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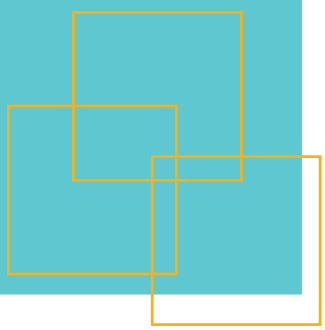
International Labour Organization

Global labour recruitment in a supply chain context

Fair recruitment initiative



Global Labour Recruitment in a Supply Chain Context

Jennifer Gordon

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Preface

Fundamental principles and rights at work are at the core of ILO's decent work agenda. The ILO Declaration on Fundamental Principles and Rights at Work and its follow-up was adopted by governments, workers and employers at the International Labour Conference in 1998. The principles and rights enshrined in the 1998 Declaration – the elimination of child labour, forced and compulsory labour, discrimination at work and respect for freedom of association and collective bargaining – are recognized as universal human rights.

The Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) provides leadership and knowledge to sustain and accelerate progress towards the full realization of those rights worldwide. A central component of its integrated Strategy (2015-2020) is to further enhance global understanding of effective policies in order to build a solid human rights and business case for the promotion of fundamental principles and rights at work. The strategy recognizes the importance of research on labour recruitment and employment practices as a basis for more effective laws and policies to prevent violations of fundamental rights at work.

This working paper has been published as part of ILO's Fair Recruitment Initiative announced by the Director-General at the International Labour Conference in 2014. This multi-stakeholder initiative is implemented in collaboration with the ILO's Labour Migration Branch (MIGRANT) and many international, regional and national partners. As such, it is also an integral part of ILO's Fair Migration Agenda that seeks to broaden choices for workers to find decent work at home and abroad, with full respect of their human and labour rights.

A central pillar of the Fair Recruitment Initiative is to advance and share knowledge on policies, laws, emerging practices and challenges related to the recruitment of workers within and across countries. We hope that this working paper will stimulate further discussion and effective action to foster fair recruitment practices, prevent human trafficking and to reduce the costs of labour migration.

We would like to thank Jennifer Gordon for this important piece of research. Thanks are also extended to the Open Society Foundations which administered and supported this research through the Open Society Fellowship. The ideas, opinions and comments expressed within this publication are entirely the responsibility of its author and do not necessarily represent the views or policies of the Open Society Foundations or the International Labour Organization.

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Fundamental Principles and Rights at Work Branch

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I thank the ILO Fair Recruitment Initiative for providing their support, with special thanks to Beate Andrees, Houtan Homayonpour, Alix Nasri, Peter Swiniarski (FUNDAMENTALS), Michelle Leighton, Ryszard Cholewinski (MIGRANT), David Seligson, Julia Lear (SECTOR), Natan Elkin (NORMES), Zulum Avila (CEPOL), Nilim Baruah, Manuel Imson, Max Tunon (ROAP) and Catherine Laws (CO-MANILA) for their thoughtful suggestions and guidance. For very helpful comments on earlier drafts, my gratitude to Alejandra Ancheita, Jeremy Blasi, Cathleen Caron, Bassina Farbenblum, Katharine Jones, Rachel Micah-Jones, JJ Rosenbaum, Kathy Ruckelshaus, and Valeria Scorza.

My deep appreciation to Research Librarian Sarah Jaramillo in the Fordham University School of Law for her invaluable assistance with this and all of my work; to Juan Fernandez, also at the law library, for his ability to track down any source, anywhere; and to my research assistants over the course of this project, Alex Cárdenas, Janice Chua, Lauren Cooperman, Naseem Faqihi, and Aaliya Zaveri.

Finally, I would like to thank all of the interviewees who offered their time and insights; their names are listed in the Appendix to this report.

Glossary[1]

Term	Definition
Labour recruiter	The term "labour recruiter" as expressed in the Forced Labour (Supplementary Measures) Recommendation, No 203, can refer to both private and public entities that offer labour recruitment services. Private entities can take many forms: formal (e.g. registered under commercial or other law) or informal (not registered, such as informal sub-agents), profit-seeking (e.g. fee-charging agencies) or non-profit (e.g. trade union hiring halls).
Private employment agencies	Private employment agencies fall within the definition of labour recruiters. In particular, they are defined by ILO Convention No. 181 as "a natural or legal person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships that may arise therefrom; (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") that assigns their tasks and supervises the execution of these tasks; (c) other services relating to job-seeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment." (Art. 1.1).
Migrant worker	As per the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families definition, a migrant worker is "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national". In some cases, "internal" migrant workers who are recruited within a country may face similar risks as those crossing international borders. Where the report refers to internal migrants, this is made clear in the text.
Trafficking in Persons	Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

[1] This Glossary only contains definitions that are provided in international standards.

Forced labour	The ILO Forced Labour Convention, 1930 (No. 29), defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." (Art. 2 (1)). The Protocol of 2014 to the Forced Labour Convention, 1930, reaffirmed this definition, and stressed the need for “specific action against trafficking in persons for the purposes of forced or compulsory labour.” (Art. 1 (3))

List of acronyms

CIERTO	Workers Centre for Research, Recruitment, and Training (Centro de Investigación, Entrenamiento, y Reclutamiento del Trabajador Organizado), USA
CIW	Coalition of Immokalee Workers, USA
EFI	Equitable Food Initiative, USA
ESB	Manitoba Employment Standards Branch
ESDC	Employment and Social Development Canada
FLOC	Farm Labour Organizing Committee, USA
GLA	Gangmasters' Licensing Authority, UK
ILO	International Labour Organization
MoU	Memorandum of Understanding
NCGA	North Carolina Growers' Association, USA
NGA	National Guestworker Alliance
NLRC	Philippines National Labour Relations Commission
POEA	Philippines Overseas Employment Agency
SNA	Foundation for Employment Standards (Stichting Normering Arbeid), Netherlands
UFW	United Farmworkers Union, USA
UNDP	United Nations Development Programme

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1. Approaches to Regulating Recruitment: An Introduction

In today's transnational labour markets, tens of millions of people regularly travel across borders and continents for a wide range of temporary work. Migrants are hired to do everything from harvesting fruits and vegetables to nursing, construction, computer programming and waiting on tables of tourists. Most migrant workers find these jobs through a labour recruiter. Recruiters are central to international migration, a phenomenon that now encompasses an estimated 232 million people.[2] They are omnipresent in all sectors that employ migrant workers.

Global labour recruiters operate in a world that is half-light and half-shadow. Once an employer decides to contract migrant workers from abroad for all or part of its workforce, recruiters offer functions that are useful to both the employer and the migrant. These include identifying, interviewing, and processing visa documents of potential workers, matching them with jobs abroad and helping them travel to their destination.[3] These positive contributions to labour mobility can sometimes be eclipsed by the abuses that arise in the recruitment industry. Unscrupulous recruiters charge fees for every possible service related to migration,[4] discriminate on the basis of gender and age, make false promises about the job on offer in the destination country to increase the amount that migrants are willing to pay, or lend money at usurious rates to cover these outsized expenses.[5] This behaviour represents a business model in the industry that creates unfair competition and has a negative impact on working conditions.[6] The criminal end of the market is occupied by fraudulent

[2] See ILO, World of Work Report 2014: Developing with Jobs (2014), at 183, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_243961.pdf.
[3] For an overview of recruiters' positive functions in the context of labour migration, see UNDP, Guiding the Invisible Hand: Making Migration Intermediaries Work for Development, at 10-17 (Apr. 2009) (by Dovelyn Rannveig Agunias).
[4] Recruiters have plenty of company in reaping profits from migration. Other actors in the migration industry charge high fees for mandatory medical exams, job training, required insurance, and bribes to government officials.
[5] There is a healthy debate over whether what I have termed the "routine abuses of labour recruitment" should also be understood, and addressed, as forced labour. See, e.g., Janie A. Chuang, Exploitation Creep and the Unmaking of Human Trafficking Law (2015); ILO, Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work 2005 (2005); Ben Rogaly, Migrant Workers in the ILO's 'Global Alliance Against Forced Labour' Report: a critical appraisal, THIRD WORLD Q. (2008); Klara Skrivankova, Between decent work and forced labour: examining the continuum of exploitation, Joseph Rowntree Found. (2010); Rebecca Smith, Guest Workers or Forced Labor, NEW LAB. F., Fall 2007. The distinction in many cases is legally important (because more remedies are available for forced labour than for violations of statutes about recruitment, where they exist) and also politically important as a way to frame the issue publicly. It is not necessary to decide this question in order to decry these conditions as unfair to migrants, and to believe that replacing them with more equitable arrangements is an important goal.
[6] In recent years, concern about abuses perpetrated by recruiters has soared. For just some of the reports since 2012 highlighting problems with recruitment and recommending reforms in the context of guest work programmes in the United States, see Alejandra Constanza Ancheita Pagaza and Gisele Lisa Bonnici, Quo Vadis? Recruitment and Contracting of Migrant Workers and Their Access to Social Security: The Dynamics of Temporary Migrant Labor Systems in North and Central America, INEDIM (Feb. 2013), at 40 [hereinafter Ancheita Pagaza & Bonnici, Quo Vadis?]; Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change, CENTRO DE LOS DERECHOS DEL MIGRANTE, INC. [hereinafter Centro de los Derechos del Migrante, Recruitment Revealed]; Visas, Inc: Corporate Control and Policy Incoherence in the U.S. Temporary Labor System, GLOBAL WORKERS JUST. ALLIANCE, at 40-45 [hereinafter GLOBAL WORKERS JUST. ALLIANCE, Visas, Inc.]; The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse, THE INT'L LAB. RECRUITMENT WORKING GROUP [hereinafter ILRWG, The American Dream Up for Sale]; Leveling the Playing Field: Reforming the H-2B Program to Protect Guestworkers and U.S. Workers, NAT'L GUESTWORKER ALLIANCE; Mary Bauer & Meredith Stewart, Close to Slavery: Guestworker Programs in the United States, S. POVERTY L. CENTER (2013).

actors who charge migrants for access to non-existent jobs, and organized criminals who may smuggle migrants to locations where they are forced to work without pay and prevented from escape by threat of violence.

In some cases, after migrant workers arrive on the job, recruiters remain available to be called in by the companies where they labour if protest is brewing. Whether they employ the migrants themselves or are only responsible for their placement, unscrupulous labour recruiters may threaten to repossess collateral on loans, bring in immigration officials to initiate deportation proceedings, and use violence against families back home, all to help the employer maintain control over the migrant workforce.[7]

It is important to note that there is no fixed set of "temporary jobs" for which recruitment services are required. Recruitment agencies and their associations work actively to expand their market share, including by recruiting temporary workers from abroad.[8] Certain aspects of recruitment have proven resistant to regulation. A number of migrant-origin governments limit recruitment fees and costs, and require recruitment agencies to obtain a license, yet lack the capacity and political will for effective enforcement against principal recruitment companies, much less their many sub-agents and brokers.[9] Some origin countries also educate potential migrants about legal protections during recruitment and employment abroad, but the knowledge offered in such sessions is of limited use where recruiters are the gatekeepers determining access to work and employers can ask immigration agents to deport

These issues recur in every labour migration corridor. Dovelyn Rannveig Agunias, of the Migration Policy Institute ("MPI"), has been publishing policy briefs on recruitment issues in the Asia-Middle East corridor since the mid-2000s; for a summary of her findings, see Regulating Private Recruitment in the Asia-Middle East Labour Migration Corridor, MIGRATION POL'Y INST. (Aug. 2012). A number of excellent studies on recruitment abuses in different places around the globe have been issued in the past year alone. See Bassina Farbenblum et al., Migrant Workers' Access to Justice at Home: Indonesia, OPEN SOC'Y FOUND. (2013) [hereinafter Farbenblum et al., Migrant Workers' Access to Justice]; Sarah Paoletti et al., Migrant Workers' Access to Justice at Home: Nepal, OPEN SOC'Y FOUND. (2014) [hereinafter Paoletti et al., Migrant Workers' Access to Justice]; Katharine Jones, What Works in Recruitment Monitoring and Welfare Assistance: A review of how international recruitment and welfare assistance is regulated, monitored and enforced in Colombo Process Member States and key CPMS destination States, IOM (forthcoming 2014) (draft on file with author) (hereinafter Jones, What Works in Recruitment Monitoring [draft]); Piyasiri Wickramasekara, Regulation of the Recruitment Process and Reduction of Migration Costs: Comparative Analysis of South Asia, GLOBAL MIGRATION POL'Y ASSOCIATES (Oct. 1, 2013); Rex Varona, License to Exploit: A Report on the Recruitment Practices and Problems Experienced by Filipino Domestic Workers in Hong Kong, ALLIANCE OF PROGRESSIVE LAB. (Oct. 2013); Ray Jureidini, Migrant Labour Recruitment to Qatar: Report for Qatar Foundation Migrant Worker Welfare Initiative, BLOOMSBURY QATAR FOUND. JOURNALS (2014) [hereinafter Jureidini, Migrant Labour Recruitment to Qatar]. Moreover, the International Labor Recruitment Working Group maintains an updated list of such reports, see Fair Labor Recruitment; ILRWG: Protecting Rights. Transforming Policy. Ensuring Justice, INT'L LAB. RECRUITMENT WORKING GROUP.

