in

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[32] Between June 2018 and mid-September 2019, weekly earnings for workers with five or more days' availability per week, excluding voluntary 'days off', averaged ZAR 900. Estimates of household income needed for a household of four to exceed the poverty line are ZAR 5,276 (Finn, 2015) and ZAR 4,125 per month (Budlender *et al.*, 2015). A Finn, *A National Minimum Wage in the Context of the South African Labour Market*, National Minimum Wage Research Initiative, Working Paper Series, No. 1, University of the Witwatersrand, Johannesburg, August 2015, retrieved 13 July 2020, http://opensaldru.uct.ac.za/bitstream/handle/11090/786/2015_153_Saldruwp.pdf; Budlender *et al.*; Hunt *et al.*

[33] We computed utilisation rates, discounting voluntary 'days off' between November 2017 and December 2018.

before joining the platform, whether live-in or day labour within private homes, sometimes obtained via an agency, and many continued to provide domestic labour through traditional means alongside gig work. Taken together, these findings suggest that despite gig earnings being inadequate, they are still better than other options—notably domestic work in traditional households.

Flexibility

Flexibility in line with workers' preferences is a core offering platform companies advertise to their workforce. It is often portrayed as particularly advantageous to women due to the potential it offers to balance paid work with unpaid care and domestic work.[34] We found some evidence of workers being able to work on days that they preferred—92 per cent of survey respondents reported having worked on convenient days during the previous week and 88 per cent reported having worked at convenient times.

Yet our interviews suggested mixed experiences among workers. Several interviewees agreed that platform work was more flexible than other types of work, including traditional domestic work. Alongside low pay in previous roles and/or persistent unemployment, this flexibility was cited as a reason to join the platform. However, this ostensible flexibility must be interpreted alongside other features of the platform model. First, the model allows platforms and clients to contract workers only when they need them. This means that the platform can respond to fluctuating demand at minimal cost, and that client demand for bookings *de facto* take precedence over workers' timing preferences. Second, the ability of clients both to book and cancel cleaners on an *ad hoc* basis—a key aspect attracting clients to the platform model—introduces considerable uncertainty for workers. Third, fixing gig booking lengths in advance increases the likelihood that clients will insist on more work than can reasonably be done in the agreed time, putting pressure on workers to acquiesce or risk being rated negatively and/or lose the client entirely.

The location of gigs was also a challenge. The persistent legacy of racial and economic segregation in South Africa means that many workers live in townships or other low-income areas. These are geographically far away from the more affluent neighbourhoods of their clients, and travelling between the

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34   E Bardasi and Q Wodon, 'Working Long Hours and Having No Choice: Time poverty in Guinea', *Feminist Economics*, vol. 16, issue 3, 2010, pp. 45–78, https://doi.org/10.1 080/13545701.2010.508574; T D Allen, R C Johnson, K M Kiburz, and K M Shockley, 'Work–Family Conflict and Flexible Work Arrangements: Deconstructing flexibility', *Personnel Psychology*, vol. 66, issue 2, 2013, pp. 345–376, https://doi.org/10.1111/ peps.12012; M Hilbrecht and D Lero, 'Self-Employment and Family Life: Constructing work–life balance when you're "always on"', *Community, Work & Family*, vol. 17, issue 1, 2014, pp. 20–42, https://doi.org.10.1080/13668803.2013.862214; Hunt *et al.*

two on public transport is rarely easy. While workers can specify on the platform where they wish to work, this aspect of flexibility was often shaped by logistical and/or financial concerns.

Safety and Security

As in the traditional sector, violence against on-demand domestic workers is a concern. On-demand domestic work also comes with safety risks particular to providing services to a range of different and unknown clients in their homes.[35] Some workers reported instances of rude, aggressive, or abusive treatment while working behind closed doors. The physical urban environment in South Africa, characterised by long distances, poor transport links, and extremely high levels of crime and insecurity, presents further risks. Early gig start times were raised multiple times as a safety issue, and workers reported several instances of armed and aggressive robbery while travelling to and from gigs.

Labour and Social Protection

A chief critique of gig platforms is that the classification of workers as 'independent contractors' (which denies them the status of employees) restricts their access to labour and contributory social protections, while removing the need for platforms to make contributions on their behalf.[36] The model does not guarantee entitlements mandated within South Africa's domestic worker employee regulation. Moreover, platform company representatives frequently express aversion to becoming recognised employers (as opposed to technology companies, as discussed further below), although some have extended basic protections to workers through limited private schemes. The relatively progressive platform involved in this research, for example, had instituted various measures aimed at improving working conditions, including making accidental death and disability coverage available to workers via a private insurance company.

Workers' status on the platform meant that routine life events risk further exacerbating economic precariousness. Workers often had limited or no income during maternity periods in which they could not work, which was especially pertinent since a majority were single mothers. Furthermore, workers' coverage by public social protection was low: the platform's polling of its workforce in 2019 suggested that just 5 per cent of on-demand domestic workers reported being registered for UIF (which would give them access to public maternity benefits), while 32 per cent did not know whether or not they were registered.[37]

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[35]   Hunt and Machingura.

[36]   De Stefano.

[37]   Key informant interview, platform representative.

Learning and the Professionalisation of Service Provision

Workers expressed satisfaction with the professional development the platform afforded; 91 per cent of survey respondents believed that the work they did through the platform gave them opportunities for 'learning on the job'. The model also appeared to enable a significant share of workers—26 per cent— to pursue studies alongside work. The platform representative we interviewed spoke of plans to provide training in soft skills such as scheduling and customer interaction. Despite this, attempts to professionalise on-demand domestic work, including through increasing and certifying worker skills, have not yet translated into widespread increased valuation of workers or the labour they provide.

Some evidence suggests that investing in skills development, certification, and other forms of domestic work 'professionalisation' is important for increasing its societal and economic valuation.[38] Indeed, the platform we collaborated with had sought to challenge client perceptions of domestic work as a low-value commodity by presenting it as professional service meriting 'above market' rates.[39] But although the company had started out with higher prices for clients, they did not make bookings until prices were lowered. 'Razor thin margins and no willingness to pay' among clients made raising earnings an extremely challenging proposition for the start-up company.[40] Moreover, several interviewees spoke of a continued lack of respect and poor treatment from clients, suggesting on-demand models have not caused clients to value domestic workers more.

Collective Organisation and Bargaining

Formal gig-worker organisation is nascent in South Africa, with few signs of successful collective action in the on-demand domestic work sector.[41] Indeed, the platform model excludes workers from fundamental labour rights such as freedom of association, collective bargaining, or protection against discrimination or unfair dismissal. None of our survey respondents reported membership in any formal group that would advocate for their rights: 32 per cent said they did not know how to join such a group and 26 per cent felt that such organisations were for workers in the 'formal economy'. While SADSAWU reported receiving some complaints from platform workers, it had not yet had the capacity to focus on them. It also noted that workers would

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[38]   Addati *et al.,* 2018.

[39]   Key informant interview, platform representative.

[40]   *Ibid.*

[41]   With notable exceptions, such as the legal case against Uber in South Africa discussed above, which the company later successfully appealed.

need to be members of the union to receive structured assistance.[42] That said, many workers reported being in informal communication with one another: 74 per cent reported interacting with others on a regular basis, most commonly through WhatsApp. While certainly a source of support to these workers in lieu of other options, the informal nature of these private groups—and lack of any formal organising or bargaining mechanism—prevents them from transforming into meaningful collective action.

Winners and Losers of On-Demand Domestic Work

Building on the analysis of working conditions, this section explores beneficiaries and losers from the rise of on-demand domestic work. We consider three core constituencies: workers, companies, and clients. The core challenge for workers in South Africa is that of employment 'quality vs. quantity'. Although platforms play a growing role in generating paid work, some clearly provide better conditions than others—as evident in the results of the University of Oxford's 'Fairwork' index, which ranks platform companies according to principles covering fairness in pay, health and safety provisions, contracting, management, and representation.[43] Nonetheless, even where platform representatives report a wish to provide quality economic opportunities, a context of high unemployment, informality, and a weak regulatory environment make it possible for decent work standards to remain unmet. Clients are likely to benefit from securing flexible on-demand domestic work with few employer obligations.

Workers

The chief motivation for domestic workers to engage in gig work in South Africa, despite the multiple challenges it presents, appears to be economic necessity. It is important to recall the broader structural constraints that limit the availability and quality of work available to marginalised and disadvantaged women in South Africa, including an economy characterised by widespread un(der)employment and informality, persistent discrimination, and a challenging physical urban environment. Many interviewees highlighted a lack of other options and reported that platform work offered them some tangible benefits over both unemployment and the other forms of work realistically available to them. These included higher hourly earnings, some choice over work hours, and having an intermediary between them and clients. Indeed, 91 per cent of survey

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[42]   Key informant interview, SADSAWU representative.

[43]   A Badger, J Woodcock, M Graham, and S Englert, *The Five Pillars of Fairwork: Labour standards in the platform economy*, Fairwork Foundation, October 2019, https://fair.work/wp-content/uploads/sites/97/2019/10/Fairwork-Y1-Report.pdf; See also Hunt *et al.,* p. 73, Box 10.

respondents reported that gig work gave them greater freedom and control in their work. From this perspective, any constraints to platform operations through further regulation are likely to restrict workers' economic opportunities, under a model that many perceive as having relative advantages.

This backdrop is hardly promising for improvements in working conditions, even where platforms seek to charge higher rates to clients than in the traditional sector and pass on (some of) this surplus to workers. The traditional domestic sector has been a key source of work for many marginalised women in South Africa, and platform companies are fully cognisant that they are operating within a context of poor labour conditions. Indeed, platforms are reliant on having a large pool of workers willing to provide cheap and readily available labour. This means that their offering can come with only minimal security, rights, and protections, and it will in some ways be better than what is found in the traditional sector. In other words, it is a *relatively better* option. But by neither fully meeting workers' needs nor by advancing a quality work framework, it can also be argued that they are helping to maintain the traditionally inadequate working conditions that have long characterised domestic work. Indeed, they can do this because weak regulatory institutions (and enforcement), widespread unemployment (currently averaging 30 per cent for women),[44] and deeply entrenched structural challenges give workers little choice but to take whatever paid work comes their way.

Lack of protections typify South Africa's informal economy (and other low- and middle-income contexts). But what distinguishes the platform economy is that these are built in *by design*. Domestic work, as we have seen, provides an income to the most insecure workers who often lack other forms of social protection, such as living in a household with a member who has social insurance or who receives a government grant. Only 27 per cent of our survey respondents lived in households receiving a South African Social Security Agency (SASSA) grant (while 12 per cent were unsure), compared with 70 per cent of households nationally. It follows that these workers are most in need of the rights and protections that employee status would confer.

The platform has provided limited protections to workers, including privately-provided microinsurance for accident and disability coverage, instead of contributions to public social protection which would normally be provided by employers. However, public schemes are more likely to confer protection upon workers, while 'more individualized forms of protection, such as private insurance or individual accounts, do not comply with most social security

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[44] 'Unemployment Drops in the Fourth Quarter of 2018', Statistics South Africa, 13 February 2019, retrieved 13 July 2020, http://www.statssa.gov.za/?p=11897.

principles, and therefore are outside the core of social protection systems'.[45] Indeed, the privatisation wave in the 1980s and 1990s demonstrated the underperformance of such schemes and raised serious doubts about an increased role for private provision.[46] Accordingly, public social protection systems financed through an appropriate blend of taxes and contributions are more likely to guarantee adequate social protection, ensure fiscal and economic sustainability, and give due regard to social justice and equity. Such an approach has the potential to promote a stronger social contract by allowing for risk pooling and redistribution among different groups within the population.[47] Behrendt *et al.* conclude that 'proposals that weaken social insurance in favour of private insurance and individual savings arrangements, with their limited potential for risk pooling and redistribution, will likely increase poverty, especially for vulnerable low-income earners and those with non-linear work careers, and exacerbate inequality, including gender gaps, and thus can only be voluntary mechanisms to complement stable, equitable and mandatory social insurance benefits'.[48]

The delinking of platform companies from social insurance is not inevitable. GoJek, the largest gig platform in Indonesia, is notable for having developed the pioneering SWADAYA programme in 2018 in partnership with the country's public social security system, which adds a social insurance contribution to the price of its services.[49] However, because it voluntarily opts to provide this scheme rather than being mandated to do so by law, it has the option of changing or revoking the programme at any time.

In short, even if workers perceive short term benefits from engaging in platform work, the concern is that its operating model could undermine legislative gains achieved within the traditional sector in the longer term. In turn, this could worsen working conditions and make workers dependent on company goodwill rather than concrete entitlements to labour rights and government social

[45] C Behrendt, Q A Nguyen, and U Rani, 'Social Protection Systems and the Future of Work: Ensuring social security for digital platform workers', *International Social Security Review*, vol. 72, issue 3, 2019, pp. 17–41, https://doi.org/10.1111/issr.12212.

[46] Ortiz, cited in Behrendt *et al.*

[47] L Addati, F Bonnet, E Ernst, R Merola and P M J Wan, *Women at Work: Trends 2016*, International Labour Organization, Geneva, 2016, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_457317.pdf.

[48] *Ibid.*

[49] A Coupez, 'Sharing Economy: A drive to success – The case of GO-JEK in Jakarta, Indonesia', Research Master's Thesis, Supervisors: C Brognaux and C Lejeune, Louvain School of Management, Université catholique de Louvain, 2017, retrieved 13 July 2020, http://hdl.handle.net/2078.1/thesis:12596.

protection. Domestic work is inherently insecure work in which marginalised women are overrepresented, yet their lack of power and socio-economic marginalisation means they are too often excluded from such protections, especially since they often do not qualify as or are not recognised as employees. Indeed, this motivated a long-fought effort by domestic worker unions and other allies in South Africa, leading to one of the strongest regulatory and social protection frameworks for traditional domestic work globally, which the on-demand economy risks undermining.

Companies

The legal framework underpinning gig work is a recurring challenge. Should gig workers be classified as employees and platform companies as their employers? This issue's importance is reflected in litigation seeking the application of regulation and/or confirmation of employee status (with its associated protections and benefits), which is being pursued by workers and labour advocates in many countries. Some analysts argue that on-demand models herald a new form of working which renders current regulatory approaches ambiguous or even obsolete, and that a new classification is needed.[50] Others argue instead that such a reappraisal would merely undermine existing standards by evading the application of current sectoral regulation.[51]

Legislative debates over gig workers' employment status in South Africa have been confined to the ridesharing sector, most notably a case for unfair dismissal brought against Uber by deactivated drivers in 2017. Despite Uber's defence that drivers were not employees, and therefore could not be dismissed, the Commission for Conciliation, Mediation and Arbitration (CCMA) ruled in the drivers' favour—although the decision was later overturned on appeal. So far, this burgeoning advocacy has not led to the wholesale recategorisation of gig workers as employees. This means that platform companies 'win' from the growing gig economy chiefly by positioning themselves as brokers between clients and workers, rather than as employers. They capture value from workers' labour by charging commissions on gigs, while at the same time circumventing the responsibility to uphold labour rights and contribute to social insurance on workers' behalf. Per Aloisi and De Stefano, 'the lack of compliance with labour-

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[50] For more discussion, see A Aloisi and V De Stefano, 'Regulation and the Future of Work: The employment relationship as an innovation facilitator', *International Labour Review*, vol. 159, issue 1, 2020, pp. 47–69, https://doi.org/10.1111/ilr.12160.

[51] V De Stefano and A Aloisi, 'European Legal Framework for "Digital Labour Platforms"', Joint Research Centre Report, Publications Office of the European Union, Luxembourg, 2018, https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112243/jrc112243_legal_framework_digital_labour_platforms_final.pdf.

related, fiscal, and social security duties constitutes platforms' main competitive advantage vis-à-vis their competitors... [resulting in] … an exacerbation of social precariousness as platform workers have very limited access to labour protection'.[52]

Platform companies, in turn, argue that innovation is needed to provide employment (particularly in high unemployment contexts like South Africa); that they provide their own support to workers where viable (e.g. private insurance); and that their operating model bolsters work quality in settings where poor quality work is endemic. They contend that any attempt to reclassify users of their platform as employees would severely hamper their profit-making ability, due to the attendant obligations in terms of worker taxation and employee contributions, and consequentially jeopardise their very existence and therefore the economic opportunities they facilitate.

Furthermore, by arguing that they need a favourable operating environment to 'create' jobs, platform companies may reduce the South African government's political will to carry out oversight. The government may well gamble that it is more politically expedient to support the creation of 'digital jobs' amid high unemployment, as Kenya's government has done,[53] than to increase the regulation of labour conditions and taxation. Indeed, a 'social partners' framework agreement for addressing South Africa's unemployment crisis through 'broad-based improvement in the business environment and conditions for entrepreneurial development' and strong encouragement of 'adopters of new technology to use innovation as a means to save and grow jobs' was agreed during the national Presidential Jobs Summit held in October 2018, with scant reference to job quality.[54]

In short, there is a strong case that the profit-making model of on-demand companies in South Africa currently depends on the historic inability of domestic workers to establish a *de facto* employment relationship (and the better conditions that accompany it), as well as poor enforcement of existing regulations governing traditional domestic work. If these challenges were tackled in a meaningful way, companies would likely be obliged to emulate traditional employers in paying employee taxes and UIF contributions, which could in turn lead them to reduce the opportunities available (e.g. to ensure no worker gets over 24 hours per month work, which would render them exempt from having to pay UIF contributions).

