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Private governance of human and labour rights in seafood supply chains – The case of the modern slavery crisis in Thailand

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Abstract

A growing recognition of human rights in business has shed light on labour violations and abusive practices that prevail in many global supply chains. The recent ‘modern slavery’ crisis in the Thai fishing industry not only brings the question of government’s responsibility to the fore, but increasingly highlights the role of private governance in global supply chains. This paper provides an updated analysis on the state of labour rights protection in the Thai fishing industry by analysing responses from private business and civil society to the modern slavery scandal. We focus on three responses in particular, ethical recruitment policies, worker grievance mechanisms and worker associations. We provide an analysis of the effectiveness of these responses and delineate the potential but also limits of private governance that need to be overcome to ensure the protection of human and labour rights in global seafood supply chains.

Keywords: Fisheries, Thailand, human and labour rights, private governance, supply chains

1. Introduction

Global supply chains connect consumers in the Global North with producers in the Global South. Two key attributes of global supply chains – organizational fragmentation and geographic dispersion – lead to low levels of visibility and transparency as to the circumstances under which a product was produced or processed. This issue specifically resonates across the upstream section of seafood supply chains that can involve destructive fishing activities. Understandably, the ocean science community has focused on environmental challenges such as habitat destruction, overfishing, and dwindling resources that can occur in such supply chains. These environmental challenges threaten the viability of livelihoods and food security and create conditions for discrimination. However, there is a compelling need to connect these environmental problems to social issues such as agency, inequality, and social justice (Allison et al. 2012; Nakamura et al 2018; Teh et al. 2019). This is also reflected in an emerging interest in the labour and working conditions involved in fishing (e.g. Belton et al. 2019; Stringer & Harré; Chantavanich et al., 2016; Hara, 2009). In this paper, we delve more deeply into the problem of labour abuse of – mostly migrant – fishworkers in the Thai fishing industry, also known as the Thai modern slavery crisis¹ (Marschke & Vandergeest, 2016), and investigate responses from the private sector to address the crisis.

Media reports published in the Guardian and the Associated Press drew attention from across the western world as it exposed migrants labour being treated like slaves in Thailand's fishery industry (McDowell et al. 2015; Hodal & Lawrence, 2014). This was possible, as labour standards in the Thai fishing industries were not monitored and regulated by national government agencies before 2014/2015 (Vandergeest, 2019). Moreover, depleting catches in Thailand's Exclusive Economic Zone (EEZ) led to industrial fishing vessels traveling further afield to fish in the waters of neighbouring countries, facilitating illegally fishing activity as well as human rights abuse (Derrick *et al.* 2017). In 2015, over 2000 workers, mostly from Myanmar and Cambodia, were found to be held captive on the Indonesian island of Benjina and forced to work under slave-like conditions on Thai fishing boats (McDowell et al., 2015). Around the same time, in May 2015, the EU issued a yellow card for the Thai fishing industry with the threat of an export ban to the European market if IUU (Illegal, Unreported,

¹ The language around “modern slavery”, “unfree” and “forced labour” is highly contested. Barrientos et al (2013) criticize scholars in this domain for thinking of unfree labour as a discrete category of labour relation, creating a false dichotomy between “free” and “unfree” labour. This occurs in ignorance of the fact that studies of labour in the global economy have highlighted a continuum of exploitation, ranging from labour relations characterised by some violations of workers' rights, to those which could be classified as severely exploitative and abusive (ibid.: 1037).

Unregulated) fishing was not adequately addressed (see also Miller et al. 2014). Even though the yellow card was mainly a response to IUU fishing, the European Commission explicitly added ‘associated problems [that] include human trafficking and slave labour in the fishery sector’ (European Commission, 2016)² in the aftermath of the media scandal.

Such incidents shed light on the dark side of global supply chains when (part of the) production takes place in countries and sectors characterized by weaker state labour regulation (Vandergeest, 2019). While modern slavery itself is undefined by international law, it is often used as an umbrella term that focuses attention on commonalities across specific legal concepts related to human exploitation such as forced labour, forced marriage, and human trafficking (ILO, 2017). The International Labour Organization (ILO) has recently re-oriented its activities to fight against ‘forced labour, modern slavery and human trafficking’, with the concept of forced labour being used as the overarching framework³. In this paper, we particularly focus on forced labour which is defined in the ILO Convention No. 29 (1930) as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*” Typical forms of forced labour in the Thai fishing industry result from debt bondage, where migrant workers from Thailand’s poorer neighboring countries (i.e. Myanmar and Cambodia in particular) are recruited through brokers and vessel owners who charge workers for their services (Chantavanich et al., 2016). These recruitment fees are often pledged from the worker’s future earnings, ultimately tying the worker to its employer as the only means of repaying the debt, jeopardising the worker’s freedom (Barrientos, 2013). Other mechanisms that bond workers to their employers are the confiscation of passports and documents, withholding of wages, intimidation and violence, and the threat of denunciation to the authorities where the worker has an unresolved immigration status. (New, 2015).