[7] See, e.g., Julia Preston, Company Banned in Effort to Protect Foreign Students From Exploitation, N.Y. Times (Feb. 1, 2012), http://www.nytimes.com/2012/02/02/us/company-firm-banned-in-effort-to-protect-foreign-students.html?pagewanted=1&_r=0. See also, Confiscation of Property Titles in Guatemala by Recruiters of Temporary Workers with H-2B Visas, GLOBAL WORKERS JUST. ALLIANCE, available at http://www.globalworkers.org/our-work/publications/confiscation-property-titles (in Spanish only) [hereinafter GLOBAL WORKERS JUST. ALLIANCE, Confiscation of Property Titles in Guatemala] for a description of how recruiters in Guatemala routinely demand the deeds to migrant workers' property at home as security for loans, and threaten to seize the properties in order to control migrants while abroad.

[8] See Neil M. Coe et al., The Business of Temporary Staffing: A Developing Research Agenda, GEOGRAPHY COMPASS (Aug. 2010), at 1055, 1063 [hereinafter Coe et al., The Business of Temporary Staffing].

[9] See Centro de los Derechos del Migrante, Recruitment Revealed, supra note 7, at 24; Jones, What Works in Recruitment Monitoring (draft), supra note 7; Paoletti et al., Migrant Workers' Access to Justice, supra note 7, at 152-53; ROBYN MAGALIT RODRIGUEZ, MIGRANTS FOR EXPORT: HOW THE PHILIPPINE STATE BROKERS LABOR TO THE WORLD (2010), Chapter 6.

"troublemakers" who demand rights on the job. Destination countries have until recently shown little interest in addressing recruitment abuses that mostly occur outside their jurisdiction unless they meet the high threshold of the legal standard for trafficking in human beings.[10] As a result, global labour recruitment has earned a reputation as ungoverned and ungovernable.

This paper is the result of a yearlong inquiry into possible courses of action that would address the recruitment governance gap, with particular attention to the abuses that affect a large number of workers. It touches only lightly on problems with recruitment and the factors impeding its regulation that are well-documented elsewhere.[11] Instead, it seeks to explain why the market for recruitment operates as it does and to propose responses that address those market factors directly. It is written with recruitment from Mexico to the United States in mind, but its goal is also to offer insights relevant to other origin and destination corridors that share some of the key features of the Mexico-U.S. setting.[12]

At the core of the paper is the call for an approach that until recently has been little in evidence: reshaping the market for recruitment services by involving the most powerful actors in that system, the employers in destination countries at the top of the labour supply chain. The study finds elements of such an approach in regulatory efforts in the Philippines, the Netherlands, the United Kingdom, and several Canadian provinces and in three agreements negotiated with employers by U.S. agricultural workers' organizations to govern the terms of recruitment for migrant workers further down the chain.

The study draws on these public and private case studies to propose key features of a regime that could—finally—promote forms of recruitment that preserve its important matching functions, but do so at a fair cost that is shared by all of the actors that benefit from labour migration, rather than resting primarily on the backs of recruited workers.

[10] A further obstacle is the lack of coordination between agencies charged with addressing trafficking, those overseeing labour recruitment and migration, and those that enforce labour standards. See, e.g., Judy Fudge, Global Care Chains, Employment Agencies and the Conundrum of Jurisdiction: Decent Work for Domestic Workers in Canada, 23 CAN. J. OF WOMEN IN L. 234, 244-246 (2011); see also Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 68.
[11] See sources cited in footnote 7.
[12] For a review of those key features, see Section V ("Caveats") below.

2. The First Step: Understanding the Structure of the Market for Labour Recruitment

A. How Recruitment Works

The global recruitment business is enormous and growing rapidly.[13] It is also astoundingly complex.[14] While some large companies recruit through internal human resource departments, low-wage workers in legal temporary labour migration programmes are more commonly hired through independent recruitment entities. The industry is made up of a web of moneylenders, notaries, brokers, and sub-agents in remote villages (some of whom are migrants themselves, recruiting for their own employer); recruitment firms in key cities of migrant origin countries and their counterparts in destination countries; and the multi-national agencies that manage most high-skilled recruitment. On arrival, some agencies hand the migrants over to their employer. Others function as staffing companies, leasing workers out to firms in the destination country while remaining the migrants' employer of record.[15]

The abuses perpetrated by unscrupulous labour recruiters—and others in the migration industry[16]—are notorious. Whatever the limits set by law, fees and costs are often much higher than the average annual income in the migrant's origin country, giving rise to a sub-industry of moneylenders offering loans at usurious rates.[17] False promises are commonplace, ranging from misrepresentations about

[13] See, e.g., IOM (Jones), What Works in Recruitment Monitoring, 2015, supra note 7, at 23. ("Since the 1970s the numbers of recruitment agencies and brokers which expedite the international migration process have burgeoned in both Colombo Process Member States (CPMS) and destination states alike. For instance, in Sri Lanka, the number of recruitment agencies has increased five-fold in the twenty years since 1985. In China, the number of agencies has grown from 4 (all large state-owned corporations) at the beginning of the 1980s to over 3000, now a mixture of both state-owned and private, by 2005.") (Citations omitted).

[14] For a useful effort to map that complexity in one corridor, see Centro de los Derechos del Migrante, Recruitment Revealed, supra note 7, at 11-12.

[15] I will refer to labour recruiters as "recruiters" or "agencies," and to the businesses that contract with agencies to obtain a migrant workforce as "employers" or "firms." Although recruitment relationships are complex, there are two basic kinds of global labour providers: recruitment agencies and staffing agencies.

Recruitment agencies recruit workers to fill jobs for firms in other countries. They process migrants' immigration papers and transport them to the location in the destination country where they will work. At that point, they hand the workers over to the firm that will be their employer. The agency is not part of the ongoing employment relationship.

Staffing agencies also generally recruit workers, process their immigration papers, and transport them to the location in the destination country where they will be work. However, the staffing agency is also the migrants' employer. Firms in the destination country pay the agency on an ongoing basis for the provision of labour, rather than having an employment relationship with the migrants directly.

16 For an overview of the concept of a "migration industry," see Ninna Nyberg Sorensen and Thomas Gammeltoft-Hansen, "Introduction," in THE MIGRATION INDUSTRY AND THE COMMERCIALIZATION OF INTERNATIONAL MIGRATION 1 (Thomas Gammeltoft-Hansen & Ninna Nyberg Sorensen eds., Routledge 2013); for that concept applied to the U.S.-Mexico context, see Ruben Hernandez-Leon, The Migration Industry in the Mexico-U.S. Migratory System, CA CTR. FOR POP. RES. (2005), available at http://www.diplomatie.gouv.fr/fr/IMG/pdf/migrationindustry_mexico.pdf.

[17] Much of the fees that migrants report paying to recruiters is in fact dispersed among other actors in the recruitment industry. Recruiters often collect money from migrants to cover a range of legally permitted expenses and mandatory (if illegal) payments to officials, as well as for their own services and profit. I thank Katharine Jones for this observation.

The fees charged to migrants headed for Qatar offers one example of the high costs of labour migration. For a detailed overview of how those fees vary from agency to agency and country to country, see Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 39-44. See also the World Bank's analysis of the Nepal-Qatar migration corridor, finding that the average migrant pays $1216 for recruitment costs, which is 2.5 times the average per capita GDP in Nepal (2009) and 4 to 6

working conditions to outright lies about the existence of a job. Graft is rampant. In the worst cases—particularly, but not only, if the recruitment firm has ties to organized crime—it will use surveillance, threats and ultimately violence to control the workers it transports across borders.[18]

These violations, and the failure of mainstream efforts to control them, are doubly problematic. In the most immediate sense, they harm migrants directly. They also harm the native workers in the sectors where they are employed alongside migrant workers, by making migrants less willing to report an exploitative employer. The debt that recruited workers have incurred to meet recruiters' demands for payment, their knowledge that their relationship with the recruiter will determine their access to work the following year, and their fear of the recruiter's power over their families at home combine to incentivize them to work without complaint no matter what they encounter on the job. In this sense recruitment abuse and employment exploitation are two sides of a coin: the debt and fear created by recruitment abuses are a principal reason why migrants put up with exploitation on the job. These coercive factors are compounded by immigration laws that tie most labour migration visas to a single employer, so a worker who is fired loses her right to remain in the country. From the perspective of an employer seeking a compliant workforce, the subservience that results from these conditions is an added benefit of hiring temporary migrants. From the perspective of both migrants and native workers in overlapping labour markets, it is a challenge to the possibility of obtaining decent work.

B. Why Regulation of Recruitment Often Fails

The existing regulation of recruitment is a patchwork with many holes. Unlike other transnational systems such as trade, no international authority systematically enforces standards for labour migration.[19] The ILO Private Employment Agencies Convention (No. 181, 1997) and accompanying Recommendation (No. 188, 1997) sets parameters for recruitment.[20] The 2014 ILO Forced Labour

times the monthly salary a migrant construction or service worker will earn in Qatar. World Bank, The Nepal-Qatar Remittance Corridor: Enhancing the Impact and Integrity of Remittance Flows by Reducing Inefficiencies in the Migration Process, at 10 (2011), available at http://issuu.com/world.bank.publications/docs/9780821370506/27#/signin. By contrast, Manolo Abella and Philip Martin interpret the preliminary results of their recent study to demonstrate that "[m]igration costs are less than one month's foreign earnings for most low-skilled migrant workers in Korea, Kuwait, and Spain," although "[t]here is significant variation in worker-paid migration costs within and across corridors." MANOLO ABELLA & PHILIP MARTIN, MEASURING RECRUITMENT OR MIGRATION COSTS: A TECHNICAL REPORT FOR KNOMAD (May 4, 2014), at 2 (draft on file with author).

[18] See sources cited in footnote 7.

[19] The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, U.N. Doc. A/RES/45/158 (Dec. 18, 1990), protects a wide array of migrant rights, but it has not been ratified by any major destination country. For list of countries that have ratified the Convention, see https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en.
ILO Conventions 97, Migration for Employment (Revised 1949) and 143, Migrant Workers (Supplementary Provisions) (1975), also contain provisions addressing international cooperation on issues of labour migration. The ILO Multilateral Framework on Labour Migration is an important non-binding initiative in this arena.

[20] Private Employment Agencies Convention No. 181, 85th ILC Sess., June 19, 1997, U.N. ILO, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326. While Article 7.1 of Convention 181 prohibits recruitment fees, Article 7.2 permits signatory governments to make allow fees for some types of workers and recruitment-related services. However, exceptions to the provision of Art. 7.1 for to certain categories of workers have to be "in the interest of the workers concerned, and after consulting the most representative organizations of employers and workers."

Protocol and its accompanying Recommendation emphasizes the importance of combatting abusive and fraudulent recruitment of workers as a critical part of the effort to prevent forced labour.[21] Yet while the ILO does critically important work promoting these and other labour standards around the world, it is the responsibility of Member States to ensure compliance with them.

Destination country governments have historically paid little attention to routine problems with recruitment, which usually occur outside of their sight and beyond their jurisdiction. What efforts to regulate recruitment destination countries have launched have largely been confined to the worst or the best actors. With regard to the low road, a number of governments have focused on catching traffickers and organized criminals who recruit migrants into situations of forced labour. Meanwhile, on the high road side, international organizations and non-governmental organizations mainly in destination countries have launched or are developing voluntary codes of conduct/certification schemes, inviting brand-sensitive transnational companies to sign on to a set of principles to govern recruitment in their supply chains.[22]

It is essential to combat criminal recruitment agencies, and voluntary initiatives may influence the top of the market. It is the core contention of this paper, however, that the vast majority of abuses suffered by most migrant workers in the process of recruitment are committed by labour recruiters in the middle expanse of the continuum. These recruiters and their agents, large and small, are neither angels nor devils, but business people responding to market incentives. Most of them do whatever is permitted—as in "actually allowed to happen in the context in which they operate," not necessarily in the sense of "permissible according to the law"—to make as much money as they can.

It is in migrant origin countries that recruitment for temporary labour migration takes place, and it is there that most efforts to regulate its everyday functions are located. Governments of some origin countries have demonstrated creativity and persistence in their efforts to bring the recruitment market under control. From Bangladesh to Ethiopia, Cambodia to Indonesia, common approaches include: registration or licensing programmes that require a recruiter to demonstrate a certain level of annual income, numbers of workers placed, and/or personal or professional qualifications in order to enter the recruitment market; bonding to ensure against abuses; a ban on charging workers any amount or more than a set limit; and, denial of permission to depart the country unless the migrant can show a

[21] Protocol of 2014 to the Forced Labour Convention, 1930 available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_248900.pdf; accompanying Recommendation available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_248908.pdf. Article 2 of the Protocol contains the provision on recruitment, and Supplementary Measure 8 of the accompanying Recommendation makes specific proposals for state action to combat fraud and abuse in recruitment.