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[52]   *Ibid.*, p. 5.

[53]   Hunt and Machingura.

[54]   Republic of South Africa, *The Presidential Jobs Summit Framework Agreement 4 October 2018*, retrieved 13 July 2020, http://nedlac.org.za/wp-content/uploads/2018/10/presidential-jobs-summit-framework-agreement-4-October-2018.pdf.

Clients

At the time of writing, the platform charged its clients a variable rate that depended on the number of hours booked—ranging from ZAR 48 (USD 3.48) per hour for a four-hour booking to ZAR 30.5 (USD 2.21) per hour for a ten-hour booking, which represents the maximum length. This is clearly far higher than the government-mandated minimum wage for domestic workers (ZAR 16.03 [USD 1.16] hourly for a worker employed for fewer than 27 hours weekly, per the 2018 Sectoral Determination). However, the higher hourly cost to clients of hiring a platform worker is offset by lower transaction costs, e.g. those associated with selecting, screening, and supervising a worker found independently. This is a key attribute of the on-demand model that was highlighted by a platform representative we interviewed. They explained that, by allowing the platform to carry out these processes, clients were ensured a 'professionalised' service in return for paying higher prices. In addition, clients avoided the economic commitment of guaranteeing employment for a set number of hours' work and bureaucratic processes associated with being an employer as stipulated by South African labour law. Therefore, it could be argued that, from a client perspective, an important advantage of the platform model is that it *de facto* provides a service that evades compliance with labour or social security regulations. Such a trend significantly threatens the hard-won gains of the domestic worker movement and risks eroding the better-quality formal jobs where they exist, should the platform economy secure a sizable market share. This is likely to impact negatively upon the cohort of domestic workers who remain relatively marginalised but have managed to secure access to higher standards and securities in the traditional sector.

4. Conclusion

At present, neither the traditional nor the on-demand models can be said to offer decent domestic work. In both spheres higher standards and their enforcement are needed to redress historical power inequalities and ongoing breaches of the labour rights of South Africa's domestic workforce. The trajectory of the gig economy to date suggests that platform companies, with an inherent profit motive, are unlikely to lead the charge towards a wide-scale revaluation of domestic work; nor are household purchasers of workers' labour. Broader societal reforms are therefore needed to shift the social norms underpinning the discrimination and structural inequality characteristic of the domestic work sector. Government action is also needed, so that traditional domestic workers benefit from the same labour protections as workers in other more highly valued sectors, and to ensure that existing regulation is enforced in the platform economy. Indeed, without compliance with labour rights and protections, on-demand workers are unlikely to benefit fully from 'collective bargaining, protection from unfair dismissal and all the legal protection that

goes with formal employment that goes in inverted commas if and when they become employees', per a Social Law Project representative.[55]

As it stands, incremental improvements notwithstanding, we find that on-demand models can be seen as largely 'more of the same'. They capitalise on the undervalued labour of marginalised women workers and uphold the power held by the purchasers of their labour that characterise the traditional sector. Therefore, the platform economy represents a continuation of the normalisation of the labour exploitation of domestic workers. It is critical to extend labour and social protections to *all* domestic workers in a sustainable and comprehensive way, for which an increased societal valuation of domestic work—and workers—is a prerequisite. Policy-makers and platform companies have a central role to play in ensuring these rights, which notably include regular, fair, and adequate earnings, facilitating access to public social protection, ensuring their health and safety, and supporting collective action to ensure that policy and practice reflect workers' own priorities.

Abigail Hunt is a Research Fellow at the Overseas Development Institute, where she leads research focused on gender and the world of work. She is particularly interested in marginalised women workers' experiences of new and emerging labour market trends, unpaid care and domestic work, and social protection. Email: a.hunt@odi.org.uk

Dr Emma Samman is a Research Associate with the Overseas Development Institute and an independent consultant. Her research centres on the analysis of poverty and inequality, particularly gender inequality, the human development approach, the future of work, and the use of subjective measures of wellbeing to inform research and policy. Email: e.samman@odi.org.uk

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[55]   Key informant interview, Social Law Project.

The Struggle of Waste Pickers in Colombia: From being considered trash, to being recognised as workers

Federico Parra

Abstract

Organised waste pickers in Colombia are formally recognised as subjects of special protection and as providers of the public service of recycling. As a consequence, they now receive remuneration for their work, but this was not always the case. This article highlights the strategies waste pickers used to successfully demand their rights while exploring the tensions and contradictions surrounding the formalisation of waste pickers as public service providers of recycling. These include a lack of sufficient guarantees from the government, attempts by private companies to appropriate waste pickers' benefits, and a lack of respect by both the state and private businesses for the recognition of their rights in law. It concludes that there is an inherent tension between the main objectives of the waste pickers—to improve their working conditions and overcome poverty and vulnerability—and that of the state, which promotes free market competition in the provision of public services.

Keywords: workers in informal employment, waste pickers, informality, social recognition, formalisation, Colombia

Introduction

Organised waste pickers in Colombia have successfully shifted legal and normative frameworks around waste management in the country in their favour. The strategies they pursued to bring about this shift offer important lessons for anybody seeking to bring decent work standards into informal employment. This article shows that formal recognition as a part of a public waste management system—and the remuneration that comes with that recognition—can integrate

a historically marginalised population into a sustainable and dignified area of work. It further shows that such integration can extend decent work standards to a significant number of poor and vulnerable people.[1] The article is divided into three sections. First, I outline who waste pickers in Colombia are, the activities they carry out, their working conditions, and their productive role in the recycling value chain. Next, I describe the actions they took to demand their rights and influence the legal framework of waste management. Following that, I describe the tensions and contradictions that exist in the way the Colombian government has attempted to 'integrate' waste pickers through what it has called 'the process of formalisation'. This section also takes stock of the achievements and potential developments that this process has had for waste pickers in Colombia. Finally, I briefly discuss how organised waste pickers—recognised as public service providers of recycling—are addressing the Covid-19 pandemic in their work.

The analysis that supports this article is based on my professional experiences accompanying the Bogotá Waste Pickers Association and the National Association of Waste Pickers of Colombia since 1997. It also draws upon my academic studies, in particular my doctoral research, which analysed the evolution of this process until 2016. As part of the research for this article I also drew upon an updated review of Constitutional Court cases and the latest available literature on the subject.

Who Are the Waste Pickers in the World, and in Colombia?

Waste pickers are women and men of all ages who earn their livelihood by recovering, collecting, transporting, warehousing, and marketing potentially recyclable waste material from garbage produced in cities. This includes containers, packaging, glass, cardboard, paper, plastic, metals, and other materials. Waste pickers carry out their work primarily in two contexts: on the streets, where garbage is left in bags on the sidewalk or in containers, and in open-air dumpsites. According to the International Labour Organization (ILO), 'of the 19–24 million workers currently in the sector, only 4 million are in formal employment. The vast majority work as informal waste-pickers in developing

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[1] The term 'decent work' involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men, see: International Labour Organization, 'Decent Work', n.d., retrieved 22 June 2020, https://www.ilo.org/global/topics/decent-work/lang--en/index.htm.

countries, with a large percentage of them presumed to be women.'[2] Women informal waste pickers face particular challenges: as Dias and Ogando note, '[g]ender inequalities manifest themselves through structures of exploitation and marginalization that also cut across race and class lines and may result in a lack of authority and recognition.'[3] This has additional consequences for women: restricted access to the most valuable recyclable materials, which leads to lower incomes relative to male waste pickers; barriers to women waste pickers organising or holding leadership positions or roles; and distinctive patterns of vulnerability to illness and accidents in the workplace.[4] These issues were evident in recent ethnographic research on the human rights situation of waste pickers conducted by the NGO Women in Informal Employment: Globalizing and Organizing (WIEGO) in five Latin American countries.[5]

Image 1: Dumpsite at Jinotega, Nicaragua. Image credit: Federico Parra, 2014.

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[2] International Labour Organization, *Report V: Sustainable development, decent work and green jobs*, International Labour Conference, 102nd Session, 15 March 2013, p. XV, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_207370.pdf.

[3] S M Dias and A C Ogando, 'Engendering Waste Pickers Cooperatives in Brazil', Conference Paper for CCR/ILO Research Conference on Cooperatives and the World of Work, Antalya, 9-10 November 2015, p. 10, https://www.wiego.org/sites/default/files/publications/files/Dias-Engendering-Wastepicker-Cooperatives-Brazil.pdf.

[4] *Ibid.*

[5] A R Maldonado, *Resumen Ejectivo – La situación de los derechos humanos de la comunidad recicladora en América Latina: Un reclamo urgente por respeto a través de estándares internacionales*, WIEGO, December 2019, https://www.wiego.org/sites/default/files/publications/file/Rivera_resumen_derechos_humanos_recicladores_AmericaLatina_WIEGO_0.pdf.

According to Mexican researcher Martín Medina, the context, activities, conditions, and value chain in which waste pickers carry out their work can be traced to at least four key factors. First, waste pickers exist because industrialisation has led to the urbanisation of production and the mass consumption of manufactured products, which in turn generate massive amounts of waste. Second, because manufacturers require cost-effective raw materials to maintain production, this waste retains commercial value. Third, because populations have become increasingly concentrated in cities, waste tends to be concentrated in spaces where it can be effectively reclaimed. And fourth, because local and national economies are unable to formally absorb all of the migrants arriving into cities, some must collect, sort, and resell waste as a means of survival.[6]

The recycling work of waste pickers contributes significantly to societies' sanitary, environmental, and productivity conditions. It reduces both the amount of waste that ends up in landfills and operational costs for municipal garbage collection services. Recycling also lowers the costs of acquiring raw materials for industries, thereby reducing the strain on natural resources. Local case studies[7] and global analyses[8] of the sector have also concluded that the work of waste pickers contributes to the reduction of greenhouse gases and to the overall sustainability of the planet.

Despite these benefits, waste pickers remain marginalised and socially excluded throughout the world. Their work is performed in highly precarious sanitary, technical, and economic conditions, and is made worse by the irresponsible ways in which both producers and consumers dispose of their waste. Waste pickers are routinely exposed to respiratory and skin diseases, and must endure hazards associated with the mixing of different types of waste material. Further occupational hazards vary according to their specific experiences of work. For example, street-based waste pickers must contend with air pollution and fast-moving traffic, while those in the landfills must watch out for heavy machinery. Regardless of where they work, waste pickers are subjected to wide-spread

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[6]   M Medina, 'Reciclaje de desechos sólidos en América Latina', *Frontera Norte*, vol. 11, no. 21, 1999, pp. 7-31, https://doi.org/10.17428/rfn.v11i21.1411.

[7]   M F King and J Gutberlet, 'Contribution of Cooperative Sector Recycling to Greenhouse Gas Emissions Reduction: A case study of Ribeirão Pires, Brazil', *Waste Management*, vol. 33, issue 12, 2013, pp. 2771-2780, https://doi.org/10.1016/j.wasman.2013.07.031

[8]   A Scheinberg, D C Wilson, and L Rodic-Wiersma, *Solid Waste Management in the World's Cities: Water and sanitation in the world's cities 2010*, United Nations Human Settlements Programme (UN-HABITAT), London and Washington D.C., 2010, https://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2918.

discrimination by both citizens and governments.[9] Police abuse is common, and in many countries their work is not recognised as work.

Image 2: Waste picker in the municipality of Rionegro, Colombia. Image credit: Federico Parra, 2018.

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9   F Parra, 'De la dominación a la inclusión: la población recicladora organizada como sujeto politico', Doctoral Dissertation in Political Studies and International Relations, Faculty of Political Science and Law, National University of Colombia, 2016, https://repositorio.unal.edu.co/handle/unal/59612.

There are more than 60,000 waste pickers in Colombia according to the National Association of Waste Pickers.[10] They recover the recyclable waste from garbage bags, collect, sort, and transport it, and then sell it to recycling warehouses. Their working hours and locations depend on the routes and schedules of the garbage collection service—they must arrive several hours earlier than the municipal collectors in order to have time to recover the recyclable materials from the garbage bags before they are taken away.

In 2012, at the request of the Constitutional Court, the Mayor's Office of Bogotá was required to identify the capital's waste picker population. This census yielded a figure of 13,984;[11] after adjustment, the figure was balanced at approximately 18,000 by 2016. Bogotá's waste pickers recover approximately 1,200 tonnes of recyclable waste per day, which would otherwise be added to the more than 6,200 tonnes per day that arrive at the city's landfill.[12] From this census, indicators were established that show the degree of exploitation to which waste pickers are subjected. For example, 43.8 per cent of waste pickers work six days a week and 71.6 per cent work more than eight hours a day. The average monthly income at the time was COP 120,000 (approximately USD 63).[13]

According to the census of waste pickers in Bogotá, 69.1 per cent of waste pickers are men and 30.9 per cent are women. The same census also established that 69 per cent of the waste pickers surveyed have up to three dependants while the remaining 31 per cent have more than four dependants. There are no statistics on how many families are headed by women, but as a general rule, women tend to be responsible for recycling and unpaid care work within patriarchal families. At the same time, as I have shown in my previous work, in many family units it is the man who administers the resources.[14] While long hours and large family sizes remain features of the waste picking population, the income of a significant percentage has improved as a result of their struggle, as will be seen below.

[10] As presented at the National Workshop for the Review and Analysis of the Recycling Scheme, 11-12 July 2019, Bogotá.

[11] Universidad Francisco José De Caldas (UFJDC) and Unidad Administrativa Especial De Servicios Públicos (UAESP), *Informe Final: Censo de recicladores, Bogotá Humana 2012*, UFJDC and UAESP, Bogotá, 2012.

[12] Superintendencia de Servicios Públicos Domiciliarios, *Informe de Disposición Final de Residuos Sólidos 2017*, Bogotá, 2018.

[13] By 2012, the legal minimum wage in Colombia was COP 566,700, and the average value of one US dollar that year was COP 1,798. It should be noted that the USD 63 represent an average of different income levels among waste pickers.

[14] F Parra, 'El Recicloscopio: Un instrumento para ver el trabajo de personas invisibles', Bachelor's Thesis in Anthropology, Department of Human Sciences, National University of Colombia in Bogotá, 1999.

The Struggle of Waste Pickers in Colombia

In various contexts around the world, non-recognition, discrimination, and criminalisation have catalysed processes of organisation within the waste picking sector. This has led to increased understanding and recognition of the role of waste pickers in society by both governments and citizens. The case of Colombia is one of the most significant, and it provides important lessons for how a country can sustainably integrate informal workers into the formal economy. To better understand these experiences, I offer a brief historical account of the normative and institutional evolution of public waste management in Colombia and how this has affected waste pickers in the country.

To understand the evolution of the prevailing narrative surrounding public waste management, it is useful to understand Wilson's notion of 'policy drivers'. They are 'the way in which waste is problematized, the domain or the "political landscape" in which the problematization is found, the prevailing ideas on how to solve the problem, and typical or usual practical actions or technical infrastructure proposed by municipal administrations, donors, central finance ministries, or a combination of such.'[15]

Until 1950, there was no centrally coordinated waste management in Colombia. Municipal authorities were left to their own devices to develop solutions, and as a result the collection and transport of waste took place irregularly. Meanwhile, intense migration from the countryside to the city, fuelled by the radicalisation of partisan violence, has taken place since the 1940s. Many of the new migrants to the growing cities, finding no other means of livelihood, began recovering containers and packaging made of glass, cardboard, and metals to sell into a then nascent recycling chain. The majority of this generation of waste pickers worked from open-air dumpsites.

Garbage collection was privatised in the second half of the 1980s as part of a broader programme of economic structural adjustment. Sanitary landfills replaced open-air dumpsites around the same time, and in a double hit, waste pickers were expelled from both the new garbage sites and from their informal settlements in the wastelands of the city and around the railroad tracks. These changes precipitated a dramatic decrease in living conditions for waste pickers. In response, and with the support of non-governmental organisations, waste pickers began defending their rights. In the face of expulsion from their

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[15]   D C Wilson, 'Development Drivers for Waste Management', *Waste Management and Research*, vol. 25, issue 3, 2007, pp. 198-207, https://doi.org/10.1177/0734242X07079149, cited in A Scheinberg, 'Informal Sector Integration and High Performance Recycling: Evidence from 20 Cities', WIEGO Working Paper No. 23, WIEGO, Manchester, March 2012, p. 7.

neighbourhoods they used arguments in support of their territoriality and habitat; in the face of restrictions on their activity they used arguments in support of their right to work; and in the face of systematic murders that went unpunished in the context of so-called 'social cleansing'[16] they used arguments in defence of their right to life. Most importantly, these situations catalysed the organisation of waste pickers in Bogotá and throughout Colombia.[17]

The Association of Waste Pickers of Bogotá (ARB) was born in 1990, and the National Association of Waste Pickers (ANR) was established a few years later.[18] Today, they are the most representative and influential organisations defending the interests of waste pickers in the country. ARB brings together seventeen grassroots waste picker organisations in Bogotá, representing 2,700 waste pickers. It is a key vehicle for member organisations to defend their interests to the authorities, and ARB has developed strategies for coordinating social mobilisation, analysing policies, denouncing rights violations, developing counter-proposals, and demanding rights. It has also promoted ways to strengthen production by coordinating the collection and sale of recyclable waste. ANR, meanwhile, brings together forty-one waste picker organisations from twenty-five cities. ANR directly represents just over 8,000 waste pickers and enjoys the support and backing of the trade unions Central Unitaria de Trabajadores de Colombia [Central Union of Workers, CUT] and the Confederación General del Trabajo [General Confederation of Labour, CGT]. It is the only organisation in the country to politically represent waste pickers' interests to national policy makers.

