

For Protection or for Profit? Non-State Actors in Global Labor Migration Governance

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Introduction.....	25
I. For Protection or For Profit?.....	28
A. For Protection?.....	30
B. For Profit?.....	34
1. <i>Migration Optimism on the Rise</i>	35
2. <i>World Bank and IOM Embrace of Migration Optimism</i>	38
3. <i>A Quadruple Win for the Private Sector?</i>	41
II. Non-State Actors in Migration Governance.....	43
A. Norm-Setting.....	44
1. <i>Ethical Recruitment Frameworks</i>	47
2. <i>A Contingent Rights Approach</i>	49
B. Compliance.....	51
C. Funding & Support.....	56
III. People, Not Bananas.....	60
A. The Role of the State.....	61
B. Recognizing Migrant Workers' Rights and Contributions.....	64
Conclusion.....	71

Introduction

Development economists have sounded the alarm: we face a global demographic crisis that threatens massive global labor shortages and resulting economic doom. According to the World Bank, demographic growth patterns are intensifying global competition for workers and talent, creating a “great divergence.”¹ On the one hand, advanced economies face aging societies, where the ratio of working adults to (non-working) elderly has dropped dramatically. On the other hand, the economies of low- and middle-income countries cannot generate enough jobs to meet the demands of a rapidly

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1. WORLD BANK GRP., WORLD DEVELOPMENT REPORT 2023: MIGRANTS, REFUGEES, AND SOCIETIES 70 (2023) [hereinafter WDR 2023].

growing youth population.² Climate change further compounds these drivers of migration, diminishing economic opportunities and amplifying pressures to migrate.³

This mismatch in labor demand and labor supply has led some economists to recommend increased cross-border labor migration as a silver bullet for fixing the world's development woes. This is not the first time that migration has been pitched as a solution—as Hein de Haas has observed, views on whether cross-border migration advances development goals have swung back and forth, like a pendulum, over time.⁴ We are now in a period of “migration optimism,” as governments, international institutions, and well-funded civil society organizations worldwide fervently push for increased cross-border labor migration as an underutilized vehicle for reducing poverty and enabling sustainable development.

Unlike in earlier periods, the current swing towards migration optimism has generated significant institutional and normative support. “Migration as development” has become a “mantra” of development institutions and thinktanks.⁵ The 2030 Sustainable Development Goals (SDGs)⁶ and the U.N. Global Compact on Safe, Orderly, and Regular Migration (GCM)⁷ both explicitly link migration to development—a linkage not previously recognized in international development and migration agreements. Similarly, the World Bank and the International Organization for Migration (IOM)—the recognized global lead international agencies for development and migration, respectively—both actively promote cross-border labor mobility in their programming. They join other migration optimists in seeking to shift the paradigm away from the traditional framing of “migration-as-security-threat” and towards “migration-as-opportunity.” From this perspective, cross-border migration offers a “triple win:” countries of origin gain access to more lucrative foreign labor markets, countries of destination gain access to flexible (and cheaper) labor, and migrants gain the ability to earn higher incomes than otherwise available

2. *Id.* at 70-75.

3. *Id.* at 2.

4. Hein de Haas, *The Migration and Development Pendulum: A Critical View on Research and Policy*, 50 INT'L MIGRATION 8, 11, 19 (2012) [hereinafter de Haas, *Pendulum*]. According to de Haas, the pendulum swung towards migration optimism in the 1950s and 1960s, then towards pessimism in the 1970s, and back towards optimism since 2000.

5. Devesh Kapur, *Remittances: The New Development Mantra?* (U.N. Conf. on Trade & Dev't [UNCTAD] G-24 Discussion Paper Series, No. 29, 2004); Kerry Preibisch, Warren Dodd & Yvonne Su, SOLIDARITY CENTER, *Irreconcilable Differences? Pursuing the Capabilities Approach within the Global Governance of Migration*, THE TRANSFORMATION OF WORK: CHALLENGES AND STRATEGIES 2 (2013) [hereinafter Preibisch et al, *Irreconcilable Differences*].

6. Goal 10 seeks to reduce inequality within and among countries. To that end, SDG target 10.7 calls upon States to “[f]acilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.” Sustainable Development Goals, Goal 10, Target 10.7, <https://www.un.org/sustainabledevelopment/inequality/> [<https://perma.cc/9LTR-DMLE>] [hereinafter SDGs].

7. The GCM views migration as a “source of prosperity, innovation and sustainable development in our globalized world.” G.A. Res. 73/195, Global Compact for Safe, Orderly, and Regular Migration, at ¶ 8 (Dec. 19, 2018) [hereinafter GCM].

at home.⁸ Migration optimists argue that labor migration can increase global income by three trillion dollars per year, with most of that money going to the poor.⁹ Conversely, they contend that, without increased labor migration, OECD countries can expect to lose three to seven billion dollars per day due to unaddressed labor shortages.¹⁰ Further augmenting their economic claims is a claimed moral imperative: failure to provide for the unmet care needs of the elderly, young, and disabled people violates our social contract to care for the vulnerable in society.¹¹

The question remains, however, precisely *for whom* is migration an opportunity? The migration-as-development strategy shifts the burdens of development from States to migrant workers, who represent only 4.9% of the global work force.¹² While migrant workers would welcome additional labor migration corridors, States' thirst for increased cross-border mobility far exceeds their appetite for affording migrant workers the necessary rights protections to guard against their abuse and exploitation. The normative landscape of migrant-worker-specific rights protections has always been bare compared to other populations considered vulnerable to rights violations. Instead, States have largely managed cross-border labor mobility through bilateral agreements that typically prioritize their own economic and border security interests over migrant workers' rights protection (if they acknowledge migrant workers' rights at all).¹³ Even with the important step taken in both the SDGs and the GCM to recognize migrant workers' rights as a priority, those agreements balance rights recognition against the competing priorities of increased border security and access to labor markets.

Building on growing attention to migrant workers' rights, the anti-trafficking and the business and human rights movements have helped expose the abusive recruitment and working conditions that migrants often suffer. But this heightened scrutiny unfortunately has not incentivized States to take on a greater role in migrant worker protection. Rather than engage in government-to-government coordination, States typically rely on (largely unaccountable) private recruiters and placement agencies to facilitate the labor migration process. Rather than adopt regulations and policies expanding

8. Then-Secretary General Kofi Annan invoked the idea of a "triple win" in establishing a series of high-level dialogues designed to place the issue of migration on the global agenda by linking migration to development. See U.N. Secretary-General, Secretary General's Address to the High-level Dialogue of the General Assembly on International Migration and Development (Sept. 14, 2006), <https://www.un.org/sg/en/content/sg/statement/2006-09-14/secretary-generals-address-the-high-level-dialogue-of-the-general-assembly-international-migration-and-development> [<https://perma.cc/M7W4-XWEW>] [hereinafter UNSG HLD Address].

9. Rebekah Smith, Lab. Mobility P'ships, Keynote Address at the Global Forum for Responsible Recruitment (June 2023) [hereinafter Smith Keynote].

10. *Id.*

11. Kai McNamee, *Migration Could Prevent a Looming Population Crisis. But there are Catches*, NAT'L PUB. RADIO (Jan. 27, 2023), <https://www.npr.org/2023/01/27/1151734308/immigration-economy-birth-rate-population> [<https://perma.cc/N3WV-RVDC>].

12. INT'L LAB. ORG. [ILO], ILO GLOBAL ESTIMATES ON INTERNATIONAL MIGRANT WORKERS: RESULTS AND METHODOLOGY 20 (2021) [hereinafter ILO MIGRANT WORKER ESTIMATES].

13. Adam Chilton & Bartosz Woda, *The Expanding Universe of Bilateral Labor Agreements*, 23 THEORETICAL INQUIRIES L. 1, 2 (2022).

rights protections for migrant workers, States have stepped aside while private recruiters and employers develop voluntary codes of conduct. And rather than bolster their (often weak and under-resourced) labor inspectorates, States have increasingly turned to the private enforcement industry to monitor for compliance with recruitment and workplace norms.

Against this backdrop, the push for increased cross-border mobility is feeding aspirations for building private, market-based infrastructures to facilitate labor migration. Non-state actors are undertaking crucial governance functions—such as norm-setting, compliance monitoring, service provision, and funding. They are also seeking to harness the power of the market to incentivize better corporate behavior. Labor migration is set to become an industry unto itself, with private entities funding cross-border labor mobility initiatives for diverse goals—for migrant protection, but also for profit. These activities reflect a shift away from traditional forms of State-based governance and regulation, and towards greater embrace of market-based approaches that, regrettably, hold limited promise of advancing migrant workers' rights.

This Article examines the push towards privatization of global labor migration governance. It begins, in Part I, by exploring the movement dynamics that have led to the current crossroads: where governance efforts are driven by competing motives both to protect and to profit off of migrant workers. The anti-trafficking movement, along with the business and human rights movement, has helped draw long-overdue attention to (and commitments to address) the vulnerabilities and abuse that migrant workers too often experience in pursuing job opportunities abroad. At the same time, growing faith in the migration-development nexus has led to concerted efforts to expand cross-border labor migration corridors—with rights traded for access to foreign labor markets. Together these dynamics have culminated in an influx of non-state actors undertaking various roles in global labor migration governance. Part II of the Article then closely examines non-state actors' efforts to assume governance roles in three critical areas: norm-setting, compliance monitoring, and funding. Despite their universal, expressed commitments to increasing rights-respecting labor mobility, their chosen initiatives offer stark differences in potential for transforming rights rhetoric into reality. The Article concludes, in Part III, by examining the implications of non-state actors engaging in labor migration governance. It cautions against enabling private action to conceal (and justify) State inaction and argues for a new social contract that better honors migrants' contributions to their home and host communities.

I. For Protection or For Profit?

The International Labour Organization (ILO) estimates that 169 million people are international migrant workers, constituting 4.9 percent of the global labor force.¹⁴ They make up a substantial proportion of the labor force of high-income countries—18-19 percent on average, and as much as 41.4 percent

14. ILO MIGRANT WORKER ESTIMATES, *supra* note 12, at 11.

of the workforce in Arab states.¹⁵ Migrant workers make crucial contributions to their destination countries, providing essential services in health care, caregiving services, transportation, agriculture, and food processing. In countries with aging societies, migrant workers meet labor shortages, rejuvenate the labor force, and support the social security system.¹⁶ Migrant workers' contributions to their origin countries are equally vital, most notably the remittances they send home—an estimated \$656 billion to low-and-middle income countries in 2023,¹⁷ and expected to reach \$690 billion by 2025. Remittances increase national savings and promote spending and investment in local economies and enable migrant workers' families back home to achieve a higher standard of living and well-being.¹⁸

For all their contributions, however, many migrant workers endure precarious, underpaid, and/or unsafe working conditions, for which they often lack access to remedy and accountability for any mistreatment. The abuse may stem from intersecting forms of discrimination—e.g., gender, race, age, nationality, ethnicity family status, pregnancy, disability, socioeconomic background—which heighten their exposure to human rights and labor violations. Gender norms and roles, in particular, can limit the jobs available to those in underregulated, informal sectors (such as domestic work), and subject them to risks of gender-based violence and abuse. While vulnerability to abuse might stem from a migrant's personal circumstances, the structural features of guestworker programs are just as likely to expose migrant workers to harm. The “temporary” nature of the work can lead to rights restrictions and exclusion from social protections otherwise available to citizens and permanent workers. Migrant worker programs may require, for example, high recruitment fees and the tying of visas to specific employers, which can disincentivize workers from reporting any abuses due to fear of overwhelming debt, retaliatory deportation and/or termination of employment.

Regrettably, States have lacked the political will to do better. Destination countries prefer to treat migrants as a flexible workforce to be readily terminated and deported when no longer necessary, and therefore typically afford them minimal rights. Origin countries, notwithstanding concerns about the well-being of their nationals, are reluctant to demand greater rights recognition from destination countries for fear of compromising their nationals' access to those labor markets. Indeed, the lack of care and commitment to migrant workers' well-being is reflected in the longstanding gaps in international norms and institutions to address global labor migration. Although States have human rights obligations towards migrants under general human rights and labor treaties, the absence of a well-ratified migrant worker-specific treaty has left normative and governance gaps that need filling. The few multilateral instruments that address the rights of migrant workers—e.g., UN Migrant Workers

15. *Id.* at 14.

16. *Id.* at 16.

17. WORLD BANK GRP., KNOMAD, REMITTANCES SLOWED IN 2023, EXPECTED TO GROW FASTER IN 2024 vi (June 2024).

18. ILO MIGRANT WORKER ESTIMATES, *supra* note 12, at 16.

Convention,¹⁹ ILO Migrant Worker Conventions²⁰—have few State Parties, of which the vast majority are primarily countries of origin rather than the countries of destination, where the need for migrant worker protections is most acute.²¹ Moreover, unlike other issues of international concern, which have long had dedicated international institutions to provide expertise and guidance to States (e.g., the U.N. High Commissioner for Refugees for refugee issues, or the International Labor Organization for labor concerns), the labor migration field, until recently, lacked a recognized lead international institution.

The 2018 adoption of the GCM, along with the GCM's designation of the International Organization for Migration as global lead migration agency, attempts to fill these normative and institutional gaps. But whether these developments ultimately benefit migrant workers is far from clear, especially when one considers the context in which said developments emerged. Human rights and labor advocates were finally succeeding in drawing attention and concern to trafficking and exploitation in global supply chains, including labor supply chains that funnel migrant workers into abusive jobs. At the same time, however, development advocates were calling for increased labor migration as the solution to the world's development woes, notwithstanding the rights concerns. From their perspective, better migration management could not only solve the rights problem but also provide a source of profits for those committed to building a "quality" labor mobility industry. Together, these dynamics and disparate motives have led a wide range of non-state actors to become actively involved in various aspects of labor migration governance—with some seeking rights protections for migrant workers, and others seeking to profit off of them.

A. For Protection?

In 2000, the international community adopted the U.N. Protocol to Prevent, Suppress and Punish Trafficking Persons ("Trafficking Protocol" or "UNTP") with the goal of addressing extreme exploitation across diverse sectors of the global economy.²² The UNTP established, for the first time, an international legal definition of "trafficking," which, when reduced to its core elements, entails: (1) an *act* of recruitment, movement, harboring, or receipt

19. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *opened for signature* Dec. 18, 1990, 2220 U.N.T.S. 3. [hereinafter Migrant Workers Convention].

20. ILO, Convention Concerning Migration for Employment (revised 1949) (No. 97), July, 1, 1949, 120 U.N.T.S. 71; ILO, Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), 1120 U.N.T.S. 324.

21. As of this writing, 58 countries have ratified the Migrant Workers Convention. *Status of Ratification Interactive Dashboard*, U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS., <https://indicators.ohchr.org/> [<https://perma.cc/9EQG-U7HD>] (last accessed Jan. 2, 2025).

22. Prior to the 2000 U.N. Trafficking Protocol, the international anti-trafficking legal framework was rooted in a poorly ratified treaty, adopted in 1949, that focused only on trafficking into the sex sector. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 272, 282 (entered into force July 25, 1951).

of a person, (2) by *means* of force, fraud, or coercion, (3) for the *purpose* of exploitation. Developed as a protocol to the U.N. Convention on Transnational Organized Crime, the UNTP frames the problem of human trafficking as a transnational crime and border security issue.²³ To combat the problem, the treaty adopts a “3Ps” anti-trafficking policy framework—focused on prosecuting trafficking, protecting trafficked persons, and preventing trafficking (but with a heavy emphasis on the prosecution prong, per the treaty’s criminal justice focus).²⁴

Over time, the modern anti-trafficking movement has evolved in ways that have helped shine a long overdue spotlight on the problem of migrant worker exploitation and abuse. The Trafficking Protocol’s drafters purposely defined trafficking to expand the concept beyond its prior, narrow focus on sex sector trafficking to include the myriad forms of non-sexual labor trafficking.²⁵ Although it took nearly a decade of global anti-human trafficking efforts to pivot away from a near-exclusive focus on sex trafficking, these efforts ultimately helped expose the widespread problem of non-sexual labor trafficking—particularly in low wage sectors of the economy where migrant work is prevalent. The U.S. government’s rhetorical reframing of trafficking as “modern day slavery,” although doctrinally problematic, helped bring global attention to trafficking in agricultural and other low wage labor sectors of the economy (e.g., construction, domestic work).²⁶ Attention to trafficking provided a springboard for the International Labor Organization to draw renewed attention to the problem of forced labor in the global economy, and ultimately to promulgate, in 2014, a Protocol to its 1930 Forced Labor Convention.²⁷

Incorporating a labor-based perspective into anti-trafficking strategies has also helped expose the broad spectrum of exploitative practices that migrant workers too often endure. While criminal justice priorities (e.g., prosecution of traffickers) have always dominated anti-trafficking strategies, over time, a labor-based approach has increasingly informed and elevated prevention efforts. The gross (and growing) disparity between the global estimate of

23. Protocol to Prevent Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime art. 3, Nov. 15, 2000, 2237 U.N.T.S. 319.

24. *Id.* art. 2.

25. See Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, 23 HUM. RTS. Q. 975, 985 (2001); ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* 1-53 (2012).

26. See Janie A. Chuang, *Exploitation Creep and the Unmaking of Human Trafficking Law*, 108 AM. J. INT’L L. 609, 619-26, 628-35 (2014) [hereinafter *Exploitation Creep*]. For an in-depth exploration of the parameters of the legal definitions of slavery as compared to trafficking, see GALLAGHER, *supra* note 25, at 177-90; Anne T. Gallagher, *Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway*, 49 VA. J. INT’L L. 789, 795-810 (2009).