To combat modern slavery, several countries have issued regulations that impose greater legal responsibility on multinational corporations (MNC) and lead firms for their international operations, and to minimize the chances that they can do harm by infringing on universal human rights (Wettstein et al., 2019). The most prominent examples are the California Transparency in Supply Chains Act, which took effect in January 2012, the UK Modern Slavery Act to address slavery and trafficking in global supply chains in 2015, the French corporate duty of vigilance law in 2017, and – most recently – the Australian Modern Slavery Act which

² http://europa.eu/rapid/press-release_MEMO-16-1460_en.htm

³ See, for instance: <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>, last accessed on October 3, 2019.

was ratified by parliament in late 2018. For example, companies that are subject to the UK Modern Slavery act must make ‘a statement of the steps the organization has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, and any part of its own business, or a statement that the organization has taken no such steps’ (Modern Slavery Act 2015, s 54(4)).

While these laws have been criticized for their weak legally-binding power (LeBaron & Rühmkorf, 2017), they have accelerated the momentum for global lead firms to take accountability and vouch for the adherence of human and labour rights in their global supply chains. Against this background, it is imperative to understand the effectiveness of private governance to address modern slavery. Private governance is a term commonly used for the regulation of negative externalities of economic activity by non-state actors (Mayer & Gereffi, 2010). Despite its “private” nature, it is said to perform a “state-like” role as it aims to fill the regulatory vacuum in global governance through the provision of global public rules or the definition of global standards (Scherer and Palazzo 2011). Private governance is carried out by both profit and non-profit actors that were traditionally antagonistic (Pattberg, 2005). Using the case of fisheries in Thailand, we analyse changes that have been made by global brands, and their interaction with other civil society stakeholders in this domain. Addressing human and labour rights in fishing is a global challenge, however, that extends beyond the borders of a specific country.

Our analysis of the progress made in the Thai fishing sector provides an update to the one by Chantavanich et al. (2016) and Marschke and Vandergeest (2016) but has a stronger focus on the role of the private governance during the reform. Our update is timely, as the EU government decided to lift the yellow card on January 8, 2019. First, we report on the current situation based on a number of recent surveys among fish workers from the International Labour Organization (ILO) and NGOs. We conclude that state and private governance were successful in fighting extreme cases of forced labour, but a salient problem is the persistence of exploitative working conditions and the lack of worker voice. In order to evaluate the effectiveness of actions undertaken by the private sector, we base our analysis on secondary materials as well as interviews with seafood companies, international and local civil society organizations, and intergovernmental organizations that are active in Thailand. All interviews were conducted between July 2017 and July 2019 (see appendix for an overview). Our analysis shows that for private governance to be effective, it needs to integrate international labour unions and civil society partners as important functionaries that corporate entities engage with on a candid, honest and equal footing. Doing so would require a change in mind set for the

corporate entities who typically view civil society and NGO's as adversaries. Private governance has its limits, however, which we outline, and these limitations need to be addressed to make the voice of the workers in the Thai fishing sector truly heard.

2. Private governance of human and labour rights in global supply chains

Multinational companies are increasingly pressured to ensure the protection of human rights beyond the boundaries of their own firms (Wettstein et al., 2019). Even though production is subcontracted from legally independent suppliers, there is common agreement about the ethical responsibilities of multinational companies to protect the rights of their workers in their global supply chains (Packer et al., 2019). This has led to the emergence of private governance of human and labour rights (Brammer et al., 2012) that has become particularly visible in the context of economic globalization and weak international level regulatory standards (Bartley, 2007; Mayer & Gereffi, 2010). Its role is often seen as complementing rather than substituting public governance institutions (e.g. Bartley & Egels-Zanden 2015; Amengual, 2010). Private governance is mainly exercised through certifications, standards, and codes of conducts that are developed by private companies or associations and are enforced at suppliers' operations through audits and purchasing practices (Bartley, 2007). The heavy reliance of MNCs on certification and audits as a main mode of governing sustainability in their global supply chains has come under scrutiny, however (Locke et al. 2009; AFL-CIO, 2013). After two decades of industry-led private governance, it seems that private governance based on voluntary standards have done little to protect the human rights of workers connected to global supply chains (LeBaron & Rühmkorf, 2017).