The Colombian Constitution of 1991 introduced the neoliberal principle of free competition in the provision of public services as a guarantor of efficiency, coverage, and quality. This was ratified in the *Law of Public Services* of 1994 and represented a dramatic shift in how public services were understood. Until 1991, the guiding principle of public waste management was economic sustainability; now it is profitability. Since 1991, the state has sought to make the provision of waste management services economically attractive for service providers, and

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[16] The most deplorable known case was the massacre of eleven waste pickers in March 1992, who were murdered to sell their organs to medical students at the Universidad Libre de Barranquilla [Free University of Barranquilla]. International Waste Picker Day is celebrated on 1 March in memory of those killed.

[17] Constitutional Court, Sentence T-617/95 [public space, right to housing, legitimate confidence, prevalence of the general interest, rights of children, community members of Puente Aranda], Judge Alejandro Martínez Caballero, 13 December 1995. See also: M Botero, 'Los Otros Comuneros de al 19 con 30', *El Tiempo*, 24 February 1996, https://www.eltiempo.com/archivo/documento/MAM-353620.

[18] 'Instancias de Representación Gremial', Asociación Recicladores Bogotá, 18 May 2012, https://asociacionrecicladoresbogota.org/quienes-somos.

one way that it has done this is by strengthening the linear model of collection, transport, and hygienic in-fill managed by private or joint stock companies. Waste pickers have been damaged by this shift, with national policies restricting and at times even criminalising their work.

Organised waste pickers sought to counteract these changes through several types of collective action. One was social mobilisation, which featured demonstrations where organised and unorganised waste pickers joined together to make their dissatisfaction visible. Some of these demonstrations culminated in sit-ins in front of municipal or national government offices. Another strategy sought to establish alliances with intermediaries in the recycling value chain, and particularly with the small, independently-run collection points that waste pickers used to market recovered recyclable waste. Other efforts focused upon policy documents to identify threats to waste pickers' interests and to develop counterproposals. However, perhaps the most effective strategy has been to seek support for waste pickers' rights within the judicial system. Whenever a law, decree, or other government act negatively affected waste pickers' livelihoods they—headed by ARB—have consistently sought recourse and protection from the courts.

Image 3: Horse-drawn carriage used by members of the Asociación de Coroteros y Recicladores [Association of Reusers and Waste-pickers] in Bogotá in 2010. Image credit: Federico Parra, 2010.

An excellent example of this larger dynamic is Law 142 of 1994.[19] This established that only municipalities with less than 8,000 subscribers could organise themselves to provide public services, thereby leaving the best market segments to private companies. The legal defence of the ANR made it possible for the Constitutional Court to establish, through Judgment C-741 of 2003, that there is neither a causal relationship between the private nature of a garbage collection company and its efficiency, nor between the public or community nature of a provider and its inefficiency. The Constitutional Court also decided that communities, including waste pickers' organisations, could provide public services in all municipalities regardless of the number of subscribers to the public waste management service.[20] This court ruling was a fundamental win for Colombia's more than 50,000 waste pickers because it opened up the recycling industry as a viable future for all of them.[21]

In 2003, the ARB carried out a demand for action for the protection of their rights known as 'Tutela'. This took place in response to a bidding process for the transport and in-fill of garbage that effectively excluded them from participating in the management of waste materials. Collection routes for recyclable waste material were subsequently awarded to private companies, and in this way the recycling business was handed over by legal means to established firms. The Constitutional Court once again ruled that waste pickers had been adversely affected, and demanded that the authorities develop affirmative actions in their favour so they could overcome conditions of poverty by formally participating in the public management of municipal waste. It also required the government to consult waste pickers and their organisations on any decision being taken in relation to waste material management.[22] In this way the Constitutional Court protected the right to work and the livelihood of waste pickers a second time.

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[19] Presidency of the Republic of Colombia, Decree 421 of 8 March 2000: regulates Law 142 of 1994, in relation to organisations authorised to provide public services for drinking water and basic sanitation in smaller municipalities, rural areas and specific urban areas. DO: 43 932.

[20] Constitutional Court, Judgment C-741/03 [provision of domiciliary public services], Judge Manuel José Cepeda Espinosa, 28 August 2003.

[21] Aluna Consultores Limitada, 2010, Condensed Report, National Recycling Study (unpublished).

[22] Constitutional Court, Judgment T-724/03 [rights to due process, equality and work; public bidding; administrative hiring process; public toilet and garbage collection services; recycling; outsourcing for tree pruning and lawn mowing; effective participation of marginalised groups; current lack of purpose; fact overcome; call to prevention; Association of Waste Pickers of Bogotá], Judge Jaime Araujo Rentería, 20 August 2003.

Almost eight years later, in 2011, the country's largest-ever public bidding process took place in Bogotá. It was meant to choose the company that would provide the garbage collection services for the next eight years. ARB made a 'claim for noncompliance' with the district government, since the bidding did not meet the requirements given by the Constitutional Court in previous pronouncements. Once again, the judicial body sided with the waste pickers and their final judgment was the most significant yet.[23] The court consolidated previously established guidelines and merged them into a series of legal requirements based on the recognition and realisation of the rights of waste pickers. Thanks to this ruling, waste pickers were recognised as having special protection status by the state. This was not only because of their conditions of poverty and vulnerability, but also because of their important environmental, economic, and public contributions. The authorities were legally obligated to take affirmative action to protect them and help them overcome poverty and vulnerability by, for example, guaranteeing real and safe access to recyclable waste material. The Constitutional Court further established that waste pickers have significant business potential, so they have the right to remain in the trade and grow as waste entrepreneurs.[24] A subsequent ruling in 2015 would warn municipal authorities about the need for operational waste management to be understood not as an end in itself, but also as a means to guarantee the rights of the waste pickers registered in their jurisdiction.[25]

Rulings by the Constitutional Court have addressed many key issues, including health, education, recreation, housing, social security, as well as the reorientation of public waste management policies so that waste pickers are properly recognised and remunerated.[26] However, the effects of these rulings have been undercut by a lack of compliance by national and municipal authorities, reflecting deeper tensions between opposing interests and agendas.

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[23] Constitutional Court, Order 275/11 [request for compliance with Judgment T-724 of 2003 and Order 268 of 2010], Judge Juan Carlos Henao Pérez, 19 December 2011.

[24] Constitutional Court, Judgement T-291/09 [rights to health, education, decent housing and food ruled in favour of a group of families that have been recycling as an occupation in the Navarro landfill for approximately 30 years, an activity that represents their only source of income], Judge Clara Elena Reales Gutiérrez, 23 April 2009.

[25] Constitutional Court, Order 587/15 [follow-up on orders issued in Order 275 of 2011, in compliance with Judgment T-724 of 2003 and Order 268 of 2010], Judge Luis Guillermo Guerrero Pérez, 15 December 2015.

[26] For more illustration, see L Fernández and F Parra, 'Constructing an Inclusive Model for Public Waste Management Based on the Legal Empowerment of Colombia's Waste Picking Community', Annex I in M Chen *et al., Urban Informal Workers: Representative voice & economic rights*, Background paper for the World Development Report 2013, World Bank, 2012, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.841.6834&rep=rep1&type=pdf.

Formalisation: Tensions between rights and markets

The rulings of the Constitutional Court have created conflict between the business paradigm of large-scale commercial waste management and the paradigm of integration, recognition, and remuneration for waste pickers. In putting the rights of a vulnerable population above the logic of profitability they also go against the economic principles of many of Colombia's laws. This has created judicial tensions, since orders from the Constitutional Court must go through normative harmonisation via national legislative and executive institutions.[27] This has created a window for policymakers to intervene and promote the interests of garbage collection companies.

Between 2012 and 2015, the municipal government in Bogotá partially complied with the rulings of the Court. It was the first time that affirmative actions in favour of this population were taken. Several achievements can be identified. For example, the city developed an in-depth census to identify waste pickers and record their socioeconomic conditions and the value chain to which they belong. They also devised a scheme to replace 2,880 animal-powered vehicles with one of the following alternatives: motorised cargo vehicles, business plans and seed capital, and housing. Perhaps most importantly, the administration designed and implemented a system for the individual registration and remuneration of waste pickers. According to official data, this system paid out COP 50 trillion (approximately USD 14.7 million) in earnings to 13,000 waste pickers between March 2013 and December 2015.[28] Finally, the municipal government at this time promoted the idea that residents should give pre-sorted recyclables directly to waste pickers.

The generally conducive and supportive atmosphere found in Bogotá at this time could also be seen in some of the actions of the national government, at least at first glance. In 2013, the national government began issuing regulations that sought to formalise recycling as a component of the public waste management service, dominated until then by the collection, transport, and controlled hygienic in-fill of garbage. Elements of the rulings of the Constitutional Court were incorporated into these regulations. Crucially, municipal administrations were required to regain control over the management of their waste, which

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[27] Normative harmonisation in this case has to do with the way in which the orders of the Constitutional Court are reflected in normative instruments on a national and municipal scale produced by the legislative and executive branches of government. Thus, the orientations of the Constitutional Court should motivate the modification of those sections that are contrary to them, and that are part of other existing regulations.

[28] '13.000 Recicladores han sido Integrados por el Distrito al Esquema de Aseo de Bogotá', *El Espectador*, 16 October 2015, https://www.elespectador.com/noticias/bogota/13000-recicladores-han-sido-integrados-el-distrito-al-e-articulo-593237.

in most cases had been delegated to garbage collection companies. Waste management plans were (re-)established as a way for municipal governments to plan their public waste policy, and these also served as a tool to collect and reflect the interests of the waste pickers and their organisations in municipal public management. Municipal mayors were furthermore given the task of organising unorganised waste pickers and strengthening their organisations.

These regulations also established how recycling services should be measured and remunerated so that costs could be charged to residents—the end-users of the garbage collection services—and subsequently transferred to the providers. Finally, they set out a path for waste pickers' organisations to formally become public recycling service providers and be remunerated accordingly. Gradual formalisation phases over a five-year period were created in addition to apparently flexible requirements. Garbage collection companies, municipal mayors, and users of the garbage collection service were charged with facilitating the formalisation of waste pickers.

Yet these new regulations were also riddled with contradictions that, at the end of the day, undermined the protection measures envisioned by the rulings of the Constitutional Court. For example, the principle of free competition in the provision of public services remains in place. This opens the door to garbage collection companies, waste logistics companies, and other non-waste pickers to occupy this space. Like waste pickers, they are entitled to receive a portion of the service charge to end-users alongside what they earn from re-selling what they collect. Yet payments for waste collection were specifically conceived by the Constitutional Court as a type of affirmative action to help waste pickers overcome conditions of poverty and vulnerability. Under the pretext of formalising the waste pickers, the national government ended up formalising recycling services in general. This has indirectly worked against the interests of waste pickers by paving the way for the entrance of large multinational corporations, such as Veolia, into the recycling sector. Formalising the work has proved to be different to formalising the workers in informal employment who perform it.

The formalisation requirements for waste pickers' organisations have also frequently proved hard to fulfil. Many were seemingly designed with formal businesses in mind, and it is not possible to apply regulations and processes designed for formal actors to workers in informal employment. Groups of informal workers function more like solidarity-based economic entities than private companies. Formalisation processes need to take this organisational form as their starting point and generate gradual and certain transformations from there.

In effect, municipal mayors became responsible for the formalisation of waste pickers but failed to develop mechanisms to achieve this. This is reflected in

data from the national recycling service, the main monitoring and supervision body in the sector. As of June 2019, only thirty-seven cities in Colombia had at least one recognised waste picker organisation providing recycling services for payment, and only 12,500 waste pickers were recorded as receiving income for services rendered.

Waste Pickers during the COVID-19 Pandemic

The COVID-19 pandemic has demonstrated the fragility and limitations of the world's health systems. Governments have resorted to quarantines and social isolation as mechanisms for preventing or slowing down infections, measures which have a disproportional impact on marginalised populations. These actions have highlighted the vulnerability of informal workers for whom it is not possible to stay at home without a solid income replacement policy.

Both ANR and ARB have debated this situation within their grassroots organisations. They ultimately decided to press for recognition by municipal and national governments as public service providers, and for recycling to be classified as an essential service. They argued that recycling not only provides income to waste pickers but also keeps landfills from collapsing under the full weight of the country's waste. The result to date is that recycling is recognised as an essential service in Colombia, and waste picker organisations as service providers can carry out their duties if they have personal protection and follow appropriate protocols. Their recycling collection centres can remain open if they comply with health requirements.

However, there is a sense of unease and fear among the waste picker population, since unorganised waste pickers have not been able to continue their work. It is too early to assess these measures, but there is evidence of the growth and consolidation of waste picker organisations as service providers in Colombia.

Conclusion

The case of waste pickers in Colombia provides an example of a possible route to sustainable integration of poor and vulnerable groups, while at the same time highlighting the tensions surrounding the transition to the formal economy by workers in informal employment. It shows how one part of society has been forced to survive on what others discard in a consumer society defined by a systematic reduction of the role of the state and the deregulation of markets. At the same time, this case shows how poor and vulnerabilised workers have emancipated and organised themselves to resist the discrimination, marginalisation, and exploitation they have suffered. This is fundamental in terms of the resignification of a historically discriminated subject, from being

considered trash to being considered a provider of public services.

Experiences in Colombia also demonstrate that developing processes of integration and formalisation of workers in informal employment cannot be achieved without generating special conditions or protections for these workers. Worker protection must be linked to a human rights perspective, and must be maintained by the state in its role as a human rights duty bearer and regulator. This will not happen unless states rein in the neoliberal logics of development at work in their countries—if integration or formalisation is left to the free market then the original exclusion will be replicated or worsened. In my view, this is the structural tension through which the process of formalisation of waste pickers in Colombia passes: the only way it will succeed is if a rights-based perspective is imposed onto the market-based concept of formalisation.

The case of waste pickers in Colombia is also an example of how solidarity-based economic models can be an alternative to private enterprises in the provision of public goods and services. They have two factors in their favour: their redistributive nature and their large workforce. While the introduction of affirmative action or positive discrimination is invariably controversial, in the case of Colombian waste pickers it has become a mechanism for recognition and sustainable remuneration of their work in the midst of a profoundly unequal society. When understood as the generation of inclusive and equitable regimes for vulnerable sectors, affirmative action should become the rule in our societies, rather than the exception.

Federico Parra is the Latin America Coordinator of the waste picker programme of the NGO Women in Informal Employment: Globalizing and Organizing (WIEGO). He holds a Master's degree in Anthropology and a PhD in Political Studies and International Relations from the National University of Colombia. His work has contributed to the understanding of the socioeconomic context of waste pickers and the impact of public waste management policy on waste pickers in the city of Bogotá. He is a member of the Research Group on Collective and Environmental Rights (GIDCA), and the Research Group on Public Policy and Public Management, at the Faculty of Law, Political and Social Sciences of the National University of Colombia. Email: federico.parra@wiego.org

'Ways of Seeing'—Policy paradigms and unfree labour in India

Lorena Arocha, Meena Gopal, Bindhulakshmi Pattadath, and Roshni Chattopadhyay

Abstract

This article traces the trajectory of different initiatives to address unfree labour and their impact on workers' capacity to aspire to and exercise their rights in India. We attempt to understand the dimensions and effects of different 'ways of seeing' precarity and exploitation within the larger context of economic policies, social structures such as caste-based discrimination, gender-based violence, and state indifference. In a caste and gender-unequal society such as India, with deep regional disparities, we examine how different lenses have impacted on development-led historical processes of informalisation and flexibilisation of work. We do this by contrasting two different 'models' in the country, one in the north in a rural setting and the other in the west in an urban context. Context is important, but the organisations and activists involved in our two case studies saw their role and that of workers differently, operating according to distinct goals and working practices. Our research demonstrates that 'ways of seeing' matter, as they lead to disparate results in terms of workers' capacity to mobilise and claim their rights.

Keywords: 'ways of seeing', slavery, unfree labour, bonded labour, workers' collective efforts

Anti-slavery and Development

Forced labour, human trafficking, and modern slavery have all come to be classified as problems of and for development thanks to the introduction of target 8.7 of the United Nations Sustainable Development Goals (UN SDG) in

2015.[1] This shift has not done away with the dominant position of criminal law, which prioritises the rescue and rehabilitation of 'victims' or 'slaves',[2] but instead adds an additional level of economic development into the larger equation as a fundamental 'root cause' or 'push factor'. This shift has in turn reinforced larger patterns of geographical fetishisation,[3] with the division of the world in North-South, East-West, or Developed-Developing, that has characterised this dominant approach, of which India is its preferred referential example. Although terminology is highly contested in this policy field, and concepts tend to be used interchangeably and simultaneously to label different practices, there is a tendency to use 'slavery' as an umbrella term, encompassing forced labour, bonded labour, human trafficking, and other slavery-like practices.