27. ILO, Protocol of 2014 to the Forced Labour Convention, 1930, June 11, 2014, 53. I.L.M. 1228 [hereinafter ILO Forced Labour Protocol]; Int’l Lab. Conf., Recommendation on Supplementary Measures for the Effective Suppression of Forced Labour (No. 203), June 11, 2014, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3174688:NO [https://perma.cc/P78U-B8JN] [hereinafter ILO Forced Labour Recommendation].

people trafficked or “living in modern slavery”²⁸ (49.6 million) compared to the number of victims identified (115,324) and prosecutions undertaken globally (15,159)²⁹ has made it obvious that trafficking is a problem that cannot be prosecuted away. Human rights advocates continue the struggle to infuse anti-trafficking laws and policies with meaningful rights protections for trafficked persons (e.g., to assistance and support).³⁰ Moreover, the fact that the already massive global estimate of trafficked persons increases every year underscores the need for more robust prevention measures—i.e., beyond the standard focus on awareness campaigns and the (presumed) deterrent effect of aggressive prosecution.

The anemic state of prevention efforts has provided a prime opportunity to infuse anti-trafficking efforts with a labor perspective. As Professor Hila Shamir describes in her pathbreaking proposal for an anti-trafficking labor paradigm, a labor approach targets the structure of labor markets prone to severely exploitative labor practices.³¹ This approach treats trafficking not simply as the product of individual deviant criminal behavior, but as the result of economic and social power disparities between traffickers and victims. It seeks to remedy these disparities utilizing collective action and bargaining, protective employment legislation, and standard-setting strategies.³² Anti-trafficking and labor advocates have pursued, for example, legislation to prohibit practices that can make it difficult, if not impossible, for migrant workers to leave abusive working conditions. Examples of such practices include high recruitment fees that can leave a worker deeply indebted; the tying of a worker’s immigration status to employment for a specific employer; and the lack of protection against retaliatory deportation or termination of workers who attempt to hold abusive employers to account.³³ Addressing these all-too-common structural features

28. ILO, WALK FREE, AND INT’L ORG. FOR MIGRATION, GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE 2 (2022).

29. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 78 (2023).

30. Human rights advocates have made appreciable progress, however. Concerned that criminal justice priorities might overshadow the human rights of trafficked people, in 2002, the U.N. Off. of the High Commissioner for Hum. Rts issued its *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, offering States practical, rights-based guidance. Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc. E/2002/68/Add.1 (May 20, 2002). Sharing the goal of strengthening the human rights protections of trafficked persons, the Council of Europe adopted the 2005 European Convention on Action against Trafficking in Human Beings (“European Convention”), which includes, for example, specific obligations on States Parties to provide assistance and protection to all victims of trafficking, irrespective of their willingness to cooperate with criminal justice authorities. Council of Europe, *Convention on Action Against Trafficking in Human Beings*, opened for signature May 16, 2005, ETS No. 197 (entered into force Sept. 3, 1953; amended June 1, 2010).

31. See Hila Shamir, *A Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. 76 (2012).

32. *Id.* at 81-82.

33. The UN Global Compact on Safe, Orderly, and Regular Migration includes recommendations along these lines in its guidance to States’ efforts to address Objective 6 (on fair recruitment and decent working conditions). GCM, *supra* note 7, ¶ 22. The ILO Forced Labour Protocol obliges States to protect persons, particularly migrant workers, from possible abusive and fraudulent recruitment practices. ILO Forced Labour Protocol, *supra* note 27, art. 2(d). To that end, the Protocol’s accompanying Recommendation specifically recommends that States eliminate the charging of recruitment fees to workers. ILO Forced Labour Recommendation, *supra* note 27, §8(a). The Recommendation also recommends

of guestworker programs would go a long way towards reducing migrant workers' vulnerability to exploitation and trafficking.

The incorporation of a labor perspective into anti-trafficking efforts has coincided with the increased scrutiny that the business and human rights movement has brought to bear on global supply chains. Since 2010, there has been a concerted effort to expose and address human rights and labor abuses in global supply chains through the development of transparency and mandatory human rights due diligence regimes, and most recently, forced labor import bans. One of the first major initiatives was the passage of the 2010 California Transparency in Supply Chains Act (TSCA), requiring companies doing business in California with global annual revenues of over \$100 million to disclose on their websites any initiatives undertaken to eliminate coercive labor practices in their supply chain.³⁴ The following year, the United Nations Human Rights Council adopted the 2011 U.N. Guiding Principles on Business and Human Rights (UNGPs), which have since become the key international soft law framework on business and human rights. Under the UNGPs, businesses are expected to conduct human rights due diligence—i.e. they are to communicate their human rights impacts and the steps they have taken to prevent, mitigate, and remediate these impacts.³⁵ With the UNGPs gaining purchase worldwide, a growing movement is afoot—especially in Europe—to transform soft law norms governing business and human rights into hard law. Legislators in France, the Netherlands, Germany, Norway, Austria, Belgium, Switzerland, and, most recently, the European Union, have sought to require companies to conduct mandatory human rights due diligence throughout their global operations.³⁶ Upping the ante even further, some countries are turning to trade enforcement mechanisms to encourage companies to root out forced labor from their global supply chains. The United States, for example, bans the importation of goods made wholly or partly with forced or indentured labor.³⁷ Canada and Mexico have also instituted forced labor import bans, and

States make efforts to protect victims from intimidation and retaliation for exercising their rights. *Id.*, §9(a).

34. CAL. CIV. CODE §1714.43 (West 2010).

35. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, UN Doc. A/HRC/17/31 (Mar. 21, 2011).

36. France was the first to adopt such a law—the French Law on the Corporate Duty of Vigilance (enacted in 2017)—which compels companies (of a certain threshold size) to establish an annual “vigilance plan” that would cover a company’s own activities as well as that of its subcontractors and suppliers. To create the plan, the company must identify and analyze the risks of human rights violations and put in place measures to mitigate the risks and address any negative impacts that occur. *Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre* [Law 2017-399 of March 27, 2017 relating to the Duty of Vigilance of Parent Companies and Ordering Companies], *JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE* [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 28, 2017. As of this writing, Germany, Norway, the Netherlands, and Switzerland have also adopted due diligence laws. For more in-depth discussion of the shift towards human rights due diligence regimes, see Rachel Chambers & Jena Martin, *Reimagining Corporate Accountability: Moving Beyond Human Rights Due Diligence*, 18 N.Y.U. J. L. & BUS. 773 (2022).

37. Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, 130 Stat. 122.

the European Union recently adopted a Europe-wide ban, scheduled for application in 2027.³⁸

Efforts to address exploitation and forced labor in global supply chains have drawn scrutiny not only to the working conditions of workers producing goods for product supply chains, but also to the situation workers encounter as participants—and, in effect, commodities—in labor supply chains.³⁹ Like product supply chains, labor supply chains can involve multiple layers of recruiters and their sub-agents, working across borders to recruit and place migrant workers in jobs producing goods or services for global markets. While government agencies of migrants' countries of origin and destination used to directly oversee the recruitment and placement of migrant workers, governments now rely on a vast—and largely unregulated—private recruitment industry.⁴⁰ Recruiters serve an important function, matching labor supply with demand and, at least in theory, providing support to migrant workers throughout the migration process. But the lack (or ineffectiveness) of State efforts to regulate cross-border recruitment has enabled unscrupulous recruiters to exploit and abuse migrant workers with impunity.⁴¹ Unsurprisingly, cross-border labor recruitment has become a site of converging interests in labor migration governance—with rights advocates, business interests, and international institutions developing and promoting initiatives to identify and address recruitment abuse.

B. For Profit?

In a 2010 article, *People are Not Bananas*, Professor Jennifer Gordon expressed concerns regarding the then-growing calls to expand cross-border labor migration as a form of global development policy.⁴² Economists were drawing parallels between labor migration and trade, arguing that just as the free flow of goods across borders maximized global wealth, so could the free flow of labor. As Professor Gordon demonstrated, however, the flow of human beings creates fundamentally different political, cultural, social, and economic effects than the flow of money and goods, therefore requiring fundamentally different governance structures.⁴³ Moreover, there were few incentives at the time for destination countries to agree to increased migration, given the significant political obstacles to expanding immigration, and the fact that the

38. See Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937, PE-CONS 87/24 (Nov. 6, 2024). For an in-depth comparison of the U.S. and Canadian forced labor import bans, see Kristine Plouffe-Malette & Hughes Bisson, *Forced Labour and Trade: A Canada-United States Comparative Analysis*, 6 EUR. REV. INT'L STUDS. 3 (2019).

39. Jennifer Gordon, *Regulating the Human Supply Chain*, 102 IOWA L. REV. 445, 445 (2017); JENNIFER GORDON, INT'L LAB. ORG., GLOBAL LABOUR RECRUITMENT IN A SUPPLY CHAIN CONTEXT 7 (2015) [hereinafter GORDON, GLOBAL LABOUR RECRUITMENT].

40. PHILIP MARTIN, MERCHANTS OF LABOR: RECRUITERS AND INTERNATIONAL LABOR MIGRATION 116-33 (2017).

41. GORDON, GLOBAL LABOUR RECRUITMENT, *supra* note 39, at 1-2, 7, 10.

42. Jennifer Gordon, *People are Not Bananas: How Immigration Differs from Trade*, 104 NORTHWESTERN L. REV. 1109, 1110 (2010).

43. *Id.* at 1109-10.

economic gains benefited origin countries more than destination countries, among other factors.⁴⁴

Times have changed, however. The pendulum has now swung towards migration optimism. Unlike in previous migration optimist eras, however, there is an unprecedented international normative and institutional embrace of the migration-development nexus. Moreover, not only is migration presumed to be a solution for the world's development challenges, but cross-border labor migration is now being pitched as a potential target of industry-building and a source of profits for businesses and investors.

1. *Migration Optimism on the Rise*

The arguments favoring migration optimism over pessimism are largely the same as in previous optimist periods, although the demographic crisis has imbued the optimist position with a sense of urgency. Migration optimists pitch cross-border labor mobility as a better development strategy than traditional top-down development approaches. They argue that remittances produce macroeconomic benefits such as increased foreign currency reserves and improved credit ratings. Remittances also offer a more stable source of income for a developing country than overseas development assistance or foreign direct investment.⁴⁵ Moreover, optimists argue, rather than place the power to disburse funds in the hands of (oft-corrupt) governments,⁴⁶ remittance-based development gives the poor direct access to and control over funds—in effect, “banking the unbanked.”⁴⁷ Individuals and their communities gain direct access to funds and a greater role in promoting development in their country.⁴⁸ Remitters can thereby enable their families back home to access education and healthcare, and to support community infrastructure projects, such as the building of septic systems and stadiums.⁴⁹ In addition to economic gains, migration yields “social remittances” in the form of new ideas, values, skills, and practices that migrants gain while working abroad and can then share with their communities upon returning home.⁵⁰ Migration optimists clarify that migration is not meant to be a permanent strategy. While one can expect increased emigration as a result of increased economic development, once a country achieves upper-middle income status, emigration will decrease as the reasons to leave diminish.⁵¹

44. *Id.* at 1132-36.

45. Kerry Preibisch, Warren Dodd & Yvonne Su, *Pursuing the Capabilities Approach Within the Migration-Development Nexus*, 42 J. ETHNIC & MIGRATION STUD. 2111, 2116 (2016) [hereinafter Preibisch et al., *Pursuing the Capabilities Approach*].

46. Preibisch et al., *Irreconcilable Differences*, *supra* note 5, at 7.

47. Preibisch et al., *Pursuing the Capabilities Approach*, *supra* note 45, at 2116.

48. Martin Geiger & Antoine Pécoud, *Migration, Development and the 'Migration and Development Nexus'*, 19 POPULATION, SPACE & PLACE 369, 371 (2013); Ezra Rosser, *Immigrant Remittances*, 41 CONN. L. REV. 3, 17-18 (2008).

49. Rosser, *supra* note 48, at 17-18.

50. Peggy Levitt, *Social Remittances: Migration Driven Local-Level Forms of Cultural Diffusion*, 32 INT'L MIGRATION REV. 926, 926 (1998).

51. This is known as the “migration hump.” Studies cast doubt on this theory. See e.g., Nicolas Berthiaume et al., *A Reappraisal of the Migration-Development Nexus: Testing the Robustness of the Migration Transition Hypothesis* 27 (World Bank Pol'y Rsch. Working Paper

“Migration pessimists,” on the other hand, counter that although migration may have anti-poverty effects for individual families, evidence that migration fuels local investment and employment is sorely lacking.⁵² Migration tends to beget even more migration, with rising incomes in migrants’ origin countries correlated with an increase in migration, at least in the short to mid-term.⁵³ Furthermore, in some cases, even after many decades of remittance-producing migration, the promised period of post-migration, stay-at-home development has yet to occur.⁵⁴ Remittances have fueled increased consumption to a far greater degree than investment in job-creating local enterprises—partly because many migrants come from areas that lack basic infrastructure for migrants to make such investments.⁵⁵ Moreover, migration pessimists argue, because the poorest individuals lack the resources and social networks to migrate, migration can also increase the inequality between migrant and non-migrant populations within origin countries.⁵⁶ Reliance on remittance incomes may even disincentivize local work—especially for young people who grew up in remittance-receiving households and who now seek higher-paying jobs abroad themselves.⁵⁷ The resulting “brain drain” and “brawn drain” thus reduce the talent and energy available to pursue the political and economic reforms necessary to achieve sustainable development at home.⁵⁸ Relying on migration as a cure-all encourages States’ tendencies to overlook the features of the global political economy that drive people to migrate in the first place—for example, poor governance and growing inequality between countries and

No. 9518, 2021), <https://documents1.worldbank.org/curated/en/786201611170919983/pdf/A-Reappraisal-of-the-Migration-Development-Nexus-Testing-the-Robustness-of-the-Migration-Transition-Hypothesis.pdf> [<https://perma.cc/SG58-6YCT>].

52. The heterogeneity of empirical evidence regarding impacts on the ground makes it difficult to definitively support either position, suggesting that these debates are largely ideologically driven. de Haas, *Pendulum*, *supra* note 4, at 19. Outcomes are strongly context-dependent, particularly with respect to whether governments first undertake the structural reforms necessary to rid their development programs of the problems that prevented their success in the past (e.g., addressing corruption). Migration-as-development strategies do not offer a quick fix or workaround for these persistent problems. *Id.*

53. KATHLEEN NEWLAND, *MIGRATION, DEVELOPMENT, AND GLOBAL GOVERNANCE: FROM CRISIS TOWARD CONSOLIDATION 5* (Migration Poly Inst., 2019); Geiger & Pécoud, *supra* note 48, at 370.

54. See, e.g., Pauline Gardiner Barber & Catherine Bryan, *International Organization for Migration in the Field: ‘Walking the Talk’ of Global Migration Management in Manila*, 44 J. ETHNIC & MIGRATION STUD. 1725, 1739 (2018) (noting that there has been no significant decline in the numbers of Filipinos willing to enter global labor markets, which suggests the idea that post-migration entrepreneurship will provide Filipinos with more employment at home is a “fiction of capitalism fueling contemporary migration.”); MARTIN, *supra* note 40, at 122-25 (noting that there are examples of migration leading to a “vicious circle” where stay-at-home development does not occur and instead migrants’ home villages “turn into nurseries for children and nursing homes for the elderly that depend on external lifelines”).

55. MARTIN, *supra* note 40, at 124.

56. Rosser, *supra* note 48, at 22; Preibisch et al, *Pursuing the Capabilities Approach*, *supra* note 45, at 2116; de Haas, *Pendulum*, *supra* note 4, at 16-18; Hein de Haas, *Migration and Development: A Theoretical Perspective*, 44 INT’L MIGRATION REV. 227, 236 (2010) [hereinafter de Haas, *Migration and Development*].

57. de Haas, *Migration and Development*, *supra* note 56, at 237-38.

58. Preibisch et al, *Pursuing the Capabilities Approach*, *supra* note 45, at 2117.

within communities.⁵⁹ Besides, migration pessimists note, placing the burden of global development on three percent of the world's population seems patently unfair.⁶⁰

Notwithstanding these critiques, over the last fifteen years, governments, international institutions, and civil society organizations worldwide have come to embrace a migration optimist perspective, believing in the possibility of a “triple win.”⁶¹ Former U.N. Secretary General Kofi Annan first introduced the “triple win” concept in 2006, when he established the U.N. High-Level Dialogue of the General Assembly on International Migration and Development. Over time, these dialogues (held every few years) helped governments to see international migration “through the prism of opportunity, rather than of fear.”⁶² Reflecting governments’ recognition of migration as an important aspect of development policy, the 2030 Sustainable Development Goals, adopted in 2015, obliges States to “[f]acilitate orderly, safe, regular, and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies” in order to reduce inequality (Goal 10, Target 10.7).⁶³ Building on this goal, the 2018 U.N. Global Compact on Safe, Orderly, and Regular Migration (GCM) establishes a “cooperative framework” designed to maximize the positive impacts of migration “as a source of prosperity, innovation, and sustainable development,” and to reduce the negative impacts of irregular migration.⁶⁴

Although the GCM is a non-binding instrument (with notable holdouts),⁶⁵ it represents a significant move forward in recognizing the need to protect migrant workers’ rights. Among its 23 stated “objectives” and accompanying guidance, the GCM recommends that States eliminate all forms of discrimination; facilitate ethical recruitment and decent working conditions; address and reduce vulnerabilities in migration; and enhance consular protection and assistance throughout the course of migration.⁶⁶ But while the GCM helpfully includes multiple objectives targeting migrant workers’ rights and well-being, States could focus instead on the GCM’s other, potentially conflicting, priorities: border security and access to labor markets. How States balance these competing priorities is entirely within their individual discretion. If history is any indication, States are likely to perceive rights tradeoffs in exchange for access to foreign labor markets to be an attractive compromise.⁶⁷

59. *Id.* at 2115–16.