[22] Examples include: the IOM IRIS project (http://iris.iom.int/), Verite and ManpowerGroup's "An Ethical Framework for International Labour Recruitment" (http://www.verite.org/ethical-framework-for-intl-recruitment), The Dhaka Principles of the Institute for Human Rights and Business (http://www.dhaka-principles.org/), and the Alliance for Ethical International Recruitment Practices (http://www.fairinternationalrecruitment.org/index.php/). For a discussion of voluntary multi-stakeholder initiatives in the recruitment arena, including IRIS, see Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 103-109.

contract with her future employer that complies with required terms.[23] A few origin countries seek to channel recruitment through the government.[24] Others, such as the Philippines, which has been a leader in many aspects of migration governance, have created entire agencies devoted to the registration, licensing and oversight of private recruitment agencies, and to monitoring and redressing problems migrants encounter in the recruitment process.[25]

Yet even the most extensive origin country government initiatives have faced significant obstacles to success that go beyond often mentioned issues of capacity and corruption. Labour recruitment is difficult to regulate because of the structure of the industry. Like many other industries where subcontractors flourish, it has low barriers to entry, minimal capital requirements and often no need for fixed offices, making it a breeding ground for fly-by-night firms.[26] If origin countries require recruitment firms to register, they must acknowledge the reality that registered recruitment companies are the tip of the iceberg in a complex labour supply chain made up of sub-agents.[27] Untouched by regulation, but critical to the migration industry, are the many local actors at the bottom of the chain whose status and trust within their communities in remote areas makes them invaluable as brokers who can deliver migrants, and their fees, to the agency at the top.[28]

Origin country governments are often in the position of having to legislate as if labour migration were a local process rather than a transnational one. They have no jurisdiction over the employers in destination countries who drive the demand side of the recruitment market, and therefore no capacity to require those employers to obey any laws they make about maximum fees or the use of licensed recruitment firms. In many cases, their government counterparts in destination countries have not

[23] See U.N.D.P., Guiding the Invisible Hand; see also Clare Waddington, International Migration Policies in Asia: A Synthesis of ILO and Other Literature on Policies Seeking to Manage the Recruitment and Protection of Migrants, Facilitate Remittances and Their Investment, ILO (2003); Guide to Private Employment Agencies: Regulation, monitoring and enforcement, ILO (2007), available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/instructionalmaterial/wcms_083275.pdf.

[24] For examples, see Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 16-18, 55.

[25] See Section IV(A)(3) below.

[26] Philip Martin, Merchants of Labor: Agents of the evolving migration infrastructure, ILO (2005), at 14; Manolo Abella, The role of recruiters in labour migration, in INTERNATIONAL MIGRATION PROSPECTS AND POLICIES IN A GLOBAL MARKET 201, 203 (Douglas Massey & J. Edward Taylor eds., 2004 Oxford University Press). Although some countries have set minimum capital requirements to spur the establishment of more stable recruitment firms, and others require that recruiters maintain a fixed office, the common practice of contracting with agents and brokers re-creates the same problems lower down the contracting chain. See Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 56-62; Piyasiri Wickramasekara, Labour migration in South Asia: A review of issues, policies and practices, ILO (2011), at 12.

[27] For examples of the labour supply chain in Qatar's sending countries, see Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 56-62. For discussion of sub-agents in Nepal, see Paoletti et al., Migrant Workers' Access to Justice, supra note 7, at 59-62, 80, 150-151, 159-160; Eleanor Taylor-Nicholson et al., Labor Migration Agents: Regulation, Accountability and Alternatives, POLICY BRIEF (June 2014), available at http://www.ceslam.org/docs/publicationManagement/CESLAM%20Policy%20Brief%205.pdf; in Indonesia, see Farbenblum et al., Migrant Workers' Access to Justice, supra note 7, at 150-151. Nepali law makes recruitment firms liable for the abuses of their sub-agents, but this provision is not enforced. See Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 65, 69.

[28] For a study of such brokers in one region of Indonesia, see Johan Lindquist, The Elementary School Teacher, the Thug and his Grandmother: Informal Brokers and Transnational Migration from Indonesia, PACIFIC AFFAIRS, March 2012. Nepal is one country that has attempted to regulate such brokers, but the regulation is not enforced. Paoletti et al., Migrant Workers' Access to Justice, supra note 7, at 80, 150-151, 159-160.

regulated recruitment at all, except in extreme cases of human trafficking. In others, destination country rules on recruitment are in conflict with origin country regulations, creating loopholes that recruiters can enlarge into chasms.[29]

Some origin country governments have invested heavily in pre-departure education to counteract the problems that accompany labour migration. But the timing of such sessions, and their emphasis, does little to provide the worker with tools that can be used in the event of mistreatment. In sessions that usually occur only after recruitment fees and costs have been paid and a job arranged, migrants learn from government officials, contractors (often recruiters), or non-governmental organizations about cultural expectations and their responsibilities on the job, with less if any emphasis on rights and mechanisms to access them.[30] While beefing up the rights education component of such sessions is important, even the best pre-departure education can only be effective as an antidote to recruitment and employment abuse if a) it occurs at a point in the migration process when the worker has not yet paid a recruiter and been given a job, and b) is provided to workers who will have the power, the protection from retaliation, and the institutional support necessary to actually exercise the rights about which they learn. Neither condition prevails in most contexts.

The primary factor shaping the market for recruitment is the often vast difference between the wage that a migrant can earn at home and that available to her in a destination country. In the United States, Mexican workers can earn four to nine times as much as they could at home, depending on the method of calculation;[31] for Bulgarian workers migrating to the Netherlands, the ratio is nine to one;[32] for a worker from Viet Nam in the Republic of Korea, it is between ten and 16 to one.[33] This difference is sometimes called the "wage wedge." From the perspective of many in developing

[29] The United States requires that employers hiring workers through several low-wage temporary work programmes contractually prohibit their recruiters from charging fees to migrants. See 20 C.F.R. § 655.135(k); 20 C.F.R. § 655.135(j); 20 C.F.R. § 655.22(g)(2). However, the law has large loopholes. For example, to prevail against an employer, the US Department of Labor must be able to demonstrate that the employer continued to work with the recruiter after learning of its violations. Employers can escape liability by reporting its discovery of the unauthorized charges to USCIS within two days. See 8 C.F.R. § 214.2(h)(6)(i)(B)(4). The law does not appear to have impeded recruiters from charging fees to migrant workers headed for the United States. See, e.g., CDM Picked Apart, at 14; GLOBAL WORKERS JUST. ALLIANCE, Visas, Inc., supra note 7, at 83.
Meanwhile, the United States has no requirement that employers work with recruiters whose operations obey the laws of the origin country where recruitment occurs. For examples of the resulting conflicts, see, e.g., GLOBAL WORKERS JUST. ALLIANCE, Confiscation of Property Titles in Guatemala, supra note 8.

[30] For the description of such processes and critiques of their failure to emphasize rights, see Paoletti et al., Migrant Workers' Access to Justice, supra note 7, at 146-148 (Nepal); Farbenblum et al., Migrant Workers' Access to Justice, supra note 7, at 48-51 (Indonesia); Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 113-118 (Qatari sending countries).

[31] The difference in estimates depends on the methodology used. The 4:1 ratio is from Jus Semper's Purchasing Power Parity (PPP) analysis of wages in the manufacturing sector: http://www.jussemper.org/Resources/Labour%20Resources/WGC-AEM/Resources/WagegapsMexAEM.pdf. The 9:1 ratio is from the OECD's data on 2013 minimum wage rates: http://stats.oecd.org/Index.aspx?DataSetCode=RMW.

[32] Eurostat table on minimum wages adjusted for PPP in EU countries, available at http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/dataset?p_product_code=TPS00155 (9:1 figure is from 2013).

[33] U.N. World Bank, Migration and Remittances: Recent Developments and Outlook, 22 MIGRATION AND DEVELOPMENT BRIEF (Apr. 11, 2014), at 15, available at http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief22.pdf.

countries, a job abroad and the higher income the wage wedge brings is the only way to support a family, fund a small business, pay for children's education, or allow—some distant day—for retirement back home.[34] It is not surprising, then, that the number of would-be migrants around the world far exceeds the number of visas available for temporary work in destination countries. Competition for temporary jobs abroad is fierce.

Recruiters represent the principal route to these scarce and lucrative jobs, and migrants are forced to pay large sums of money to gain access. Functionally, as migration scholar Manolo Abella has declared, "What the recruiter gets is not a fee for recruitment services per se, but a bribe for the jobs that he or she offers."[35] A more appropriate label might be "extorted payment".[36] The price a migrant is willing to pay depends on what she believes her earnings and benefits will be. Knowing this, recruiters may make inflated (if not outright false) promises about the work they offer, targeting would-be migrants with the least capacity to assess the realism of their claims and using sub-agents to allow them to pretend ignorance of the fraud.

Indeed, every actor in the migration industry has a hand out to claim a piece of the wage wedge, from the broker at the village level to the bus driver who takes the migrant to the capital to the government official at the airport. Because low-wage global labour recruitment is so inadequately regulated, much of the increased wages that migrants stand to earn by leaving their home countries goes instead to these gatekeepers who are in a position to demand up-front payment.

Origin governments have little power to address the market-shaping reality of the vast imbalance in the global distribution of wealth and the limited number of destination country jobs available to authorized migrants. Efforts to regulate labour recruiters are routinely defeated by the reality that, from the recruiter's perspective, the likelihood of reaping large sums by violating the law far outweighs the penalty in the unlikely event of detection and punishment. For example, many migrant-sending governments have restricted fees to a percentage of expected salary, or banned them altogether.[37] As a result, recruiters may increase what they charge for a range of services related to the recruitment process, without ever specifying a "recruitment fee;" informalise the fee process by making clear that a cash bribe is necessary to reserve a spot; or charge employers rather than workers,

[34] See Douglas S. Massey, International Migration at the Dawn of the Twenty-First Century: The Role of the State, 25 POP. & DEV. REV. 303, 305 (1999).
[35] Abella, The role of recruiters in labour migration, at 203.
[36] Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 30.
[37] For example, Sri Lanka's fee ceiling is 2 months of the destination country wage; the Philippines' is 1 month (with no fees permitted for domestic workers); Nepal allows charges of up to 6 months salary for migrants bound to the Republic of Korea, the United Kingdom, Hong Kong, and Afghanistan. See Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 57. Mexico bans fees entirely. See, e.g., Ley Federal de Trabajo, Art 14, Section II; Art. 539-D; 57 STPS Agency Regs, Art. 10, I.
Almost all worker advocates call for complete bans on charges to migrants for recruitment services. Beyond the human rights undergirding for this position, a compelling pragmatic reason for an outright prohibition on charging migrants for recruitment services is that it is easier for governments to enforce than a minimum fee provisions. Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 121.

well aware that the employers will take the money from migrants' wages on arrival.[38] The market, driven globally, overwhelms one-sided efforts to regulate it locally.

In response to the difficulty of unilateral regulation of a transnational system, many origin countries have sought bilateral agreements with destination governments that set terms for temporary labour migration.[39] While a number of agreements have been signed, and some of those include recruitment and employment standards, such documents are largely intended to open markets to new migration flows rather than to protect workers. Most are drafted and negotiated with no representation of trade unions, non-governmental organizations, or employer associations.[40] Not surprisingly, then, such agreements have rarely been the springboard for actual coordination of enforcement, much less measurable improvement in conditions. The title of a recent study of India's bilateral migration agreements by long-time migration expert and former ILO Migration Specialist Piyasiri Wickramasekara offers an apt description of their effectiveness in most other contexts as well in his paper entitled "Something Is Better than Nothing."[41] There are also major destination nations such as the United States and many Gulf States that are reluctant to negotiate bilateral accords at all.[42]

Perhaps the most powerful impediment to effective regulation of recruitment from the origin country government perspective, however, is a fundamental reluctance to imperil the income generated by migrant remittances.[43] Income from migrants is essential to keeping many origin country economies afloat. According to the World Bank, in 2013 worldwide migrant remittance flows to developing

[38] Regarding bribes, see Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 29, 44-50; Abella, The role of recruiters in labour migration, at 207; and Martin, Merchants of Labor, at 17 (regarding failures of POEA regulation of fees). Regarding charging ERs instead, see Agunias MPI 9/2013, at 4. On double-dipping (charging both workers and employers), see Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 34-35.

[39] For an overview of Bilateral Labour Migration Agreements in OECD countries, see Daniela Bobeva & Jean-Pierre Garson, Overview of Bilateral Agreements and Other Forms of Labor Recruitment, ORG. FOR ECON. COOP. AND DEV., MIGRATION FOR EMP.: BILATERAL AGREEMENTS AT A CROSSROADS 11-12 (2004); within North and Central America, see Ancheita Pagaza & Bonnici, Quo Vadis?, supra note 7; between India and its migrants' destination countries, see Piyasiri Wickramasekara, Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers Through Bilateral Agreements and Memoranda of Understanding, GLOBAL MIGRATION POL'Y ASSOCIATES (Feb. 1, 2012) [hereinafter Wickramasekara, Something is Better than Nothing]; between Nepal and its migrants' destination countries, see Paoletti et al., Migrant Workers' Access to Justice, supra note 7, at 88; overall, see Jennifer Gordon, People Are Not Bananas: How Immigration Differs from Trade, 1004 NW. U. L. REV. 1109, 1126-28 (2010) [hereinafter Gordon, People Are Not Bananas].

[40] See generally Gordon, People Are Not Bananas, supra note 41; Wickramasekara, Something is Better than Nothing, supra note 41; Jones, What Works in Recruitment Monitoring (draft), supra note 7.

[41] See generally Wickramasekara, Something is Better than Nothing, supra note 41.

[42] Regarding the United States, see Gordon, People Are Not Bananas, supra note 41, at 1127. Regarding Gulf States, see Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 3.