In India, terminology that defines policy paradigms reflects local historical contestations and movements, such as bonded or forced labour,[4] or local-global struggles, such as human trafficking, which has focused on female migration and sex work exceptionalism.[5] Over the last couple of decades, policy interventions focused on anti-trafficking in efforts to improve India's standing in the United States Department's *Trafficking in Persons Report*.[6] This emphasis on trafficking has tended to overshadow and exclude local histories of struggle around bonded and other forms of forced labour, as evidenced in the draft *Trafficking Bill,* 2018.[7] In this article, we explore how, in a context where workers' conditions are being driven to the ground in the pursuit of economic growth, the lenses through which we frame these experiences matter. We find it is critical to consider the processes through which *change* for these workers is imagined when addressing unfree labour in India. We do this by focusing on the trajectories of two initiatives which aimed to address workers' conditions: one that sees workers as 'victims' of 'slavery', and the other that sees *citizens* in conditions of precarity and exploitation. Our research indicates distinct results

1   S McGrath and S Watson 'Anti-slavery as Development: A global politics of rescue', *Geoforum*, vol. 93, 2018, pp. 22–31, https://doi.org/10.1016/j.geoforum.2018.04.013.

2   P Kotiswaran 'Trafficking: A development approach', *Current Legal Problems*, vol. 72, issue 1, 2019, pp. 375–416, https://doi.org/10.1093/clp/cuz012.

3   McGrath and Watson, p. 27.

4   K K Prasad, 'Debate: Use of the term "bonded labour" is a must in the context of India', *Anti-Trafficking Review*, issue 5, 2015, pp. 162–167, https://doi.org/10.14197/atr.201215513.

5   P Kotiswaran, 'What Is Wrong With India's Trafficking Bill 2018: An Introduction', *Economic and Political Weekly*, Special Feature Rethinking Trafficking Bill 2018, 2018, https://www.epw.in/engage/article/what-wrong-indias-approach-2018-0.

6   R Kapur, 'India' in Global Alliance Against Traffic in Women, *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, GAATW, Bangkok, 2007, pp. 114-141.

7   Kotiswaran, 2018; Prasad.

for the workers involved. Particularly, the workers operating under the latter framing were more inclined and able to exercise their rights collectively despite the ongoing deterioration of their working conditions.

A Pilot Research Project

In 2018, we gained funds from the Higher Education Funding Council for England (HEFCE) through their Global Challenges Research Fund (GCRF) scheme to conduct a collaborative research project between the Advanced Centre for Women's Studies at the Tata Institute of Social Sciences (TISS) in Mumbai, India, and the Wilberforce Institute at the University of Hull in the United Kingdom. The project started as an attempt to understand the trajectories of different initiatives where workers' collective efforts and voices had been prioritised within the context of efforts to address bonded labour, forced labour, human trafficking, or other forms of exploitative and precarious work. It is also important to note, however, that our data reflects the pilot nature of the project and the restricted time and resources we had.

Overall, we had more information about initiatives in the west and south of the country, given our location in Mumbai, than in the north.[8] We conducted four different field site visits, one in the north and three in the west, and spoke to representatives of unions, NGOs, activists, and workers across sectors and regions. We recorded twenty interviews, held numerous informal conversations, kept fieldnotes, and transcribed an event where we brought together workers, activists, organisations, and academics. Sectors included in the project were brick-making, mining, construction, sex work, domestic and other service work, agricultural work, waste management, porterage, and garment production. On some occasions, we were able to speak and interview workers without the presence of those leading the interventions; in others, we were able to compare and contrast organisations' official narratives with what we were seeing during our field visits, or to talk with multiple people occupying different positions within the organisations. For the purposes of this article, we focus on two case studies, one in the north in a semi-rural context, and another in the west in an urban context. This helps us to link 'ways of seeing' these practices with the consequences for workers. Before we move to these case studies, let us first introduce our 'ways of seeing' framework.

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[8]   We use North-South as broad regional references and to ensure the anonymity of some of our participants (some others waived that anonymity, as seen below).

'Ways of Seeing'

Policy theories acknowledge that policymaking is complex, messy and unpredictable.[9] Decisions as to what social issues are to be prioritised are often the result of negotiations, contestations, and compromises among a multitude of actors, including governments, multinational institutions, businesses, non-governmental and other civil society organisations, faith-based, advocacy, and campaigning groups, community groups, experts and particular individuals. Not all these actors understand and frame social problems the same way, but over time, a 'way of seeing', or policy paradigm, emerges as dominant. Here we follow the work of James Scott to refer to the authoritative cognitive lenses through which a particular social problem is seen.[10] A 'way of seeing' then indicates how the nature of the problem is understood and allows linking a diagnosis of its root causes with generic prescriptive policy solutions and interventions.[11] 'Ways of seeing' are necessarily schematic and partial, centring on a slice of the totality of the social order.[12] These 'ways of seeing' then function to simplify a complex and fluid social reality, relying on measurement techniques and the seductive appeal of quantification to further legitimise this position.[13] As Scott highlights, these dominant cognitive models are also invested in modernist ideologies centred on progress and development, and aspire to be universally applicable across contexts.[14]

'Slavery' comes with a set of multifocal lenses, allowing people to perceive it differently depending on who they are and where they are located. 'Slavery' in India is typically conceived as a pre-capitalist relation of labour, illustrated in attachment relationships between landlords and agricultural labourers in rural contexts. It is therefore strongly associated with traditional, backward, and pre-modern cultural formations, which are exemplified in the caste system.[15]

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9   P Cairney, 'How Can Policy Theory Have an Impact on Policymaking? The role of theory-led academic-practitioner discussions', *Teaching Public Administration*, vol. 33, issue 1, 2015, pp. 22-39, https://doi.org/10.1177/0144739414532284.

10 J C Scott, *Seeing Like a State: How certain schemes to improve the human condition have failed*, Yale University Press, New Haven and London, 1998.

11 A Broome and L Seabrooke, 'Seeing like an International Organisation', *New Political Economy*, vol. 17, no. 1, 2012, pp. 1-16, https://doi.org/10.1080/13563467.2011.569019.

12 Scott, p. 6.

13 S E Merry, *The Seductions of Quantification: Measuring human rights, gender violence, and sex trafficking*, University of Chicago Press, Chicago, 2016.

14 Scott, p. 3.

15 J Phuley, *Slavery (Gulamgiri)*, translated from Marathi by Maya Pandit, Critical Quest, New Delhi, 2008 [1873].

Note here how culture is deployed as the explanation to the persistence of 'slavery', a sign of India's perennial backwardness and under-development. Framed in terms of the advancement of modernity, culture becomes the enemy, an impediment—'a voice from the past that inhibits societies from functioning in the modern world'[16]—and a history that must be transcended.[17] This tunnel vision has a tendency to then bring all facts observed into line with this fundamental premise.[18]

This form of 'slavery', also referred to as serfdom, was re-classified as debt-bondage in 1843, when slavery was abolished in British India.[19] Many have devoted attention to understanding the historical process through which attachment between landlords and agricultural labourers across rural India changed. Scholars have looked at, inter alia, the origin and nature of bondage, whether and why it disappeared, the role of economic and socio-cultural processes in this transformation, and the subsequent emergence of an army of footloose labour[20] dependant on circular migration but not yet delinked from the rural setting.[21] Prakash traces how in southern Bihar in the north of India, patron-client relationships between *kamias* [agricultural labourers] and *maliks* [landlords] were constructed in colonial records as an unfree, debt-based labour relation, in opposition to free labour exchanges under market conditions.[22] Seeing bondage in India reflected a historicity that emphasised progress, and it served to reinforce an imagined classical India, and not the changing realities resulting from shifts in the political economy of the region due to colonialism. This is not to say that there was no hereditary attachment, that the caste-system was not implicated, or that *kamias* and *maliks* had equal power and status.

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[16] V Rao and M Walton (eds.), *Culture and Public Action*, Stanford University Press, Stanford, 2004.

[17] Scott, p. 95.

[18] *Ibid.*, p. 90.

[19] G Prakash, *Bonded Histories: Genealogies of labor servitude in colonial India*, Cambridge University Press, Cambridge, 1990; I Chatterjee, *Gender, Slavery and Law in Colonial India*, Oxford University Press, New Delhi, 1999.

[20] J Breman, *Footloose Labour: Working in India's informal economy*, Cambridge University Press, Cambridge, 1996.

[21] J Breman, *Patronage and Exploitation: Changing agrarian relations in South Gujarat, India*, University of California Press, Berkeley, Los Angeles and London, 1974; Breman, 1996; J Breman, *At Work in the Informal Economy of India: A perspective from the bottom up*, Oxford University Press, New Delhi, 2013.

[22] Prakash, 1990.

Post-independence India was shaped by mounting pressure from activists working with marginalised communities in conditions of bondage, culminating in the Indian state enacting the *Bonded Labour System (Abolition) Act* of 1976. This legislation would subsequently become infamous for its poor implementation and an overbearing bureaucratic process, continuing a pattern of legal reforms which struggle to be realised in practice (the abolition of forced labour was also mandated by the Constitution of India in 1950). Consistent work by activists, including via the judicial system in the 1980s, have given further clarity to its terms and application.[23] Thanks to these efforts, Indian law against forced labour now includes provisions such as the right to a minimum wage,[24] the role of the state in guaranteeing labour rights,[25] bonded labourers' rehabilitation,[26] the existence of an advance as an indicator of bonded labour,[27] and instructions to labour inspectors to assess workers' health and safety protection and ensure children under fourteen are not in work but in education.[28] The presence of such elements is often used as evidence that workers are subject to bonded labour conditions.

Jan Breman, in his early study of the *hali* system in South Gujarat, carefully delineates how depatronisation occurred in this region, where numbers of attached agricultural labourers diminished progressively as the number of daily wage labourers increased.[29] This was the result of shifts in the selection of crops, acceleration of capitalist modes of production and commercialisation, job prospects in nearby urban industrialising centres, imbalances in demographic patterns and aspirations between caste unequal groups, and the centralisation of bureaucratic and governing institutions. And yet, as he emphasises, the conditions of these daily wage labourers, now dependent on circular migration and *mukkadams* [contractors] to mediate in finding work, were not any less bleak.[30] This process of depatronisation has taken place at different levels and speeds across regions in India.[31]

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23   M Dasgupta, 'Public Interest Litigation for Labour: How the Indian Supreme Court protects the rights of India's most disadvantaged workers,' *Contemporary South Asia*, vol. 16, issue 2, 2008, pp. 159-170, https://doi.org/10.1080/09584930701733498.

24   *PUDR vs. Union of India*, 1982 AIR 1473, 1983 SCR (1) 456.

25   *Peoples' Union for Democratic Rights vs. Union of India*, 1983 1 SCC 525.

26   *Neerja Chaudhary vs. State of Madhya Pradesh*, AIR 1984 S.C. 1099.

27   *Bandhua Mukti Morcha vs. Union of India and Others*, 1984 SCC (3) 161.

28   *Bandhua Mukti Morcha vs. Union of India*, 1997 10 SCC 549.

29   Breman, 1974.

30   Breman, 2013.

31   J Lerche, 'Politics of the Poor: Agricultural labourers and political transformations in Uttar Pradesh', *The Journal of Peasant Studies*, vol. 26, issue 2-3, 1999, pp. 182-241, https://doi.org/10.1080/03066159908438707.

Conditions of work in India have been deteriorating over the last few decades. Labour flexibilisation and informalisation processes have been at the core of the growth model adopted since liberalisation policies were introduced in 1991. Proponents of this development approach consider labour standards and decent working conditions as luxuries to be pursued only after a threshold of development has been achieved.[32] This concentration on development through informalisation and flexibilisation has precluded vast sections of people of decent employment and a dignified life. Hence the need to understand how these intersections affect the trajectories of interventions to address forms of unfree labour across locales. Women's position in work, despite their participation in the labour market via paid work, is still mediated via caste and gender, often as an extension of their social reproduction tasks. Within cities, women at the bottom-most of the caste and class hierarchy straddle different markets for labour, such as dancing, cleaning, and care-work, often by-passing or at times using skills to escape the permutations of caste-based unpaid labour. This contention over caste-based occupation still remains a raging debate within the women's movement in India.[33]

These conditions are likely only to get worse in the future thanks to recent legislative changes. As part of its agenda to make India the world's third-largest economy by 2030, the Bharatiya Janata Party (BJP) government, re-elected in 2019, is pursuing an aggressive labour reform programme that will redraw all country labour legislation into four Labour Codes. This includes a Code on Wages, passed in August 2019, which leaves wages to the discretion of state governments—it includes no definition of a minimum wage. This effectively pushes many daily wage and migrant workers into bonded labour conditions.[34]

We explore some of these dynamics via our two case studies, exploring the relevance of 'ways of seeing' unfree labour in two different localities with very different social and cultural dynamics. We hope this exercise can offer a first step to understanding some of the implications of how 'ways of seeing' produce not only different outcomes but also engender different subjects.

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[32] S Bhattacharya, *Informal Sector Dynamics and its Role in the Capital Accumulation Process: The contrasting cases of India and South Africa*, 2007, n/p, https://www.researchgate.net/publication/237386313.

[33] M Gopal, 'Caste, Sexuality and Labour: The troubled connection', *Current Sociology*, vol. 60, issue 2, 2012, pp. 222–238, https://doi.org/10.1177/0011392111429223.

[34] R Mehrotra and N Jayaram, 'India's New Wage Code Will Push Migrant Labourers Deeper Into Poverty', *Scroll*, 19 September 2019, https://scroll.in/article/937596/indias-new-wage-code-will-push-migrant-labourers-deeper-into-poverty.

Stone Quarries in North India: Seeing 'slavery'

One of our field visits was to Laxmangarh,[35] a town in a northern Indian district. An Adivasi[36] group migrated centuries ago to this region to escape feudal lords from neighbouring districts in an adjacent state. They are now categorised as a Scheduled Caste.[37] Soon after their first migration, these groups entered into bonded labour relations, farming non-irrigated land in rocky terrains. During the 1970s and 1980s, political activists raised concerns about the plight of families living in bonded labour in Laxmangarh. Over the years, there were a series of collective outbursts, such as protest rallies, but with little long-term benefits for the workers. Locally, a number of activists as well as non-governmental and community-based organisations (NGOs) took on the plight of these workers in the 1990s and, over the course of three decades, developed a model to address bonded labour. They refer to their existing approach as a third generation NGO approach,[38] characterised not by focusing on the amelioration of visible needs (first generation), or on questioning root causes of identified problems (second generation), but on external environmental factors and agents. However, as the description that follows indicates, interventions in practice have not really allowed these groups to resist these external socio-economic and environmental factors and certainly have not been able to transform 'boundary actors'.[39]

At the beginning of the movement, social activists' pressure on government officials in the region led to the establishment of a District Level Bonded Labour Vigilance Committee, which finally recognised bonded labour in the area.[40] A community-based organisation and activists with support from international donors started to operate in the region. They adopted self-help group structures

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[35] This is a pseudonym for the region where we conducted our field visits. This is in line with what we suggested in our ethics forms to all our interviewees and participants.

[36] Adivasi is an emic collective term used for the Scheduled Tribes of India, which is the official name recognised by the Constitution of India.

[37] This is an officially designated name given in India to the lowest castes, in the past considered 'untouchable' and for which some groups prefer the term 'Dalit'.

[38] D C Korten, 'Third Generation NGO Strategies: A key to people-centered development', *World Development*, vol. 15, Supplement 1, 1987, pp. 145-159, https://doi.org/10.1016/0305-750X(87)90153-7.

[39] *Ibid.*

[40] District Level Bonded Labour Vigilance Committees in States, formed under the *Bonded Labour System (Abolition) Act* of 1976, are responsible for enforcing it and advising the district magistrate to ensure that the bonded labour law is properly implemented; providing for the economic and social rehabilitation of freed bonded labourers; coordinating the functions of rural banks and cooperative societies to help ensure freed bonded labourers have access to credit; monitoring 'the number of offences of which cognizance ought to be taken under the act' and defending freed bonded labourers against attempts to recover the bonded debt.

with a participatory management approach to organise these bonded labourers. This, in turn, enabled a number of these self-help groups to apply together for a mining lease, which was granted for a quarry of nine acres of land in 1999. In time, self-help groups for men and women were established, with different goals and responsibilities along gender lines. Between 1999 and 2001, a total of seven leases were granted to these groups.

In the early 2000s, the community-based organisation with the assistance of an international non-governmental organisation would assess the presence of indicators of bonded labour, such as amounts and lengths of loans and advances, freedom of mobility, the nature of relationships with labour contractors, and, to a lesser extent, the incidence of sexual harassment and violence. However, they would also use the language of 'slaves' and enslavement to categorise the experiences of those in bondage, prioritising their identification as bonded labourers to guarantee their access to rehabilitation funds and other state welfare schemes. Contractors and their families were identified as the culprits orchestrating systems of bondage, assisted by corrupt officials (mostly local police officers) who would often turn a blind eye to these workers' experiences of violence and exploitation. Workers affiliated with these self-help groups' leases saw their incomes increase threefold and this encouraged other groups to come together in the hope of applying for further mining leases. At this time, the community-based organisation mobilising bonded labourers seemed understaffed and under-resourced, and faced challenges in monitoring the situation on the ground. Bonded mining labourers were under surveillance from contractors through which their work was arranged, complicating staff visits.