60. Geiger & Pécoud, *supra* note 48, at 371; de Haas, *Pendulum*, *supra* note 4, at 8, 10.

61. See discussion accompanying *supra* note 8.

62. UNSG HLD Address, *supra* note 8.

63. SDGs, *supra* note 6.

64. GCM, *supra* note 7, ¶ 8.

65. Austria, Australia, Brazil, Bulgaria, Chile, Hungary, Israel, Latvia, Poland, and Slovakia refused to sign the pact citing concern that doing so would infringe upon their sovereign right to decide issues relating to migration and security. Jessica Toale, *Why Have 12 Countries Pulled Out of the UN Migration Pact?*, MEDIUM (Dec. 7, 2018), <https://medium.com/@jjtoale/why-have-12-countries-pulled-out-of-the-un-migration-pact-a48779aadf2d> [<https://perma.cc/Q8Q7-597U>]. Many of these countries objected that the GCM failed to sufficiently distinguish between legal and illegal migration. *Id.*

66. GCM, *supra* note 7, ¶¶ 33 (eliminate discrimination), 22 (ethical recruitment and decent working conditions), 23 (address vulnerabilities), 30 (consular protections).

67. See generally, MARTIN RUHS, *THE PRICE OF RIGHTS* (2013).

2. World Bank and IOM Embrace of Migration Optimism

Poised to help guide and support States in their pursuit of the triple win are the World Bank and the IOM—the lead international institutions on development and migration, respectively. The World Bank now actively promotes cross-border labor migration as “the most effective way” to fulfill its twin goals of reducing poverty and sharing prosperity.⁶⁸ Tellingly, in 2023 the World Bank devoted its annual World Development Report (WDR) to the topic of “migrants, refugees, and societies” for the first time. Its opening page poses a choice for the global community: “[d]o we want migration to be a source of prosperity and international solidarity, or a byword for inhumanity and social friction?”⁶⁹ Pursuing the former, the 2023 WDR proposes policies to “better manage migration,” recommending that origin countries make migration an explicit part of their poverty reduction strategy, and that they “facilitate orderly movements” through bilateral labor agreements to enhance the matching of skills, provide legal status, build globally transferable skills, and process involuntary returns humanely.⁷⁰ The World Bank holds the free movement of people as a “key element of the efficient functioning of the global economy,” and that “labor should be allowed to move where it is most productive.”⁷¹ The WDR thus emphasizes the need to strengthen the “match” between migrants’ skills and the destination labor market’s needs: the stronger the match, the greater the benefits for the origin and destination countries, and for the migrants themselves.⁷²

Achieving the triple win, therefore, is pitched as a technocratic task of carefully matching labor supply with labor demand—a task the IOM is now strategically positioned to accomplish. IOM served as technical advisor for the drafting of the GCM, shortly after joining the U.N. system as a “related organization.” The GCM ultimately designated IOM as secretariat and coordinator for a new UN network on migration,⁷³ solidifying IOM’s sought-after role as lead global migration agency. IOM’s designation over other international institutions working on migration issues was not surprising, considering IOM’s long history of providing migration services to its Member States. Under its tagline, “making migration work for all,”⁷⁴ IOM pioneered the “migration management” concept: the idea that orderly, predictable migration may be beneficial for all.⁷⁵

68. WORLD BANK GROUP, WORLD DEVELOPMENT REPORT 2023: MIGRANTS, REFUGEES, AND SOCIETIES, CONCEPT NOTE 3 (2022) (hereinafter 2023 WDR CONCEPT NOTE).

69. 2023 WORLD DEVELOPMENT REPORT, *supra* note 1, at iv, (quoting Antonio Guterres, Secretary-General of the United Nations, 2018).

70. *Id.* at 9, 10, 14.

71. *Id.* at 25.

72. *Id.* at 4.

73. GCM, *supra* note 7, art. 45(a). The GCM establishes a UN network on migration, which includes all UN agencies working on migration issues, “to ensure effective and coherent system-wide support for implementation, including the capacity-building mechanism, as well as follow-up and review of the [GCM].” *Id.*

74. INT’L ORG. FOR MIGRATION, <https://www.iom.int/> [https://perma.cc/9BNJ-RAGJ] (last accessed Jan. 2, 2025).

75. Megan Bradley, Cathryn Costello & Angela Sherwood, *Introduction: IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era*

IOM assuming the role of lead migration agency has been concerning to human rights and labor advocates, however. Prior to joining the U.N. system, IOM had operated on the periphery of the international system for nearly 70 years, earning a reputation for being a highly entrepreneurial, Jack-of-all-trades, normatively ambivalent intergovernmental organization that existed to serve its Member States' interests.⁷⁶ IOM's activities prioritized border security and access to labor markets—sometimes glaringly at the expense of migrant and refugee rights by, for example, facilitating harsh detention and repatriation policies and ignoring migrant worker abuse.⁷⁷ The fact that IOM joined the U.N. system as a “related” organization rather than becoming a U.N. specialized agency (thus subject to U.N. accountability mechanisms) only exacerbated skepticism concerning IOM's commitment to rights protections.⁷⁸ IOM specifically negotiated to maintain its independent operations⁷⁹ and remain a “non-normative” institution.⁸⁰ Unlike the U.N. specialized agencies (e.g., ILO, UNHCR, OHCHR), which have normative protection mandates, therefore,

of Expansion, in IOM UNBOUND? OBLIGATIONS AND ACCOUNTABILITY OF THE INTERNATIONAL ORGANIZATION FOR MIGRATION IN AN ERA OF EXPANSION 1, 9-10 (Megan Bradley, Cathryn Costello & Angela Sherwood, eds., 2023) [hereinafter IOM UNBOUND].

76. Fabian Georgi, *For the Benefit of Some: The International Organization for Migration and its Global Migration Management*, in *THE POLITICS OF INTERNATIONAL MIGRATION MANAGEMENT* 45, 47, 63 (Martin Geiger & Martin Kochs, eds., 2010).

77. For in-depth analysis of IOM's activities in this regard, see IOM UNBOUND, *supra* note 75; Janie A. Chuang, *IOM and New Global Migration Governance*, 63 *HARV. INT'L L. J.* 401 (2022) [hereinafter Chuang, IOM]; Asher Lazarus Hirsch & Cameron Doig, *Outsourcing Control: The International Organization for Migration in Indonesia*, 22 *INT'L J. HUM. RTS.* 681, 690 (2018); Ishan Ashutosh & Alison Mountz, *Migration Management for the Benefit of Whom? Interrogating the Work of the International Organization for Migration*, 15 *CITIZENSHIP STUD.* 21, 31-32 (2011); Rutvica Andrijasevic & William Walters, *The International Organization for Migration and the International Government of Borders*, 28 *ENV'T & PLAN. D: SOC'Y & SPACE* 977, 994 (2010) (describing the IOM's assisted voluntary return programs as deploying a neoliberal deportation model).

78. See e.g., Elspeth Guild, Stefanie Grant, and Kees Groenendijk, *Unfinished Business: The IOM and Migrants' Human Rights*, in *THE INTERNATIONAL ORGANIZATION FOR MIGRATION: THE NEW 'UN MIGRATION AGENCY' IN CRITICAL PERSPECTIVE* 29, 47-48 (Martin Geiger & Antoine Pécod, eds., 2020); Miriam Cullen, *The IOM's New Status and its Role under the Global Compact for Safe, Orderly and Regular Migration: Pause for Thought*, *EJIL:TALK!* (Mar. 29, 2019), <http://www.ejiltalk.org/the-ioms-new-status-and-its-role-under-the-global-compact-for-safe-orderly-and-regular-migration-pause-for-thought/> [<https://perma.cc/M2XR-V27G>].

79. Had IOM become a U.N. specialized agency, it would have been bound by the obligation of impartiality, prohibiting any government influence in discharging IOM responsibilities. It would also have been brought under U.N. General Assembly oversight and the checks and balances contained within the U.N. Charter, and expected to operate in line with the protective mandates of other U.N. agencies. Cullen, *supra* note 78.

80. Unlike the U.N. specialized agencies that work on migrant worker-related issues—e.g., the Office of the High Commissioner for Human Rights (OHCHR), the U.N. High Commissioner for Refugees (UNHCR), and the ILO—the IOM does not have a normative protection mandate establishing human rights and labor rights promotion as a core feature of its operations. Nicholas R. Micinski & Thomas G. Weiss, *International Organization for Migration and the U.N. System: A Missed Opportunity*, *FUTURE UNITED NATIONS DEV. SYS.* (Sept. 2016), https://www.futureun.org/media/archive1/briefings/funds_brief42_iom_un_migration_sept2016.pdf [<https://perma.cc/VGD5-KWRS>]. Instead, the IOM Constitution establishes only that IOM will make arrangements for the “organized transfer” of migrants and refugees and provide States with “migration services.” *INT'L ORG. FOR MIGRATION [IOM], CONSTITUTION AND BASIC TEXTS*, art. 1 ¶ 1, IOM Doc. Pub2021/006/L (Mar. 19, 2021) (establishing “[t]he purposes and functions of the Organization”).

IOM is not required to conduct its operations with rights protection as a central concern.

As coordinator and secretariat for the UN migration network, IOM now has an elevated perch from which to promote migration optimistic policies. IOM has operated labor migration programs in at least seventy countries⁸¹—establishing new labor migration corridors, facilitating governments' efforts to create temporary labor programs, and even taking on the role of labor recruiter itself. IOM's labor migration initiatives thus aim to "foster the synergies between labour migration and development," and to promote "legal avenues of labour migration as an alternative to irregular migration" and "effective protection and assistance to labour migrants and their families."⁸² Utilizing its global network of over 400 offices, IOM aims to "bring together governments, civil society and the private sector to establish labour migration programmes and mechanisms that *balance their various interests*, and address migrants' needs."⁸³

Whether IOM would reliably advance migrants' rights protection is far from assured, however. On the one hand, the fact that the GCM includes, among its many objectives, a commitment to increasing migrants' rights protection perhaps holds promise for IOM to adopt a more rights-based approach going forward. Moreover, collaborating with specialized agencies that do have protection mandates could inspire a heightened rights-consciousness and commitment. On the other hand, the fact that the GCM's rights-focused objectives are included alongside GCM's other key (and potentially competing) objectives—i.e., increased border security and foreign labor market access—leaves open the possibility of rights being subsumed by these other priorities. Indeed, while the ILO and UN human rights agency offer a wealth of crucial rights-based expertise and guidance,⁸⁴ the IOM and World Bank's migration optimistic perspective could pull in the opposite direction with its focus on increasing labor mobility for economic gains.

Perhaps anticipating concerns over their (lesser) commitments to rights protection, IOM and the World Bank have acknowledged the need to take a more "holistic approach" and recognize—and address—the downsides of migration, including migrant workers' vulnerability to rights abuses. For example, IOM has identified "adherence to international standards and fulfillment of

81. *Labour Migration*, INT'L ORG. FOR MIGRATION, <https://hungary.iom.int/labour-migration> [<https://perma.cc/AQ3B-L8RC>] (Last accessed Jan. 1, 2025).

82. *Id.*

83. *Id.* (emphasis added).

84. The ILO, for example, has provided data to support evidence-based labor migration guidance concerning fair recruitment practices, and has engaged in norm-setting regarding forced labor. See, e.g., ILO MIGRANT WORKER ESTIMATES, *supra* note 12; ILO, GENERAL PRINCIPLES AND OPERATIONAL GUIDELINES FOR FAIR RECRUITMENT (2019); ILO Forced Labour Protocol, *supra* note 27; ILO Forced Labour Recommendation, *supra* note 33. The U.N. human rights system has also been a source of norms and guidance concerning migrant workers, for example, through the work of the U.N. Special Rapporteur on the Human Rights of Migrants and the treaty-monitoring body for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. See, e.g., U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS & GLOB. MIGRATION GRP., PRINCIPLES AND GUIDELINES, SUPPORTED BY PRACTICAL GUIDANCE, ON THE HUMAN RIGHTS PROTECTION OF MIGRANTS IN VULNERABLE SITUATIONS (2018).

migrants' rights" as an essential element of "well-managed" migration.⁸⁵ In a similar vein, the World Bank has stated that migrants are "more than just providers of labor or victims to protect; they are persons with human capital, identities, cultures, and preferences."⁸⁶ That said, the World Bank's "match-motive" migration policy framework rests on a cost-benefit analysis rooted primarily in the needs of the destination countries, rather than origin countries, much less the migrants themselves.⁸⁷ Whether IOM and the World Bank adopt a more rights-based approach to labor migration as a matter of substance rather than stated commitment remains to be seen.⁸⁸

3. A Quadruple Win for the Private Sector?

In addition to international institutions' strong support for the migration-development nexus, some development economists have been promoting migration optimism in mainstream media outlets, arguing that increasing cross-border mobility is not only good for development, but is now also a demographic necessity. For the first time in the history of the world, they argue, we are experiencing an inversion of the demographic pyramid, with not enough people in the labor force to support the elderly—which will result in labor shortages that will cost the global economy three to seven billion dollars per day.⁸⁹ By 2050, OECD countries will lose 92 million working age individuals while gaining 96 million elderly individuals, which means there will be a need for 400 million additional workers to maintain basic social infrastructure.⁹⁰ In the United States, by 2028, the number of new workers will not be enough to meet the needs of the elderly,⁹¹ resulting in a shameful breach of our social contract, in which the young support the elderly in our society.⁹² Meanwhile, low-income countries will not be able to meet the employment demands of their rapidly growing working-age populations. Not only could these workers fill the labor shortages abroad, but the economic gains to their origin countries would dwarf that of major anti-poverty programs by factors of, for example, 20 (Ethiopia), 41 (India), and 45 (Peru) times.⁹³

Unfortunately, migration optimists argue, restrictions on mobility create labor scarcity in rich countries, which, in turn, perpetuate poverty for millions of people who are willing and able to work productively but are prohibited

85. INT'L ORG. FOR MIGRATION, MIGRATION GOVERNANCE FRAMEWORK (MiGOF), available at https://www.iom.int/sites/g/files/tmzbd1486/files/about-iom/migof_brochure_a4_en.pdf [<https://perma.cc/7FRX-KV7Y>].

86. 2023 WDR CONCEPT NOTE, *supra* note 68, at 7.

87. 2023 WORLD DEVELOPMENT REPORT, *supra* note 1, at 4-9.

88. For in-depth analysis of the IOM's operations, see generally IOM UNBOUND, *supra* note 75.

89. McNamee, *supra* note 11.

90. Smith Keynote, *supra* note 9; REBEKAH SMITH & ZUZANA CEPLA, A GOOD INDUSTRY AND AN INDUSTRY FOR GOOD: WHY WE NEED A QUALITY MOBILITY INDUSTRY TO SCALE LABOR MOBILITY 2, available at https://lampforum.org/wp-content/uploads/2020/12/lamp_report_mobility-industry.pdf [<https://perma.cc/TAM9-M2CU>] [hereinafter A GOOD INDUSTRY].

91. Smith Keynote, *supra* note 9.

92. McNamee, *supra* note 11.

93. Smith Keynote, *supra* note 90.

from doing so.⁹⁴ According to development economist Lant Pritchett, the phenomenon of global poverty is not one of “poor people” but rather one of “people trapped in poor places,” denied the opportunity to move abroad. Development projects, anti-poverty programs, and foreign aid to poor countries thus have an “inconsequentially small effect” compared with the benefits of just letting people migrate to rich countries that need them and work in positions where the going wage is justified by their productivity.⁹⁵ Promoting greater cross-border labor mobility, migration optimists argue, could increase global income by \$3 trillion—with most of that money going to the poorest in the world. Therefore, to *not* pursue increased labor mobility as the solution to labor shortages in wealthy countries amounts to leaving “trillion-dollar bills on the sidewalk.”⁹⁶ Furthermore, migration optimists argue, continued restrictions on labor mobility results in a “terrible misdirection of resources:” instead of recruiting workers from abroad, firms invest in developing technology to enable machines to perform roles that could easily be performed by low-income people. This not only wastes money, but it “helps keep the poorest poor.”⁹⁷

Indeed, some migration optimists even argue that increased cross-border labor mobility can offer a *quadruple* win—with investors and businesses joining the winners’ circle via the development of a “quality mobility industry.” They estimate that relying on cross-border labor mobility to address global labor shortages could yield \$3 trillion in economic gains—spending only one percent of those gains on mobility services could create a \$30 billion industry.⁹⁸ Bringing in partners from the finance world, incubators, and startup companies, one could build a quality industry that could be a “huge force for good” by matching job-seekers with enterprises that need them.⁹⁹ A quality mobility industry would recruit workers without excessive costs and based on reliable information and contracts, and place them in time-limited jobs that match their abilities, protect them from abuse, and facilitate their orderly return home.¹⁰⁰ Better still, brain drain would not be a risk, migration optimists argue, as most of these jobs would be for low-skilled work (e.g., home health care for the elderly).¹⁰¹ Concerns currently plaguing temporary migration programs, such as visa overstays and migrant worker abuse, could be addressed through better design, and careful regulation and monitoring of the mobility industry.¹⁰² Establishing an industry could improve outcomes “by reducing migration costs per worker through greater economies of scale, increasing the accessibility of

94. Lant Pritchett, *People Over Robots: The Global Economy Needs Immigration Before Automation*, FOREIGN AFFS., Mar.-Apr. 2023, at 53, 61.