[43] For specific examples of how this conflict plays out, see RODRIGUEZ, MIGRANTS FOR EXPORT, Chapter 6 (describing and analyzing the Philippines government's response to an incident with Filipino migrants to Brunei); Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 118–120.

This fear is realistic. Recently, when the Philippines and Sri Lanka raised the minimum wage for their migrant domestic workers abroad to $400 per month, recruiters supplying domestic workers to the Gulf States turned instead to less-regulated Bangladesh for new hires. Personal communication from Katharine Jones to author (July 27, 2014 8:57AM) (on file with author), based on her research for forthcoming ILO paper. In the 2000s, a similar shift occurred in recruitment from Filipina to Indonesian care workers when the Philippines increased its mandatory pay and working conditions for its nationals abroad. See NICOLE CONSTABLE, MAID TO ORDER IN HONG KONG: STORIES OF MIGRANT WORKERS, at 86-88 [hereinafter Nicole Constable, Maid to Order in Hong Kong]; Hsiao-Chuan Hsia, Transnationalism from Below: The Case Study of Asian Migrants Coordinating Body, at 4-5, 8-9 (July 2007) (unpublished paper presented at the 15th Int'l Symposium of the Int'l Consortium for Soc. Dev., H.K.), available at http://www.apmigrants.org/papers/Transnationalism_fr_below.pdf.

countries reached an all-time high of $404 billion.[44] In El Salvador, remittances make up 16.5 per cent of GDP;[45] in Nepal the number is 25 per cent, and in Tajikistan it is 52 per cent.[46] Origin country governments do not want to create conditions that might make their citizens more expensive to hire, leading employers in destination countries to turn instead to other nations whose migrants will work for less.[47] With so much at stake, the incentives are great for origin country officials to look the other way when recruiters violate the law.

C. Subcontracting: A Key Structural Factor in the Market for Recruitment

Most conversations about the problems underlying the "ungovernability" of labour migration focus on the wage wedge. Much less discussed, but at least as important, is the subcontracted structure of the global market for the supply of workers.

Except in the cases where a large firm does its own recruiting, most employers of migrants from abroad contract with an outside agent to do their recruitment.[48]

[44] See U.N. World Bank, Migration and Remittances: Recent Developments and Outlook, supra note 35, at 2.
[45] D'Vera Cohn et al., Remittances to Latin America Recover—but Not to Mexico, PEW RESEARCH CENTER, at Table 1, p. 7 (Nov. 2013), available at http://www.pewhispanic.org/files/2013/12/Remittances_11-2013_FINAL.pdf.
[46] For data on Nepal and Tajikistan, see Press Release, World Bank, Remittances to developing countries to stay robust this year, U.N. Press Release 2014/436/DEC (Apr. 11, 2014), available at http://www.worldbank.org/en/news/press-release/2014/04/11/remittances-developing-countries-deportations-migrant-workers-wb.print.
[47] For an example of such a reaction, see Nicole Constable, Maid to Order in Hong Kong, supra note 45.
[48] Sitting between these two arrangements is the situation where an employer designates a migrant who works for it as a recruiter. Such migrants may or may not be paid extra by the employer for playing that role, but they often enjoy privileges such as access to the most desirable work during the season, and they reap considerable rewards back home, including the ability to charge under the table for access to work and to distribute jobs to friends and family members. Author's interview with Joba Reyes & Olivia Guzmán, Coalición de Trabajadores y Trabajadoras Temporales de Sinaloa; Alejandra Ancheita and Atzin Acevedo Gordillo, Proyecto de Derechos Económicos, Sociales, y Culturales (ProDESC).

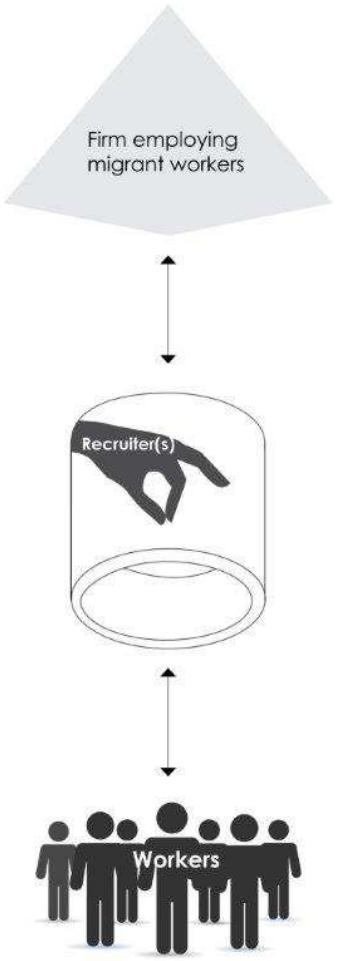

Figure 1: The Basic Labour Supply Chain

This employer-recruiter contracting relationship sits in the middle of a complex network of subcontracting arrangements. Frequently, the migrant's direct employer in the destination country is in turn a business whose goods or services are provided to another firm, which may in turn be serving a third firm, and so on all the way to an end user at the top, which made the decision to deliver its product or service through such a structure. I will refer to this as a product or service supply chain.

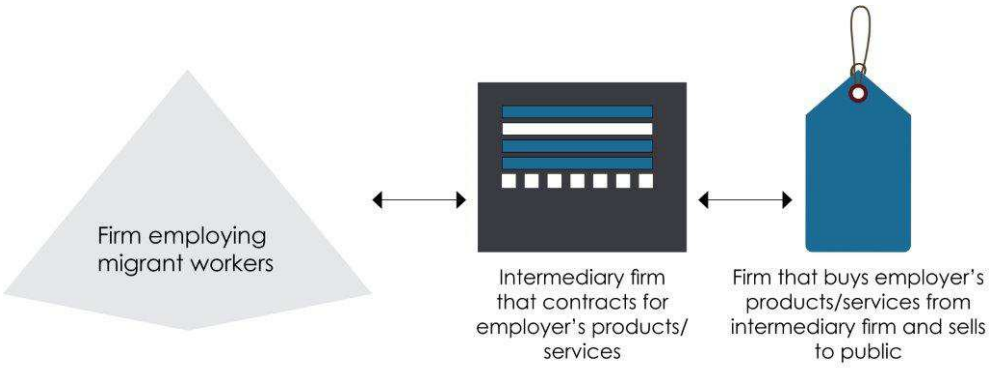

Figure 2: The Basic Product/Service Supply Chain

Meanwhile, the recruitment firm manages a network of sub-agents who stretch its reach into far-flung rural areas and offer ancillary services like moneylending, transportation, and a place to stay along the journey. Alternatively, the employer may use one of its lead migrant workers as a recruiter. I will refer to this as the labour supply chain.

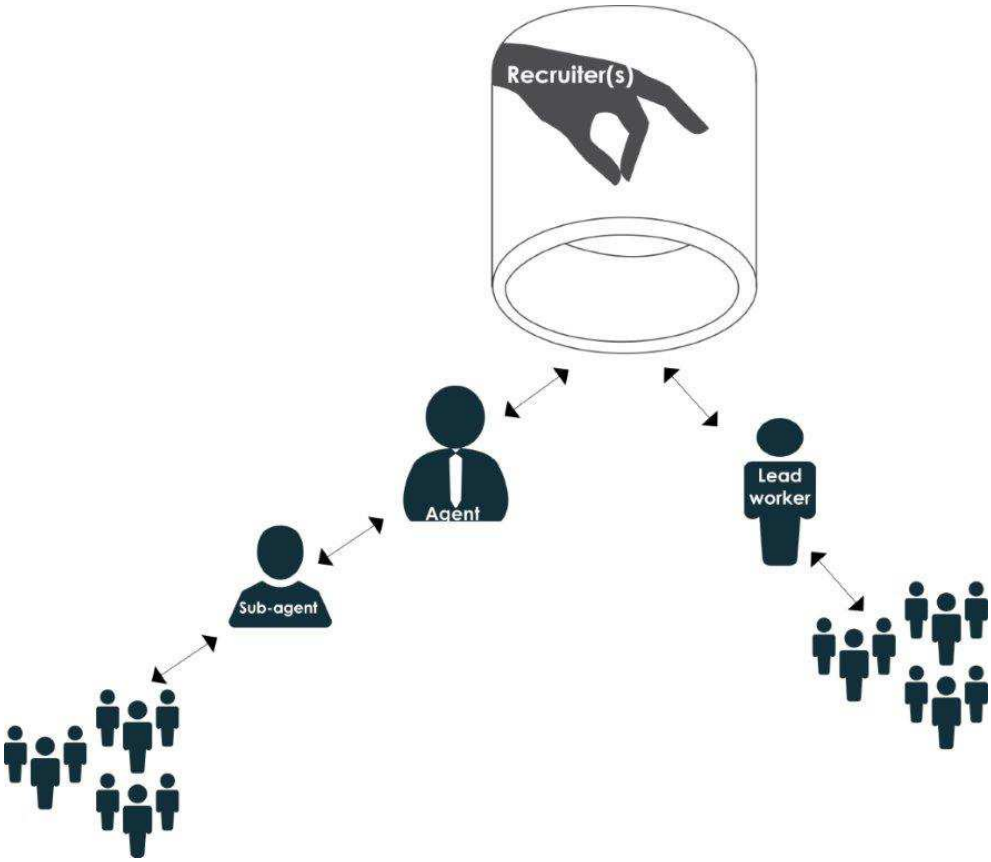

Figure 3: The Complete Labour Supply Chain

Looking at the system as a whole, its complexity becomes clear. A product or service supply chain may be fed at multiple levels by different labour supply chains.

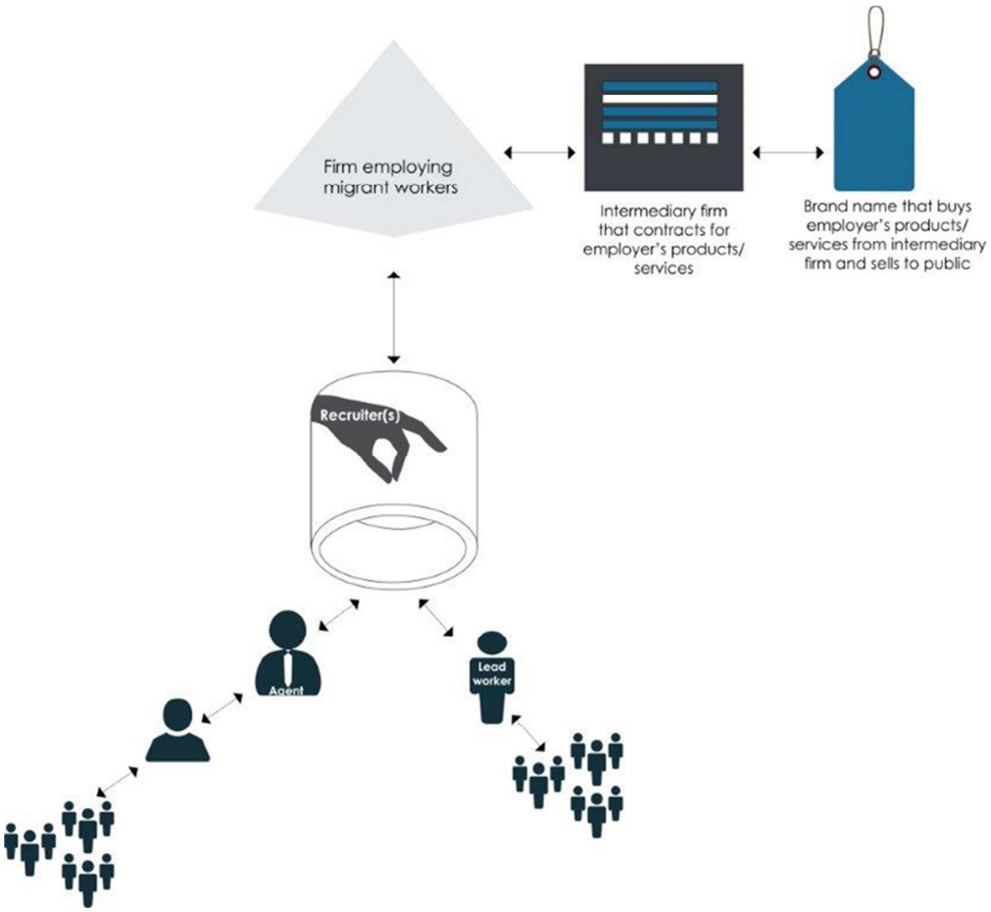

Figure 4: Integrated Labour and Product/Service Supply Chains

In most jurisdictions, law excuses the actors at the top of the chain from responsibility for the violations that take place lower down, even though those abuses reduce labour costs and deliver greater profits. This is equally true in product/service supply chains, where with some notable exceptions only direct employers are generally liable for workplace violations,[49] and in labour supply

[49] For a review of existing joint liability employment laws, such as the Hot Goods provision of the Fair Labor Standards Act—and a call for more enforcement of existing such laws and the creation of new ones—see Catherine Ruckelshaus et al., Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work, NAT'L EMP. L. PROJECT (2014), at 33-38 [hereinafter Ruckelshaus et al., Who's the Boss]; David Weil, Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division, BOS. U. (May 2010), available at http://www.dol.gov/whd/resources/strategicEnforcement.pdf.

chains, where only recruiters are generally liable for violations in the process of matching employers and workers.[50]

A hypothetical example illustrates the problem well.