Within a two-year period, malpractice emerged in five of the seven mining lease sites, culminating in their operations stopping altogether. Self-help groups needed a level of technological competence to be able to deal with transactions along the supply chain, including contractors, transporters, loaders, and buyers, and workers lacked that capacity. Furthermore, self-help groups did not operate well internally, and leaders made rushed decisions without consultation or informing other members. Contractors took advantage of these internal conflicts which ultimately exploded in a violent event. This first batch of mining leases slowly disintegrated. With the lessons learnt from this first trial, two more mining leases were granted in the mid-2000s to a number of surviving self-help groups, but these were now managed through a local and newly established supporting NGO. The earlier community-based organisation had also been accused of mishandling finances.

By the time we visited the villages in July 2019, shifts in the economic structure of mining were undermining previously viable ways of life and the self-help group model again. The government is now granting mining leases only to big private contractors that use heavy machinery in the open mines, and hence employ less labour. The government also allowed two big power plants to be

established in the area. Around 10,000 local inhabitants were displaced as a result. The inability to find work had pushed young men in these villages to migrate out of the region into Delhi, Mumbai, and Pune. Women, children, and older men stayed, and some men continue to mine illegally, earning a pittance. Others engage in agricultural work whenever available, for which they receive very little money. They have a hand-to-mouth subsistence, and in the villages we visited, we saw children who were incredibly malnourished and small for their age, school attendance was patchy, and entire villages had no access to water or electricity. Electricity had been instead diverted into open mining or power plant sites, sometimes adjacent to these villages. Girls were married off when reaching puberty as a protective measure, given the outmigration of most men and the loitering of lorry drivers at the nearby mining sites. Conditions at the time of our visit seemed quite despondent.

This case underscored the inability of this slavery 'way of seeing' to address shifts in wider structural factors. The deterioration in the conditions of work due to economic growth models that benefit big capital and mineral extraction over labour and environmental sustainability revealed that past interventions had not empowered workers locally. Thousands of people were invisibly and silently displaced from their villages and internal migration became the only potential source of livelihood. This is further supported by other research in India.[41] This case study also supports the development literature that identifies the limitations of self-help groups. Some claim they are a route to the partial neoliberalisation of civil society, addressing poverty through low-cost methods that effectively do not challenge the existing distribution of power and resources between the powerful and the exploited labouring poor.[42]

We also saw no strong articulation of a collective identity, Adivasi or otherwise, and how this could be deployed to make demands from the state as citizens or from big mining companies as workers. There were signs that they were trying to distance themselves from their Adivasi identity. In the villages, a culture of debt through advances persists, where these groups are borrowing money from other families (who are also sometimes smaller contractors in the quarries) to attend to immediate family crises. NGO staff labelled these contractors 'Muslim', something quite significant in the socio-political context of the region. And yet, the families lending money were not visibly better-off and often lived in nearby villages. During our field visits, we heard little discussion as to how the conditions of work experienced by migrant Adivasis in Laxmangarh fall within the larger political economy of the building and construction industry

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[41]   Breman, 1996; Breman, 2013; Lerche, 1999.

[42]   J Pattenden, 'A Neoliberalisation of Civil Society? Self-help groups and the labouring class poor in rural South India', *Journal of Peasant Studies*, vol. 37, no. 3, 2010, pp. 485-512, https://doi.org/10.1080/03066150.2010.494372.

in India, something that was articulated initially by the community-based organisation and activists at the time of obtaining the first set of leases. In 2019, the leading NGO staff were focused on providing psychosocial support. One of the schemes, for example, was aimed at female adolescents not yet migrating. This seemed to us to provide little benefit to the women, especially in terms of addressing gender inequalities such as early marriages and poor school attendance. This type of support was modelled on therapeutic interventions and did not intend to mobilise these young women for social reform. NGO staff were also averse to workers' unions, given the history of trade unions in India and their very close association with major political parties.

The operation of these programmes reflected the co-constituted nature of caste-class-gender based relations. In this case, an Adivasi group has remained at the bottom of the social and economic hierarchy, even when migrating outside of their places of origin. During our field visits, workers and NGO staff seemed to have taken roles and dispositions as service users and service providers, respectively. We saw evidence of past activities in some of these villages that centred on raising awareness of national legislation, such as the 1976 *Bonded Labour System (Abolition) Act*, and economic activities which aimed to provide alternative sources of livelihood away from mining. These activities appeared to reach a relatively small number of people. This 'slavery' lens struggled to capture the wider social and economic structural dynamics in the region and did not seem to allow for a collective long-term strategy to lift the position of these workers and that of their families.

Mobilising Informalised Labour: Seeing citizens

As we saw in our previous case study, economic growth fuelled by natural resource extraction is displacing and pushing many groups in the north of India to migrate to cities like Pune, the second largest city in the western state of Maharashtra. Outmigration from villages into big urban centres also offers migrants the possibility of escaping caste-based obligations and bonded labour relations. Many of these inter-state migrants end up working in the informal and unorganised sector, as they search for work that does not tie them to labour contractors. As some of them would say: 'who wants to be in the shackle of that *mukkadam* [contractor]?'[43]

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[43]   These case studies are based on interviews that the researchers had with activists of KKPKP (Kagad Kach Patra Kashtakari Panchayat) between April and July 2019 as part of the pilot study as well as field observations.

With this case study, we trace the history of unionisation of mostly female Dalit waste-pickers in Pune. Many of the first cohort of women workers involved in setting up the Kagad Kach Patra Kashtakari Panchayat (KKPKP), a trade union of self-employed waste collectors, had arrived in the city after the 1972 Maharashtra drought,[44] principally from the Marathwada region. These women were in highly precarious living and working arrangements, discriminated against as out-castes engaged in 'dirty work', harassed, and easy targets for accusations of theft. Many gravitated towards settling in unrecognised slums and then engaged in waste-picking as their source of living. In 1990, a group of social activists and researchers attached to the Shreemati Nathibai Damodar Thackersey Women's University (SNDT) in Pune, through their adult education centres, began to work with children who were segregating scrap and recyclable material, enrolling them into education classes. Soon their mothers sought their support to organise themselves in managing their waste collection efforts. While women earned a livelihood through their recycling efforts, the city municipal body began to encourage private enterprise who suddenly evinced an interest in providing garbage collection services.

Through their nascent organising efforts that resembled feminist environmental activists of the Chipko Andolan in the Himalayas in the 1970s, these women waste collectors in the 1990s organised their 'Bin Chipko Andolan', adopting Chipko Andolan's nonviolent direct actions, holding onto garbage containers and the waste that had recyclable potential. This was their source of livelihood as informalised workers, which would have been appropriated by private agents interested in capitalist profits had they not resisted. In 1993, they registered as a trade union for self-employed people in the waste management sector.[45]

KKPKP might sometimes use the word 'slavery' strategically to describe their exploitative caste-based working conditions, but their organising is centred on rendering these workers visible and providing them with a dignified way of life. Without the traditional employer-employee relationship, these workers demanded recognition as workers—complete with identity cards specific to those in the informal economy—directly from local authorities. This is a strategy that has been adopted by organised contract and self-employed workers across a number of informalised sectors in India to obtain visibility and improve working conditions.[46]

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[44]   S Brahme, 'Drought in Maharashtra', *Social Scientist*, vol. 1, no. 12, 1973, pp. 47-54, https://doi.org/10.2307/3516345.

[45]   See fn 43.

[46]   R Agarwala, *Informal Labor, Formal Politics, and Dignified Discontent in India*, Cambridge University Press, Cambridge, 2013; R Agarwala, 'Redefining Exploitation: Self-employed workers' movements in India's garments and trash collection industries', *International Labor and Working-Class History*, vol. 89, 2016, pp. 107-130, https://doi.org/10.1017/S0147547915000344.

In this case, the combination of research and organising and the collaboration between feminist social scientists and the workers themselves was very productive in these initial days. Feminist scholars' research allowed workers to understand the political economy of waste picking and to map the distribution and recycling chains of this informal sector.[47] Post-liberalisation, there is pressure to privatise solid waste management, but research allowed these waste pickers to articulate a different vision. Being able to understand how waste is collected, where it goes and why, and what happens to it facilitated the presentation of such an alternative. The workers' cooperative SwaCh (**S**olid **Wa**ste **C**ollection and **H**andling) gave workers a stake in the enterprise through a participatory form of democracy, and a solution to outright privatisation.[48] The trade union also helped them get a share of the waste management trade while also improving their conditions of work.[49] As one of our interviewees explained, 'it is necessary we keep track of the way the sector is structured and the way it is changing, otherwise you might make demands in the air and that's the end of it, so your struggle can just die over there'. As issues affecting trade union members would be identified, agitations, rallies, and other activities would be organised to ensure members remained engaged in the process. Although KKPKP is an independent union, they have built a network of alliances with other informal workers' unions to which they go for advice and support whenever needed.

In Pune, there has been a shift in the gender and caste division of workers in waste picking as the work became more formalised. One the one hand, men and Other Backward Classes[50] are now entering these jobs as they are less socially stigmatised and pay better, and, on the other, women bring their husbands and sons in when they find no jobs elsewhere. Union leaders have had to actively campaign against these practices and ensure women remain in charge of their earnings. Newer waves of inter- and intra-state migration in Pune also create anxiety among established union members and these can translate into barriers for union entry. As with other informal sector unions, maintaining membership, hierarchies within the union, struggles over leadership, and the sustainability of the process in the face of private encroachment into solid waste management are some of the threats they currently face.

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[47] See fn 43.

[48] Critics have identified this move as partial privatisation, too, and a first step to the union losing ground to private capital.

[49] See fn 43; P Chikarmane, 'Public Space, Public Waste, and the Right to the City', *NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy*, vol. 26, no. 2, 2016, pp. 289-300, https://doi.org/10.1177/1048291116652689.

[50] Other Backward Classes is a collective term used by the Government of India to classify castes which are educationally or socially disadvantaged, but that are not Dalits, who are often at the bottom of the social and economic hierarchy.

In the case of waste pickers in Pune, we have seen how attempts to escape neo-bondage relations in villages and a lack of viable employment and livelihoods have resulted in migration and a search for work outside of contract-based arrangements. Women who found themselves at the bottom of the local social hierarchy struggled to secure decent work and avoid exploitation, harassment, and violence. Women workers in the waste economy, especially those at the bottom of the hierarchy of solid waste management within Pune and facing stigmatisation for engaging in 'dirty work', organised both into a trade union to bargain with the state and as a workers' cooperative to have a stake in the waste economy. What struck us in this instance is how these women's aspirations had broadened over the years. They had developed a collective voice and challenged the stigma associated with their work. Their collective efforts had altered their situation in a highly competitive value chain. Anti-caste movements have a different perspective to the one employed by KKPKP. They seek abolition of all polluting labour and abjure the participation of members of the Dalit community within these polluting labours; yet KKPKP activists demanded basic rights for those who are still located within it, even as they seek a space within the formal economy of modern solid waste management administration.

'Ways of Seeing', Possibilities and Hope

As scholars-activists of labour in India have indicated, India's progressive labour legislation, including against bonded labour, slavery, and forced labour, has had a long history and was the product of the same movements that struggled for independence.[51] Increased labour actions and militancy led first the colonial government and then the Indian National Congress[52] to try and defuse its strength. Legislation introduced shortly after independence, for example, reduced the scope of direct collective bargaining by trade unions and firmly established the state as a paternalist regulator.[53] Despite this, the organised

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[51] S Bhattacharya, 'Vicissitudes of the Relationship between State, Labour and Capital: An appraisal of neoliberal labour market reforms in India and beyond', *Labour, Capital and Society*, vol. 40, no. 1/2, 2007, pp. 106-133; V Chibber, *Locked in Place: State-building and late industrialization in India*, Princeton University Press, Princeton, 2003; V Chibber, 'From Class Compromise to Class Accommodation: Labor's incorporation into the Indian political economy', in R Ray and M F Katzenstein (eds.), *Social Movements and Poverty in India: Poverty, power, and politics*, Rowman and Littlefield, Lanham, 2005, pp. 32-61.

[52] This was the first party to form the central government after independence in India. Jawaharlal Nehru became its first prime minister.

[53] Chibber, 2005, p. 37; Bhattacharya, 2007, pp. 118-119.

labour movement succeeded in advancing its interests, using a combination of pressure and compromise,[54] which, paradoxically, also led to 'a loss of revolutionary consciousness'.[55] Agarwala claims that informal workers' unions are newly re-directing their attention to the state.[56] This indicates that the state is now in charge of bearing the costs of structural adjustments.[57] What is interesting, as in the case of KKPKP above, is how informal trade union members are making visible the crucial role and power of informal workers in the liberalisation project of the government in their attempts to improve their working conditions. They are doing this using an intersectional lens, positioning waste-pickers as women, migrants, low caste and involved in reproductive work, as citizens with rights-claims with non-exclusionary identities.[58]

Our first case study traced the trajectory of interventions which aligned with an approach that sees 'slavery', with an emphasis on identifying 'slaves' and offering support through low-cost measures in line with neoliberal approaches. In Laxmangarh, we saw very little sign of either a collective identity, ascriptive or otherwise, or the possibility to imagine a different way to respond to the catastrophic impact of the neoliberal development model. Indeed, there was no 'revolutionary consciousness', and this showed in the disposition of the workers we spoke to. By contrast, our second case study emphasised rendering workers visible and engaged in collectivising efforts. In Pune, the KKPKP as well as in other sites where informal workers were organising in trade unions or collectives (as in the case of porters and sex workers), we saw workers positioning themselves as part of collectives. They were confident to articulate how they could make claims and assert their rights as citizens as a collective. Despite these important differences, the cases also shared some key features. In both examples the organisations involved operated hierarchically, despite their aspirations to be more horizontal and collaborative, and contestations over decision-making among workers and staff within and beyond the organisation emerged. Furthermore, in both cases initial material improvements for workers proved difficult to sustain over time.

Despite differences in terms of sectors and regions, our case studies also indicate the relevance of the intervention of an external agent or agents to the onset of workers' mobilisation. The approaches that these external agents followed and their ideological basis were critical in how these collectivising

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[54]   Bhattacharya, 2007, p. 126.

[55]   *Ibid.*, p. 113.

[56]   Agarwala, 2013.

[57]   Bhattacharya, 2007, pp. 112-113.

[58]   Agarwala, 2013, p. 24.

efforts evolved over time, as other scholars have shown as well.[59] Sometimes this was orchestrated, following media spotlighting dire conditions and abusive practices. Most of these efforts begin by trying to render visible the invisibility of these workers, by obtaining identity cards, the first step towards accessing a range of welfare and social services.[60] Appadurai warned us that reducing our very right to life, liberty, dignity, and well-being to a documented status as statizens can also be the first step towards exclusion, expulsion, and even extermination.[61] Breman had issued this warning, too. [62]

We know that more in-depth research would have allowed us to better trace the relationships between workers and outside actors, to delineate points of contestation and compromise, and internal and external threats to the sustainability of these efforts. However, our pilot research indicates that 'ways of seeing' matter. These had distinct results for workers, as they led to different dispositions and strategies in challenging and re-imagining workers' positions. What we saw is that different 'ways of seeing' produced very different subjects, the distinctive factor between them being the workers' voice.

Lorena Arocha is Lecturer in Contemporary Slavery at the Wilberforce Institute at the University of Hull. Her research focuses on exploring intersections in policy and practice. She has published and worked on projects evaluating the implementation of child sexual exploitation and trafficking policy in the UK, examining the roles of organisations in anti-trafficking work in South Asia, and evaluating the implementation of services, including provisions for asylum-seeking young people and women in sex work. Email: Lorena.Arocha@hull.ac.uk

Meena Gopal is Professor at the Advanced Centre for Women's Studies, School of Development Studies, Tata Institute of Social Sciences, Mumbai. She has published and worked on projects related to gender and labour, caste and sexuality, political economy of health, welfare and development, and social movements. She is also a member of feminist and queer collectives in Mumbai, India. Email: meena.gopal@tiss.edu

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[59] A G Nilsen, *Adivasis and the State: Subalternity and citizenship in India's Bhil heartland*, Cambridge University Press, Cambridge, 2018.

[60] Agarwala, 2013.

[61] A Appadurai, 'Goodbye Citizenship, Hello "Statizenship"', *The Wire*, 4 September 2019, https://thewire.in/rights/goodbye-citizenship-hello-statizenship.

[62] Breman, 2013.

Bindhulakshmi Pattadath is Associate Professor at the Advanced Centre for Women's Studies, School of Development Studies, Tata Institute of Social Sciences, Mumbai. She has many years of experience in doing ethnographic research among women labour migrants, particularly women domestic workers, who have migrated from India to the United Arab Emirates and has published on gender, labour, and transnational migration. Email: bindhulakshmi@tiss.edu

Roshni Chattopadhyay is currently a graduate student at the Anthropology department of Emory University, USA. She has worked as a research assistant on the collaborative project, 'Worker-driven Initiatives to Tackle "Modern Slavery" in India: A socio-historical pilot study', housed at the Advanced Centre for Women's Studies of Tata Institute of Social Sciences, Mumbai. Her research interests lie at the intersection of gender, indigeneity, law, state formations, and democratic politics in India. Email: Roshni.chattopadhyay@emory.edu

Debate: 'It is worth undermining the anti-trafficking cause in order to more directly challenge the systems producing everyday abuses within the global economy'

From Conflict to Common Ground: Why anti-trafficking can be compatible with challenging the systemic drivers of everyday abuses

Ella Cockbain

Response to the ATR debate proposition 'It is worth undermining the anti-trafficking cause in order to more directly challenge the systems producing everyday abuses within the global economy.'