95. *Id.*

96. Michael A. Clemens, *Economics and Emigration*, 25 J. ECON. PERSPS. 83, 83 (2011).

97. Pritchett, *supra* note 94.

98. Smith Keynote, *supra* note 90.

99. Pritchett, *supra* note 94; Smith Keynote, *supra* note 90.

100. See Pritchett, *supra* note 94.

101. Note, however, that the drain of “low-skilled” workers could have negative effects on countries of origin with respect to their own abilities to sustain these much-needed work sectors and undermine their resilience to external shocks (e.g., global pandemics). See *infra* discussion of resilience, at text accompanying notes 218-222.

102. McNamee, *supra* note 11; Pritchett, *supra* note 94; Smith & Cepla, *supra* note 90, at ii.

labor mobility for employers, decreasing the burden on migrant workers, and building trust and capability among actors within labor mobility systems.”¹⁰³

Whether motivated by profit or desire to protect, a wide range of non-state actors are now positioned to shape the future of global labor migration processes. The anti-trafficking movement, together with the business and human rights movement, have made slow but steady progress in drawing attention and resources to migrant worker exploitation. Yet efforts of migration optimists to aggressively push for increased labor mobility could stymie that progress so long as their programming lacks a clear commitment to advancing migrants’ rights protections. As explored below, whether the trajectory of the labor migration field advances or detracts from migrants’ well-being turns on how these non-state actors engage in norm-setting, compliance monitoring, and funding of interventions.

II. Non-State Actors in Migration Governance

The above-described dynamics have created space for a wide array of actors to engage in labor migration governance functions that can either advance or undermine migrant worker protections. All of these actors recognize—at least rhetorically—that the international community must do more to protect migrant workers from abuse and exploitation. But they bring vastly different perspectives, assumptions, expertise, and levels of commitment to migrant workers’ rights protection.

Human rights and labor advocates have long sought reforms to weak law and policy frameworks regarding labor and migration that feed the vulnerability of migrant workers to exploitation and abuse. Heightened attention to global supply chains—for both products and labor—has helped surface the abusive recruitment practices and working conditions migrant workers endure worldwide. The desire to clean up these supply chains has attracted a wide range of non-state actors—ranging from civil society organizations, philanthropies, business and trade associations, and workers themselves. These diverse actors have sought to fill the gaps in state action (e.g., norm-setting and compliance-monitoring), with the stated goal of improving migrant workers’ recruitment and (to a far lesser extent) workplace conditions.

But just as these rights advocates have been trying to identify and address abuses in existing labor migration corridors, migration optimists have been pressing for *more* labor migration. The idea that cross-border labor mobility can produce a triple win is now firmly ensconced in international development policy. Adoption of the GCM, the IOM’s ascent to lead global migration agency, and the IOM’s and the World Bank’s full-throated support for the migration-development nexus together have laid a strong foundation for promoting and facilitating increased cross-border labor mobility. The notion that cross-border labor mobility could present a *quadruple* win—i.e., additionally a win for investors and businesses via the profits they could generate from creating a

103. A GOOD INDUSTRY, *supra* note 90.

labor mobility industry—adds another layer of actors seeking a role in labor migration governance.

To the extent they acknowledge the problem of migrant worker abuse, migration optimists prefer market-based solutions—i.e., that expanding and better managing migrant labor markets can create competition for migrant workers, which, in turn, will incentivize recruiters and employers to provide better treatment. From this perspective, affording migrants additional rights is acceptable only insofar as doing so would not impede cross-border labor mobility. This creates obvious tensions between rights advocates' and migration optimists' respective objectives and, further, risks their working at cross-purposes. As the notion of a quadruple win gains traction, the pursuit of profits could very likely subsume efforts to advance migrant workers' rights protections.

To demonstrate the clash of approaches, the following discussion explores the outsized role that non-state actors—both rights- and market-prioritizing—have assumed in establishing norms and standards for cross-border labor migration, creating mechanisms to monitor compliance with those norms, as well as funding interventions. Their perspectives diverge regarding the role of multilateral versus bilateral treaties, and whether norms should even be legally binding as opposed to voluntary. Approaches to monitoring compliance with adopted norms and standards similarly reflect deep differences, particularly with respect to the level of worker engagement. And just as some non-state actors are directly engaged in governance functions, another set of non-state actors—funders—can exert indirect but powerful influence over the shape and tenor of those engagements, bringing their own agendas vis-à-vis migrants' rights to bear.

A. Norm-Setting

The lack of migrant-worker specific rights protections under international law reflects a longstanding and deeply-rooted bias against “economic migrants” in the international system. Unlike asylum-seekers/refugees, whose migration is compelled by fear of persecution, economic migrants' border-crossing in pursuit of better livelihoods is presumed less deserving (or in need) of protection. This bias is reflected in the weak ratification rates of both the U.N. and ILO migrant worker treaties,¹⁰⁴ especially when compared to core human rights treaties targeting other specific populations (e.g., women, children) or issues (e.g., racial discrimination, torture), which enjoy nearly universal ratification. Many countries of destination likely prefer, instead, to unilaterally set their immigration policies rather than coordinate with other countries.¹⁰⁵

In lieu of multilateral commitments regarding labor migration, States have preferred to enter into bilateral labor agreements (BLAs). Bilateral negotiations offer (typically more powerful) destination countries greater leverage than they would have in multilateral negotiations, where origin countries might pool

104. See discussion accompanying *supra* notes 19-21. As of this writing, 58 countries have ratified the U.N. Migrant Workers Convention, 54 countries have ratified ILO Convention 97, and 30 countries have ratified ILO Convention 143.

105. Chilton & Woda, *supra* note 13, at 2.

their power for leverage.¹⁰⁶ Even certain (more market-oriented) multilateral institutions such as the World Bank and the IOM prioritize encouraging States to enter into bilateral labor agreements to manage migration over multilateral commitments to protect migrant workers' rights.¹⁰⁷ After all, countries of destination and countries of origin have a shared interest in controlling and policing the actions of migrant workers, as well as the migration industry that has developed to facilitate and profit from their migration.¹⁰⁸ For destination countries, BLAs address border security (hence, sovereignty) concerns by providing an opportunity to limit the terms of entry, stay, and departure for workers that cross into their territories for (typically) temporary work. For countries of origin, BLAs provide a vehicle for controlling both their citizens while abroad and potentially exploitative recruitment actors; this helps promote their development goals by maintaining their reputation as a reliable source of hard-working and compliant workers.¹⁰⁹ While BLAs carry the potential to protect migrant workers' rights, States' interests have resulted in BLAs being used more as tools for migration control than for migrant worker protection.¹¹⁰ Indeed, researchers have found that provisions identified as best practices for protecting migrant workers (e.g., provision of health insurance, housing standards, prohibition on recruitment fees) have actually become less common in BLAs over time.¹¹¹

Against this sparse normative landscape of specific migrant worker protections, non-state actors have sought to elaborate their own standards regarding

106. Yuval Livnat & Hila Shamir, *Gaining Control? Bilateral Labor Agreements and the Shared Interest of Sending and Receiving Countries to Control Migrant Workers and the Illicit Migration Industry*, 23 *THEORETICAL INQUIRIES IN L.* 65, 67 (2022).

107. For example, even though the World Development Report acknowledges that the benefits of migration are larger when migrants have a legal status and formal employment rights in line with international labor standards, it does not recommend States sign the multilateral migrant worker treaties. WDR 2023, *supra* note 1, at 9. Curiously, in discussing international labor standards that are important for safeguarding the dignity and rights of migrant workers, the WDR makes no mention of the U.N. Migrant Worker Convention or the ILO conventions on migrant work. It focuses instead on the eight fundamental rights conventions of the ILO (i.e., addressing forced labor, child labor, freedom of association, and collective bargaining) and conventions with general application (i.e., labor inspection, private agencies, domestic work, among others). *Id.*, at 298. The WDR further recommends that countries enter into bilateral labor agreements to facilitate better skills matching, to provide legal status to those who move, and to enable humane involuntary returns. *Id.* at 15.

108. Livnat & Shamir, *supra* note 106, at 75.

109. Livnat & Shamir, *supra* note 106, at 71. For example, stipulations might include having countries of origin ensure workers' time return back home upon completing their restricted period of work under the destination countries' temporary guestworker program. Overstay of workers could prompt a destination country to suspend entry of workers from that origin country. *Id.* 78-79.

110. See generally Livnat & Shamir, *supra* note 106.

111. Chilton & Woda, *supra* note 13, at 31. This is not to say that countries of origin are not concerned with the human rights or working conditions of their out-migrating nationals. As Livnat and Shamir explain, many countries are highly concerned, whether because they value their rights and well-being, or because bettering their rights enables higher remittances (e.g., ensuring minimum wage, protecting against wage theft); some countries are simply willing to sacrifice workers' rights for the sake of preserving migration and remittance streams. Livnat & Shamir, *supra* note 106, at 83. In any event, most BLAs lack effective enforcement mechanisms for guaranteeing workers' rights such that any rights declared on paper will not translate to protected rights in action. Livnat & Shamir, *supra* note 106, at 68-69.

different aspects of the labor migration process. One area that has drawn a great deal of normative attention is cross-border labor recruitment. Migrant worker exploitation often begins at the recruitment stage, when workers may be misled about the job on offer and/or charged exorbitant recruitment fees and costs. Recruitment fees can amount to nine months or more of a migrant worker's earnings and are often taken on as a debt to be paid off with their labor.¹¹² Despite the high fees they charge, unethical recruiters can maintain a perpetually large client base because the supply of workers far exceeds the demand for their labor.¹¹³

Cross-border labor recruitment is notoriously difficult to regulate, and is, at present, largely managed by a powerful, "ungoverned and ungovernable" private recruitment industry.¹¹⁴ Given the multiple jurisdictions implicated in recruitment activities, cross-border labor recruitment ideally would be addressed in a multilateral treaty. But the only binding instrument addressing labor recruitment, specifically the ILO Private Employment Agencies Convention, is unfortunately quite limited in its substantive scope and has only been ratified by 37 countries.¹¹⁵ Recruitment is thus typically regulated at the national level (if at all), with laws that impose licensing requirements, prohibit certain practices, and assess civil penalties for non-compliance. These regulations are readily circumvented, however—whether due to under-resourced (or non-existent) enforcement capabilities, or the ready ability to deflect responsibility to other jurisdiction(s) where the recruiters' associates operate. And even if abusive recruiters are held liable, the resulting penalties typically do little to deter future violations—with fines too low to hurt business operations, and de-licensed recruiters readily able to re-register their businesses under another name, for example.¹¹⁶

As a practical matter, therefore, recruitment operations and methods are largely left to the market—a highly competitive market in which incentives to cut costs often expose migrant workers to exploitation and abuse.¹¹⁷ To make matters worse, the political influence wielded by the highly profitable recruitment industry may encourage lax or non-existent enforcement of applicable regulations. Indeed, in some contexts, unethical recruitment practices may be the norm rather than the exception, causing aspiring migrant workers to collude with recruiters to circumvent the regulations to secure their livelihoods.¹¹⁸

In response to the lack (or ineffectiveness) of State action on cross-border labor recruitment, a range of non-state actors have offered widely divergent

112. ILO, A GLOBAL COMPARATIVE STUDY ON DEFINING RECRUITMENT FEES AND RELATED COSTS: INTERREGIONAL RESEARCH ON LAW, POLICY AND PRACTICE xi (2020).

113. *Open Working Group on Labour Migration & Recruitment, Ethical Recruitment, Policy Brief #5*, MIGRANT F. IN ASIA (2015), <http://mfasia.org/recruitmentreform/wp-content/uploads/2015/03/Policy-Brief-Support-for-Ethical-Recruitment.pdf> [https://perma.cc/CA6V-P5MT] (hereinafter Open Working Group).

114. GORDON, GLOBAL LABOUR RECRUITMENT, *supra* note 39, at 3.

115. ILO, Convention Concerning Private Employment Agencies (No. 181), June 19, 1997, 2115 U.N.T.S. 249.

116. For discussion of the challenges regulating cross-border recruitment, see Chuang, *supra* note 77.

117. See Gordon, *Regulating the Human Supply Chain*, *supra* note 39, at 450.

118. Martin, *supra* note 40, at 149.

approaches to dealing with cross-border labor recruitment. One approach has been to develop guidelines on ethical recruitment—which may or may not be rooted in international laws concerning migrant worker protection—that recruiters (and employers working with them) agree to follow in their recruitment practices. Adherents to ethical recruitment frameworks differ on whether this guidance should take the form of soft or hard obligations. Meanwhile, other actors have eschewed ethical recruitment frameworks altogether as potentially too limiting on labor mobility. They offer instead an approach that prioritizes increasing “quality” labor migration corridors that aspire to address rights concerns through better management.

1. Ethical Recruitment Frameworks

Ethical recruitment frameworks aim to protect migrant workers against exploitation and abuse, to ensure decent working conditions, and to maximize migrants’ socioeconomic contributions to their countries of origin and destination.¹¹⁹ One of the earliest proponents of an ethical recruitment framework was labor rights NGO Verité. In 2012, Verité partnered with the Manpower Group (a multinational corporation specializing in “workforce solutions”) to develop an ethical framework to combat human trafficking and forced labor in cross-border recruitment.¹²⁰ Undergirding the framework was a hope for “new, transformative, social and market demand for ethical recruitment practices driven by employers, workers, NGOs, labor unions, consumer groups and all other engaged stakeholders.”¹²¹ As attention to non-sexual labor trafficking increased, recruitment practices became a focus of anti-trafficking advocacy efforts. To provide normative guidance to recruiters, governments, and workers, in 2016, the ILO issued the ILO General Principles and Operational Guidelines for Fair Recruitment (“ILO Principles”), drawing from relevant human rights and labor rights norms found in international law.¹²² That same year, the IOM launched its International Recruitment Integrity System (IRIS) multistakeholder initiative, which developed its own set of ethical recruitment standards, known as the “IRIS Standard.”¹²³ The ILO Principles have broader application (e.g., to undocumented migrants) and entail a more comprehensive set of rights protections than the IRIS Standard. While the IRIS Standard includes a set of key migrant workers’ rights, it also recommends that recruiters establish management systems, including due diligence, to ensure compliance.¹²⁴

119. GCM, *supra* note 7, ¶ 22.

120. VERITÉ & MANPOWER GROUP, AN ETHICAL FRAMEWORK FOR CROSS-BORDER LABOR RECRUITMENT 1 (2012), available at https://verite.org/wp-content/uploads/2016/12/ethical_framework_paper.pdf [<https://perma.cc/9PMA-Z4A2>].

121. *An Ethical Framework for International Labor Recruitment*, VERITÉ, <https://verite.org/project/an-ethical-framework-for-international-labor-recruitment/> [<https://perma.cc/38TU-8YHH>] (last accessed Jan. 2, 2025).

122. ILO, GENERAL PRINCIPLES, *supra* note 84, at 11.

123. INT’L ORG. FOR MIGRATION, THE IRIS STANDARD, v. 1.2 (2019).

124. For example, unlike the IRIS Standard, the ILO Principles provides that governments should extend access to grievance procedures, irrespective of migration status, and that employers should respect workers’ freedom to change employers. ILO, GENERAL PRINCIPLES, *supra* note 84, at 17, 22.

The Global Compact on Migration endorses both the ILO Principles and the IRIS Standard, calling upon States to consider the recommendations of both in implementing Objective 6, to “facilitate fair and ethical recruitment and safeguard conditions that ensure decent work.”¹²⁵

A key provision typically included in ethical frameworks—and one that has gained significant traction—is the prohibition of worker-paid recruitment fees. The prohibition stems from a belief that no worker should have to pay for a job, and that recruitment costs should therefore be borne by employers. Fees may cover a variety of costs, including the recruitment itself, travel, visa and administrative costs, and other unspecified fees and service charges. High recruitment fees can render workers vulnerable to forced labor or trafficking, forced to remain in jobs with bad working conditions in order to pay off the fees. The prohibition of worker-paid recruitment fees has thus garnered the support of workers’ rights organizations, business associations, civil society organizations, and (some) recruiters.

For example, business groups such as the Responsible Labor Initiative (RLI)—comprising almost 200 companies from a variety of sectors, including international corporations such as Apple, Cisco, Walmart, among others¹²⁶—have voluntarily committed to incorporating the “Employer Pays” principle into their operations. In contrast, others, such as the International Trade Union Confederation (ITUC) and the World Employment Confederation (WEC), which represent trade unions and recruiters, respectively, in international forums have called upon States to adopt the ILO Private Employment Convention and incorporate its prohibition on recruitment fees into national legislation.¹²⁷ As the WEC explains, banning recruitment fees across the board is necessary to level the playing field for ethical recruiters, who would otherwise be unable to compete against the fee-charging “rogue” recruiters whose services come at a lower price for employers.¹²⁸ Another challenge to eliminating recruitment fees is the fact that global labor supply chains can have several links, at each of which a fee can be extracted from a worker. For a prohibition on recruitment fees to be effective thus requires that entities like Walmart, for example, ensure that all of its subcontractors down the chain also refrain from charging recruitment fees. Civil society organizations like Verité and the Solidarity Center thus have advocated for enforceable contract clauses to ensure that all employers across supply chains will bear the costs of recruitment.¹²⁹

125. GCM, *supra* note 7, ¶ 22 (“Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work”).

126. *Members*, RESPONSIBLE LAB. INITIATIVE, <https://www.responsiblelabor.org/about/members-and-collaborations/> [https://perma.cc/MV3J-N8NZ] (last accessed Jan. 2, 2025).