Conventional forms of private governance primarily through audits seem to have particularly limited efficacy for regulating labour standards in fishing. In fact, compared to environmental sustainability, private standards and certifications for human and labour rights are surprisingly absent in fishing (Teh et al., 2019). The Marine Stewardship Council (MSC), as the largest private standard for sustainable fish and seafood has recently announced an update to its fisheries certification process to include labour requirements in its standards from February 2019 onwards. The standard, however, does not involve a separate audit but fishery clients are now required to complete a self-assessment through a questionnaire on the measures, policies and practices in place to prevent forced and child labour⁴. Moving forward, land-based companies in standard risk countries will have to complete a labour audit through third party

⁴ <https://www.msc.org/media-centre/press-releases/msc-announces-changes-to-labour-reporting-objections-and-stakeholder-engagement>

auditors such as the Business Social Compliance Initiative, SEDEX and SA8000 certification. This approach – although a step in the right direction – leaves out off shore companies. Considering that severe labour rights violations happen off shore and even in low risk countries, MSC has been heavily criticized by labour rights organizations which fear that fisheries would use this to cover up serious abuses. Thus, in line with the earlier observation by Maschke & Vandergeest (2016) that there is still no dominant standard for wild caught fish that would certify acceptable labour conditions in the supply chain.

Moreover, compared to environmental standards, labour rights violations are more difficult to monitor in the process (Wilhelm et al, 2016). This applies particularly to wild-caught fishing that takes place in the isolation of the open sea, making any monitoring activities difficult (Bailey et al. 2016). The lack of transparency is further exacerbated through transshipment practices which not only assist in laundering of illegal fishing, but also aid in the trafficking and exploitation of workers (Ewell et al., 2017). Moreover, there is a strong nexus between unsustainable fishing practices and labour exploitation. A recent study by Tickler et al. (2018) demonstrates that countries that score high on the Global Slavery Index share similar key features regarding their national fisheries governance, including higher levels of subsidised distant-water fishing and poor catch reporting. At the same time, fish-workers have traditionally been treated as separate from the terrestrial workforce and have, as a result, enjoyed only weak legal protection, falling between the gaps in national and international law (Fitzpatrick & Anderson, 2015; Lindley & Techera, 2017). According to the 2018 report of the FAO, almost 60 million people are engaged in the primary sector of capture fisheries and aquaculture (FAO, 2018) – most of them in developing countries – and the sector is possibly the world’s largest employer (Teh & Sumaila, 2013). Thus, the risk and scale of human rights violations seem potentially high in global seafood supply chains.

As an alternative to a buyer-driven and audit-based model of private governance, researchers are advocating a more collaborative, multi-stakeholder approach (Lund-Thomsen & Lindgreen, 2014). This form of private governance is based on ‘the intensified engagement of private actors, social movements, and the growing activities of international institutions’ (Scherer and Palazzo 2011: 904). By extending the analysis from a mainly vertical, to a more horizontal perspective on supply chains, wider social relations of production and consumption around the chain are increasingly considered (Hess, 2004). Thus, going beyond the model of internal coordination within the chain, the emerging mode of private governance can best be described as “a broader level of governance that captures the interaction between the chain and its firm actors with a wider set of networked actors and activities that collectively steer

sustainable production and consumption practices.” (Bush et al., 2015: 13). The emerging form of private governance is likely to be contested in nature as firms, consumers, and other non-state actors compete for the creation of norms and rules regarding global production (Bair and Palpacuer, 2015). The influence non-firm actors can exert on the way global value chains are governed will depend on the type of actor and the context in question, bringing question of structural power asymmetries into focus (ibid).

Aftermath of the modern slavery scandal in Thailand

As fishing is characterized by long periods of hard work and low pay, the Thai fishing industry relies heavily on a migrant workforce. The number of non-Thai residents within the country has increased from an estimated 3.7 million in 2014 to 4.9 million in 2018 (International Labour Organization, 2018). This suggests that migrants currently constitute over 10 percent of Thailand’s total labour force. In 2017, the fishing and seafood sector employed approximately 600,000 workers. More than 302,000 of those employed were migrants, primarily from Myanmar and Cambodia (International Organization for Migration, 2019). Migrant workers in Thailand enjoy only limited labour rights as they are treated as temporary workers and are not allowed the unionizes.