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The sheer force of myths and misconceptions around human trafficking—and 'modern slavery'—detracts from much-needed conversations about how global economic and socio-political systems foster *both* everyday and extreme abuses. Yet, anti-trafficking efforts in and of themselves do not represent a shared and singular cause: agendas, expressions and interventions vary markedly across different times, places and actors.[1] Some anti-trafficking efforts are well informed, thoughtful, collaborative and aimed at meaningful change; others are blatantly problematic, using the guise of anti-trafficking to promote measures that harm the very groups they claim to serve. Unsurprisingly, many also fall in between these two extremes.

Across the not-for-profit sector, journalism, politics, academia and beyond, it is frustratingly common to hear widely discredited claims about trafficking repeated as if they were indisputable facts. Thus, people invested with authority blithely assert, for example, that trafficking represents the 'third most profitable

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1   A Bunting and J Quirk (eds.), *Contemporary Slavery: Popular rhetoric and political practice*, University of British Columbia Press, Vancouver, 2017.

organised crime' or that there are '40.3 million modern slaves' worldwide.[2] I suspect the issue here is not so much ignorance as a willingness to overlook conceptual and statistical shortcomings. A simplified and sensationalised version of trafficking commands more attention and better serves other self-interests, such as securing funding, winning popular support, or selling products and services. Yet, this overblown rhetoric ultimately fuels misleading debates around a complex issue and creates credibility problems for the entire field.

There is also a widespread tendency to exceptionalise trafficking, treating it as a neatly delineated, standalone issue involving wicked criminals and idealised victims.[3] This conceptualisation naturally translates into an overwhelming focus on 'bad apples' and a concomitant neglect of the 'bad barrels' that produce them. We see this situation most clearly in the way attention and investment in anti-trafficking have coalesced around criminal justice responses, with success routinely measured in terms of the number of offenders prosecuted and/or victims assisted.[4] Such interventions are important but far from sufficient; they do not address the drivers of abuse at situational (i.e. linked to the immediate environments) or systemic levels (i.e. linked to broader economic, political, and social structures). As such, the dominant approach means endlessly playing catch-up, intervening once harm is done and reaching only a fraction of those affected.

Many corporations—including ones with dubious labour rights records—have proved keen on anti-trafficking. The appeal seems to lie at least partially in an easy public relations win that requires little introspection or expensive changes to core business practices. Politicians and governments have also rallied to the anti-trafficking cause, having seemingly determined that it can often be championed (superficially, at least) without disturbing existing socio-economic and political structures.[5] Universities have also recognised that trafficking and 'modern slavery' are fruitful topics in terms of securing research funding and attracting students, as evidenced by a proliferation of publications and the spread of dedicated new research centres, degrees, and modules. I genuinely

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[2]   For a detailed critique of spurious claims-making around trafficking/'modern slavery', see J O'Connell Davidson, *Modern Slavery: The margins of freedom*, Palgrave Macmillan, Basingstoke, 2015.

[3]   E.g., M Wilson and E O'Brien, 'Constructing the Ideal Victim in the United States of America's Annual Trafficking in Persons Reports', *Crime, Law and Social Change,* vol. 65, issues 1–2, 2016, pp. 29–45, https://doi.org/10.1007/s10611-015-9600-8.

[4]   E.g., The Anti-Trafficking Monitoring Group, *All Change: Preventing trafficking in the UK,* Anti-Slavery International, London, 2012.

[5]   I de Vries *et al.*, 'Anti-Immigration Sentiment and Public Opinion on Human Trafficking', *Crime, Law and Social Change*, vol. 72, issue 1, 2019, pp. 1–19, https://doi.org/10.1007/s10611-019-09838-5.

believe that robust research evidence is needed to understand and tackle the extreme abuses of trafficking. I am well aware, however, that I have also benefitted professionally from an increased spotlight on trafficking and investment in related research.

The longer I work in this field, the more I am troubled by the ways anti-trafficking can be actively harmful and help produce everyday abuses among already marginalised populations. Work framed as anti-trafficking is not necessarily driven primarily (or even at all) by a commitment to addressing inequalities and abuses. Instead, anti-trafficking can act as a convenient cover for other motives, such as promoting unpalatable laws and policies, appealing to distinct voting constituencies, or increasing influence overseas. Consequently, anti-trafficking can function as a backdoor to introduce measures constraining human and labour rights, dressed up as protection, rescue, or rehabilitation. An obvious example is the push for the so-called 'Nordic Model': a form of asymmetric criminalisation under which sexual services are legal to sell but not to buy. Despite its abject failure to deliver on its anti-trafficking promises where implemented and its well-documented harms to sex workers (such as the increased risk of violence),[6] politicians and prostitution abolitionists continue to abuse anti-trafficking logic to push for the model's adoption elsewhere. Other anti-trafficking measures that have attracted criticism for harming marginalised groups include immigration raids framed as 'welfare checks', forced 'rescues' of reluctant 'victims', bans on advertising sexual services online, and 'spot the signs' campaigns that encourage racial profiling and uncritical citizen surveillance.[7]

It is clearly imperative to engage with the tensions, limitations, and harms of anti-trafficking. Nevertheless, I think it would be misguided to dismiss the entire enterprise outright. The first main reason why is that the anti-trafficking frame has a demonstrable ability to increase the visibility and prioritisation of extreme abuses. That is positive in itself, regardless of whether this frame also advances understanding of more everyday abuses. To illustrate, in our research

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[6] L Platt, *et al.*, 'Associations between Sex Work Laws and Sex Workers' Health: A systematic review and meta-analysis of quantitative and qualitative studies', *PLoS medicine*, vol. 15, issue 12, 2018, https://doi.org/10.1371/journal.pmed.1002680; G Ellison, C Ní Dhónaill, and E Early, *A Review of the Criminalisation of the Payment for Sexual Services in Northern Ireland*, Queens University Belfast, Belfast, 2019.

[7] See, e.g., M Smith and J Mac, *Revolting Prostitutes: The fight for sex workers' rights*, Verso, London, 2018; A Volodko, E Cockbain, and B Kleinberg, '"Spotting the Signs" of Trafficking Recruitment Online: Exploring the characteristics of advertisements targeted at migrant job-seekers', *Trends in Organized Crime,* vol. 23, 2020, pp. 7-35, https://doi.org/10.1007/s12117-019-09376-5.

into labour trafficking in the UK,[8] I encountered much evidence of police (and other authorities) misunderstanding and minimising extreme labour abuses. For example, various people later officially designated as labour trafficking victims initially reported exploitative labour situations to the police, only to be told it was 'just' a civil matter and to seek help elsewhere. Some such individuals ended up desperately trying to walk along motorways to reach their embassies in London. I would hope such dismissive responses are less likely now that a scathing national inspection of police responses to 'modern slavery'[9] prompted a multimillion-pound investment in improving them. These changes themselves followed heightened political interest in trafficking/'modern slavery' and a push for a greater focus on abuses within the regular labour market.[10] An anti-trafficking lens can also increase attention to abuses occurring within the informal economy. In the UK, for example, re-framing sexual and criminal exploitation of children in terms of trafficking/'modern slavery' has helped attract interest and investment in tackling these complex and long-neglected issues.[11] If fewer children are now dismissed and criminalised as consenting 'child prostitutes' or 'drug runners', then I would argue that this represents progress.[12] The diversity of examples here highlights another important point: trafficking is a broad and varied phenomenon and disaggregating it into meaningful components helps target responses towards their specific characteristics and drivers.[13] Importantly, law enforcement alone cannot tackle trafficking and exploitation, yet vital

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[8] See, e.g., E Cockbain, K Bowers, and L Vernon, 'Using Law Enforcement Data in Trafficking Research', in J Winterdyk and J Jones (eds.), *The Palgrave International Handbook of Human Trafficking*, Palgrave Macmillan, Basingstoke, 2019.

[9] Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), *Stolen Freedom: The policing response to modern slavery and human trafficking*, London, 2017.

[10] C Robinson, 'Policy and Practice: Claiming space for labour rights within the United Kingdom modern slavery crusade*, Anti-Trafficking Review*, issue 5, 2015, pp. 129–143, https://doi.org/10.14197/atr.20121558.

[11] E Cockbain, *Offender and Victim Networks in Human Trafficking*, Routledge, Abingdon, 2018; E Cockbain and K Olver, 'Child Trafficking: Characteristics, complexities and challenges', in I Bryce, W Petherick, and Y Robinson (eds.), *Child Abuse and Neglect: Forensic issues in evidence, impact and management*, Elsevier, New York, 2019, pp. 95–116.

[12] The dismissal of exploited children in such terms by various authority figures has long been documented in the UK. See, e.g., Cockbain and Olver.

[13] See, e.g., E Cockbain and K Bowers, 'Human Trafficking for Sex, Labour and Domestic Servitude: How do key trafficking types compare and what are their predictors?', *Crime, Law and Social Change*, vol. 72, issue 1, 2019, pp. 9–34, https://doi.org/10.1007/s10611-019-09836-7; A Efrat, 'Global Efforts against Human Trafficking: The misguided conflation of sex, labor, and organ trafficking', *International Studies Perspectives,* vol. 17, issue 1, 2016, pp. 34–54, https://doi.org/10.1111/insp.12097.

grassroots services are often overlooked and under-funded.[14]

The second reason why I think it would be counter-productive to reject anti-trafficking wholesale is that it clearly is a powerful tool for securing a seat at the table and winning interest, funding, and sympathy for vital but less obviously 'appealing' issues, like migrants' and workers' rights. In the UK, the non-governmental organisations Kalayaan and Focus on Labour Exploitation have both proved particularly adept at using trafficking to highlight how restrictive laws and policies around migration and the labour market fuel abuses across the continuum of exploitation.[15] Internationally, the Global Alliance Against Traffic in Women stands out for its combination of anti-trafficking advocacy, knowledge production and dissemination, and a broader push to improve migrant workers' rights. With mounting evidence as to the ineffectiveness of 'corporate social responsibility'-based measures in tackling labour exploitation,[16] anti-trafficking might still prove a useful 'hook' to increase support for bottom-up measures that focus on rights over rescue, such as worker-driven social responsibility. An obvious challenge here is overcoming corporations' reluctance to confront how their own business models foster exploitation.[17]

Done well, I think anti-trafficking can—and should—be compatible with efforts to challenge the systems producing everyday abuses. The effective convergence of the two requires, however, some of anti-trafficking's most positive aspects to migrate from the margins to the mainstream. For example, shifts are needed in how trafficking is conceptualised (as part of a broader spectrum of abuse), discussed (sensibly, without recourse to simplistic and sensationalist tropes and shoddy statistics), and addressed (with nuance, disaggregating different issues

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[14] For more on this issue, see, e.g., E Cockbain and W Tufail, 'Failing Victims, Fuelling Hate: Challenging the harms of the "Muslim grooming gangs" narrative', *Race and Class*, vol. 61, issue 3, 2020, pp. 3–32, https://doi.org/10.1177/0306396819895727; Smith and Mac.

[15] See, e.g., M Ahlberg, 'Hostile Environment Undermines UK Government's Anti-Slavery Agenda', Focus on Labour Exploitation, 1 May 2018, retrieved 23 June 2020, https://www.labourexploitation.org/news/hostile-environment-undermines-uk-government%E2%80%99s-modern-slavery-agenda; A Sharp and N Sedacca, *Dignity Not Destitution: The impact of differential rights of work for migrant domestic workers referred to the national referral mechanism*, Kalayaan, London, October 2019, http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf.

[16] See, e.g., G LeBaron and A Rühmkorf, 'Steering CSR through Home State Regulation: A comparison of the impact of the UK bribery act and modern slavery act on global supply chain governance', *Global Policy*, vol. 8, issue S3, 2017, pp. 15–28, https://doi.org/10.1111/1758-5899.12398.

[17] See, e.g., G LeBaron, 'Subcontracting Is Not Illegal, but Is It Unethical: Business ethics, forced labor, and economic success', *Brown Journal of World Affairs*, vol. 20, no. 2, 2014, pp. 237–249.

and paying attention not just to individuals but also to broader systems and situations that facilitate abuses).

The planning, implementation, and monitoring of anti-trafficking should obviously be responsive to victims and survivors of trafficking. There are also real benefits in being more inclusive of other intersecting populations who have relevant expertise and/or face collateral damage from anti-trafficking, such as collectives of sex workers or domestic workers. At present, anti-trafficking spaces vary greatly in the extent to which they engage with the various constituencies just mentioned. Establishing the trust of those most affected by anti-trafficking means recognising their agency, genuinely listening to their experiences and perspectives, and incorporating their needs into anti-trafficking interventions. Policy-makers, practitioners, activists, and academics alike all need to commit to transparency, rigour, accountability, and ethics in their anti-trafficking work, which should go without saying but has thus far not always been the case. The anti-trafficking field has also long been resistant to evidence that challenges orthodoxies, and there is a stark lack of evaluations,[18] which makes it too easy to hide agendas, ineffectiveness, and harms. It is important, therefore, to incentivise and invest in more evidence-informed approaches. Overall, it remains to be seen whether there is sufficient appetite within the diverse anti-trafficking field for such changes and challenges to the *status quo*. Even if the will is there, it may well be difficult to chart a new course while maintaining sufficient political, economic, and social capital to influence policy and practice. Old allies may well be lost and new ones will need to be found. For those genuinely committed to tackling exploitation, however, it is surely a challenge worth seizing.

Dr Ella Cockbain is an Associate Professor in Security and Crime Science at University College London (UCL) and a visiting research fellow at Leiden University in the Netherlands. Her research focuses in particular on human

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[18] D Vigneswaran, 'Methodological Debates in Human Rights Research: A case study of human trafficking in South Africa', in A Bunting and J Quirk (eds.), *Contemporary Slavery: Popular rhetoric and political practice*, University of British Columbia Press, Vancouver, 2017, pp. 179–201; E Cockbain, K Bowers, and G Dimitrova, 'Human Trafficking for Labour Exploitation: The results of a two-phase systematic review mapping the European evidence base and synthesising key scientific research evidence', *Journal of Experimental Criminology*, vol. 14, issue 3, 2018, pp. 319–360, https://doi.org/10.1007/s11292-017-9321-3.

trafficking, child sexual exploitation, and labour exploitation. She has published widely on these topics, including her recent book *Offender and Victim Networks in Human Trafficking* (Routledge, 2018). She has co-chaired the UK's national working group on preventing 'modern slavery'. Email: e.cockbain@ucl.ac.uk

The Anti-Trafficking Cause: From exceptionalism to shared struggle

Sienna Baskin and Huey Hewitt

Response to the ATR debate proposition 'It is worth undermining the anti-trafficking cause in order to more directly challenge the systems producing everyday abuses within the global economy.'

This reflection was written collaboratively by a long-time advocate and director of the Anti-Trafficking Fund in the United States and by a student of African American history, an intern with the Anti-Trafficking Fund. These different perspectives gave us an opportunity to develop a dialogue about the anti-trafficking cause, and problems in its approach which are apparent from the outside and from within.

What is Worth Undermining?

The anti-trafficking movement in the United States has long relied on a narrative of *exceptionalism and individualism.* The modern movement began with a push to establish a coherent legal framework to address forced labour and allow its victims to seek justice. A few high-profile and egregious cases were the impetus for this advocacy, giving advocates salient stories to tell of individuals harmed by trafficking. The resulting law treats human trafficking as a crime meriting extraordinary punishment and extraordinary remedies.

This narrative has proven incredibly powerful and continues to be used to garner attention and concern for the cause. It raises funds and opens hearts. It has created a 'bubble' of protection and access for survivors who can convince the state of their victimhood. But it also effectively silences critique. Who, after all, wants to question the number of dollars spent or the possibility of harmful

side effects when people are being trafficked and enslaved?[1] Would we not want any and all action to be taken, no matter the cost, if it happened to us or our loved ones?

News coverage of human trafficking amplifies this approach. A 2016 review of trafficking-related articles published by US news media found that journalists simplify the issue by focusing on the worst cases.[2] They may do so out of a desire to tell an 'unambiguous' story, to provoke action and sympathy, but they leave out the complexity needed for real solutions.[3] This problem is not confined to the US: a 2019 review of UK print media by the NGO Focus on Labour Exploitation (FLEX) found that the majority of trafficking-related media articles focus on the criminal prosecution of perpetrators. Very little coverage explored structural drivers like labour market issues, racism, immigration policy, and regulation.[4] Yet these are precisely the drivers of trafficking that need to be addressed in order to make progress in the fight against it.[5]

However well intentioned, focusing exclusively on exceptional stories of trauma and redemption can actually harm survivors and those at risk of trafficking. The 2016 news analysis found that journalists employ a 'hierarchy of victimhood' where the ideal victim is 'weak, vulnerable, and trafficked by a shadowy, dangerous offender.'[6] By focusing on the worst cases and telling stories of powerless victims, news stories obscure the complexities of victims' lives and make it difficult for those who fall short of this standard to come forward. These stories re-affirm a government approach which requires survivors to convince the state that their trauma is extreme enough to merit support and

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[1]   The Global Alliance Against Traffic in Women (GAATW) has done much to direct our attention to this collateral harm. See: M Dottridge (ed.), *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, GAATW, Bangkok, 2007, https://gaatw.org/resources/publications/908-collateral-damage-the-impact-of-anti-trafficking-measures-on-human-rights-around-the-world.