127. *Topics: Fair Recruitment and Migration*, WORLD EMP. CONFED., <https://wec-global.org/topics-global/fair-recruitment-and-migration/> [https://perma.cc/HM5A-7BTK] (last accessed Jan. 2, 2025).

128. *Id.*

129. VERITE, FINANCIAL AND CONTRACTUAL APPROACHES TO MITIGATING MIGRANT WORKER RECRUITMENT-RELATED RISKS 19 (2019), *available at* <https://verite.org/wp-content/uploads/2019/10/Verite-Financial-and-Contractual-Approaches-to-Mitigating-Foreign-Migrant-Worker-Recruitment-Related-Risks.pdf> [https://perma.cc/T5W2-DTLN].

Prohibiting worker-paid recruitment fees is just one element of an ethical recruitment framework, but it is an issue that enjoys strong normative support from a wide range of actors. As such, the different approaches pursued—from establishing voluntary standards to adopting binding laws—reveal different actors' varying levels of commitment to seeing the norm fully realized in practice. The willingness to be held accountable for non-compliance, especially across long supply chains, is particularly instructive.

2. A Contingent Rights Approach

Notwithstanding the widespread support for ethical recruitment frameworks, other non-state actors have rejected ethical frameworks as too limiting on labor mobility and, in any event, too difficult to bring to scale and ultimately ineffective. One prime example is Labor Mobility Partnerships (LaMP)—an influential development non-profit that bills itself as the “only organization dedicated solely to expanding rights-respecting labor mobility for migrant workers as a global public good.”¹³⁰ LaMP argues that ethical frameworks fail to account for migrants' willingness to pay fees and the fact that there are real costs associated with recruitment that must be covered. LaMP further views ethical frameworks as doomed to failure because they require governments to regulate and enforce the standards, which LaMP believes governments are ill-equipped (if not unwilling) to do.

In contrast to current advocacy trends, LaMP has rejected proposals to eliminate worker-paid recruitment fees as too limiting on labor mobility. (LaMP does not even consider the possibility of employer-paid fees.) It instead proposes a privatized “outcomes-based” model that better “aligns” recruiter and worker incentives.¹³¹ This Outcomes-Based Migrant Welfare Fund eliminates up-front payments and requires that recruiters be paid only if the migrant worker has been supported and sustained in “quality employment.” The payments would be made from a rotating fund to which social investors would provide the initial contribution but then would ultimately be funded by migrant workers paying a portion of their salaries into the fund. The fund would then be used to reimburse investors and finance essential services such as job placement, migrant training, workplace audits, worker protection, and “the necessary government institutions for protections and oversight.”¹³² Under LaMP's proposal, therefore, migrant workers assume the burden of funding not only for their own recruitment fees but any regulatory infrastructure—whether private or even public—to oversee the program and protect workers from abuse.

The fund reflects LaMP's broader vision of developing a market-based approach to creating a “quality mobility industry.”¹³³ LaMP defines the “mobility

130. *Why LaMP*, LAB. MOBILITY P'SHIPS, <https://lampforum.wordpress.com/about-lamp/our-vision/> [<https://perma.cc/2ZGB-RGPM>] (last accessed Jan. 2, 2025).

131. Rebekah Smith & Richard Johnson, *Introducing an Outcomes-Based Migrant Welfare Fund*, CTR. FOR GLOB. DEV'T BLOG (Jan. 16, 2020), <https://www.cgdev.org/blog/introducing-outcomes-based-migrant-welfare-fund> [<https://perma.cc/JFJ3-CZAH>].

132. *Id.*

133. See generally *A GOOD INDUSTRY*, *supra* note 90.

industry” as “the body of private sector actors delivering services required for mobility,” including:

. . . actors providing services across the entirety of the migration life cycle, from predeparture (e.g., passport or visa application preparation and processing, health and security screenings, CV or resume preparation, language training, and skills training) to transit and employment (e.g., travel and accommodations arrangements, healthcare, banking, remittance transfer, life insurance, and grievance redress) to return (e.g., reintegration and benefits portability).¹³⁴

LaMP defines a *good* mobility industry as one which (1) establishes as minimum standards a set of “core rights” of migrant workers; (2) ensures that these minimum standards and terms agreed to before migration are clearly understood and adhered to by all parties; and (3) includes access to effective grievance redress when those terms are broken.¹³⁵ LaMP advocates for “a universal but limited set of ‘core rights’ for migrant workers rather than the comprehensive set of rights set forth in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).”¹³⁶ Unlike the proponents of ethical frameworks who have articulated a baseline for migrant workers’ rights in recruitment, LaMP refrains from identifying the specific contents of their proposed “core” set of migrants’ rights. LaMP has justified the vagaries of this (and other) policy positions as the product of its “practice first” approach: “rather than focusing on designing perfect policies . . . LaMP emphasizes solving problems on the ground to demonstrate good practices that pave the way for good policy.”¹³⁷ For LaMP, therefore, experimentation seems a necessary prelude to identifying *which* rights it would ultimately support for migrant workers.

The fact that destination countries typically constrain migrant workers’ rights in exchange for granting access to their labor markets—usually the lower

134. *Id.* at 17.

135. *Id.* LaMP argues that “[a] key driver of systemic fraud and abuse across the current mobility industry is the perverse incentives baked into the design of mobility systems.” *Id.* at 13. LaMP argues that “a quality mobility industry could improve outcomes of temporary labor mobility by reducing migration costs per worker through greater economies of scale, increasing the accessibility of labor mobility for employers, decreasing the burden on migrant workers, and building trust and capability among actors within labor mobility systems.” *Id.* at 1.

136. *Id.* at 17. LaMP takes its inspiration from Martin Ruhs’s work, *The Price of Rights*. See generally RUHS, *supra* note 67.

137. *About LaMP*, LAB. MOBILITY P’SHPIS, <https://lampforum.org/about-lamp/> [<https://perma.cc/2ZGB-RGPM>], (last accessed Jan. 2, 2025). The author has participated in two meetings between labor advocates and LaMP leadership, during which the author asked LaMP to more specifically identify which rights they would advocate migrant workers be afforded. In both, LaMP personnel demurred, arguing that “good practice makes good policy,” so the answer to my question is as yet to be determined.

It bears emphasizing, however, that experimentation in this context involves the lives and livelihoods of vulnerable populations—for which caution (and a good dose of humility) is warranted. More significantly, a wide range of actors have already identified a set of rights that if meaningfully recognized by States, would greatly reduce the exploitation and abuse many migrant workers currently endure. Guidance from international and domestic institutions with labor expertise, such as the ILO, is plentiful, as are scholarship, thinktank policy position papers, and NGO reports identifying deficiencies in migrant workers’ rights protections and how best to address them.

the skill level, the greater the rights tradeoffs¹³⁸—is a reality LaMP is willing to accept. Its refusal to identify a firm set of rights protections to be respected regardless of circumstances belies its stated commitment to pursuing rights-respecting labor mobility. Such embrace of a malleable rights floor thus stands in stark contrast to rights advocates’ goal of establishing a robust set of protections for migrant workers’ rights. For LaMP, rights are contingent rather than inherent entitlements, pegged to the perceived economic productivity of the putative rightsholder.¹³⁹ This treats migrant workers as cogs in the machine of economic development, notwithstanding the “rights-respecting” rhetoric.

B. Compliance

The increasingly private regulation of recruitment and migrant worker labor conditions furthermore relies on non-state actors to ensure compliance with the relevant norms and standards. Even when migrant workers’ rights are recognized in the destination countries, meaningful mechanisms to enforce those protections are often lacking, if not altogether absent. Labor inspectorates in many major destination countries remain severely under-resourced. For example, in the United States, there is only one Wage & Hour Division inspector for every 200,000 or more workers.¹⁴⁰ Despite growing consumer demand for goods and services verified as “clean” or “slavery-free,” governments have shown little interest in strengthening their labor inspectorates. Instead, governments have largely deferred to non-state actors to assess and certify compliance with labor rights.

Within this private regulatory realm, two divergent compliance-monitoring models have emerged: one born of the corporate social responsibility (CSR) movement, and the other rooted in a rejection of CSR and instead favoring a worker-driven social responsibility (WSR) approach. CSR posits that corporations have responsibilities—beyond profit maximization—to consider the broader societal (e.g., environmental and human rights) impacts of their operations. The rapid growth of the CSR movement in the 1990s, combined with cuts to labor inspection budgets, led to the practice of “social auditing.” To demonstrate their commitment to a set of societal goals, organizations adopt voluntary codes of conduct (e.g., ethical recruitment principles) and have their compliance measured and evaluated by third-party auditors. The rise in consumer demand for ethical consumption—e.g., assurance that the goods and

138. See generally RUHS, *supra* note 67.

139. Close review of LaMP’s policy positions on different issues does reveal, however, a few examples of rights it accepts and those it rejects. LaMP has expressed support for the “untying” of visas. Temporary guestworker programs typically tie visas and work permits to specific employers, such that workers cannot change employers without losing their immigration status and legal permission to work. According to LaMP, changing to occupation-specific visas could increase employer productivity and worker wages, and reduce worker vulnerabilities. *The Benefits of ‘Untying’: How to Move from Employer-to Occupation-Specific Work Permits*, LAB. MOBILITY P’SHPIS BLOG (July 26, 2019), <https://lampforum.org/2019/07/26/the-benefits-of-untying-how-to-move-from-employer-to-occupation-specific-work-permits/> [<https://perma.cc/PS73-LTWV>].

140. DANIEL COSTA & PHILIP MARTIN, RECORD-LOW NUMBERS OF FEDERAL WAGE AND HOUR INVESTIGATIONS OF FARMS IN 2022 3 (Econ. Pol’y Inst., 2023), available at <https://files.epi.org/uploads/271660.pdf> [<https://perma.cc/R9GY-4QUJ>].

services they consume are “slave-free”—has helped CSR strategies to proliferate. Social auditing is now a multibillion-dollar business, dominated by large multinational companies—with publicly traded stocks, thousands of employees, and highly paid CEOs—that fiercely compete for market share in the CSR and social auditing industry.¹⁴¹

Critics argue, however, that social auditing is a poor substitute for labor inspectorate oversight, more a public relations tool than one designed to ensure decent working conditions. They point to the Rana Plaza (Bangladesh) and Ali Enterprises (Pakistan) building collapse and factory fires, where over a thousand workers died in fires in factories that had recently been certified safe by social auditors.¹⁴² Critics attribute the failure of social auditing to a combination of market pressures and audit design.¹⁴³ Audit firms increasingly resemble the global companies they monitor and assess, with their own long supply chains and incentives to keep costs low and executive salaries and stock values high. This downward pressure can cause audit firms to reduce the amount of time spent on worksites and on auditor trainings, or to outsource the audits to subcontractors who may be inadequately trained to conduct thorough assessments of firm practices. In some cases, auditors may even cater to the preferences of audit targets in hopes of retaining them as clients for future audits.¹⁴⁴

Moreover, the audit process often fails to capture meaningful, candid input from the workers. Auditors typically assess the companies at the top of the supply chain, leaving the bottom tiers—where the abusive practices are

141. GENEVIEVE LeBARON, *COMBATTING MODERN SLAVERY* 120 (2020).

142. Over 1,100 workers died and thousands more injured when the Rana Plaza building in Bangladesh collapsed in April 2013. The eight-story building housed five factories that produced garments for major retail brands, which had conducted social audits of their factories shortly before the collapse. Elizabeth Paton, *A Grim Anniversary for Survivors of the Rana Plaza Disaster*, N.Y. TIMES (April 23, 2023), <https://www.nytimes.com/2023/04/24/fashion/rana-plaza-anniversary.html> [<https://perma.cc/V67X-3SHW>]; *Decade After Rana Plaza, Safety Flaws Persist*, HUM. RTS. WATCH (Apr. 17, 2023), <https://www.hrw.org/news/2023/04/17/decade-after-rana-plaza-safety-flaws-persist> [<https://perma.cc/ZK8F-TK8S>]. In the Ali Enterprises fire, 300 workers perished in a fire that had been certified safe by an audit firm accredited by Social Accountability International (SAI), an organization that trains and certifies auditors to conduct social audits. As it turned out, the SAI-certified auditor had never actually set foot in the factory, having instead subcontracted the audit to a local firm that had certified the factory despite its lack of fire safety measures, its failure to register with the Pakistani government, and its failure to provide the majority of the workers with formal employment contracts. BRIAN FINNEGAN, AFL-CIO, *RESPONSIBILITY OUTSOURCED: SOCIAL AUDITS, WORKPLACE CERTIFICATION AND TWENTY YEARS OF FAILURE TO PROTECT WORKERS RIGHTS* 4, 37 (2014), <https://aflcio.org/sites/default/files/2017-03/CSRreport.pdf> [<https://perma.cc/M8YN-6B5X>].

143. Genevieve LeBaron, Jane Lister & Peter Dauvergne, *Governing Global Supply Chain Sustainability through the Ethical Audit Regime*, 14 *GLOBALIZATIONS* 958, 961 (2017); Luc Fransen & Genevieve LeBaron, *Big Audit Firms as Regulatory Intermediaries in Transnational Labor Governance*, 13 *REGUL. & GOVERNANCE* 260, 261 (2019); Carolijn Terwindt & Amy Armstrong, *Oversight and Accountability in the Social Auditing Industry: The Role of Social Compliance Initiatives*, 158 *INT'L LAB. REV.* 245, 251-52 (2019) (hereinafter Terwindt & Armstrong, *Oversight and Accountability*); Genevieve LeBaron & Jane Lister, *Benchmarking Global Supply Chains: The Power of the ‘Ethical Audit’ Regime*, 41 *REV. INT'L STUD.* 905, 941 (2015).

144. LeBARON, *supra* note 141, at 126; Terwindt & Armstrong, *Oversight and Accountability*, *supra* note 143, at 247.

most prevalent—entirely unexamined. Even when audits extend to the bottom of the chain, companies can readily circumvent discovery of problematic practices. On-site audits are usually announced in advance, enabling audit targets to make disgruntled workers unavailable for interviews, to engage in fraudulent bookkeeping, and to make superficial adjustments to ensure they pass inspection.¹⁴⁵ Perhaps most troubling, audit reports are held strictly confidential, thus shielding the audit findings from government or public scrutiny that could contest or correct the findings. Indeed, confidentiality requirements may even prohibit auditors from reporting worker abuses to entities—such as government agencies or NGOs—capable of providing assistance to or advocating on behalf of workers.¹⁴⁶ Moreover, without robust anti-retaliation measures, workers may refrain from complaining about their recruitment and/or working conditions for fear of being blackballed for future jobs or subjected to retaliatory termination and/or deportation.

Dissatisfaction with the CSR approach inspired an alternative: a worker-driven social responsibility (WSR) model. This approach adopts a ground-up strategy, substantively engaging workers in the design and implementation of worker protection standards. The WSR model stems from the idea that meaningful and lasting improvements in workplace conditions requires that human rights protections in corporate supply chains be worker-driven, enforcement-focused, and based on legally binding commitments that assign responsibility for improving conditions to the global corporations at the top of those supply chains.¹⁴⁷ It is a model that enables workers to protect and enforce their own rights according to the circumstances and priorities driving the program (e.g., right to freedom of association, and to a work environment that is safe, healthy, and free of forced labor).

The first manifestation of the WSR model emerged from the work of the Coalition of Immokalee Workers (CIW), a human rights organization composed primarily of migrant farmworkers.¹⁴⁸ In 2011, CIW established its Fair Food Program (FFP), which targets the top of the supply chain—i.e., the fast food restaurants, supermarkets, and cafeterias—utilizing their purchasing power to incentivize growers to ensure decent working conditions on their farms.¹⁴⁹ Participating brands (e.g., McDonalds, Whole Foods) agree to buy produce only from growers who have signed the Fair Food Code (FFC), which mandates a range of working conditions—developed with the direct input of workers—for the farms. Growers that do not comply with the FFC thus face the real threat of losing sales to major buyers.¹⁵⁰

145. LeBaron, *supra* note 141, at 126, 133.

146. *Id.*

147. *Fact Sheet: Worker-Driven Social Responsibility Network*, WORKER-DRIVEN SOC. RESP. NETWORK (2017), https://wsr-network.org/wp-content/uploads/2017/10/About_WSR_Network_web.pdf [<https://perma.cc/D3W4-DX45>].

148. Greg Asbed & Steve Hitov, *Preventing Forced Labor in Corporate Supply Chains: The Fair Food Program and Worker-Driven Social Responsibility*, 52 WAKE FOREST L. REV. 497, 498 (2017).

149. *Fair Food Program: The Power of Prevention*, FAIR FOOD PROGRAM, <https://fairfoodprogram.org/> [<https://perma.cc/ZB2K-F5B3>] (last accessed Jan. 2, 2025).