Shortly after the European Union issued Thailand a “yellow card” warning, this threat mobilized the Thai government and other stakeholders to take substantive action (Chuenpagdee et al., 2017). The Thai government introduced an extensive fisheries reform program addressing human rights as well as the sustainability of fish catch (ibid). The most significant achievement was the ratification of the ILO Work in Fishing Convention (No. 188, 2007) in January 2019, making Thailand the first country in the Asia to do so. The Work in Fishing Convention stipulates requirements relating to work on board fishing vessels, including occupational safety and health, medical care at sea and ashore, rest periods, written work agreements, and social security protection (International Labour Organization, 2019). In addition, the Royal Thai Navy was put in charge of coordinating the efforts of government agencies addressing IUU fishing. Thirty-two Port-In/Port-Out (PIPO) Centres were established in 22 coastal provinces where crew inspections are conducted by multidisciplinary teams each time a fishing vessel departs from or arrives in port. The Ministry of Labour is involved in checking employment status and working conditions for fishermen, in line with relevant labour laws. The Department of

⁵ To date, Thailand has not ratified the ILO conventions C87 “Freedom of Association and Protection of the Right to Organise Convention” and C98 “Right to Organise and Collective Bargaining Convention”.

Fisheries is mandated to conduct pre-departure inspections of fishing licenses and equipment, as well as to check the catch before unloading at the pier. However, the number of labour abuse cases actually disclosed and acted upon through the PIPO system is still low. A governmental report from 2015 revealed that inspections of 474,334 fishery workers through the PIPO system did not result in the identification of any cases of forced labour (Royal Thai Government, 2015). More recent number from 2018 show a slight increase of enforcement cases (1,3 per cent).

Next to the lack of clear standards and processes of how these checks are performed, a major point of criticism is that the PIPO system has not opened new opportunities for workers to voice complaints and fishermen are generally lacking the confidence to raise issues with PIPO inspectors (Human Rights Watch, 2018). Thus, despite the amendment of several labour-related laws, their enforcement remains a major concern. The Trafficking in Persons Report 2018 by the U.S. Department of State criticized the Thai government for reportedly investigating significantly fewer cases of labour trafficking in the fishing industry in 2017 (U.S. Department of State, 2018). In 2018, the ILO published a survey of 434 fishing and seafood processing workers that allowed for a rough comparison with a representative survey by the International Labour Organization (ILO) published in 2013. A comparison of the 2013-2018 survey results revealed several notable improvements concerning the provision of written contracts to workers (from 6 to 43 percent), a decline in reports of severe beatings on board fishing vessels (from 10 to 2 percent) and an increase in average monthly wages (before deductions). However, the share of fishermen reporting deductions from their wages rose from 42 percent in 2013 to 48 percent in 2018. After these deductions were considered, the average wage for fishermen in this survey was THB 7,730 (approx. 250\$), significantly below the legal minimum. Withholding of wage payment also doubled to 24 percent of fishermen since the 2013 ILO survey (ILO, 2018).

The findings from the ILO survey are largely in line with findings from a survey of 300 Burmese and Cambodian nationals working on board Thai-flagged commercial fishing vessels, conducted by the Civil Society Organization Coalition for Ethical and Sustainable Seafood (CSO). For instance, the large proportion of fishermen who reported holding a passport or certificate of identity (62 percent compared to 14 percent in 2013) highlights a successful ongoing effort on the part of the Ministry of Labour to regularise migrants working in the fishing sector. However, the percent of respondents who reported wage deductions was even higher (50 percent). Another severe violation of the law is retention of personal identity documents, which was reported by over 60 percent of respondents. Most alarming, however, is that 55 percent of migrant respondents in the fishing sector still paid a recruiting fee, and that

most of them paid it in Thailand rather than in their country of origin (ILO, 2018). Overall, it thus seems that the situation for migrant workers has improved across some domains such as contract provision and legal employment, but did not fully eliminate the risk of forced labour.

The emergence of private governance of human and labour rights in Thai fishing

In our assessment of private sector responses to the modern slavery crisis in Thailand, we first introduce the main non-state actors on the field, namely seafood companies, international NGOs and local NGOs before we discuss their specific responses.

The most publicly visible and biggest private sector coalition of large producers of seafood in Thailand is the Seafood Taskforce (STF) that formed in 2014. Upwards of 50 large retailers (e.g. Walmart and Costco), and seafood brands (e.g. Thai Union, CP Foods) have come together under the joint direction of this group to develop both strategic and tactical industry responses to the now widely understood issue of slavery in seafood supply chains. A core focus is to develop mechanisms to achieve full traceability back to the vessel for all STF members, and to develop recruitment practices that meet ethical and legal guidelines.