Imagine Apple Fresh, an apple cider maker in Washington State. Apple Fresh owns an orchard and, in its first decade, controls the apple harvest and all aspects of cider production, from hiring the pickers to pressing the juice to storing the finished beverage and selling it at farmer's markets and local stores. Like all employers, Apple Fresh is responsible for ensuring that its employees' wages, benefits, and working conditions comport with legal and contractual minimums. It must also pay social security premiums on its employees' behalf and cover their unemployment and workers compensation insurance.[51]

In its second decade, Apple Fresh begins to expand beyond the local market, selling its cider to large grocery chains. It is under continual pressure from those retailers to make its cider supply more predictable and to reduce its prices. As part of its effort to meet those demands, Apple Fresh decides to outsource the pressing of its apples to a food processor, Presser Inc., which can produce the cider more cheaply and efficiently. Once it signs a contract with Presser Inc., Apple Fresh is released from responsibility for the social insurance and many of the working conditions of the workers who press its apples, because it is no longer their employer. Now those obligations are born by Presser Inc. Of course, the contract price is supposed to reflect Presser's costs for fulfilling those obligations. But since, like most businesses in production chains, Apple Fresh sought bids for its pressing contract and favoured low bidders, Presser had an incentive to cut corners on wages and workplace laws in order to get the job. Presser Inc.'s employees protest the way they are paid and treated, and it has a high turnover rate, but it is able to meet its commitment to Apple Fresh in the first year of the contract and earn a slim profit. Meanwhile, Apple Fresh has reduced its costs, and continues to reap income as before from the sale of its brand name cider.

In year two of the contract, Presser decides to try to decrease turnover and increase its profit margin by using temporary migrant workers to staff its plant. Its owner had been contacted not long before by the U.S. agent of a labour recruitment firm in Mexico City to discuss the advantages of temporary migrant workers. Presser's human resources department calls the agent and asks him to begin the recruitment process. He in turn contacts the firm in Mexico City, which has sub-agents in a Mexican state capital, who in turn work with other sub-agents in rural areas to sign up would-be migrants. By the time the migrant workers have arrived at Presser's plant, they owe high-interest lenders over three

[50] For exceptions—and a call for more—see Section IV of this paper.
[51] Many states exempt farm employers from the mandate to provide workers compensation insurance for job-related illnesses or injuries, but Washington State is not one of them. See Employers' Guide to Workers' Compensation Insurance in Washington State, WASH. ST. DEP'T OF LAB. & INDUSTRIES (July 2013), at 2, available at http://www.lni.wa.gov/IPUB/101-002-000.pdf.

months' salary to pay back the loans they took out to meet the demands for payment along this chain of recruiters. All of these charges are all in violation of Mexican law, but none of Presser's recruiters have been penalized, both because the law is rarely enforced, and because the principal recruitment firm blames unauthorized labour recruiters for the violations.[52]

The migrants are well aware that to make good on their loans and begin to earn the money their families back home are expecting, they must not displease their supervisors at Presser. If the migrant workers do complain, and are fired, they are immediately subject to deportation, because their visas are valid exclusively to work for Presser. In that sense, Presser, Inc. can rely on U.S. government enforcement of immigration law as an additional mechanism of control over its labour force. With their debt and the fear of deportation foremost in their minds, the migrants at Presser work hard and make no demands, despite their concerns about safety and treatment. Presser's productivity and profits rise with this new staff of subservient workers.

When the law releases Presser Inc. from liability for the actions of labour recruiters that provide it with indebted workers, it allows Presser—and Apple Fresh—to shed costs and increase profits without paying the price for the means through which these benefits come to them. Their lack of responsibility is problematic since both Presser and Apple Fresh have actively chosen to subcontract aspects of their business *because of* pressure from the actors above them in the supply chain, and the way that the combination of private contracting arrangements and public laws about immigration control and the legal liability for the treatment of migrants and workers allow them to benefit from the decision to outsource a firm function, without bearing the true cost.

That cost does not disappear into the ether. It is passed down the chain until it lands on the workers at the bottom. The U.S. workers who protest by refusing to take the very worst jobs become unemployed. The only people who will replace them are those from a lower-income country who measure the value of the job in the United States against one at home, and see in that equation a route to getting ahead in the long term—a goal only possible when dangerous work and a low salary by U.S. standards pays off in a place where the dollars go much further.[53]

[52] The Mexican human rights organization ProDESC has recently broken new ground by convincing the Mexican government to inspect a recruitment agency for the first time, resulting in an administrative fine for multiple violations. A criminal case for fraud is pending. For a description of how this came about, and particularly of the role of migrant workers themselves in demanding accountability from the Mexican government, see Jennifer Gordon, Roles for Workers and Unions in Regulating Labor Recruitment in Mexico (forthcoming 2015).

[53] See Robin Lenhardt & Jennifer Gordon, Rethinking Work and Citizenship, 55 UCLA L. REV. 1161, 1212-1213 (2010).

3. The Argument for a Joint Liability Approach to Regulating Recruitment

At the same time that subcontracting is an impediment to direct regulation of recruiters, it also offers new and largely untapped opportunities for intervention. Renewing a discussion with a long history in highly subcontracted settings such as agriculture and construction, several scholars and advocates have recently called to apportion legal responsibility in product or service supply chains so that it tracks the way power is distributed in those chains, increasing as one moves up toward the end user.[54] It is the firm at the top of the chain that makes the decision to structure its enterprise through subcontracting relationships, usually because such a structure allows the firm to lower its costs and risks. These savings are largely the result of the firm's transfer of risk and legal liability for employment to its subcontractors, the lower wages and costs it achieves by putting jobs out to bid, and its release from obligations to pay benefits.[55] At the same time, the firm retains functional control over the key aspects of work it has contracted out to other companies, because it has the power to dictate their processes and fire them if they fail to meet its standards. Where control flows down the product/service supply chain from the firm at the top, and financial benefit flows up to it, the argument goes, some form of liability for the payment and treatment of the workers who make the profits possible should follow.

Recent proposals by the National Employment Law Project and Professor Mark Barenberg, among others, argue that the actors best positioned to change the incentives of subcontractors are the range of entities above them in the product or service supply chain.[56] Building on the history of efforts to address abuses by subcontractors in industries long structured that way, such as garment production and agriculture, they contend that when end users face a high likelihood of meaningful penalties for

[54] See Ruckelshaus et al., Who's the Boss, supra note 52, at 38-40; Jeremias Prassl, Insourcing Responsibility: A Functional Notion of the Employer, NAT'L EMP. L. PROJECT (2014) available at http://nelp.3cdn.net/100101adf5769a9ca9_arm6ivozh.pdf; Mark Barenberg, Employer Responsibility Act: Model Legislation [hereinafter Mark Barenberg, Employer Responsibility Act] (draft on file with author).
These proposals have been spurred by a rise in subcontracting and other structures that distance the end user from responsibility for the employment of workers such as franchising and misclassification of employees as independent contractors across industries. They are rooted in the examination of past strategies in industries with longstanding traditions of subcontracting, including agriculture, garment, and construction. For a particularly interesting examination of joint liability in the garment industry, see Mark Anner et al., Towards Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks, COMP. LAB. L. AND POL'Y J. 35, 1: 1-43. Although this work has focused on joint liability in service and product supply chains, rather than the global labour chain, the experiments it analyses, and the new strategies it proposes, have much to offer to a discussion on approaches to regulating labour recruitment. There are meaningful differences between the subcontracting of production or services and the subcontracting of labour recruitment, but there is also significant overlap (including complete convergence where staffing agencies both recruit workers and remain their legal employers in subcontracted settings). In the future I hope to undertake a more in-depth analysis of how the context of global labour supply and the subcontracting of production and services converge and divergence, and how lessons learned in one can inform the other.
[55] For a literature review confirming the predominance of these factors in the decision to contract with a staffing agency, see Coe et al., The Business of Temporary Staffing, supra note 9, at 1058-1060, 1066.
[56] Ruckelshaus et al., Who's the Boss, supra note 52, at 38-40; see also Mark Barenberg, Employer Responsibility Act, supra note 57.

recruitment violations through some form of joint and several liability,[57] they will drive changes in the market for subcontractors, shifting their incentives and behaviour as a result.

The justification for applying this approach to the labour supply chain follows that elaborated in the product/service context. As the hypothetical Apple Fresh/Presser example illustrates, when an employer decides to outsource its recruitment function, it reduces its costs while retaining functional control. Presser, Inc. has the power to correct the problems in its recruitment chain by changing recruiters or demanding more of its current one, and by paying more to cover the actual price of its decisions. Likewise, Apple Fresh has the power to address the working conditions at Presser *and* the recruitment issues in Mexico, because it retains the ability to switch processors or demand that Presser use a different recruitment firm. And the lead recruiter in Mexico has the power to bring its labour supply chain under control. It is both fair and effective to align that power with legal responsibility.

[57] Generally, under joint and several liability schemes in the employment context, the direct employer and other actors that have the ability to prevent the legal violation or harm in question may each be held responsible and sanctioned for it. In most cases, a victim may seek damages from any one of the involved parties.

4. Joint Liability Approaches: Case Studies

Few firms will voluntarily change behaviour that is advantageous to them. This is the problem with initiatives that invite employers to use a particular set of certified recruiters without creating meaningful penalties for not doing so. A successful effort to make employers take responsibility for the actions of their recruiters requires some form of pressure that creates negative market consequences for the employer's previously profitable behaviour of distancing themselves from the actions of their recruiters. This pressure can come from a law, or from another source—most often protest from consumers and workers.

To be successful in changing the behaviour of employers and recruiters, a joint liability approach must involve strong positive incentives for compliance and consequences for non-compliance, imposed swiftly and consistently. When targeting employers, these incentives and penalties must have enough economic impact to change the business calculations of the firms at the top of the chain, so that they will demand compliance from their recruiters, re-shaping the recruitment market. And the intervention must function across borders, closing the jurisdictional gaps and loopholes that have characterized uncoordinated unilateral efforts to regulate recruitment to date.

In the United States, advocates have begun to integrate efforts to hold employers liable into other strategies for addressing recruitment abuses. The International Labour Recruitment Working Group has proposed that penalties against employers for some recruitment abuses be incorporated into federal immigration reform bills and in state legislation as well, as have many of its member organizations in their individual work.[58] Lawyers for temporary migrant workers have asked courts to impose more responsibility on employers for paying recruitment costs, arguing that the recruiter was acting as the employer's agent and/or that the charges were for the benefit of the employer, rather than the worker.[59] The National Guestworker Alliance (NGA), in particular, has put joint and several

[58] See the "Employer Accountability" principle in ILRWG, The American Dream Up for Sale, supra note 7, at 6. The ILRWG has supported the inclusion of joint and several liability for employers that use recruiters at the federal and state level. ILRWG advocated strongly for California's Foreign Labor Recruitment Law, S.B. 477, 2013-4 Sess (Cal. 2013) available at http://legiscan.com/CA/text/SB477/2013, which passed in late 2014. As of July 1, 2016, the law mandates that foreign labour recruiters register with the California Labor Commissioner and disclose all terms of employment, and bars recruiters from charging workers for their services. Employers that use registered recruiters are protected from liability for the recruiter's violations of the law. See also ILRWG's statement on recruitment proposals in the Senate bill S. 744 during the comprehensive immigration reform debate in the U.S. Senate in 2013, available at http://fairlaborrecruitment.files.wordpress.com/2013/06/senate-bill-ilr-2-pager-7-17-2013.pdf. Centro de los Derechos del Migrante has used political pressure to move employers to take action to address recruitment abuses in the Maryland crab industry. Author's interview with Rachel Micah-Jones, Executive Director, CDM (July 30, 2014). The Global Workers Justice Alliance has argued for mandating transparency in the recruitment supply chain, see Why Transparency in the Recruiter Supply Chain is Important in the Effort to Reduce Exploitation of H-2 Workers: A Global Workers Justice Alliance Position Paper, GLOBAL WORKERS JUST. ALLIANCE (Sept. 2011), available at http://www.globalworkers.org/sites/default/files/recruiter_supply_chain_disclosure_gwja_sept_2011.pdf.

[59] See, e.g., En Banc Brief for Secretary of Labor as Amici Curiae, Castellanos-Contreras, et al. v. Decatur Hotels, LLC et al., 622 F.3d 393 (5th Cir. 2010) (No. 06-4340) (arguing that recruitment fees are primarily "for the benefit or convenience of the employer" and therefore employees on H-2B visas charged for such fees should be able to recoup them as a deduction from wages under the Fair Labor Standards Act). Arguments as to why employers should be held liable under FLSA for recruitment fees have met a mixed reception in court. See, e.g., Arriaga v. Fla. Pac. Farms, L.L.C., 305 F.3d 1228 (11th Cir.

liability at the forefront of its efforts to address recruitment violations. Working with migrants on a range of visas, from the "non-agricultural temporary and seasonal" H-2B to the J visa[60], NGA has carried out high-profile campaigns targeting major companies and brands, demanding that they be held accountable for recruitment abuses and exploitation of migrants by their subcontractors.[61]

To date, however, it is only outside the United States that a few legal regimes systematically impose liability on employers for recruiter violations. In what follows, I profile three such government efforts. I then turn back to the United States to describe three union/civil society regimes that have used organizing strategies to require end user firms to take responsibility for conditions of recruitment in agriculture.