150. *Id.*

Rather than relying on government labor inspection or the private enforcement industry to determine grower compliance with the FFC, the FFP established a separate monitoring organization, the Fair Food Standards Council (FFSC). Prior to establishing the FFSC, the CIW contacted several commercial auditors to see if they would be willing to assess grower compliance with the FFC. Tellingly, the commercial auditors balked at the depth and breadth of oversight CIW had in mind because it would have required auditors to spend too much time rooting out abusive practices to turn a profit for their services.¹⁵¹ The CIW therefore established the FFSC to ensure workers' rights are protected on the participating farms. In addition to investigating and resolving complaints filed by workers (protecting complainants from retaliation as it does so), the FFSC conducts extensive field, payroll, and management audits of grower operations. The FFP/FFSC have been remarkably successful in transforming the Florida tomato industry from "ground zero for modern slavery" to the "best working environment in American agriculture."¹⁵² The success of the FFP has enabled the WSR model to gain purchase beyond agricultural sectors in the United States¹⁵³—for example, in the international textile and garment industry, affecting factories in Bangladesh, Pakistan, Lesotho, and India.¹⁵⁴

The WSR model is designed to be multidisciplinary, replicable in different sectors through "enforceable brand agreements" (EBAs) between global corporations, suppliers, and worker organizations. Under the EBAs, companies commit to using their supply chain leverage to support raising labor standards at worksites.¹⁵⁵ These agreements embody a set of six core principles: (1) labor rights initiatives must be worker driven; (2) obligations for global corporations

151. Asbed & Hitov, *supra* note 148, at 522 n.149.

152. Steven Greenhouse, *In Florida Tomato Fields, a Penny Buys Progress*, N.Y. TIMES: BUS. DAY (Apr 24, 2014), <https://www.nytimes.com/2014/04/25/business/in-florida-tomato-fields-a-penny-buys-progress.html> [https://perma.cc/T7CB-NNWH].

153. The FFP and FFSC have expanded their reach to multiple new U.S. states and crops (e.g., cut flowers, sweet potatoes, lettuce, herbs, peaches, melons), and their approach has been replicated in the U.S. dairy industry. *About*, FAIR FOODS STANDARDS COUNCIL, <https://www.fairfoodstandards.org/about/> [https://perma.cc/EQ5B-K3JT] (last accessed Jan. 2, 2025); MILK WITH DIGNITY STANDARDS COUNCIL, <https://milkwithdignity.org> [https://perma.cc/VX3Z-TCXT] (last accessed Jan. 2, 2025).

154. See INTERNATIONAL ACCORD FOR HEALTH AND SAFETY IN THE TEXTILE AND GARMENT INDUSTRY, (Nov. 1, 2023), available at https://internationalaccord.org/wp-content/uploads/2023/11/CSSP-Bangladesh-Agreement_public-version.pdf [https://perma.cc/P7BB-KKN7]; PAKISTAN ACCORD ON HEALTH & SAFETY IN THE TEXTILE AND GARMENT INDUSTRY (Jan. 1, 2023), available at https://internationalaccord.org/wp-content/uploads/2023/02/Pakistan-Accord-on-Health-and-Safety-in-the-Textile-and-Garment-Industry-2023_public-version.pdf [https://perma.cc/8QWN-TTA7]; *Statement: Agreement on International Accord Framework for Health and Safety in the Textile and Garment Industry*, INT'L ACCORD (Nov 6, 2023), https://internationalaccord.org/wp-content/uploads/2023/11/Statement_Agreement-on-International-Accord-framework-for-Health-and-Safety-programs-Updated-on-20-Nov-2023.pdf [https://perma.cc/E8ST-B5VY] (renewing the International Accord through December 2026); AGREEMENT ON PROGRAM DESIGNED TO ELIMINATE GBVH AT NIEN HSING FACTORIES IN LESOTHO (Aug. 12, 2019), available at <https://www.workersrights.org/issues/gender-based-violence-and-discrimination/gender-based-violence-in-lesotho/brand-agreement/> [https://perma.cc/TL9R-LZAR] (last accessed Jan. 2, 2025).

155. Judy Fudge & Genevieve LeBaron, *Regulatory Design and Interactions in Worker-Driven Social Responsibility Initiatives: The Dindigul Agreement*, 163 INT'L LAB. REV. 575, 575 (2024).

must be binding and enforceable, (3) buyers must afford suppliers the financial incentive and capacity to comply; (4) consequences for non-compliant suppliers must be mandatory; (5) gains for workers must be measurable and timely; and (6) verification of workplace compliance must be rigorous and independent.¹⁵⁶ Compliance monitoring must include:

inspectors with deep knowledge of the relevant industry and labor issues and who operate independently of the financial control and influence by buyers; in-depth worker interviews, carried out under conditions where workers can speak freely, as a central component of the process; effective worker education that enables workers to function as partners with outside inspectors; and a complaint resolution mechanism that operates independently of buyers and suppliers and in which workers organizations play a central role.¹⁵⁷

These requirements thus address the defects (discussed above) of standard social auditing practices utilized in traditional CSR programs.

Both CSR and WSR approaches function as private regulatory systems, relying on the market—specifically, consumer attitudes—as the engine for reforms across supply chains, and across borders. CSR initiatives enable corporations to exert private, strategic control over supply chain governance initiatives, critics argue, to preserve their profitable business models better than government regulatory scrutiny might otherwise allow. WSR was also originally designed to be almost completely divorced from the government regulatory system. It did so on the belief that: (1) the regulatory system has not served migrant workers well; and that (2) by separating solutions from any particular legal system and instead harnessing the power of the market, WSR can more easily address cross-border supply chain problems, without regard to international borders or differing legal norms.¹⁵⁸ In contrast to CSR, however, WSR does not actively resist State intervention so much as it has opted not to rely on it in order to advance workers' rights.

Faced with the challenge of monitoring compliance with a particular set of norms, non-state actors have a choice as to whether to rely on the private enforcement industry, or a mechanism that aligns with the WSR approach. One entails more of a tick-the-box exercise, the other involves deeper engagement with migrant workers' lived experiences to determine whether their recruitment and working conditions are decent. Given the well-documented failures of social auditing to meaningfully protect workers from abuse (even forced labor), the choice between CSR and WSR approaches reveals a non-state actor's level of commitment (if any) to advancing migrants' rights. For example, IOM's reliance on the private enforcement industry to assess compliance with its ethical recruitment framework aligns with IOM's operational history of privileging labor market access over rights protections.¹⁵⁹ Whether the companies

156. *Statement of Principles*, WORKER DRIVEN SOC. RESP. NETWORK, <https://wsr-network.org/what-is-wsr/statement-of-principles/> [<https://perma.cc/WV4V-PSU8>] (last accessed Jan. 2, 2025).

157. *Id.*

158. Asbed & Hitov, *supra* note 148.

159. Under its International Recruitment Integrity System (IRIS) initiative, IOM has established a voluntary certification system by which recruiters can be deemed "IRIS-certified"

touting adherence to the “Employer Pays” principle opt for social auditing over enforceable agreements would be similarly revealing as to the depth of commitment to advancing migrant well-being.

Indeed, one of the benefits of a worker-driven approach is that it offers a more holistic understanding of whether particular initiatives actually advance migrant workers’ rights in practice. Take the issue of recruitment abuse discussed above, for example. While recruitment abuse has become the focus of numerous initiatives pursued by a full range of non-state actors involved in labor migration governance, it has also represented the lowest common denominator with respect to advocacy efforts targeting migrant worker exploitation. As such, some actors have targeted recruitment abuse, but without also addressing the poor working conditions migrant workers too often face while in their jobs. Studies of worker experiences have emerged, demonstrating how a singular focus on recruitment abuse, at best, offers incomplete protection and empowerment of workers, and it may even worsen working conditions. For example, even where there is compliance with no (worker-paid) fees recruitment, employers may simply extract the costs of recruitment from other aspects of the employment, for example, through lowering of workers’ wages.¹⁶⁰ Narrowly targeting recruitment abuse thus may offer the semblance, but not necessarily the reality, of improving migrant worker well-being. Only through a compliance mechanism that engages worker participation in both design and implementation can one be assured that rights initiatives advance rights protection in practice.

C. Funding & Support

Although perhaps less visibly than the actors described above, two other sets of non-state actors could significantly influence labor migration governance: philanthropies and social impact investors. While philanthropies historically have shied away from funding labor-related initiatives, they have recently come to embrace the idea that building the power of workers is necessary to advancing a global economy “that works for all.” At the same time, social impact investors have identified labor exploitation as a social ill for which targeted investments can not only bring about necessary change, but also generate profit. Hence, like the non-state actors involved in norm-setting and compliance-monitoring, funders may have vastly different assumptions

if found to comply with IOM’s ethical recruitment standards (IRIS Standard). Certified recruiters can use the IRIS certified trademark on their websites and promotional materials, which IRIS pitches as an opportunity for recruiters to “increase their market visibility and attract new clients and workers.” *IRIS Voluntary Certification Scheme*, INT’L ORG. FOR MIGRATION, <https://iris.iom.int/iris-voluntary-certification-scheme> [https://perma.cc/498V-77NZ] (last accessed Jan. 2, 2025). But rather than conducting the certification process itself, IRIS relies on a system of private commercial auditors to assess recruiter compliance. *Id.* For in-depth discussion of the IRIS system, see Chuang, *IOM*, *supra* note 77, at 438-55.

160. Studies have demonstrated, for example, how prohibiting recruitment fees—the preferred prescription of many initiatives—may, in practice, result in employers paying lower wages to recoup the costs of recruitment. Nonna Kushnirovich & Rebeca Raijman, *Bilateral Agreements, Precarious Work, and the Vulnerability of Migrant Workers in Israel*, 23 THEORETICAL INQUIRIES L. 266, 283 (2022).

regarding the role of migrants' rights protections vis-à-vis their ultimate goals, leading to support for initiatives that may work at cross purposes.

Modern philanthropy has reached a critical inflection point, having increasingly come under fire for being far too wedded to the current economic and political status quo to explore, much less challenge, its systemic problems. The dominant form of philanthropy today—known as venture philanthropy or philanthrocapitalism—represents a significant shift from the philanthropy of the past.¹⁶¹ Traditional philanthropy, recognizing that wealth production can generate severe inequalities that threaten the basis of democratic governance, aimed to give back to the community to help atone for the sins of business.¹⁶² Philanthrocapitalism, however, does not simply offer compensation for the system's flaws—rather, it demands conversion to that same system's philosophy. Philanthrocapitalism incorporates a deep ideological commitment to market-based solutions to the world's problems on the assumption that the same techniques, management styles, and value systems that enable corporations to amass tremendous wealth can and should be used to correct the world's social problems.

Rather than simply funding third-party initiatives, today's philanthrocapitalists create and manage ventures based on their own ideas of how to fix the world. They invest, rather than give, and fully expect to see a return on their investment—as evidenced by their heavy reliance on metrics and benchmarks to identify impact and scale up successful programs. Moreover, with their vast capital and networking capabilities, philanthrocapitalists have assumed an outsized role in policymaking. Governments and international institutions have embraced “philanthropolicymaking.”¹⁶³ After all, the resulting “private-public partnerships” promise not only an infusion of funds, but also a convenient vehicle for outsourcing State responsibility to private do-gooders. And yet, because philanthrocapitalists are not beholden to an electorate, a membership list, or a donor, they exercise power without many of the accountability mechanisms that keep others in check.

Unsurprisingly, philanthrocapitalism has attracted plenty of criticism. As philanthropist Peter Buffett has self-critically noted, the current “charitable-industrial complex” offers “conscience laundering” for the ultra-wealthy while

161. See generally MATTHEW BISHOP & MICHAEL GREEN, *PHILANTHROCAPITALISM: HOW THE RICH CAN SAVE THE WORLD* (2008); Chrysta Freeland, *The Rise of the New Global Elite*, ATLANTIC, (Jan.-Feb. 2011) <http://www.theatlantic.com/magazine/archive/2011/01/the-rise-of-the-new-global-elite/8343/> [<https://perma.cc/SV3Q-T78C>]; James Shulman, *The Funder as Founder: Ethical Considerations of the Philanthropic Creation of Nonprofit Organizations*, in *GIVING WELL: THE ETHICS OF PHILANTHROPY* 220 (Patricia Illingworth, Thomas Pogge, Leif Wenar, eds., 2011). For in-depth examination of the role of philanthropy in the anti-trafficking movement, see *Debate: How has Philanthrocapitalism Helped or Harmed the Anti-trafficking Movement?* (Elena Shih & Janie Chuang, eds.), *OPENDEMOCRACY: BEYOND SLAVERY AND TRAFFICKING* (Feb. 1, 2021), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/blindness-using-venture-capital-fight-human-trafficking/> [<https://perma.cc/7JGL-6YGK>]; Janie A. Chuang, *Giving as Governance: Philanthrocapitalism and Modern-Day Slavery*, 36 GA. ST. U. L. REV 1027 (2020).

162. Robin Rogers, *Why Philanthro-Policymaking Matters*, 48 SOC'Y 376, 377 (2011).

163. *Id.*

also keeping the existing structure of inequality in place.¹⁶⁴ Philanthrocapitalists spend millions of dollars dealing with the symptoms of an unfair economy yet refrain from tackling the rules and policies that allow the rich to accumulate ever more wealth in the first place. Given that, philanthrocapitalism's relationship to labor has, at least until recently, been ambivalent, at best, with a deep-rooted wariness of the labor movement as too big, powerful, and influential.¹⁶⁵

A major shift is afoot, however, as philanthropies are increasingly recognizing that change will come only if workers have more say in the workplace. The pandemic has helped expose the difficulties that "essential workers" (often low-wage, immigrant workers) face in their jobs, which underscores the need to bolster workers' rights campaigns. At the same time, the #MeToo movement, Black Lives Matter, and a string of union victories at Amazon and Starbucks have demonstrated how the labor movement is a crucial—and promising—site for changing the balance of power between employers and vulnerable workers. This realization led, for example, several major foundations to join forces in 2020 to establish Funders Organized for Rights in the Global Economy (FORGE), a donor collaborative that pools expertise and resources to support community and worker-led movements to catalyze change towards "a global economy that works for all."¹⁶⁶ Through its "Vision and Response Fund," FORGE has supported, for example, the International Trade Union Confederation (ITUC) in its work with union affiliates in debt-distressed countries to gain a greater voice in debt relief decision-making; and Global Labor Justice-International Labor Rights Forum to strengthen the capacity of hospitality workers in Southern Cone countries who demand fair, safe, and healthy working conditions to organize, campaign, and negotiate.

At the same time, however, philanthropic support has also been pouring into migration optimist initiatives designed to provide the global poor "greater opportunity for economic advancement" through increased labor mobility. Unlike the initiatives described above, these funding streams target expanding worker capacity and access to jobs—for example, via workforce training—rather than worker rights. For example, funding from (libertarian-leaning) Open Philanthropy,¹⁶⁷ Walmart Foundation, and Western Union Foundation,¹⁶⁸

164. Peter Buffett, *The Charitable-Industrial Complex*, N.Y. TIMES (July 26, 2013), <https://www.nytimes.com/2013/07/27/opinion/the-charitable-industrial-complex.html> [<https://perma.cc/MMN3-M77Y>].

165. Alex Daniels, *In Unusual Step, Foundations Embrace Organized Labor with \$20 Million Plan to Help Workers in the South*, CHRON. PHILANTHROPY (June 8, 2022), <https://www.philanthropy.com/article/in-unusual-step-foundations-embrace-organized-labor-with-20-million-plan-to-help-workers-in-the-south> [<https://perma.cc/BT57-RLMR>].

166. FORGE members include the Ford Foundation, Humanity United, Wellspring Philanthropic Fund, Open Society Foundations, Laudes Foundation, Safe Fund, Fundación Avina, The Freedom Fund, Wallace Global Fund, and the True Costs Initiative. FORGE also accepts contributions from non-member donors, including, for example, the Omidyar Network. FUNDERS ORGANIZED FOR RTS. IN THE GLOB ECON., <https://www.forgefunders.org/> [<https://perma.cc/Z5PE-VARW>] (last accessed Jan. 2, 2025).

167. *Labor Mobility Partnerships—International Labor Mobility*, OPEN PHILANTHROPY, <https://www.openphilanthropy.org/grants/labor-mobility-partnerships-international-labor-mobility/> [<https://perma.cc/7QHC-R6KQ>], (last accessed Jan. 2, 2025).

168. *Partnerships, LAB. MOBILITY P'SHIPS*, <https://lampforum.org/partners/> [<https://perma.cc/DH7Q-BNSG>], (last accessed Jan. 2, 2025).

among others, have enabled LaMP to expand significantly and gain a greater voice in policymaking fora than would normally be expected for a relatively new organization. Open Philanthropy explains its funding decision citing research papers by LaMP economists “suggesting that loosening or removing barriers to labor mobility would have enormous benefits for economic welfare globally (e.g., on the order of a 50% increase in world GDP)” and that working to liberalize restrictions on labor mobility could be a “potentially extremely high return” philanthropic activity.¹⁶⁹ At the same time, Walmart Foundation has provided funding to LaMP to put its ideas into motion—specifically to “support the growth and development of professional, quality H-2A recruitment operations in North American agriculture.”¹⁷⁰

However transformative philanthropic dollars can be, some view philanthropy to be too limited with respect to its ability to foster *sustained* change, and that market-based interventions are essential for that task. Indeed, a number of leading foundations have established vehicles for “impact investing”—investments that seek to generate both financial return and positive social impact. The private foundation Humanity United, for example, established the Working Capital Innovation Fund (WCIF) to make for-profit investments in the forced labor/workers’ rights space. As the WCIF directors explain, a venture-type strategy can help innovators make progress at scale against the systemic problems of labor exploitation in global supply chains.¹⁷¹ Venture capital enables businesses to grow and scale organically, free from the perpetual cycle of grant funding, project restrictions and narrow goals.¹⁷²

Recognizing that supply chains are rife with labor risk, social impact investors have sought to channel technological innovation into applications that enable companies to better understand and address these risks. The tailwinds favor such investments, given how corporations are now increasingly subject

169. *Labor Mobility*, OPEN PHILANTHROPY (May 11, 2013), <https://www.openphilanthropy.org/research/labor-mobility/> [https://perma.cc/VML5-F65L].