The STF has been criticized repeatedly for their exclusion of NGOs, particularly those that represent interests of migrant workers (Ramsden, 2015). The large absence of NGOs – with a few exceptions from WWF and International Justice Foundation (IJF) – can be explained by the peculiar rule of the STF that all joining members must sign a non-disclosure agreement – which would deprive NGOs to engage in advocacy campaigns against other (corporate) members. Due to the lack of worker representation in the Seafood Taskforce, it remains questionable to what extent the activities undertaken by member seafood companies and retailers are realistically aligned with the needs and real-life concerns of the fish workers themselves.

Thai and international civil society organizations have actively engaged with issues of labour standard violations, anti-trafficking and modern slavery long before the EU issued its yellow card (Kadfak et al. 2012). However, imposing the yellow card led to significant international attention and was accompanied with a substantive increase in funding. As the crisis unfolded, it were particularly international NGOs – as recipients of significant funding – that garnered international attention through a series of reports for example by the Environmental Justice Foundation (EJF) (2010, 2014, 2015), Human Rights Watch (HRW) (2010) and Greenpeace (2015, 2016). As a consequence, the voice of local NGOs within the advocacy domain was submerged compared to their international counterparts. This became evident by the lack of invitations from the Thai government to engage in monitoring and

evaluation of its current reform. For example, while the Thai government invited international NGOs such as HRW and EJF as observers during EU inspections, our local Thai NGO informant mentioned that there were no local NGO representatives present or invited to take part in the inspections. In comparison to INGOs, local NGOs have limited influence on Thai government activities to fight against IUU. This is because INGOs possess the requisite resources and platforms to connect the incidents in Thailand to similar phenomenon in other parts of the world, e.g. EJF on pirate fishing and Greenpeace in Taiwan fishing, which make a stronger case to pressure the Thai government (EJF 2015, Greenpeace 2018). Furthermore, attracting funding from international donors is particularly challenging for local NGOs, making it difficult for them to scale up their activities, and engage with supply chains overseas.

In order to strengthen their advocacy capacities, a number of Thai NGOs teamed up with INGOs in 2016 to form the “Civil Society Organisation Coalition for Ethical and Sustainable Seafood” (CSO). The CSO is the first coalition of its kind that aims to engage in both environmental and ethical sustainable seafood production from sea to plate. The CSO has 15 members, ten of which are local NGOs, four international NGOs and the ILO Ship to Shore Rights Project as an observer. Oxfam acts as a convener of the regular meetings. The work is divided into two working groups; one for labour and another for fisheries/sustainable resources.

A major aim of the coalition is to stimulate private sector engagement, which constitutes a new direction for most of the local NGOs that have a history in victim rescue and -assistance. Investments were made to build up research skills in order to carry out evidence-based advocacy such as a survey of 300 Burmese and Cambodian fishworkers that became the basis for the “Falling through the net”-report. CSO members have also started to engage in dialogues with seafood corporations, trying to obtain their commitment for labour rights improvement. Some CSO members have also started bilateral partnerships with seafood companies. For example, in order to monitor the implementation of the no-recruitment fee policy, Thai Union and MWRN formally launched a cooperation. Some of our interview partners from CSO member organizations expressed their concerns, however, that such private sector collaborations might jeopardize the effectiveness of their advocacy role to expose corporate activities that violate international and national labour standards. One of the CSO members reflects on this development:

“And so we continue to build that research capacity, continue to invest in the coalition building. But we have to be aware that we are creating a transformation of our role here. The frontline NGOs in Thailand have in the past acted as a service provider and case handler of distressed migrant workers. They document cases, they provide shelter and food and basic services and support to the distressed migrant workers. But the new face is actually becoming an advocacy NGO, an NGO that would be able

to substantively influence government and corporate sector to achieve policy objectives. And that transformation takes time.”

The dissonant nature of the partnering and advocacy role remains a source of tension amongst the members of the Thai CSO. members.

Private sector response to the Thai modern slavery crisis

In the following we discuss some of the joint responses from major actors in the Thai modern slavery crisis across three main areas: ethical recruitment, worker grievance mechanisms, and worker associations.