[2]   R Sanford, D E Martinez, and R Weitzer, 'Framing Human Trafficking: A content analysis of recent U.S. newspaper articles', *Journal of Human Trafficking*, vol. 2, no. 2, 2016, pp. 139-155, p. 146, https://doi.org/10.1080/23322705.2015.1107341.

[3]   *Ibid.*, p. 152.

[4]   E Kenway, 'Anti-Slavery Day 2019: What are we talking about when we talk about "modern slavery"?', Focus on Labour Exploitation (FLEX), 17 October 2019, https://www.labourexploitation.org/news/anti-slavery-day-2019-what-are-we-talking-about-when-we-talk-about-%E2%80%98modern-slavery%E2%80%99.

[6]   G LeBaron, N Howard, C Thibos and P Kyristis, *Confronting Root Causes: Forced labour in global supply chains*, openDemocracy and University of Sheffield, 2018, https://cdn-prod.opendemocracy.net/media/documents/Confronting_Root_Causes_Forced_Labour_In_Global_Supply_Chains.pdf.

[6]   Sanford, Martinez and Weitzer, pp. 142, 151.

care. This narrative props up vigilante groups who showily 'rescue' victims only to later abandon them to fend for themselves.[7] If survivors of trafficking are constantly exceptionalised, it can be hard for them to unite with those similarly situated to build power.

And there are those who intentionally use these narratives to advance carceral, nationalist, and misogynist policies. Grantees of NEO Philanthropy report that the bubble of protection has burst under the current administration of President Donald Trump, and survivors who are not US citizens now can rarely obtain the remedies to which the law entitles them. Meanwhile, the Trump administration proudly claims to be fighting human trafficking, painting pictures of women being brought captive over our borders by 'bad hombres',[8] while restricting abortion access and tearing families apart. The anti-trafficking field has recoiled and pointed out the blatant racism and cynicism in Trump's policies, yet the public still responds to these images. They lock into a deeply held idea that trafficking is about individual victims suffering exceptional crimes, rather than unjust socio-economic and political systems. And we, as anti-trafficking advocates, are partially responsible for that idea being so deeply held.

The individualist narrative in anti-trafficking work is especially ironic in the United States, with our history of chattel slavery. Chattel slavery cannot be understood unless one thinks in terms of systems—economic, legal, racial, and cultural—and their effects. A failure to reckon with the legacies of transatlantic enslavement has produced contemporary inequalities that are evident in patterns of unemployment, poverty, and homelessness amongst Black people. It is also reflected in inequalities in the prison system, and in the way policing, courts, and post-release surveillance play out depending on race. Recognising this has produced a contemporary prison abolitionist movement that refers to incarceration as 'modern slavery', not just because today's prisoners are economically exploited, but because the forms of anti-Blackness found in plantations and prisons are affectively and historically linked.[9] Chattel slavery also spawned scientific racism: the categorising of ethnic groups as biologically inferior, which has affected even non-Black people of colour. For these reasons,

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[7]   A Lange, '"8 Minutes" Trafficking Victim Adviser Says Producers Ignored Her Advice', *BuzzFeed*, 11 May 2015, retrieved 20 July 2020, https://www.buzzfeednews.com/article/arianelange/8-minutes-trafficking-victim-adviser-says-producers-ignored.

[8]   See E Burmila, 'Scientific Racism Isn't "Back"—It never went away', *The Nation*, 6 April 2018, https://www.thenation.com/article/archive/scientific-racism-isnt-back-it-never-went-away.

[9]   See A DuVernay (Dir.), *13th*, Kandoo Films, 2016; see also: K R Johnson, 'Prison Labor Is Modern Slavery. I've been sent to solitary for speaking out', *The Guardian*, 23 August 2018, retrieved 30 March 2020, https://www.theguardian.com/commentisfree/2018/aug/23/prisoner-speak-out-american-slave-labor-strike.

when US anti-trafficking activists, some of whom call themselves 'modern day abolitionists', push for prosecutors to send more people to prison and fail to acknowledge the role of systems in creating exploitation, they expose their ignorance of the wider dynamics and history of their own field.

What is Worth Preserving and Transforming?

It is worth undermining these narratives and associated approaches to human trafficking. However, this does not mean we need to abandon the cause of ending human trafficking. Human trafficking is not a distraction from the erosion or lack of rights and protections in the workplace. It is a *result* of the erosion of these rights. In some locations and industries, forced labour *is* the everyday abuse. It is the natural result of the regular and smooth operations of labour markets and migration systems. This is what makes it so devastating, and so illuminating. We need not undermine the cause of ending human trafficking in order to widen our aperture.

Instead, we need to bring the cause into comprehensive movements for racial justice, gender equity, migrants' and workers' rights. Solutions to human trafficking are to be found within the goals of these movements. When all people have the right to migrate and work safely, and when people of all genders and races have the same rights and opportunities, human trafficking will cease to be a systemic problem. And these movements benefit from understanding human trafficking; its survivors have salient lessons for us all about how the economy is structured. We have seen positive trends among grantees of NEO Philanthropy; anti-trafficking organisations who have embraced this wider framework. This includes the National Survivor Network uniting behind a platform which includes raising the minimum wage,[10] Damayan Migrant Workers Association sponsoring a worker co-operative founded by survivors of labour exploitation to build safe and equitable jobs for themselves and their peers,[11] and the Human Trafficking Legal Center and many other anti-trafficking organisations standing up against anti-immigrant enforcement and border wall construction.[12] With these and other similar initiatives they are challenging the systems that perpetuate human trafficking. They are changing the narrative, and we should follow their lead.

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[10]   See https://nationalsurvivornetwork.org/policy-advocacy.

[11]   See https://www.damayanmigrants.org/damayan-workers-cooperative.

[12]   See S Jorgensen and P Sandoval, 'Experts: Trump's tape-bound women trafficking claim is misleading', *CNN*, 28 January 2019, retrieved 3 August 2020, https://www.cnn.com/2019/01/27/us/human-trafficking-fact-check/index.html.

Sienna Baskin is Director of the Anti-Trafficking Fund at NEO Philanthropy. The Anti-Trafficking Fund provides grants to prevent human trafficking and aid its survivors in the United States, and implements a strategy based in immigrant rights, labour rights, economic/social justice, and human rights. Before joining NEO Philanthropy, Sienna Baskin was Managing Director of the Urban Justice Center's Sex Workers Project, where she worked to protect the rights of victims of trafficking and sex workers. Email: sbaskin@neophilanthropy.org

Huey Hewitt is a first-year PhD student in the Department of African & African-American Studies at Harvard University. He is a former intern with the Anti-Trafficking Fund at NEO Philanthropy. Before, during, and after his time with NEO, Huey Hewitt has worked as a community organiser alongside currently and formerly incarcerated people—especially those who have been criminalised as survivors of trafficking, domestic violence, and other forms of abuse. Email: hueydhewitt@hotmail.com

Rights Not Rescue: Lessons from migrant domestic workers in the UK and their struggle for systems change

Kate Roberts

Response to the ATR debate proposition 'It is worth undermining the anti-trafficking cause in order to more directly challenge the systems producing everyday abuses within the global economy.'

Challenging the systems which produce everyday abuses within the global economy must be central to the anti-trafficking cause. This is because any system that leaves some people with no realistic way to challenge everyday abuses or access rights also creates the underlying conditions that render these same people vulnerable to human trafficking.

One example of this relationship is the effect of immigration rules, which can leave people vulnerable to abuse and exploitation, including trafficking. The conditions of an immigration visa, for instance, can determine its holder's ability to access healthcare and labour law protections, including sick pay or state support when unable to work.

This is reflected in recent experiences in the United Kingdom (UK), where changes made in 2012 to the rules governing the Overseas Domestic Worker (ODW) visa illustrate how workers' struggles to assert rights and challenge everyday abuses are directly related to the prevention of trafficking. From 1998 until April 2012, ODW visa holders had the ability to leave an employer, find a new job, and apply to extend their work visa on the basis of new employment. This meant that both they and their employers knew that the worker could change employer without losing their immigration status or income. The availability of this qualified yet still consequential option helped to partly rebalance the power difference between domestic workers and their employers. Research by

London-based support and advice organisation, Kalayaan, has revealed that the removal of these rights contributed to an increase in reported levels of abuse and exploitation, including human trafficking.[1]

The ODW visa was first created in 1998. It was regarded as an example of good practice because it went some way towards addressing the structures enabling the exploitation of migrant domestic workers.[2] This original ODW visa recognised that migrant domestic workers were entering the UK as workers. It gave them the right to change employers and renew their visa based on ongoing employment. Workers on this visa had a pathway to settlement. Its creation ended the operation of an informal system under which domestic workers accompanying employers had simply received a stamp in their passports stating they had 'permission to work with [employers name]'.[3] This informal system had left such workers in legal limbo and workers had risked being penalised for violating immigration laws when they left exploitative work and reported problems to the authorities. The original ODW visa was thus a significant step forward, and the result of years of campaigns by migrant domestic workers and their allies.

Migrant domestic workers and their allies also made it clear that proposals to end or restrict the original ODW visa risked undoing all the achievements by migrant domestic workers, leaving them without the means to challenge abuse.[4] Despite these campaigns, changes to the immigration rules introduced in 2012 prevented workers from changing employers or renewing their visas beyond six months.[5] Although ODW visa holders were, in theory, still recognised as

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[1]   See for example: Kalayaan, 'Britain's Forgotten Slaves: Migrant domestic workers in the UK three years after the introduction of the tied visa', Kalayaan, May 2015, retrieved 16 July 2020, http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-3-year-briefing.pdf.

[2]   The original ODW visa was cited internationally as good practice. See: International Labour Organization (ILO), *Multilateral Framework on Labour Migration: Nonbinding principles and guidelines for a rights-based approach to labour migration*, ILO, Geneva, 1 January 2006, p. 67, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_146243.pdf.

[3]   B Anderson, *Doing the Dirty Work? The global politics of domestic labour*, Zed Books, London, 2000.

[4]   Kalayaan, 'The Impact of Proposals to Abolish the Overseas Domestic Worker Visa', Briefing by Kalayaan, Justice for Domestic Workers and Oxfam, July 2011, http://www.kalayaan.org.uk/wp-content/uploads/2014/09/domestic-worker-visa-brief-July-2011.pdf.

[5]   Kalayaan, 'Slavery by Another Name: The tied migrant domestic worker visa', Kalayaan, May 2013, http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Slavery-by-a-new-name-Briefing.pdf.

workers, the dependence on their employer for accommodation, employment and immigration status, together with the hidden and undefined nature of 'live-in' domestic work, made it almost impossible to challenge abuse in practice. When the visa rules changed, reported exploitation increased, including indicators of trafficking. For example, in 2013, 86 per cent of workers on the new tied visa reported to Kalayaan that their passports or identification documents were being kept from them, an increase of 40 per cent when compared to reports from workers on the original visa. Reports of being unable to leave the house unsupervised were over 50 per cent higher among workers on the restricted visa, at 96 per cent of workers.[6]

In the wake of the adoption of the *Modern Slavery Act* in 2015 the government committed to review the ODW visa in light of the recognised need for options to prevent trafficking and slavery. The review recommended that all ODW visa holders should have the right to change employers, renew their visa on the basis of their employment, and have access to information about their rights in the UK.[7] However, these recommendations were not implemented. Instead, in 2016, workers were permitted to change employers but not to renew their visa.[8] For workers restricted to one full-time job as domestic worker in a private household, finding alternative decent work in a sector which inevitably involves building personal relationships and trust with only a few months remaining on a non-renewable visa is unrealistic.[9] Only those ODW visa holders who are officially identified as trafficked have options to extend their visa.[10] Support organisations such as Voice of Domestic Workers and Kalayaan report the bind in which the current situation leaves the majority of workers. Do workers risk leaving before abuse escalates? If this abuse does not equate to trafficking, they could be left destitute, without a reasonable prospect of finding work and without access to legal aid to challenge mistreatment. The desperate need to remit money to one's family and pay off debts means workers may not feel able to risk leaving exploitative labour situations.

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[6]   *Ibid.*

[7]   J Ewins, 'Independent Review of the Overseas Domestic Workers Visa', Government of the UK, 16 December 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report__6_11_15_.pdf.

[8]   *Immigration Act*, 2016.

[9]   A Sharp and N Sedacca, *Dignity, not Destitution: The impact of differential rights of work for migrant domestic workers referred to the National Referral Mechanism*, Kalayaan, October 2019, http://www.kalayaan.org.uk/wp-content/uploads/2019/10/Kalayaan_report_October2019.pdf.

[10] *Ibid.*

Rather than listen to workers on the visa and reinstate the original ODW visa, the 2016 changes to the visa ignore the need for workers to be able to exercise their rights before exploitation escalates. This is only realistic when workers have alternative employment options and a safety net, such as access to public funds. Built-in options and choices where immigration rules, the labour market, and social security structures are concerned must be at the core of any effective approach to prevent exploitation, slavery, or trafficking.

Migrant domestic workers and their allies continue to recognise the importance of the anti-trafficking framework to push for change. They continue to highlight the legal and moral commitments to prevent and address trafficking and slavery and use these to make a clear case for systematic change to allow for rights to be exercised and exploitation to be challenged early on. Rather than undermine the anti-trafficking cause to directly challenge the systems producing everyday abuses within the global economy, the situation of migrant domestic workers in the UK makes clear how connected 'everyday abuse' and trafficking are; when workers cannot challenge their unpaid overtime or lack of holiday pay, at what point can they be sure their demands for justice will be supported? The ODW visa shows us that anti-trafficking responses will only be effective when they encompass the prevention of trafficking, including addressing the systems which produce everyday abuse.

Kate Roberts is UK & Europe Manager at Anti-Slavery International. She has 15 years of experience in workers' and migrants' rights and anti-trafficking work and has previously worked at the Human Trafficking Foundation and Kalayaan. She has in-depth knowledge of the UK's anti-trafficking and anti-slavery measures, having compiled the Slavery and Trafficking Survivor Care Standards 2018 and having been a First Responder to the UK's National Referral Mechanism from 2009 to 2016. Email: k.roberts@antislavery.org

Strategic Redirection through Litigation: Forgoing the anti-trafficking framework to address labour abuses experienced by migrant sex workers

Alison Clancey and Frances Mahon

Response to the ATR debate proposition 'It is worth undermining the anti-trafficking cause in order to more directly challenge the systems producing everyday abuses within the global economy.'

SWAN Vancouver (SWAN) promotes the rights of migrant and immigrant (hereinafter im/migrant) sex workers through front-line service provision and systemic advocacy. In 2019, SWAN began to consider a constitutional challenge against Canadian immigration law, which currently prohibits temporary residents and migrant workers from engaging in sex work. This litigation is designed to at least partially counteract the harmful effects of recent anti-trafficking policies. Mounting a constitutional challenge is a difficult exercise for a small organisation like SWAN, but we have decided that it is nonetheless the most effective pathway for exposing how 'crimmigration'[1] enables both labour abuses of migrant sex workers and manufactures vulnerability to human trafficking.

Since 2002, SWAN has advocated for im/migrant sex workers, who are primarily from Asia, in the areas of health promotion, legal rights, and criminal justice access. SWAN's front-line work has deeply informed our systemic advocacy with policymakers. For many years now, we have been trying our best to get Canadian law enforcement and multiple levels of government to adopt

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[1]　The intertwining of criminal and immigration law, see: J Stumpf, 'The Crimmigration Crisis: Immigrants, crime, and sovereign power', *American University Law Review*, vol. 56, issue 2, 2006, pp. 367–419.

evidence-based anti-trafficking strategies that address root causes and increase labour protections for im/migrant sex workers. These efforts have included contributions to numerous human trafficking roundtables, providing input and critical responses to policy briefs and legislation, and attempting to raise awareness of both the design and distribution of anti-trafficking funding. Working with law enforcement, SWAN has trained front-line officers and attempted to inform policy from a sex worker rights perspective. It has also proved necessary to challenge ill-informed anti-trafficking raids which target im/migrant sex workers under the guise of protection.

None of these efforts have been particularly successful. Attempts to inform anti-trafficking policy and law did not translate into meaningful changes in practices. There is significant overlap between anti-trafficking and prostitution law, and they work together to legislate victimhood, which in turn justifies crude attempts at 'rescue'. Attempts to educate police about the differences between human trafficking and im/migrant sex work were unsuccessful. Police continue to enforce laws based upon a rudimentary understanding of human trafficking hinged on victims, villains, and heroes.