170. *People in Supply Chains*, WALMART FOUNDATION, (July 8, 2024), <https://corporate.walmart.com/esgreport/social/people-in-supply-chains> [https://perma.cc/DZ5X-GFUQ]. Interestingly, the Walmart Foundation has also committed funds to CIERTO, a non-profit international labor contractor, to build capacity around responsible recruitment of H-2A workers from Mexico and to support implementation of the Employer Pays Principle, to which Walmart has committed to enforce as a member of the RLI. How the disconnect between LaMP’s approach to recruitment fees and Walmart’s approach plays out in this initiative remains to be seen.

171. Ed Marcum & Dan Viederman, *Venture Capital’s Place in the Struggle Against Labor Exploitation*, OPENDEMOCRACY: BEYOND SLAVERY AND TRAFFICKING (Nov. 10, 2021), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/venture-capitals-place-in-the-struggle-against-labour-exploitation/> [https://perma.cc/LTK9-5QTG].

172. WCIF invested, for example, in the Canadian for-profit start-up Ulula, which created a “worker voice” platform that enables real-time, anonymous feedback from workers regarding their labour conditions, in order to better identify labour abuses and remediate quickly. A number of leading foundations had spent millions of project-based philanthropic dollars to support multiple startups attempting to develop and grow such platforms. But after WCIF chose to invest in Ulula, virtually all competitors fell by the wayside, while Ulula grew at 50% year after year and reached over 1.5 million vulnerable workers. Seed-stage investment allowed Ulula to expand and scale its impact, enabling the company to reinvest profit into sustainable growth and access commercial financing in a way that philanthropic support could not. See *id.*

to human rights-related mandatory due diligence obligations.¹⁷³ Recognizing that social audits—despite being interventions most frequently used at large scale—“suffer from serious credibility and efficacy questions,”¹⁷⁴ social impact investors argue that investing in new technologies and management systems that are scaled to span vast global supply chains can offer, at least in theory, a better toolkit to assess labor risk.

Given these dynamics, one can readily see the appeal of investing in LaMP’s proposed “quality mobility industry.” Migrant worker abuse is a problem in desperate need of a solution, and if migration optimists are correct in their predictions, that solution could take the form of a \$30 billion per year industry.¹⁷⁵ As discussed below, however, translating that concept into reality is not simply a technocratic management exercise, but rather one that requires substantive normative commitments if the model is to meaningfully advance migrants’ well-being.

III. People, Not Bananas

The many governance roles non-state actors are assuming across the labor migration landscape reflect States’ longstanding efforts to offload responsibility for migrant worker protection. To be sure, non-state actors have much to contribute to the project of advancing migrant workers’ rights. That migrant workers are claiming a role in designing and implementing initiatives established in the name of advancing their interests is a long overdue and helpful development. The fact that philanthropists and social impact investors can utilize their freedom and resources to think long-term, challenge conventional wisdom, and to try new approaches might hold transformative potential.

It is hard to imagine, however, that the structural/systemic changes necessary to ensure that the global economy benefits *all* can be achieved without the State, if for no other reason than to hold these non-state actors to account when their initiatives fail. After all, whether any of these non-state-actor-led initiatives advance migrant workers’ rights protection ultimately depends on the theory of change and the diligence with which they evaluate the initiatives’ impacts on the ground. LaMP’s proposal for a “quality mobility industry,” for example, demonstrates the drawbacks of market-based approaches to labor migration reform that discount the role of the State and migrant worker participation. States play a crucial role in incentivizing actors to act in a rights-compliant manner, by utilizing regulations and enforcement mechanisms to discipline bad behavior. And States *should* do so both as a matter of their obligations under international human rights and labor law, and in recognition of migrants’ contributions to their origin and host countries.

173. See discussion accompanying footnotes 35-36.

174. *Id.*

175. A GOOD INDUSTRY, *supra* note 90, at 25.

A. The Role of the State

In an age of lower government accountability, social movements have increasingly turned to market-based interventions to achieve their goals. But, beyond the irony of relying on market-based solutions to resolve labor exploitation generated in the first place by free-market global inequality, there is the risk of private action concealing—or even justifying—government inaction. As Kemp and Raijman have demonstrated, migrant workers have much to lose under neoliberal configurations of labor migration governance that permit “governing labor migration from a distance.”¹⁷⁶ Relying on the privatization of labor recruitment, employment and control—specifically, the creation of a large for-profit industry of broker agencies—promotes the “de-responsibilization” of State agencies for migrant workers’ rights and conditions.¹⁷⁷ States’ failure to commit the necessary material resources to properly oversee migrant workers’ working conditions enables worker exploitation to occur not only with impunity, but to the benefit of private actors’ profit margins.

As the SDGs make clear, decent working conditions are key to any potential economic growth from labor migration.¹⁷⁸ However well-intentioned they may be, private actors have limited ability to ensure ethical recruitment and decent working conditions without the State exercising its regulatory power. Take, for example, LaMP’s vision of establishing a (profitable and) “quality mobility industry.” As LaMP has noted, convincing employers to work with “emerging quality industry actors” rather than continue their long-established relationships with (less expensive) “low-quality actors” is a major challenge.¹⁷⁹ Unethical recruiters benefit from the market advantage of being able to charge employers lower prices by shifting the costs of recruitment to the workers. To be sure, some employers might more readily work with “quality industry actors” for reputational gains—but these employers tend to be larger enterprises that can afford to pay more for recruitment services. But other (particularly smaller-sized) employers would likely require “evidence of a net positive return” before making the switch.¹⁸⁰ LaMP argues that this might be achieved through the “reduction of migration costs per worker through greater economies of scale.”¹⁸¹ Yet, as LaMP concedes, because ethical recruitment firms are significantly more expensive than low-quality firms, achieving economies of scale would require “more quality actors [to] enter” for costs to go down.¹⁸² LaMP’s proposal offers no prescription, however, for how best to draw in more “quality actors.”

If anything, this quandary illustrates the crucial role States can play—laws regulating recruitment are more likely to be effective than simply relying on

176. Adriana Kemp & Rebeca Raijman, *Bringing in State Regulations, Private Brokers, and Local Employers: A Meso-Level Analysis of Labor Trafficking in Israel*, 48 INT’L MIGRATION REV. 604, 607 (2014).

177. *Id.* at 607-08.

178. See generally SDGs, *supra* note 6.

179. A GOOD INDUSTRY, *supra* note 90, at 24.

180. *Id.*

181. *Id.*

182. *Id.*

employer/recruiter good will or the proclivities of the market to incentivize ethical behavior. National legislation regulating recruitment (e.g., prohibiting recruitment fees) could help level the playing field such that rogue, “low quality” recruiters no longer have a market advantage over ethical recruiters, perhaps thereby attracting “quality actors” to the industry.¹⁸³ Of course, this would require effective mechanisms to ensure compliance with recruitment regulations—again, a role that States are better positioned than the private enforcement industry to undertake, particularly with respect to expertise and consistency of approach.

This is not to say that non-state actors do not have a crucial role to play in reforming labor migration structures. Quite the opposite—utilizing State-led and non-state actor-supported action, migration can yield safe and productive employment and economic gains for all. Given the limits on States’ extra-territorial exercise of power, non-state actors may be better positioned than States to work with migrant populations across borders. Partnering with such entities enables States to claim efficiency gains and save resources that might otherwise be spent on migration policy implementation.¹⁸⁴

But the choice of with whom—and how—States partner is critical. Migration industry actors include entrepreneurs, businesses, and services which, motivated by the pursuit of financial gain, can undertake a range of activities, including recruitment, money-lending, transportation, remittance-sending/receiving, documentation, and communication services.¹⁸⁵ Where States formally delegate to migration industry actors, States may keep these actors in line by manipulating competition, using market-oriented tools such as deposits, rating systems, fines, and quotas.¹⁸⁶ By contrast, in informal delegation contexts, agents may become *de facto* executors of a State’s migration program, and enjoy greater autonomy and discretion, and the ability to evade responsibility/blame.¹⁸⁷

States could, of course, instead choose to partner with non-profit actors, which are less likely than for-profit actors to transfer costs to migrants, and more likely to instead prioritize migrant worker protection and empowerment. Doing so would require staving off pressure to partner with for profit actors, however. As Surak has noted, the profit potential of mobility schemes attracts entrepreneurs who may find compliant actors within governments with whom to partner.¹⁸⁸ At the same time, the trend towards increased philanthropic commitment to advancing “a global economy that works for all”—catalyzing change through support for worker-led movements—can bolster the role of rights-focused non-state actors. Partnering with trade unions, for example, can help raise awareness of the realities of cross-border migration, provide

183. *Topics: Fair Recruitment and Migration*, WORLD EMP. CONFEDERATION, <https://wecglobal.org/topics-global/fair-recruitment-and-migration/> [<https://perma.cc/4YL2-E97X>] (last accessed Jan. 2, 2025).

184. Kristin Surak, *Migration Industries and the State: Guestwork Programs in East Asia*, 52 INT’L MIG. REV. 487, 511 (2018).

185. *Id.* at 487.

186. *Id.* at 512.

187. *Id.* at 513.

188. *Id.* at 515.

transparent and accessible information regarding migrants' rights and options, and act as a watchdog regarding migrant worker treatment.

The Fair Food Program's (FFP) "clean channel" recruitment mechanism provides a helpful illustration of the potential benefits of private-public collaboration.¹⁸⁹ This recruitment mechanism was designed to address the problem of Mexican recruiters charging illegal fees and extorting Mexican workers participating in the U.S. agricultural guestworker program (the H-2A visa program). Based on the suggestions of workers in the FFP, the Fair Food Standards Council (FFSC) conducted a fact-finding visit to Mexico and held meetings with the U.S. embassy, the National Employment Service (SNE) under the Mexican Secretary of Labour and Social Welfare, various NGOs, and a trade union. As a result, the FFP Code of Conduct incorporates a clean channel recruitment mechanism where the SNE serves as the sole FFP recruitment channel for H-2A workers from Mexico. Workers can voice any concerns regarding their rights during the recruitment process through the regular, retaliation-free FFP/FFSC dispute resolution mechanisms. In addition, the FFSC worked with the SNE to ensure that (1) prospective workers receive pre-departure education concerning their rights; and (2) recruitment is suspended in areas where workers report illegal recruitment and the perpetrators are referred to federal prosecuting authorities.¹⁹⁰ As Mieres and McGrath note, the clean channel recruitment mechanism exemplifies how a private governance mechanism can influence public governance over labor migration.¹⁹¹ It also implicitly acknowledges the necessary role of the State when dealing with increasingly transnational labor markets.

At the same time, given the growing role that non-state actors are playing in labor migration governance, it is important to recognize how State regulatory actions intersect—and possibly conflict—with private forms of regulation, especially worker-driven initiatives. Professors Fudge and LeBaron have demonstrated, for example, how the U.S. forced labor import ban risked undermining a recent WSR initiative—the Dindigul Agreement—designed to address the very practices that had triggered the ban.¹⁹² The U.S. Customs and Border Patrol had issued a withhold and release order ("WRO") in July 2022 against an Indian supplier, Natchi Apparel, in response to a pattern of serious labour rights violations indicative of forced labor. The WRO had been issued less than four months after the Dindigul Agreement ("Agreement") was signed. The threat of banning Natchi Apparel from being allowed into the U.S. market risked causing brand companies to drop Natchi Apparel as a supplier, just as it was undertaking measures pursuant to the Dindigul Agreement.¹⁹³

189. Fabiola Mieres & Siobhán McGrath, *Ripe to Be Heard: Worker Voice in the Fair Food Program*, 160 INT'L LAB. REV. 631, 637-38 (2021).

190. *Id.*

191. *Id.*

192. Fudge & LeBaron, *supra* note 155, at 592-94.

193. The Dindigul Agreement establishes, among other measures, workers monitoring working conditions (with extensive protections) and assisting workers in accessing grievance procedures, and an internal complaints committee staffed by independent actors and rights advocates. JUDY FUDGE & GENEVIEVE LEBARON, RE:STRUCTURE LAB, THE DINDIGUL AGREEMENT 4 (2024).

Fortunately, worker organizations were able to successfully seek modification of the WRO to permit Natchi Apparel imports based on extensive documentation of the supplier's efforts to implement the Agreement.¹⁹⁴ The incident demonstrates, however, the importance of governance interactions between State and non-state actors (including consultations with affected workers) to ensure that the regulatory impacts advance workers' rights.¹⁹⁵

B. Recognizing Migrant Workers' Rights and Contributions

Despite expressing a commitment to migrant workers' rights, migration optimist proposals typically place most (if not all) of the burdens and costs of these programs on the backs of migrants. This begins with their starting premise: that migrants, through their remittance-producing labor, will solve the world's development woes; and continues throughout their various labor mobility proposals with their vague, contingent, and malleable commitment to migrant workers' rights protection. Recall LaMP's proposed Outcomes-Based Migrant Welfare Fund, discussed above.¹⁹⁶ Despite laudable aims to incentivize recruiters to engage in more rights-compliant practices, and to cover recruitment costs and social services for migrant workers, the costs of the fund are to be borne by migrant workers. Migrants thus are expected not only to solve their countries' development problems through their remittances, but to finance the apparatus that supposedly enables them to do so more safely.¹⁹⁷

What this demonstrates, ultimately, is that at the heart of such migration optimist reform proposals is an assumption that migrant workers are like bananas—in effect, commodities. Under this conception, immigration control and neoliberal reliance on markets are the principal drivers of change.¹⁹⁸ This comes through perhaps most starkly in migration optimists' solution for addressing the challenging politics of migration. They acknowledge the long-intractable political barriers in destination countries to increased labor mobility, but they believe them to be surmountable. To wit, it simply requires disaggregating two questions that are too often conflated in policy debates: (1) who are the future members of what we regard as our society, our nation, and (2) who are we going to allow to be legally present on our territory to provide labor services?¹⁹⁹ Instead, they argue, one should reframe the pitch for increased immigration by (1) emphasizing the *temporary* nature of the migration in order to allay concerns over societal belonging that the prospect of permanent

194. JUDY FUDGE & GENEVIEVE LEBARON, RE:STRUCTURE LAB, DO IMPORT BANS AGAINST PRODUCTS MADE WITH FORCED LABOUR HELP THE WORKERS WHO MADE THE BANNED PRODUCTS? (2024).

195. Fudge & LeBaron, *supra* note 155, at 593-94.

196. See text accompanying notes 131-133.

197. *Id.*

198. Critics have noted that the fact that migration optimism continues to dominate development policy despite limited evidence of effectiveness suggests that these other agendas (e.g., immigration control, reliance on markets) are at play. Alan Gamlen, *The New Migration-and-Development Pessimism*, 38 PROGRESS HUM. GEOGRAPHY 581, 587-91 (2014).

199. *All Things Considered: Populations around the world are declining. Migration is the solution, says economist* (NAT'L PUB. RADIO radio broadcast Jan. 25, 2023), available at <https://www.npr.org/2023/01/25/1151474938/populations-around-the-world-are-declining-migration-is-the-solution-says-economist> [https://perma.cc/2ZP2-63SS].

migration tends to raise among destination populaces; while (2) touting the economic advantages of relying on migrant labor.²⁰⁰ Migration optimists argue that, ultimately, the path to *better* migration is simply through *more* migration, likening the situation to the Prohibition-era, where path to more control of alcohol was through less control of alcohol.²⁰¹

Migration optimists ground their proposals in the moral claim of a social contract—i.e., in which society cares for the vulnerable members of our community (e.g., elderly, children). Tellingly, this particular notion of a social contract does not extend to the migrant workers themselves, notwithstanding migrants' crucial role in providing care and labor to sustain our economies and communities. LaMP's proposed Outcomes-Based Migrant Welfare Fund raises fundamental normative questions in this regard: should a worker be expected to pay for the privilege of working abroad? Or, better yet, for any social services they might require should the system fail to adequately protect them from abuse? How does this scheme ensure that those carrying the burdens of development actually benefit from their efforts? How do rights protections figure into this proposal?

A new social contract is required—one in which States recognize and reward migrants' contributions to society through meaningful protection and support of migrants' rights. As a starting matter, it bears emphasizing that States have legal obligations to protect the rights of migrant workers. As Chetail has demonstrated, the relatively low ratification rates for the migrant worker-specific treaties belies the “normative density” surrounding the rights of migrant workers.²⁰² International human rights treaties, which enjoy wide ratification, offer a crucial source of protections for migrant workers—covering a wide range of basic civil and political rights; economic, social, and cultural rights; and more specific rights pertaining to particular populations (e.g., women, children, disabled), and issues (e.g., racial discrimination).²⁰³ Norms relevant to migrant work can also be found in international labor law. While the nearly-200 treaties promulgated by the ILO have varying ratification rates, ten of those treaties are considered “fundamental” and therefore binding on all ILO Member States by virtue of their membership in the ILO, even if they have not ratified those specific instruments.²⁰⁴ The set of fundamental,

200. McNamee, *supra* note 11; Pritchett, *People Over Robots*, *supra* note 94; A GOOD INDUSTRY, *supra* note 90.

201. *All Things Considered*, *supra* note 199.

202. See generally VINCENT CHETAIL, *INTERNATIONAL MIGRATION LAW* (2019).

203. *The Core International Human Rights Instruments and their Monitoring Bodies*, OFF. OF THE HIGH COMM'R FOR HUM. RTS. <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies> [https://perma.cc/A66X-Z2K7] (last accessed Jan. 2, 2025).