In their latest available progress report from December 2018, the Seafood Taskforce (STF) states that one of the key activities regarding labour is ethical recruitment. High brokerage fees that are borne mostly by migrant workers at the recruitment stage are commonly seen as the main cause of unfree labour relations (Human Rights Watch, 2018; Chantavanich et al., 2016). The STF aims to adopt a no-recruitment fee policy over a five-year time frame whereby the employer – rather than a hiring agent – directly engages with the origin-side recruitment agency to set up a transparent service agreement between the two. The STF also aims to provide a white list of recruitment agencies that STF Members can use. Some member companies such as Thai Union and Charoen Pokphand Foods PLC (CP Foods) send their HR officers to the countries of migrant worker’s origin for pre-departure training. The no-recruitment fee policy is also written in the code of conduct of the STF⁶, published in 2016. It is worth noting that the no recruitment fee principle is stipulated by the ILO’s General Principles & Operational Guidelines for Fair Recruitment and Thai law: The Royal Ordinance on the Management of Migrant Workers requires that employers – not workers – bear the cost of their recruitment in Thailand. Thus, the no-recruitment fee policy is an example of how private governance is attempting to enforce existing regulations.

Our interviews, revealed, however, that only few companies (most prominently Thai Union and CP Foods) have started to directly engage with recruitment agencies abroad. At the moment, the no-recruitment fee policy strictly applies for workers in seafood processing (and usually in the company’s own processing plants), rather than workers in fishing. In fishing, vessel owners or their crew supervisors often recruit migrant workers directly from their home

⁶ More specifically the code states: “*Recruitment Fees Workers shall not be required to pay recruitment and hiring-related fees to employers, agents or labour broker outside legally allowed fees. All fees charged to workers must be disclosed in advance and documented in a language that the workers understand.*”
<http://www.seafoodtaskforce.global/wp-content/uploads/2017/12/TF-Code-of-Conduct-10.2016-FINAL.pdf>

villages under false promises. These workers often become indebted not only through uncontrolled recruitment fees but also through the process of migration – that incurs costs for passports and transportation. In fact, one remaining point of dispute is the difference between recruitment and migration costs. According to the ILO, recruitment fees and related costs should explicitly include costs for transportation and administration (e.g. obtaining visas) as well⁷. Most employers – and particularly smaller ones – are, however, concerned that workers, once migrated to Thailand, might move to other sectors outside fishing. Furthermore, even if fish workers start their employment without debts, they can still become tied to a vessel owner when their wages are being withheld.

Another initiative by the STF is the formulation of an auditing standard for vessels that comprises both environmental and labour standards (e.g. employment contracts, freedom of movement, recruitment fees). To date, it seems that only Thai Union has implemented this standard in its supply chains. Suppliers sign Thai Union’s “vessel code of conduct” as part of the purchasing agreement. Adherence to the standard is audited by a third-party auditing firm. The International Transport Workers' Federation (ITF) is tasked to monitor progress for the labour standards of the code and is also co-organizing health and safety training workshops for fishworkers in Thai Union’s supply chain.

Some major seafood companies in Thailand have also entered into bilateral partnerships with NGOs to establish worker’s grievance tools. For example, in 2017 CP Foods and the Labour Rights Promotion Network Foundation (LPN) initiated a “Labour Voices Hotline” to encourage migrant workers to voice their complaints (Bangkok Post, 2018). A number of NGOs have also developed apps in Burmese or Khmer that workers can use to voice their complaints. Next to technological restrictions regarding connectivity on open seas that make the use of apps questionable, several of our interviewees were highly sceptical about the adoption of such apps by workers. As one of them explains:

“It’s cheap to get an app made – you can do it for a thousand dollars so everybody’s got one (...). The important thing for workers is connecting with somebody they know and trust and they don’t know and trust apps, they know and trust friends and family and organizations they’ve been face to face with. (...) So there’s only two or three organizations here that fishers seem to know of and rely on. And it’s where they can be face to face with people. (...) Migrant fishers, migrant workers generally don’t call a Thai employer or Thai government hotline when they’ve got a problem.”

⁷ According to the ILO, “the terms ‘recruitment fees’ or ‘related costs’ “refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.” https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_536755.pdf

Another concern that some of our interviewees shared is that grievances collected through such apps and worker hotlines often remain private, and are sometimes even used to identify whistle-blowers. As grievance cases are rarely handled through official channels, the Thai government does not get the opportunity to prosecute misconduct and amend their laws. Since resolving grievances takes place behind closed doors, intergovernmental organizations that should typically act as neutral observers are unable to perform this vital function. This point was made categorically by one of our interviewees:

“We want workers to push complaints publicly through the government and then we can all watch whether or not the government's doing its job. When all that happens privately, we just don't know what happened and the government isn't forced to develop any muscle.”