A. Government-Led Approaches to Chain Liability

1. Destination country case study: Manitoba, Canada

In 2008, the Canadian province of Manitoba passed the Worker Recruitment and Protection Act, [62] creating a public licensing scheme for recruiters of foreign workers and a registration requirement for Manitoba employers seeking to hire workers abroad. The law also bars recruiters from charging fees to workers, and prohibits employers from passing along such costs to their recruited employees.

Recruiters—defined as entities seeking work within Manitoba for at least one foreign worker, or seeking at least one foreign worker to fill a job in Manitoba—must obtain a license from the Manitoba Employment Standards Branch ("ESB"), the same agency responsible for enforcing basic workplace rights, such as minimum wage, overtime, and holiday pay, in the province. To be licensed, recruiters must undergo an investigation by the ESB of their history and business relationships, make financial disclosures, and pay a $10,000 bond to be used to reimburse workers for recruitment fees collected by any party at any time during the recruitment and employment process. They must also be members of either the Law Society or the Immigration Consultants of Canada Regulatory Council, both

2002) (H-2A workers can recover travel and visa costs under FLSA because they were "incurred for the benefit of employers," but not recruitment fees unless the employer specifically required the workers to use a fee-charging recruiter); Castellanos-Contreras et al. v. Decatur Hotels (H-2B workers cannot recover travel, visa, or recruitment fees from employer under FLSA); but see Rivera v. Peri & Sons Farms, Inc., 735 F.3d 892 (9th Cir. 2013), cert. den., June 2014 (allowing H-2A workers to recover recruitment expenses from employer under FLSA). See also Rivera v. Brickman Group, Ltd., No. 05-1518, 2008 WL 81570 (E.D. Pa. Jan. 7, 2008) (allowing H-2B workers to recover recruitment fees from employer under FLSA where employer directed workers to use a particular recruiter). For an overview of the legal arguments for holding employers liable for H-2A and H-2B recruitment fees, see Eleanor G. Carr, Note: Search for a Round Peg: Seeking a Remedy for Recruitment Abuses in the U.S. Guest Worker Program, 43 COLUM. J.L. & SOC. PROBS. 399 (2010).

[60] The J Visa is ostensibly for cultural exchange visitors to the United States, but is increasingly used as a source of low-wage labour.

[61] NGA is currently urging United States-based multinational brands to join an anti-forced labour accord which would require suppliers to prohibit retaliation, including by recruiters. Author's interview with JJ Rosenbaum and Jacob Horwitz, NGA (Apr. 25, 2014); Forced Labor Prevention Accord (draft on file with author); Michelle Chen, What if Your Ability to Stay in This Country Depended on Your Employer, THE NATION BLOG (June 12, 2014), available at http://www.thenation.com/blog/180192/what-if-your-ability-stay-country-depended-your-employer#.

[62] See Manitoba Worker Recruitment and Protection Act (2008), available at http://web2.gov.mb.ca/laws/statutes/ccsm/w197e.php [hereinafter Manitoba Act].

professional associations that issue the accreditation that permits their respective members to practice in Canada. This introduces a second layer of licensing and oversight. Since the ESB communicates with these associations when it encounters a problem with one of their members, a violation of the Act also puts the recruiter's professional license in peril. Recruiter licensing must be renewed annually.

These requirements have been strictly applied. Many recruiters have withdrawn their applications upon hearing from the ESB that they did not meet the stringent licensing standards.[63] As of late June 2014, only 22 agencies hold licenses to recruit foreign workers.[64] These include Canadian recruitment firms as well as several recruitment firms based in other countries that have sought licenses as a way to increase their business from Manitoba employers.[65] The Act also created a data collection system that allows the public to verify compliance with these requirements.

Also under the Manitoba Act, any employer wishing to hire workers currently outside Canada must first register with the Manitoba Director of Employment Standards. To be approved for registration, the employer must provide information about its business, the position(s) it seeks to fill, and whether it intends to recruit the workers directly or by using a recruitment agency. Registration must be renewed annually. Each employer that applies to register receives a call from an investigator at the Manitoba Employment Standards Branch. The investigator alerts the firm to common problems with foreign labour recruitment, and to the employer's liability if the foreign worker it hires is charged recruitment fees at any point in the process.[66] Such fees and costs are deemed "wages," recoverable through the regular ESB procedures for wage collection.[67] Once an employer has been registered, it is authorized to recruit foreign workers directly or through a licensed recruiter. Using a licensed recruiter releases the registered employer from liability for recruitment violations by that firm and its agents, unless the employer attempts to recover recruitment costs from the workers.[68]

The functional requirement that a firm be in compliance with workplace law before registering to hire foreign workers is an important factor in setting a baseline for the treatment of resident as well as temporary foreign workers. The ESB has integrated its registration process with its enforcement of workplace rights. When an employer files a registration application, the ESB will often carry out a

[63] Author's interview with Jay Short, Manager of Special Investigations, Manitoba Employment Standards Branch, Canada (Apr. 14, 2014).
[64] See Worker Recruitment and Protection Act (2014) available at http://www.gov.mb.ca/labour/standards/asset_library/pdf/wrapa_valid_licensees.pdf. At any given time, Manitoba has had between 20-30 licensed recruiters. During the first five fiscal years of the programme, the Manitoba ESB has received 174 applications from recruiters. (This number includes renewal applications from recruiters previously licensed.) 46 of these applications have not been approved. Email to author from Jay Short (July 25, 2014) (on file with author).
[65] Author's interview with Jay Short.
[66] Id. The Manitoba ESB has received 10,038 registration applications from employers over the first five fiscal years of this regime. (This number includes renewal applications from companies previously registered.) It has not permitted 681 of these applicants to register, most commonly because of concerns about the firm's violation of wage laws or about unethical recruitment practices. Email to author from Jay Short.
[67] Manitoba Act, supra note 63, at 20(5).
[68] Manitoba Act, supra note 63, at 20(1-3), email to author from Jay Short.

proactive audit of the employer for compliance with employment law. Such inspections make up a quarter to a third of the 400-450 proactive investigations that the ESB undertakes annually as a part of its enforcement of all workplace laws.[69] Where that audit or the agency's database of past violations reveals a problem, the ESB will deny the employer's registration application until it has come into compliance, on the theory that "you can't bring in foreign workers if you don't treat your domestic workers well."[70]

Although the Manitoba Act only applies to employers in that province, it has been integrated with visa application requirements set by an amendment to Canadian federal regulations that came into effect in 2011.[71] Under these regulations, the Canadian authority responsible for issuing temporary foreign worker visas, Employment and Social Development Canada[72] ("ESDC") checks to ensure that information the employer provided when registering in Manitoba is consistent with the statements it makes in the forms it fills out to request a foreign worker visa. ESDC will not process a Manitoba employer's request for permission to hire a temporary worker from abroad unless the Manitoba ESB gives a green light by issuing the employer a registration certificate.[73] This may result in denial to the company of visas for temporary workers throughout Canada, even though the violation was only of a Manitoba law.[74]

Once recruited migrants arrive in the province, the Manitoba Act permits the Manitoba ESB to interview them to collect a range of information, and to obtain copies of all recruitment agreements and records of expenses occurred during recruitment. The ESB re-interviews a number of the workers after they have converted to permanent immigrant status (an option under Manitoba law), as a check on the accuracy of the information officials collected at entry when the migrants were likely to be

[69] The Manitoba branch of Employment standards has a director and 5-6 officers. It carries out 400-450 proactive investigations each year, targeting industries known to hire vulnerable workers (including, to date, agriculture, restaurants, and manufacturing), of which approximately 100-150 are devoted to enforcing the WRPA. Author's interview with Jay Short.
[70] Id.
[71] Operational Bulletin 275-C, Temporary Foreign Worker Program–Operational Instructions for the Implementation of the Immigration and Refugee Protection Regulatory Amendments, at Section 2.5 (Apr. 1, 2011) available at http://www.cic.gc.ca/english/resources/manuals/bulletins/2011/ob275C.asp#consistency. A skeletal version of this regulatory change was first promulgated in 2009.
[72] Until 2014, ESDC was called Human Resources and Skills Development Canada. HRSDC Renamed Department of Employment and Social Development Canada (ESDC), HICKS MORLEY (Jan. 6, 2014) available at http://www.humanresourceslegislativeupdate.com/general-employment/hrsdc-renamed-department-of-employment-and-social-development-canada-esdc/. References to the old name remain in laws and regulations promulgated prior to the change.
[73] Information from Operational Bulletin 275-C ("CIC and CBSA officers will verify that the foreign national meets the eligibility requirements outlined under these [provincial] pilots or programmes. Failure to meet these criteria can result in a work permit refusal."), and--for how the regulation has been applied to employers in Manitoba. Author's interview with Jay Short.
[74] This also covers companies that are based in other provinces but whose workers at some point labour in Manitoba, such as a trucking firm based in Quebec that load and unloads cargo in Manitoba or an entertainment company with its offices in Ontario that stage performances in Manitoba. However, ESDC is likely to be unaware of the Manitoba connection unless the firm itself brings it to their attention, and thus will not demand proof of registration in order to grant the visas. Email to author from Jay Short.

concerned about the consequences of revealing the full truth.[75] The data is used to monitor worker recruitment in Manitoba and to track trends as they develop.

Manitoba ESB Manager of Special Investigations Jay Short, charged with enforcing the Act, makes clear that although his office takes the licensing of recruiters very seriously, most of its enforcement is dedicated to assuring the compliance of employers. Although the Manitoba ESB is authorized to pursue recruiters, his view is that it is usually more effective and a better use of limited resources for a destination country to "target employers as a way to correct the market for recruitment, rather than going after recruitment practices directly."[76] Some of the newer laws, in particular Saskatchewan's, include a broader array of tools to hold recruiters liable.[77] It will be instructive to see if the Employment Standards Branches in such provinces diverge in enforcement approaches over time.

When the Manitoba law first passed, there were concerns that its effect would be to push illegitimate recruitment firms into neighbouring provinces rather than eliminating them entirely.[78] As other Canadian provinces have followed Manitoba's lead, this concern has diminished. In 2013, Nova Scotia and Saskatchewan began to require employers to register and recruiters to obtain licenses pursuant to legislation that was modelled on the Manitoba Act but—especially in the case of Saskatchewan—diverge in some respects.[79] Saskatchewan bans an extensive list of recruiter behaviours beyond the charging of fees, including offering false or misleading information, confiscating documents, and threatened or actual retaliation against the migrant or her family members.[80] The Saskatchewan law also requires that the recruiter disclose all of its agents, and makes it responsible for their actions.[81] New Brunswick and Ontario are currently contemplating enacting variations on the Manitoba model.[82]

A final feature of the system emerging in the Canadian provinces is the relationship it has facilitated with the government of the Philippines, one of Canada's top two source countries.[83] Manitoba and several other provinces have signed individual MoUs regarding recruitment with the Philippines

[75] See id.
[76] Author's interview with Jay Short.
[77] Foreign Worker Recruitment and Immigration Services Act: Protecting Foreign Workers and Immigrants Coming to Saskatchewan, MINISTRY OF THE ECON. (Oct. 2013), available at http://www.saskimmigrationcanada.ca/FWRIS-act-fact-sheet-for-foreign-workers-and-immigrants [hereinafter Saskatchewan's Foreign Worker Recruitment and Immigration Services Act].
[78] Personal communication from Fay Faraday to author (Oct. 3, 2013) (on file with author); author's interview with Jay Short.
[79] Fay Faraday, Profiting from the Precarious: How recruitment practices exploit migrant workers, METCALF FOUND. (Apr. 2014), at 75-81.
[80] Saskatchewan's Foreign Worker Recruitment and Immigration Services Act, supra note 78; Saskatchewan Code of Conduct for Foreign Worker Recruiters, SASKATCHEWAN IMMIGR. available at http://www.saskimmigrationcanada.ca/code-of-conduct-for-foreign-worker-recruiters.
[81] See Saskatchewan Code of Conduct for Foreign Worker Recruiters,, supra note 81, at s. 10.
[82] See Faraday, Profiting from the Precarious, supra note 80, at 75.
[83] Facts and Figures 2012 – Immigration overview: Permanent and temporary residents, STATISTICS GOV'T OF CAN. (2013), available at http://www.cic.gc.ca/English/resources/statistics/facts2012/permanent/10.asp.

Department of Labour and Employment.[84] In the Manitoba MoU, the Philippines agrees to hold recruiters of workers bound for Manitoba to the standards of the Manitoba Act, which are higher than Philippine law—for example, the Philippines permits fees equivalent to a month's salary in the destination country, while Manitoba bans fees entirely. [85] Manitoba recruiters can only enter into agreements with Filipino recruiters licensed by the Philippines government. The MOUs express an intention to cooperate on many aspects of labour migration, including training and recruitment. However, Manitoba ESB Manager of Special Investigations Jay Short does not recall an example where the two governments have worked together to resolve a specific case of recruitment abuse.[86]

Manitoba is a province that is geographically large but has a small population. While it remains to be seen how the model will work on a larger scale, it appears that the Manitoba Act has been able to have a direct impact on the structure of labour recruitment in this setting. J. Short reports that instead of relying on agencies, firms with human resources departments have increasingly begun to recruit using these in-house resources, while others have turned to hiring newcomers already in Canada.[87] Although abuses may continue to occur further down the recruitment chain, the law and its enforcement appears to have significantly decreased both the scope and severity of the violations that the ESB is able to detect.[88]

2. Destination country case study: The Netherlands[89]

The Netherlands regulates labour recruiters through a combination of public and voluntary initiatives.[90] Dutch law establishes joint liability as the default regime in Dutch subcontracting

[84] According to the POEA website, last updated in 2012, the Philippines has signed memoranda of understanding with the Canadian provinces of Manitoba, Saskatchewan, British Columbia, and Alberta. See Bilateral Labor Agreements, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, available at http://www.poea.gov.ph/lmi_kiosk/labor_agreements.htm.