204. The ILO Declaration on Fundamental Principles and Rights at Work (1998) identified eight instruments—covering forced labor, child labor, discrimination, and freedom of association and collective bargaining—as fundamental. ILO, *Declaration on Fundamental Principles and Rights at Work*, (June 18, 1998). Following its adoption, the Protocol of 2014 to the Forced Labor Convention (1930) was added to the list of fundamental instruments, and in 2022, the list was again expanded to include the conventions addressing occupational safety and health. Int'l Lab. Conf., Res. 110.1, *Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work* (June 10, 2022).

core labor standards these treaties cover now include (1) freedom of association and the right to collective bargaining, (2) elimination of all forms of forced or compulsory labor; (3) effective abolition of child labor, (4) elimination of discrimination in respect of employment and occupation; and (5) the right to a safe and healthy working environment.²⁰⁵ As the ILO has made clear, the fundamental principles and rights at work are universal—applicable to all people, including migrant workers, whether temporary or permanent migrant workers, and whether in regular or irregular situations.²⁰⁶ Human rights, too, are considered universally applicable, as they derive from one's status as a human being rather than as citizen of a particular state.

When it comes to migrant workers, however, universality remains aspirational in practice. States typically distinguish between migrants and citizens, and among migrants, between irregular (undocumented) and regular migrants, and between “high-skilled” and “low-skilled” workers, in determining the range of rights, if any, they are willing to recognize. The calculus might be rooted in sovereignty concerns, or a cost-benefit analysis of migrants' fiscal impact on their host communities, or simply the expected political gains or losses of one choice versus another.

Indeed, theorists have long debated different ethical frameworks for determining migrants' “moral standing,” hence entitlements to certain rights. These may be rooted, for example, in an “ethical cosmopolitanism” that views rights as universal (and therefore applicable to noncitizens), or instead, a more nationalist conception that, privileging citizen interests, restricts migrants' rights.²⁰⁷ Migration optimists typically hew to the latter conception, arguing for increased labor mobility based on national interests, while (too readily) conceding rights restrictions as necessary tradeoffs for gaining access to foreign labor markets.

Given the crucial roles migrant workers play in their host communities, even those skeptical of the universality of human rights protections ought to appreciate consequentialist justifications for affording migrants' rights protections. Consider, for example, the negative consequences that result from failure to recognize migrants' rights—for public health, border security, economic opportunities, among other areas. COVID, for example, exposed the perils of overlooking or neglecting migrant well-being, as communities were forced to contend with the broader negative public health consequences of treating migrants poorly.²⁰⁸ At the start of the pandemic, Singapore was heralded as

205. For a discussion of the core labor standards, see ILO, *FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK FACT SHEET*, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40asia/%40ro-bangkok/%40ilo-islamabad/documents/publication/wcms_741333.pdf [https://perma.cc/5X9H-S8JS].

206. International Lab. Conf. (92nd Session), *Report VI: Toward a Fair Deal for Migrant Workers in the Global Economy* (Geneva, June 2004), ¶ 258.

207. RUHS, *supra* note 67, at 159-61.

208. Hilary Leung, *Singapore Was a Coronavirus Success Story – Until an Outbreak Showed How Vulnerable Workers Can Fall Through the Cracks*, TIME (Apr. 29, 2020, 8:23 AM), <https://time.com/5825261/singapore-coronavirus-migrant-workers-inequality/> [https://perma.cc/Y8BN-PLWU]; Shibani Mahtani, *Singapore Lost Control of Its Coronavirus Outbreak, and Migrant Workers are the Victims*, WASH. POST (Apr. 21, 2020), <https://www.washingtonpost.com/world/2020/04/21/singapore-lost-control-its-coronavirus-outbreak-migrant-workers-are-victims/> [https://perma.cc/9L6L-GWWL].

a COVID-19 success story, boasting single-digit caseloads due to aggressive efforts to contain and prevent community transmission. Two months later, the Singaporean government was reporting the then-largest per capita rate of COVID infection in the world. Why? Because Singapore had failed to consider the impact of COVID-19 on its massive, overlooked migrant worker communities, which represented thirty-eight percent of the total workforce, and had been relegated to living in cramped and unsanitary dormitories on the outskirts of the city-state.²⁰⁹

Even a State's border anxieties can justify increasing migrants' rights protections, as paradoxically, doing so can help prevent undocumented migration. The failure to protect migrant workers' rights can drive workers towards "illegality" as they leave the substandard employment—losing their immigration status if their visas are tied to specific employers—to operate in a free market, where they may be better able to negotiate salaries and working conditions.²¹⁰ Conversely, requiring employers to respect migrants' human rights can lessen their recourse to employing irregular migrant workers.²¹¹

Protecting migrants' rights can also prevent exploitative working conditions from escalating into forced labor and/or trafficking situations—phenomena that States are increasingly under economic pressure to address and prevent. Insufficient efforts in this regard can place governments in the cross-hairs of U.S. unilateral economic sanctions, levied against governments that fail to meet a set of "U.S. minimum standards" for combating trafficking.²¹² Perhaps more significantly, failure to prevent forced labor can undermine a country's ability to export goods to countries that have adopted forced labor import bans (e.g., in United States, Canada, Mexico, and EU-wide).²¹³

Beyond arguments as to the perils of *not* protecting migrants' rights are the many affirmative reasons to advocate for greater rights protections, for States' national interests. Take, for example, migration optimists' stated goal of fostering economic development. Whereas optimist proposals are strikingly lacking in specifics regarding their stated commitment to rights protection, the Global Compact on Migration articulates the link between development and rights protection and provides States specific guidance. The GCM explicitly recognizes

209. Leung, *supra* note 208; Mahtani, *supra* note 208.

210. Kemp & Rajman, *supra* note 176, at 635-56.

211. CHETAIL, *supra* note 202, at 220.

212. Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. §§7101-7110 (2000). The U.S. government has utilized this regime to shape anti-trafficking responses of governments worldwide. Each year, the U.S. government ranks other countries' anti-trafficking performance, as measured against a set of "U.S. minimum standards." Governments found failing to make significant efforts to comply with those standards are ranked in the lowest tier, and potentially subject to economic sanctions. See e.g., U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2024) (assigning tier rankings to countries). For in-depth examination of the U.S. rankings and sanctions system, see Beth A. Simmons, Paulette Lloyd & Brandon M. Stewart, *The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking*, 72 INT'L ORG. 249, 263-65, 276 (2018); Simmons, Lloyd & Stewart, *supra*, at 263-65; Judith Kelley & Beth A. Simmons, *Politics by Number: Indicators and Social Pressure in International Relations*, 59 AMERICAN J. POL. SCI. 55 (2015); Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT'L L. 437, 453-54 (2006).

213. See discussion accompanying *supra* notes 37–38.

that addressing vulnerabilities in migration (Objective 7), along with facilitating ethical recruitment and safeguarding conditions that ensure decent work (Objective 6), maximizes migrants' socioeconomic contributions to countries of origin and destination.²¹⁴ To those ends, the GCM recommends, for example, enabling migrants to access legal assistance and effective complaint and redress mechanisms, prohibiting recruitment fees, and permitting migrants to switch employers.²¹⁵ The GCM furthermore reaffirms workers' fundamental right to non-discrimination in employment, recommending that States provide migrants the same labor rights and protections as all workers in the respective sector—including rights to just and favorable conditions of work, equal pay for equal value, freedom of association and to assemble, and the highest attainable standard of physical and mental health.²¹⁶ Moreover, States should strengthen enforcement of these norms by enhancing the abilities of labor inspectors and other authorities to better monitor recruiters and employers to ensure human rights and labor laws are observed.²¹⁷

While migrant labor can certainly grow economies, it bears emphasizing that it is also key to sustaining them. The global pandemic made abundantly clear the value of migrants' contributions to their host societies—their labor essential to keeping global supply chains open, enabling the continued functioning of the economy. The pandemic experience challenged the longstanding presumption that “high-skilled” workers have more to offer destination countries than “low-skilled” workers.²¹⁸ As Ruhs demonstrated in *The Price of Rights*, high-income destination countries have typically afforded migrant workers rights based on the workers' (perceived) skill level—the lower the skill level, the fewer the rights.²¹⁹ They justify the disparate treatment on grounds that high-skilled workers offer greater complementarities with skills and capital of the existing population, greater contributions for long-term growth, and better fiscal outcomes as they pay more in taxes and consume less in public services.²²⁰ But the COVID experience offers an alternative narrative for valuing and analyzing the socio-economic contributions of low-skilled migrant workers. As Ruhs, Poeschel, and Anderson argue, it is important to consider migrants' role in not only providing, but also ensuring the longer-term *resilience* of, essential services.²²¹ Rather than narrowly conceptualizing labor demand as focused on employers' incentives, one should consider the essential nature of particular sectors (e.g., farming and food processing, health care and child care, farming) to social and economic functioning, and migrants'

214. GCM, *supra* note 7, ¶¶ 22-3.

215. *Id.* ¶ 22(c), (d), (g).

216. *Id.* ¶ 22(i).

217. *Id.* ¶ 22(f).

218. Immigration policies tend to attribute skill level to credentials (e.g., educational qualifications) and earnings. As Anderson, Poeschel, and Ruhs rightly note, what is considered “low-skilled” or “high-skilled” is “socially constituted, unavoidably politicised, and often heavily gendered.” Bridget Anderson, Friedrich Poeschel, & Martin Ruhs, *Rethinking Labour Migration: Covid-19, Essential Work, and Systemic Resilience*, 9 *COMP. MIGRATION STUD.* 45, 47-48 (2021).

219. RUHS, *supra* note 67.

220. *Id.* at 91-121.

221. Anderson, Poeschel & Ruhs, *supra* note 218, at 47.

contributions to them not only within individual countries, but along global supply chains.²²² Low-skilled workers provide the bulk of the labor in these sectors, and therefore are as deserving of rights protections as the high-skilled workers destination countries typically prefer.

Moreover, it is not inevitable that destination populaces would view migrants as a threat to their social fabric. The work of worker-led organization Resilience Force demonstrates that it is possible to chip away at such views and work towards reconfiguring the social contract to better honor migrants' contributions to society. Resilience Force is a U.S. nonprofit that advocates on behalf of workers who respond to climate disasters, helping communities to adapt and prepare for climate disaster and to rebuild post-disaster.²²³ The "resilience workforce" comprises mostly migrant workers (some undocumented), but also formerly incarcerated people and U.S.-born people of color.²²⁴ Hired by disaster restoration firms, these resilience workers travel from disaster zone to disaster zone, cleaning up and restoring communities. Disaster restoration is now a \$200 billion industry—involving a complex web of ill-regulated contractors, subcontractors, labor brokers and agencies—that pursues lucrative government contracts.²²⁵ Disaster work is inherently precarious—involving hazards such as toxins, water-borne diseases, and unstable buildings; moreover, like so many other migrant workers, resilience workers also experience rampant wage theft and health and safety violations, as their employers seek cost-cutting measures in pursuit of ever more profits.²²⁶

Yet, the disaster context has also provided an unexpected opportunity for social cohesion between migrant workers and the residents of the communities who have benefited from their labor. Tensions can arise between residents and the workers coming to rebuild their communities—for example, with some workers fixing the homes of those who would otherwise wish to see them deported for being undocumented.²²⁷ In response, Resilience Force has made a concerted effort to build relationships between the workers and the residents, for example, by canvassing residents and learning that many feel abandoned by the government in the disaster's aftermath.²²⁸ Able to relate to the residents'

222. *Id.*

223. RESILIENCE FORCE, <https://www.resilienceforce.org> [<https://perma.cc/X4M9-WEXN>] (last accessed Jan. 2, 2025). See Sarah Stillman, *The Migrant Workers Who Follow Climate Disasters*, NEW YORKER (Nov. 1, 2021), <https://www.newyorker.com/magazine/2021/11/08/the-migrant-workers-who-follow-climate-disasters> [<https://perma.cc/7743-Q3NC>]; SAKET SONI, *THE GREAT ESCAPE: A TRUE STORY OF FORCED LABOR AND IMMIGRANT DREAMS IN AMERICA* (2023); TED, *The Workers Rebuilding Communities After Natural Disasters: Saket Soni*, YOUTUBE (May 13, 2024), <https://www.youtube.com/watch?v=wtCogf-htV0> [<https://perma.cc/4YNY-6UZT>] [hereinafter Soni TED Talk].

224. Nina Lakhani, *Private equity profits from climate disaster clean-up—while investing in fossil fuels*, THE GUARDIAN (Sept 7, 2023, 6:00 PM), <https://www.theguardian.com/environment/2023/sep/07/private-equity-climate-crisis-disaster-cleanup> [<https://perma.cc/W2JZ-HJVV>].

225. *Id.*; Stillman, *supra* note 223.

226. Investigative journalist Sarah Stillman accompanied Resilience Force to twenty disaster recoveries, over the course of which Stillman uncovered two thousand credible claims of harm to workers, including "instances of fatal or injurious working conditions, stolen wages, assaults, and labor trafficking." Stillman, *supra* note 223.

227. *Id.*

228. *Id.*

sense of dislocation at a personal level, resilience workers have volunteered to rebuild their homes without charge—after which they have shared meals and talked. During these exchanges, the residents have expressed their deep gratitude, which in turn has strengthened the workers’ sense of greater purpose. As Resilience Force founder and director Saket Soni explains, “people who understand each other’s vulnerabilities will protect each other’s dignity.”²²⁹ Such moments of common purpose and community have fostered a willingness by communities to assist the workers—e.g., a mayor who created hiring halls to enable workers and employers to negotiate safe working conditions; a church community that helped nurse an injured worker back to health, who then gathered friends to rebuild their church from ground up after it was destroyed. As Soni explains, the Resilience Force workers, in effect, have gone “from building homes to building home”—“reweav[ing] the civic fabric that binds us all together by restoring our sense of shared faith with our neighbors.”²³⁰

The Resilience Force example demonstrates that there are better responses to anti-immigrant sentiments than deflecting and promising that migrant workers’ presence is “just temporary.” Instead, a counter-narrative that emphasizes migrant workers’ economic (and social) contributions to their host communities can be far more compelling. Like other worker-organizing organizations, Resilience Force forges relationships across lines of class, political affiliation, race, and immigration status, working directly with local communities to develop policy agendas that strengthen both the communities and the workers. Through these actions, they build a sense of social cohesion that has helped shift attitudes from wariness towards growing acceptance of migrant workers’ essential roles in their communities.

The Resilience Force example also underscores the crucial role that grassroots and community-based organizations play in bringing about social change. Resilience Force steps into the vacuums created by government inaction while also calling upon governments to fulfill their responsibilities to care for communities in need.²³¹ This includes both the communities devastated by climate disasters—for whom Resilience Force has proposed establishing a disaster safety net to provide food and unemployment assistance and protections from predatory rent gouging and eviction—and the resilience workforce. Recognizing that climate disasters are now a fact of life, Resilience Force has proposed the creation of a national “Resilience Corps” public workforce (including both migrants and citizens) that can be trained and put on a path to stable and long-term careers, with heightened and vigorously enforced wage and labor standards.²³²

It is difficult to imagine a for-profit entity (however well-intentioned) being able and willing to identify and advocate for such reforms. “Rights-respecting”

229. Soni TED Talk, *supra* note 223.

230. Soni TED Talk, *supra* note 223.

231. Resilience Force has worked with communities to develop a better disaster response framework that both bolsters (specifically low-income) local communities’ resilience in the face of climate change and better recognizes and strengthens the resilience. RESILIENCE FORCE & THE NEW FLORIDA MAJORITY, A PEOPLE’S FRAMEWORK FOR DISASTER RESPONSE: REWRITING THE RULES OF RECOVERY AFTER CLIMATE DISASTERS 9 (2020).

232. *Id.*

must be more than a catchphrase—it needs to be backed by an agenda informed and shaped by those whose rights are at issue. Worker-led organizations are best-positioned to give substance and specificity to calls for more “rights-respecting labor mobility.” Moreover, they, more than anyone else, can appreciate the role the State must play to achieve rights realization, from standard-setting through enforcement. There is much to be gained from increased labor mobility, for which an array of non-state actors can play a role—but only if their efforts recognize and honor migrant workers’ essential role in producing those gains.

Conclusion

Aging populations, global pandemics, climate disasters—these are sobering features of our new reality. But embedded in these phenomena are opportunities to reconsider how we approach global labor migration, which is a necessary, but neglected, response to addressing these global challenges. Among their many contributions to our societies, migrant workers have kept our global supply chains running, provided the caregiving for family members that makes work outside the home possible, and rebuilt communities devastated by climate disasters. They have become the backbone of economies worldwide, their labor essential to the societal and economic functioning of the communities in which they work. Yet, as essential as they may be, their migration journeys are often a gamble, risking abuse and even severe exploitation due to the lack of migrant worker protections in destination countries worldwide.

In 2018, the World Bank issued a policy report titled *Moving for Prosperity*, arguing that few economic policies can achieve the goals of ending extreme poverty and sharing prosperity as effectively as increased labor mobility.²³³ Development economists have seized the opportunity to promote this idea, even touting labor mobility for its potential to produce economic gains not only for countries of origin, countries of destination, and the migrants themselves, but for businesses too. Their vision of creating a global labor mobility industry promises profits for all.

But prosperity built on the backs of migrant workers vulnerable to abuse and exploitation can hardly be deemed progress. For migrant workers to enjoy their share of the promised prosperity requires a serious and sustained commitment to protecting their labor and human rights. Doing so requires the expertise and leadership of worker-led organizations, and meaningful State regulation and intervention to prevent the rampant rights violations migrant workers too often experience. Only then can increased labor mobility bring benefits for all.

233. WORLD BANK GROUP, *MOVING FOR PROSPERITY* 1-4 (2018)