In fact, concrete numbers for users and complaints collected through such worker grievance tools are hard to come by.

A remaining problem in the Thai law is the restriction of migrant workers to organize and form unions due to the Labour Relations Act, B.E. 2518 (1975). Thailand has to date also not ratified the ILO Conventions 87 and 98 which grants all workers (including migrant ones) the rights to freedom of association and collective bargaining. Under the backdrop of these legal restrictions for migrant workers to lead their own union, the Thai CSO has initiated talks with major Thai seafood companies to establish direct communication channels between workers and management. Seafresh and CP Foods have followed the Thai CSO's suggestion and have set up worker welfare committees with the help of Thai CSO member organizations. The ITF has publicly expressed their concern that such committees might “sidestep legitimate, independent organizing efforts by workers” and might easily be abused as greenwashing activities in companies' CSR reports but fail to build real democratic power among workers. Meanwhile, the ITF has created the Fishers' Rights Network (FRN) that are currently present in three major ports in Thailand.

Discussion and Outlook

The purpose of this paper was to update, discuss and critique the effectiveness of private governance in securing human rights in seafood supply chains by analysing responses to the modern slavery crisis in Thailand. At the outset, we have endeavoured to bring a strong business and human rights perspective to the ocean science scholarly community. We thereby respond

⁸ Joint statement from the international transport workers' federation (IFT) and the international trade union confederation (ITUC) on the right to freedom of association and collective bargaining in the seafood industry, SeaWeb Seafood Summit Bangkok, 10 June 2019.

to calls of marine scholars that social issues should not be side-lined but given a strong focus in studies conducted within this domain (Kittinger et al., 2017).

More specifically, our study extrapolates on the need to understand the mechanics and importance of private governance. Building on the case of the Thai modern slavery scandal we have observed a number of mechanisms employed by seafood companies and civil society organizations that seek to regulate labour issues in the seafood sector. While seafood companies have a longer history of regulating labour conditions for workers in their own processing plants, there are fewer (and more recent) initiatives for fishworkers in wild catch fishing. Some of our interview partners have pointed out that there is in fact considerable resistance among vessel owners who fear higher labour costs as most of them are at the brink of going out of business. Our study also highlights the current limits of private governance – in terms of its inability to facilitate worker association and bargaining. This would require a supporting legal framework but as long as migrant workers' rights to bargain and unionise are viewed as a national security threat in Thailand, any reform on this policy is blocked. Thus, while we share the concern that worker welfare committees might not lead to a real democratisation of workers, they might still assist to raise migrant worker's awareness of their rights and support their organization in a difficult political environment. As frontline NGOs with their long history of case work have earned trust with migrant communities, their involvement might alleviate the lack of trust that is commonly associated with technology-based grievance mechanisms. It remains to be seen, however, whether welfare committees will be successful in uniting and empowering workers.

Frontline NGOs operate in a restricted political space in Thailand. It is positive that international donors and intergovernmental organizations have recognized this and invested in building advocacy capacity of local NGOs through the provision of funding and linking them to an international advocacy network. Since the retraction of the EU yellow card, institutionalization of advocacy activities around human and labour rights in the seafood sector under local ownership is critical to keep the momentum going. While international NGOs may move to other regions which offer more promising funding opportunities, it becomes even more important that civil society in Thailand continues to exert pressure on local government and businesses. In our interviews with Thai CSO members, informants expressed a very positive and genuine attitude about the benefits of the network approach and wanted to continue with their regular meetings even if funding was running out. In its current state, civil society in Thailand around labour in seafood is still fragile, however. To strengthen them, it becomes imperative to seek the engagement of international union organizations and intergovernmental organizations such as the ILO. Not only will their engagement bring an element of neutrality to

worker voice mechanisms but also ensure that the complaints are effectively dealt with. Such international organizations can play a pivotal role by developing appropriate frameworks for understanding and assessing provenance in labour supply chains.

Currently, the human and labour rights agenda is still determined by what private sector companies are willing to do in order to mitigate risks in their supply chains. Most Global North retailers continue to rely on MSC certification to control the adherence with labour standards in their supply chains⁹. This is problematic as the MSC procedure for the labour chain of custody is in its embryonic stage of development. It relies on honest disclosures by organizations and therefore these declarations should be treated with caution. While companies have made substantial progress to establish a chain of custody for fish, methods to trace labour rights abuses in their supply chains are far less developed (Teh et al, 2019). Real progress in this area would require that companies stop treating labour merely as an input factor for productive activities but make it a truly integral part of their supply chains.