[85] Memorandum of Understanding between the Department of Labor and Employment of the Government of the Republic of the Philippines and the Department of Labour and Immigration of the Government of Manitoba, Canada, Concerning Cooperation in Human Resource Deployment and Development, see Memorandum from the Department of Labor and Employment: International Labor Affairs Bureau (Oct. 18, 2010), available at http://www.poea.gov.ph/lmi/Bilateral%20Agreements/BLA_PH_Manitoba2010.pdf.
There are two sectors for which the Philippines bans fees entirely: domestic work (POEA Governing Board Resolution No. 6, Series of 2006) and seafarers (Section 1, Rule IV, Part II of the POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers).

[86] Author's interview with Jay Short..

[87] Id.; Judy Fudge & Daniel Parrott, Placing Filipino Caregivers in Canadian Homes: Regulating Transnational Employment Agencies in British Columbia, in TEMPORARY WORK, AGENCIES, AND UNFREE LABOR: INSECURITY IN THE NEW WORLD OF WORK 70, 88 (Judy Fudge & Kendra Strauss eds., 2013).

[88] Author's interview with Jay Short.

[89] This case study is based in part on interviews conducted by the author in the Netherlands in November, 2013.

[90] Formerly, the Netherlands required that labour providers obtain a permit directly from the government. That system was abolished in 1998, in part as the result of concerns that it had driven agencies under ground, and partly reflecting an overall trend toward deregulation during that period. See Labour Market Intermediaries Act (Wet Allocatie Arbeidskrachten door Intermediairs) (July 1, 1998) [hereinafter WAADI]; author's interview with Simone de Geus, Policy Advisor, Inspectie SZW, Netherlands (Nov. 5, 2013); Peter Vonk, Senior Policy Advisor, Inspectie SZW, Netherlands (Nov. 5, 2013); Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 49 n. 119.
It should be noted that several of the Dutch innovations I describe here apply principally to staffing agencies, i.e. those that recruit migrants and continue to operate as their employer on arrival, supplying the workers to another firm on a subcontracted basis. Although this differs from the pure recruitment model that is the principal subject of this paper, the Netherlands approach has innovative features that are worth considering in the pure recruitment context as well.

chains.[91] If a staffing agency or a subcontractor violates Dutch law on the payment of taxes and social insurance contributions, all firms above that agency can be held liable, up to the firm at the top of chain. When any firm in the chain hires an immigrant who is not authorized to work, all firms are likewise responsible and subject to fines. Since 2010, joint liability applies to the payment of minimum wages as well, but only when the violator is a staffing agency, and only to the firm immediately above it in the chain.[92] Workers can seek redress in court for joint liability claims.

Dutch law also requires that all firms operating in the country register with the Chamber of Commerce. As of 2012, recruitment and staffing agencies must specifically identify themselves as labour providers when they comply with this provision. Firms that wish to use a labour provider are required to check this registry to insure that the agency they plan to use is listed. Penalties apply to firms that use unregistered agencies to source labour. However, as to the agency, registration merely involves filing a brief form. When registering, agencies make no commitment to comply with the laws, nor are they inspected for compliance at that time.[93]

Since 2006, this public regime has been supplemented by a voluntary certification scheme. The Foundation for Employment Standards (Stichting Normering Arbeid, "SNA") was founded in that year as a non-governmental entity that offers a voluntary certification programme for employment agencies.[94] SNA, which has a staff of ten, is run by a management company, but is governed by a board representing employment agencies, end-user firms (for example, in agriculture and meat-packing), and unions. As of the end of 2013, SNA has certified nearly 3,700 companies.[95]

In order to issue a certification, SNA requires that an agency undergo an audit for compliance with payroll taxes, laws related to immigrant workers, and the minimum and holiday wage law. These audits are conducted at the recruiting agency by the agency's choice of one of six auditing companies certified by the Dutch Accreditation Council, working under contract to the SNA. Audits largely consist of document review and do not include interviews with workers.[96] Subsequent monitoring for

[91] For an overview of joint liability laws in the Netherlands, see Mijke Houwerzijl & Saskia Peters, Liability in subcontracting processes in the European construction sector: Netherlands, EUROFOUND (2009), available at http://www.eurofound.europa.eu/publications/htmlfiles/ef08877.htm. Note that this source was written prior to the passage of the law creating joint liability for wages, mentioned and cited below.
[92] Burgerlijk Wetboek (Civil Code) 2010, Art. 7:692 (Neth.).
[93] See generally Article 7a of WAADI, supra note 91.
[94] SNA website: http://www.normeringarbeid.nl/en/default.aspx. SNA was founded largely at the urging of associations representing temporary employment agencies. Author's interview with Willem Plessen, Manager of Social Affairs, Randstad Holding Co.; Professor, University of Tilburg School of Law, Netherlands (Nov. 6, 2013); author's interview with Roland Huisman, Director, SNA, Netherlands (Nov. 6, 2013).
[95] See Stichting Normering Arbeid: Dé norm voor betrouwbaarheid! (2013), available at http://www.normeringarbeid.nl/Downloads/SNA-Jaarverslag%202013.pdf [hereinafter SNA 2013 Annual Report] (in Dutch only). For purposes of comparison, the number of commercial labour providers that have completed the mandatory registration with the Chamber of Commerce is approximately 12,500. Author's interview with Roland Huisman.
[96] However, current pilot projects include one where worker interviews are added and another where inspection goes beyond the minimum wage to include compliance with the collectively bargained wage rate and employer contributions to pensions and other benefit plans. Author's interview with Roland Huisman.

continued compliance occurs once or twice a year.[97] The inspection process regularly results in suspensions and decertifications. During 2013, SNA decertified 530 agencies,[98] or nearly 15 per cent of the total number of agencies registered, and during the first ten months of that year it temporarily suspended 654.[99] A list of certified agencies is publicly available on the SNA website, and firms that hire agencies can sign up to receive automatic reports on changes in agency status.[100]

The hallmark of the Dutch system for regulating staffing agencies is its criss-crossing of these public and private mandates. Under Dutch law, a firm that contracts with a SNA-certified labour provider (and the firms above it in the subcontracting chain) is partially released from joint liability. It will not be held responsible when that agency violates tax and social insurance laws. In the case of minimum wage violations by the agency, the firm is insulated from private lawsuits by agency workers, and is eligible for mitigated penalties from the government. As a result, although SNA certification is voluntary, firms have begun to demand certification of all agencies in their subcontracting chains.[101]

Like the Manitoba Act, the Dutch scheme relies on regulation of employers to drive the market for recruitment. But its structure is different in two important ways, illustrating the variety of ways a supply chain approach to regulation can be constructed.

First, in the Netherlands, certification of recruiters is voluntary and private, rather than mandatory and government-run. So, too, is an employer's decision about whether to use a certified recruiter. Second, rather than facing a substantial penalty for using non-licensed recruiters, employers in the Netherlands are offered a highly desirable benefit by the government for contracting with certified recruiters: release from the background legal regime of joint liability. Although the difference can seem to be a matter of semantics (after all, Manitoba employers, too, receive a benefit for following the law: they can access permits to hire temporary foreign workers and they are released from liability for recruitment fees), offering businesses that opt in to a licensing/registration scheme a safe harbour from the chain liability that is otherwise mandated by law may be more appealing politically in some countries than mandating their participation.[102]

[97] SNA carried out 7,306 inspections in 2013, including both for new applicants and for on-going monitoring of certified companies. See SNA 2013 Annual Report, supra note 96, at 3.
[98] Id.
[99] Author's interview with Roland Huisman.
[100] See Gecertificeerde ondernemigen, STICHTING NORMERING ARBEID, http://www.normeringarbeid.nl/keurmerk/pagina/volledigelijst.aspx.
[101] Author's interview with Roland Huisman; author's interview with Sytske Jonkman, Inspector, SNA, Netherlands (Nov. 6, 2013). The Dutch system features other elements of public-private collaboration as well. For example, Inspectie SZW (The Ministry of Social Affairs and Employment) and the agency charged with enforcing tax laws both send the SNA reports on agencies found to be in violation. Author's interview with Roland Huisman. In turn, the SNA has a policy of calling uncertified agencies to persuade them to seek certification. If they refuse, the SNA informs SZW, which in turn uses the information to guide its targeted inspection of staffing agencies. Personal communication from Katharine Jones to author (on file with author); email to author from Roland Huisman (September 24, 2014) (on file with author).
[102] A different EU model for the regulation of staffing agencies is the Gangmasters' Licensing Authority (GLA) in the food industry in the United Kingdom. This brief description is based on my interviews with GLA officials and board members,

3. Origin country case study: The Philippines

The case studies offered to this point originate in destination countries where the employers that are their primary subjects are located. However, origin countries also have critical roles to play in holding recruiters to account within a joint liability regime. The Philippines provides a good starting point to consider this role. Like Ethiopia and Indonesia, the Philippines has imposed joint liability on recruiters and employers.[103] Unlike those countries, it has made considerable efforts to enforce that regime.

The Philippines facilitates and controls overseas labour migration through an extensive system of regulations and government institutions, and it has become an increasingly prominent country of origin for labour migration in recent decades. In 1995, following public outcry after the execution of a Filipina domestic worker in Singapore, the Philippine Congress enacted the Migrant Workers and Overseas Filipinos Act.[104] The Act, which has since been amended, sought to increase the rights of migrant workers from the Philippines. Recently, regulations promulgated in 2010 further defined migrants' rights and the mechanisms available to enforce them.[105] Like all origin countries, however, the Philippine government faces challenges in reconciling its role of providing its citizens with the

trade union representatives, and others, conducted in the United Kingdom in February 2010 and September 2013. I do not treat the GLA in detail here, both because I have described it elsewhere; see Jennifer Gordon, Free Movement and Equal Rights for Low-Wage Workers? What the United States Can Learn from the New EU Migration to Britain (May 1, 2011), UC BERKELEY L. SCH., THE CHIEF JUSTICE EARL WARREN INST. ON L. AND SOC. POL'Y ISSUE BRIEF (May 1, 2011), at 10, available at http://www.law.berkeley.edu/img/Gordon_Issue_Brief_May_2011_FINAL.pdf, and because it represents a fairly straightforward approach to mandatory government licensing for staffing agencies, with penalties for end user firms that contract unlicensed labour providers.

The United Kingdom's most noteworthy innovation for the purpose of this study is its creation of the GLA as an independent government enforcement body, charged with monitoring agencies' adherence to multiple laws. In order to get and keep a license, a staffing agency must demonstrate compliance with tax, social insurance, immigration, employment, and worker housing requirements. The GLA audits an agency for compliance with all of these laws prior to granting a license, and can make unannounced worksite inspections at firms where agency employees labour, revoke a license, and shut down the agency on the spot if it has committed a particularly serious violation. It collaborates closely with the police and the United Kingdom tax agency, but has independent authority to impose both civil and criminal penalties on agencies that operate without a license or in violation of the terms of their licenses. In addition, it has the authority to penalize the firms that contract with unlicensed agencies. In other words, it imposes a form of joint liability on firms for the violations of their staffing agencies.

The GLA does not have jurisdiction outside the United Kingdom. However, UK law states that no agency can operate as a labour provider in the United Kingdom unless it has a home office in the United Kingdom. Thus, foreign agencies that want to provide workers to UK employers must open a UK office, bound by UK law. In this way, the GLA can hold an agency responsible for what migrants were told in the home country, even without extraterritorial jurisdiction. In addition, the GLA has formed a unique and noteworthy partnership with Polish authorities. When a Polish agency seeks GLA licensing so that it can operate in the United Kingdom, the GLA informs the Polish government, which carries out an inspection of the agency for compliance with GLA standards. Personal communication from Katharine Jones to author (on file with author).

[103] For Indonesia, see Farbenblum et al., Migrant Workers' Access to Justice, supra note 7; Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 65. For Ethiopia, see Bina Fernandez, Traffickers, Brokers, Employment Agents, and Social Networks: The Regulation of Intermediaries in the Migration of Ethiopian Domestic Workers to the Middle East, 47 INT'L MIGRATION REV. 814, 819 (Winter 2013).

[104] Migrant Workers and Overseas Filipinos Act of 1995, Rep. Act No. 8042 ("Act").

[105] POEA Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as Amended by the Rep. Act No. 10022 (2010) ("Regulation"). The Regulation was developed by the Department of Labor and Employment and the Department of Foreign Affairs, together with other government departments.

ability to seek jobs abroad with the need to protect them when they work overseas. These objectives are at times in conflict.[106]

The original Act and its amendments create basic workplace protections for migrants, in part by mandating that overseas employment contracts contain specific terms regarding wages, termination, repatriation, and other matters, and established mechanisms for enforcement. In order to be allowed to leave the Philippines to work abroad, a migrant must present a written contract containing the required terms first to the Philippines Overseas Employment Agency ("POEA") for review and approval while still in the Philippines, and again to a government representative at the airport prior to boarding the plane. If an employer subsequently violates the migrant's rights enumerated in the contract, Philippine Overseas Labour Offices in major destination locations are supposed to work with labour attachés at consulates to help the migrant resolve the problem. Alternatively, the migrant can return home and request the POEA's help in recovering damages. Migrants must be informed of their rights during mandatory pre-departure training sessions.