SWAN has increasingly withdrawn from government-sponsored and community-based human trafficking forums and roundtables. We realised there is limited space for perspectives that challenge anti-trafficking rhetoric by centring im/migrant sex workers' voices around migration and labour in a global economy. The human trafficking discourse in Canada is used as a cover to legislate, limit and curtail the activities of sex workers.[2] It also informs an anti-sex work crusade, which rehashes misinformation about the sex industry in order to justify ever-increasing anti-trafficking resources.[3]

SWAN realised that working within the anti-trafficking framework was not going to lead to the protection of migrant sex workers' rights. Hence, SWAN's proposed constitutional challenge at least partly stems from a lack of faith in the value of working within existing structures. There is no other recourse SWAN could ethically undertake to advance the labour and migration needs of the women we serve. Moreover, recent changes to immigration policy, which

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[2]   S K H Chu, J Clamen, and T Santini, *The Perils of 'Protection': Sex workers' experiences of law enforcement in Ontario*, Canadian HIV/AIDS Legal Network, 2019, retrieved 25 June 2020, http://www.aidslaw.ca/site/the-perils-of-protection.

[3]   See Public Safety Canada, *2018 Human Trafficking Consultations Report*, Ottawa, 2019, retrieved 25 June 2020, https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2018-hmn-trffckng-cnslttns-rprt/2018-hmn-trffckng-cnslttns-rprt-en.pdf; and Standing Committee on Justice and Human Rights, *Moving Forward in the Fight Against Human Trafficking in Canada*, Ottawa, 2018, https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP10243099/justrp24/justrp24-e.pdf.

increase labour protections for some migrant workers, continue to exclude migrant sex workers, since they do not hold employer-specific work permits.[4]

The constitutional challenge has been carefully designed to strategically target three specific regulations in the *Immigration and Refugee Protection Regulations* (*IRPR*), which make it impossible for temporary residents to provide paid sexual services in Canada. We will argue that these regulations violate the rights of migrant sex workers under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* by exposing migrant sex workers to unnecessary harms and discriminating against them on the basis of sex, race, and national or ethnic origin. We will seek to have the three regulations held unconstitutional, and declared to be of no force and effect under section 52, paragraph 1, of the *Constitution Act, 1982*. This would prevent these particular regulations from being used against migrant sex workers in the future.

SWAN intends to act as a public interest litigant alongside individual plaintiffs who have directly experienced the harms associated with immigration prohibitions on sex work in Canada. Public interest litigants are individuals and organisations who do not directly bear the brunt of the constitutional infringement, but are nevertheless well-placed to bring forward the perspectives of those who risk much in doing so. There is a practical disincentive for migrant sex workers in Canada to sign on as litigants in this case, since it could result in their removal from Canada or victimisation by law enforcement.

The design of immigration law creates barriers to criminal justice responses to the labour abuses experienced by migrant sex workers. Under the current regime, anyone with temporary immigration status in Canada is prohibited from engaging 'with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages.'[5] Individuals who enter Canada on a work permit, study permit, or visitor's visa have temporary immigration status. If they engage in sex work, they violate immigration regulations. Consequently, immigration law effectively bars migrant sex workers from reporting violence and thus contributes to under-reporting. Any contact with law enforcement, even as victim of a crime, carries the very real risk of detention and deportation.

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[4]   In 2019, the *Immigration and Refugee Protection Regulations* (s 207.1) allowed Open Work Permits to be issued to temporary foreign workers holding an employer-specific Work Permit, who are experiencing abuse or who are at risk of experiencing abuse in the context of their employment. See Government of Canada, 'Program Delivery Update: Vulnerable workers', 4 June 2019, https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/updates/2019-vulnerable-workers.html.

[5]   Government of Canada, *Immigration and Refugee Protection Regulations*, ss. 183(1) and 196.1, last amended 30 April 2020, https://laws-lois.justice.gc.ca/PDF/SOR-2002-227.pdf.

As a consequence, unscrupulous individuals use the threat of detention and deportation to exploit sex workers. Immigration law enables perpetrators of violence to act with impunity, thereby protecting them from prosecution instead of protecting migrant sex workers from labour exploitation. The government's unwillingness to consider how border control and immigration policy contribute to an environment ripe for labour exploitation and trafficking has resulted in an impenetrable policy arena.

Within the anti-trafficking framework, it is impossible for a small community organisation like SWAN to be on a level playing field with powerful stakeholders such as government, law enforcement, and well-funded anti-trafficking organisations. Taking a politically combative stance by way of litigation compels government and other key stakeholders to look beyond awareness campaigns and the prosecution of individual traffickers as primary strategies. By using the legal system, SWAN aims to force a much-needed dialogue about international migration, the global economy, labour protections—or the lack thereof—for migrant workers, and the racialised assumptions about migrant women that led to the creation of the immigration prohibition on sex work and its subsequent enforcement. We also seek to highlight the government's complicity in creating systems that exacerbate systemic vulnerability to human trafficking. It was not possible to place these issues on centre stage within the anti-trafficking framework.

Although the tactical decision to litigate does not guarantee increased labour protections for migrant sex workers, it compels anti-trafficking stakeholders, namely the federal government and police, to re-examine popular yet ineffective strategies to address human trafficking. While risky, SWAN sees no other way to foreground a discussion about who is entitled to criminal justice and labour rights in Canada in the context of migrant sex work.

What we do know is that the *status quo* is unacceptable. In Canadian society, migrant sex workers exist in a space that does not offer labour protections or rights of any type. Using the legal system to expose how criminal justice and immigration responses structurally render migrant sex workers vulnerable to labour exploitation gives us hope that change is possible. Our strategic redirection through litigation re-instils the hope we had lost during our attempts to use the human trafficking framework as a vehicle for that change.

Alison Clancey is the Executive Director of SWAN Vancouver. Alison's interests are the production and politicisation of trafficking knowledge, crimmigration, and the policing of sex work. She holds a Master's degree in Social Work from the University of Victoria, Canada. Email: info@swanvancouver.ca

Frances Mahon is the owner and founder of Mahon & Company, a progressive litigation boutique in Vancouver specialising in criminal law, immigration and refugee law, and constitutional law. She has appeared in courts and tribunals across the country, including the Supreme Court of Canada. Frances is often invited to speak on *Charter* and human rights issues, and she has provided expert witness testimony to both the Senate and the House of Commons. She is proud to support communities who have historically lacked access to justice, including the LGBTQ2S people, im/migrants, sex workers, prisoners, and many others. Email: frances@mahonlitigation.com

Letting Go of the Dream of Traffickers behind Bars: We can do better for exploited workers

Lisa Rende Taylor

Response to the ATR debate proposition 'It is worth undermining the anti-trafficking cause in order to more directly challenge the systems producing everyday abuses within the global economy.'

Governments and businesses are duty-bound to protect and respect workers' rights. In accordance with the UN Guiding Principles on Business and Human Rights (also known as Ruggie Principles), governments, as duty bearers, must protect workers by upholding laws, regulating working conditions, managing safe and efficient labour recruitment channels, and punishing businesses that exploit workers. Businesses, as duty bearers—including employers, recruitment agencies, global brands, and retailers—must respect workers by complying with laws and other codes.

Most of the world's anti-trafficking programmes both before and after the development of the Ruggie Principles in 2011 have fallen broadly under the so-called 3 Ps: prevention, prosecution, and protection. Now, twenty years after the adoption of the UN Trafficking Protocol, enough time has passed for us to conclude that these efforts have not led to a sustained reduction in forced labour and human trafficking.[1] One reason is that these efforts have been, for the most part, transactional rather than transformational. They have focused on protecting

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1   M Dottridge, 'Editorial: How is the money to combat human trafficking spent?', *Anti-Trafficking Review*, issue 3, 2014, pp. 3-14, https://doi.org/10.14197/atr.20121431. See also: K Bryant and T Landman, 'Combatting Human Trafficking Since Palermo: What do we know about what works?', *Journal of Human Trafficking*, vol. 6, no. 2, 2020, pp. 119-140, https://doi.org/10.1080/23322705.2020.1690097.

victims and prosecuting perpetrators rather than on changing the systems and mentalities that fundamentally deny workers their dignity.[2] Related to this is the criminal justice tunnel vision underpinning most anti-trafficking programming, which focuses on only the most extreme cases. This has left the great majority of exploited workers excluded from trafficking responses while also obscuring the effects of market systems designed to put ever cheaper products into the hands of consumers. Put simply, spending millions of dollars of aid from more economically developed countries on protecting labour trafficking victims and prosecuting their exploiters in less economically developed countries makes no sense, if at the same time trillions of dollars in trade fuels demand for cheap products made by some of these very same workers and exploiters.

The addition of businesses as duty bearers in the Ruggie Principles gave labour rights practitioners new opportunities to build bridges between anti-trafficking and anti-forced labour on the one hand, and responsible sourcing and ethical trade on the other. In recent years, global brands and retailers have begun speaking more openly about the failures of businesses' risk management-oriented audit-compliance systems to uncover labour risks and abuses in their supply chains, including forced labour and human trafficking. However, for the vast majority, making the leap from talking about going beyond audits to actually trying something new has proven extremely difficult.

Most global brands and retailers have been slow to evolve their supply chain risk management and compliance practices in order to more effectively combat forced labour and human trafficking in their supply chains. In order to understand why, I looked at data from Issara Institute's recent five-year assessment of the impact of its work in empowering workers and transforming the systems and behaviours of businesses.[3] Over the past five years, Issara Institute's worker voice channels operating across Cambodia, Myanmar, and Thailand[4] received 143,995 calls and messages. From 2016 to 2018, these led to remediation for 81,690 individuals suffering some form of labour exploitation, most within the supply chains of our 20 global brand and retailer strategic partners. Of 81,690

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2   J Chuang, 'Beyond a Snapshot: Preventing human trafficking in the global economy', *Indiana Journal of Global Legal Studies,* vol. 13, issue 1, Winter 2006, pp. 137-163, https://doi.org/10.2979/gls.2006.13.1.137.

3   Issara Institute, *Assessing Five Years of Impact and Trends in Worker Voice and Responsible Sourcing: 2014-2019*, Issara Institute, Palo Alto and Bangkok, 2020, https://44f2713d-a205-4701-bba3-8d419653b4b6.filesusr.com/ugd/5bf36e_2977cdf991bc404aaaa9fbf37d7d71d7.pdf.

4   These include 24-hour, multi-lingual helplines for domestic and foreign workers, Facebook (including Messenger), WhatsApp-like chat/communications apps including Line and Viber, and a Yelp-like smartphone app (Golden Dreams) for workers to rate and review their employers, recruiters, and service providers.

workers, 19,978 met the international definition of forced labourers. Workers most commonly reported some combination of overwork (systematic, non-voluntary overtime), underpay (cheating on wages and benefits), deception and coercion in recruitment (e.g. a promised hourly wage changed to a piece rate upon arrival), threats, abuse, and debt bondage. Remediation of these labour abuses sometimes involved government assistance, especially with less severe cases of benefits theft, social security issues, and document issues. However, for the most part, remediation came directly from the supplier, at times with the help of supply chain leverage on the part of progressive global brand and retailer partners.

These and other similar cases point to three main reasons why it has been so difficult for global brands and retailers to improve their supply chain risk management practices:

1. **Many businesses are reluctant or ill-prepared to escalate or make sourcing decisions based on data other than traditional, standardised audit-compliance data, despite the inherent shortcomings identified with audits and supplier self-reported data.** Most leading global brands and retailers understand how audit data is collected by auditors, primarily from employers (suppliers), and not from workers in any safe or trusted way (if at all). They also seem to understand that auditors cannot be expected to have relationships of trust with workers, or the requisite linguistic or technical expertise to uncover issues affecting workers. This means that responsible brands and retailers require another means or channel to safely uncover issues around labour recruitment or working conditions that may require remediation. This is a fundamental challenge in parts of the world such as Southeast Asia, where goods for export are often produced by foreign migrant workers who are prohibited by law to organise, form unions, or bargain collectively. However, in Issara's experience, having to deal with such nuanced and direct feedback and validation from workers is new territory for brands and retailers. Many businesses are ill-prepared or reluctant to deal with the level of responsibility and risk that this brings.

2. **Many brands and retailers are wary about partnering with organisations outside of their direct supply chain (that is, outside of their supplier base). When they do, the objective has often been risk mitigation rather than remedies for labour abuses.** How a business presents its brand and core values, and how it interacts with its customers all factor into this. Businesses that publicly articulate the importance of having ethical, responsible supply chains will typically be more open to supporting new models such as worker-driven solutions. Most businesses, however, are less transparent about

their sourcing practices, and progress is hindered by legal concerns around possible liability, risk, and expectations that arise from being privy to these new sources of information. Additionally, many brands and retailers prefer to have turn-key solutions that they and their suppliers can systematically roll out without having to partner with workers' rights groups. For example, global brands and industry groups have increasingly deployed worker polling technologies into their supply chains in recent years.[5] However, this has been implemented without sufficient safeguarding in place or means of ground-truthing and validation, which by its nature requires engaging with workers and worker rights groups. In addition, many brands have not committed to addressing risks and abuses that may be discovered through such technologies. A massive industry has been built around audit-compliance frameworks, bodies, and risk data collection. However, the voices of workers and validation of the labour picture by workers is worryingly absent in this landscape, leading many in the labour rights field to question the credibility of these tools or initiatives.[6]

3. **Retailers (much more so than brands) generally lack relationships with the suppliers producing the goods and products they sell.** Procurement and sourcing practices have shifted as competition for low prices has driven ever narrower margins in the retail space. One of the most common changes has been for retailers to transfer responsibility for meeting not only cost, volume, and quality requirements, but also social requirements upstream. Indeed, the model for many retailers has been to push responsibility for ensuring that their standards and codes of conduct are upheld onto both external auditors and the intermediary agents, importers, and other middlepersons who hold direct relationships with manufacturing, processing, and exporting suppliers. This essentially shifts many liabilities up the supply chain and introduces another duty bearer for fair labour conditions and responsible sourcing. Consumer expectations of retailers having 'clean supply chains' still remain with the retailer, but the execution and implementation of those standards has shifted over recent years to auditing bodies and intermediary importers and buyers, which has an

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[5] L Rende Taylor and E Shih, 'Worker Feedback Technologies and Combatting Modern Slavery in Global Supply Chains: Examining the effectiveness of remediation-oriented and due diligence-oriented technologies in identifying and addressing forced labour and human trafficking', *Journal of the British Academy*, vol. 7, no. s1, 2019, pp. 131-165, https://doi.org/10.5871/jba/007s1.131.

[6] *Ibid.*; see also: L Berg, B Farbenblum, and A Kintominas, 'Addressing Exploitation in Supply Chains: Is technology and game changer for worker voice?', *Anti-Trafficking Review*, issue 14, 2020, pp. 47-66, https://doi.org/10.14197/atr.201220144.

impact on how (or whether) retailers engage and collaborate in efforts to drive remediation when labour abuses are uncovered.

Where does this leave us? On the one hand, the anti-trafficking community has largely focused on transactional interventions to prevent the worst forms of abuse. On the other hand, the business community increasingly acknowledges that their sourcing practices may be perpetuating labour abuses that they have a responsibility to help eliminate, but many are reluctant to adopt new tools and partnerships that could help them do so. Above all, most businesses have yet to engage directly with workers and worker groups to validate and remediate the real issues and risks facing workers in their supply chains.

Going back to the Issara data, the metrics demonstrate that enough businesses' responses were swift and commensurate enough to remediate the exploitation of the 81,690 workers mentioned above. For example, some global brand partners stood firmly behind their codes of conduct and reinforced to suppliers that abiding only by the lower bar set by local or national laws was not sufficient to remain part of their supply chain. This supply chain leverage time and again provided sufficient pressure or encouragement for suppliers to collaborate with Issara's business and human rights team to strengthen their labour recruitment and management systems, and remediate affected workers. Unfortunately, this was not the case for all businesses. Some resisted taking a strong stance on responsibility for addressing worker-reported abuses, especially when recent audits had not successfully identified these risks. In these cases, businesses engaged in some combination of denial, turning a blind eye to threats by their supplier against workers and Issara's NGO staff, discounting and challenging workers' experiences, insisting on focusing on audit results, and foot-dragging. This suggests that the main limitation to a scalable solution to solving the wide range of abuses in global supply chains is not the ability of workers to identify them, but the commitment of business to hearing them and responding in a swift, responsible manner.

After twenty years in the anti-trafficking sector, I argue that undermining the anti-trafficking cause to more directly challenge the systems producing everyday abuses within the global economy should be a goal, if not a moral imperative, for anyone who is serious about making workers' lives better. Encouraging, advocating for, and partnering to achieve the inclusion and empowerment of worker voices and validation in businesses' efforts to identify and effectively eliminate labour risks in their supply chains is the only scalable way for the anti-trafficking sector to ever disrupt the global scale of forced labour and human trafficking.

The anti-trafficking community needs to let go of the dream of governments solving the problem of human trafficking by putting exploiters behind bars. By and large, it does not happen. And when it does, very little is actually disrupted

in the grand scheme of things. We need to dream bigger: a path to a fairer market, where the dual questions of whether workers were treated fairly in the production of goods, and whether this is credibly verified by empowered and safeguarded workers, are taken more seriously in global supply chain management.

Lisa Rende Taylor is the Founder and Executive Director of Issara Institute, a non-profit dedicated to transforming the lives of millions of workers in global supply chains through partnerships, innovation, and empowering worker voices. She has over twenty years of experience in the anti-trafficking field, having worked in the US State Department and the United Nations on sex, marriage, and labour trafficking research and programming before founding Issara Institute. Her PhD in human behavioural ecology developed novel predictive risk models to explore globalisation, parental decision making, and trafficking risk in rural Thailand. Email: lisa@issarainstitute.org

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