Prior studies have shown that private governance can be successful in regulating specific areas of labour in global value chains – such as raising wages for growers and eliminating middleman (Levy et al., 2008), or improving health & safety standards (Distelhorst et al., 2015). Private governance seems to be less effective, however, in areas where they challenge managerial control by empowering workers, such as freedom of association and collective bargaining (Bartley & Egels-Zanden 2015). Positive examples exist in other industries, however, which might also work in the Thai fishing industry. Born from a farmworker community migrant workers in Florida’s tomato agriculture organized themselves as the Coalition of Immokalee Workers (CIW) in 1993. Today the CIW is an internationally recognized for pioneering the design and development of a worker-led, market-enforced approach to the protection of human and labour rights in global supply chains. The CIW managed to gain commitment from companies like Walmart (that is also a member of the STF) to buy only from growers who follow fair labour standards and pay an extra penny a pound, which goes directly to the pickers (Greenhouse, 2014).

Moreover, relations between private and public sectors, as well as government-to-government relations remain largely understudied in the context of ocean science. For example, we have very little knowledge of how the Thai government, with its wide range of ministries and departments, has worked with, or responded to EU delegates’ requirements to improve the

⁹ <http://theconversation.com/almost-every-brand-of-tuna-on-supermarket-shelves-shows-why-modern-slavery-laws-are-needed-108421>

situation in its fisheries. Similarly, we know little about how international companies have influenced the way in which the Thai government has amended its laws. This would require, however, that MNCs widen their focus beyond risk mitigation in their own supply chains and start using the economic power they possess in order to strengthen enforcement regimes in sourcing countries. While the interaction between public and private governance remains an area for future research, we echo the words of Mayer & Gereffi, 2010 that “unless private governance is supplemented and reinforced by public institutions of governance, it cannot provide adequate governance capacity for the global economy” (ibid: 22).

Finally, government officials and policy makers, particularly from the Global North, increasingly understand that this is a serious global problem. The extensive media coverage has evoked the impression that exploitative working conditions are a “Thai” problem. The focus has been on Thailand as the world’s biggest exporter of tuna (Greenpeace, 2018b). However, cases of human rights violations of workers have also been reported for trawlers sailing under the Irish flag (McSweeney & Lawrence, 2017) or fishing in New Zealand territory (Simmons & Stringer, 2014). Seafood hub countries such as Indonesia, Vietnam, the Philippines, and Peru have also come under scrutiny (U.S. Department of Labor, 2016). In fact, Vietnam was issued a yellow card warning by the EU in October 2017; but unlike Thailand, the country has made little progress to resolve its issues. Thus, while Thailand was the most obvious choice to study non-governmental responses to modern slavery in fishing, it becomes clear that any efforts must go beyond the contours of a specific region. It is interesting to note that the explicit focus on human and labour rights violations (next to IUU fishing) was unique to the yellow card warning in fishing industry and is missing for other seafood exporting countries that have received this warning. Thus, while there is a growing awareness that environmental and social issues need to be jointly addressed in fishing, this has not been institutionalized as a policy instrument, yet. Because of this, businesses bear an even greater responsibility to ensure both environmental and social sustainability of their seafood supply chains.

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Appendix: Interview overview

Organization Name	Type of Organization	Interview method	Interview length
Marine Stewardship Council	Standard organization	face to face Skype	100 min 65 min
Seafood Taskforce	Industry roundtable	Skype	56 min
MMP	Seafood Processor	face to face	60 min
Thai Union	Seafood Processor	face to face Skype	90 min 60 min
Stop the Traffik	NGO	face to face	60 min
Greenpeace Thailand	NGO	face to face face to face	90 min 90 min
Oxfam	NGO	face to face	122 min
Oxfam USA	NGO		60 min
Oxfam GB	NGO	face to face Skype	51 min 52 min
International Justice Mission	NGO	face to face Skype	60 min 60 min
Issara	NGO	face to face	70 min
MAST/LPN	NGO	face to face Skype face to face	45 min 60 min 54 min
Stella Marris	NGO	face to face	138 min
Migrant Worker Rights Network (MWRN)	NGO	face to face	118 min
Human Rights Development Foundation (HRDF)	NGO	face to face	54 min
Freedom Fund	Donor	Skype	54 min
International Organization for Migration (IOM)	IO	Skype	60 min
ILO	IO	Skype Skype Skype face to face Skype	78 min 48 min 64 min 60 min 55 min
EU delegation managing IUU fishing in Thailand	Government Organization	Skype	54 min 60 min 60 min