The Act also sets Philippine policy governing private recruitment agencies.[107] Like a number of other migrant origin countries, the Philippines requires that recruitment agencies register and obtain a license from the government and post a bond in order to send Filipino workers overseas. To be licensed, agency owners must pass criminal background checks, submit to an interview, and show proof of job orders for at least 100 workers. In addition, only agencies that are at least 75 per cent Philippine-owned can operate in the country.[108] Agencies can be suspended or have their licenses revoked for violations of Philippine law regarding recruitment, for example for fraud or the charging of excessive fees.[109] Recruitment agencies are permitted to charge a fee of no more than one month's salary, plus the costs of obtaining necessary documents.[110] Additionally, the Philippines has prohibited recruiters from charging recruitment fees to migrant domestic workers and sea-farers.[111] The POEA has a public website listing recruitment agencies and their current licensing status.

One of the most innovative aspects of the Philippine approach to the regulation of recruitment is its imposition of joint liability on recruitment agencies and the employers (and destination country

[106] See, e.g, RODRIGUEZ, MIGRANTS FOR EXPORT, at 122-140; Rene E. Ofreneo & Isabelo A. Samonte, Empowering Filipino Migrant Workers: Policy Issues and Challenges, U.N. ILO (2005), available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_160550.pdf.
[107] For a useful overview of the regulation of recruitment in the Philippines, see Dovelyn Rannveig Agunias, Migration's Middlemen: Regulating Recruitment Agencies in the Philippines-United Arab Emirates Corridor, MIGRATION POL'Y INST. (2010), available at http://www.migrationpolicy.org/pubs/filipinorecruitment-june2010.pdf.
[108] POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, Philippine Overseas Employment Administration (2002), available at http://www.poea.gov.ph/rules/POEA%20Rules.pdf.
[109] However, a firm whose license is revoked may just create a "phoenix company" to take over its business, so called because it rises from the ashes of the debarred agency. This is a common problem in origin countries that rely on licensing to control recruitment. See, e.g., Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 67-68.
[110] POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, Regulation, Part II, Rule 5, Section 3. Fees are prohibited when barred in the destination country.
[111] The 2006 Household Service Worker (HSW) Reform Package) and POEA Rules and Regulations Governing the Recruitment and Employment of Sea-farers, 2003, Rule IV, Section 1 respectively.

recruitment firms) to which they supply migrant workers. Section 10 of the Act and Section 3 of the Regulation stipulate that recruiters and employers are jointly and severally liable for monetary claims arising out of the employment contract.[112] The Regulation requires that this joint liability be written into the contract a worker must present before receiving approval to leave the country. If a migrant is unable to get redress from the employer for rights violations that occurred in the destination country, she can ask the Philippines National Labour Relations Commission ("NLRC") to pursue those claims against the recruiter. If the Commission finds for the worker, the recruiter is obligated to pay monetary damages to cover the employer's violation of contract terms, and the bond posted by the recruitment agency as a condition of licensing can be used to cover such claims. It is quite common for workers to recover damages from recruiters under this provision, though this most often occurs through settlements that award them less than the full amount owed.[113]

The inclusion of joint liability in the Philippine system for regulating recruitment is an important innovation. It diminishes the jurisdictional challenges that origin countries face in seeking to protect their citizens working abroad, because it establishes the recruiter as the actor in the home country responsible for answering for the employer and compensating migrants abused by employers abroad.[114] The idea animating this approach is that it will create incentives for recruiters to pay more attention to the quality of jobs into which they place migrants.

In practice, however, joint and several liability applied to recruiters has had some unintended consequences. Some recruiters report that rather than screening employers more intensively, they pass the cost of the increased risk on to migrants through higher fees.[115] In addition, workers seeking to enforce the Philippine joint liability requirement have encountered a number of practical obstacles.[116] The POEA and NLRC are inadequately funded, and claims processes are slow. While a lawyer is not technically necessary to file a claim, many migrants need legal assistance even at the first stage and all do if the case is appealed, yet there are few sources of affordable legal assistance.[117] Recruitment agencies can appeal the decision of the NLRC; if they do, the case may take years to be

[112] Act, at Section 10; Regulation, at Part II, Rule 2, Section 1(f)(3).
[113] Author's interview with Jeriel Domingo, Philippines Overseas Employment Agency (POEA), Deputy Administrator and Officer in Charge, Adjudication and Licensing Regulation Office (July 22, 2014).
[114] Recruiters are then supposed to be able to collect the money owed from the employer. In practice, however, unless the employer pays the recruiter back voluntarily, the recruiter must go to the destination country and initiate a lawsuit to recover the amount owed. This need—and the desire of recruiters to remain on the good side of the employers on which they depend for jobs—means that there are few examples of successful litigation of this sort. Author's interview with Jeriel Domingo. Jeriel Domingo notes that some employers do pay the recruiter back voluntarily, because if they do not they risk being disqualified by the POEA from future hiring in the Philippines. Id.
[115] Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 69.
[116] Some of the issues are inherent to the law itself. For example, the Act limits joint liability to violations of rights enumerated in the contract between the recruiter, the employer, and the worker. This means that recruiters are not responsible for employers' violations of rights established by provisions outside the contract, such as destination country laws covering minimum wage and overtime provisions, unless the contract specifically mentions them. This could be remedied through passage of a law extending recruiters' liability to employer violations of any statutory right in the destination country.
[117] Email to author from Henry Rojas, Coordinator, Lawyers Beyond Borders, Philippines (July 21, 2014) (on file with author).

resolved. In light of these challenges most workers settle early in the process, accepting a fraction of the total owed.[118] Even when a worker pursues the case to its conclusion, it is very rare that the recruiter pays the full amount found due, especially when multiple workers are involved and the recruiter's bond is inadequate to cover the charges.[119]

While recruiter obligations can be established via legislation in the origin country, and can be enforced by origin country government agencies and courts, the Philippine experience illustrates that matters are considerably more complicated with regard to origin countries' ability to gain jurisdiction over *employers* abroad in order to hold them liable for *recruiters'* violations—the core subject of this paper. Origin country governments do not have the power to enact laws governing employers operating outside their territory. In practical terms, one of the only ways such governments can reach employers in destination countries is to mandate that recruiters operating within their borders (over whom they do have jurisdiction) sign contracts with employers containing the desired terms. If the employer fails to comply with the contract it has signed, it can—again, in theory—be sued for breach.[120]

Thus, if countries like the Philippines wish to make employers jointly responsible for recruiter violations, they must do so by requiring joint liability as a part of the recruiter-employer contract.[121] Firms outside the Philippines are not subject to the dictates of its government agencies, so to enforce this aspect of the contract against an employer, the migrant herself would have to initiate a case for breach of contract in the destination country.[122]

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[118] Id.

[119] Author's interview with Jeriel Domingo; email to author from Henry Rojas.

[120] Very few recruitment firms have pursued this remedy. Jeriel Domingo notes that in practical terms it means that the recruiter must sue the employer in the destination country; the expense of doing so is prohibitive from the point of view of most recruitment agencies in the Philippines. Author's interview with Jeriel Domingo.

[121] Note the difference: here I am referring to holding employers liable for violations committed by recruitment firms, the key recommendation of this report, not to the effort to recover from recruiters for abuses by employers.
Reliance on a contract as the trigger for joint liability is problematic for several reasons. Even where origin countries require that temporary migrant workers sign contracts including a range of protective provisions before departing, few have established processes to reliably confirm that such a contract is actually in place pre-departure. For critiques of existing emigration clearance programmes in Colombo Process states, see Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 81-85. In countries such as Mexico, where the government does not restrict out-migration, it is hard to see how such a requirement would be enforced.
Contract substitution is another great concern. Whatever migrants sign before leaving home, they are often required to assent to a substitute contract on worse terms once they arrive in the destination country. For example, in India, one study found that almost a fifth of migrants who had used recruiters were required to sign new contracts on arrival. Irudaya Rajan et al., Overseas Recruitment Practices in India, MINISTRY OF OVERSEAS INDIAN AFF., available at http://www.oit.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/presentation/wcms_100010.pdf. This practice is common throughout Asia and in the Gulf States. Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 87-89. Although Philippine law states that joint liability survives such substitution (Act, Section 10), the diminished rights under the substitute contract may leave migrants with little practical ability to bring claims against recruiters for the employer's actions.
Despite these problems, absent the sort of transnational cooperation called for below, a contract containing assent to joint liability is the only mechanism an origin country has to impose a legal responsibility on an employer not operating within its borders.

[122] To the knowledge of Jeriel Domingo, POEA Officer in Charge of Adjudication and Licensing Regulation, there has never been a case within the Philippines in which such a claim has been made. Author's interview with Jeriel Domingo.

B. Organizing Approaches to Chain Responsibility

Government regulation is only one way to create pressure on end users to take responsibility for the violations of their labour providers. Worker organizing and consumer boycotts can play a similar role. Supply chain organizing strategies have become a particular focus in agriculture, where most products are purchased by consolidated transnational retailers demanding ever-lower costs. The international *product* supply chain has been the target of organizing since the 1990s; what is new is the use of those same strategies to improve treatment of workers in the global *labour* supply chain. A few farm workers unions and workers' organizations in the United States have begun to use the brand-protective instincts of companies at the top of the chain to bring those firms to the table to discuss agreements regarding conditions of recruitment, sometimes alongside other concerns about wages, working conditions, and food safety.[123]

Organizing that targets the top of the labour supply chain has created the space for experimentation to flourish. As the following case studies illustrate, having built sufficient power to compel negotiations, the organizations were free to craft different solutions to the recruitment problem, reflecting their distinct contexts and organizing goals. One sets out new terms of recruitment in a collective bargaining agreement with an association of growers; one establishes its own recruitment and training entity in the context of a new ethical food initiative; and one bars subcontracted labour altogether, requiring that employers hire workers directly. At the same time, all of the initiatives have key features in common: they incorporate key roles for workers in setting standards and monitoring compliance and they mandate that retailers increase the amount they pay participating growers for their produce to cover the cost of compliance, thus shielding growers from competition with farms outside the programme that could otherwise underbid them.

1. Recruitment Governed by a Collective Bargaining Agreement: The Farm Labour Organizing Committee's Contract with the North Carolina Grower's Association

The Farm Labour Organizing Committee (FLOC) is a farm workers union with approximately 10,000 members in Ohio and North Carolina.[124] FLOC is based in Ohio, where in the 1980s it succeeded in organizing workers on a number of tomato and cucumber farms supplying brand-name companies

[123] The National Guestworker Alliance (NGA) is noteworthy for having put a joint and several liability approach in the forefront of its efforts to address recruitment violations outside the context of agriculture. NGA has led a number of ground-breaking initiatives to hold brands at the top of product or service supply chains responsible for the violations of recruiters in their labour supply chains. Working with migrants on a range of visas, from the "non-agricultural temporary and seasonal" H-2B to the J visa (which is ostensibly for cultural exchange visitors but has been increasingly used as a source of low-wage labour), NGA has carried out high-profile campaigns targeting Hershey Foods, Signal Shipbuilders, and WalMart, among others, demanding accountability for recruitment abuses and exploitation of migrants by their subcontractors. NGA is currently urging U.S. based multinational brands to join an anti-forced labour accord that would require suppliers to prohibit retaliation, including by recruiters. While NGA has not yet entered into agreements with firms at the top of the chain regarding on-going recruitment practices, its analysis of the role of migrant labour in the global economy, creative and effective use of legal tools in co-ordination with organizing, and strategic approach have made it a critical actor in the field.
[124] FLOC 2013 LM-2, available by entering query at http://kcerds.dol-esa.gov/query/getOrgQry.do (U.S. Dep't of Labor) [hereinafter Union Search].

with produce. Over time, the resulting contracts were undercut as brands sought to buy cheaper produce harvested by non-union workers present on temporary "H-2A" or "guest worker" visas in North Carolina. In response, FLOC initiated a boycott campaign against a major food processor brand, highlighting the poor treatment of workers on its suppliers' North Carolina farms. Meanwhile, the union was involved in lawsuits against the North Carolina Growers' Association (NCGA), the largest employer of agricultural guest workers in the United States and a primary source of labour for the food processor.[125]

In 2004, after a five-year campaign, FLOC succeeded in negotiating a three-way accord with the food processor and NCGA. For its part, the food processor agreed to pay its Ohio growers 11 per cent more over a period of three years for the cucumbers it purchased from them, to be passed on to workers as higher wages, with an additional 3 per cent annually for growers who provided workers compensation coverage for sick or injured labourers.[126] The food processor, meanwhile, brought in the NCGA, which agreed to recognize the outcome of a card-check vote on union representation by its workers in exchange for the settlement of the lawsuits against it.[127] Following an intensive organizing campaign in the fields, a majority of the workers voted for unionization, and FLOC and the NCGA bargained the first U.S. guest worker union contract in September 2004. The accord was amended and renewed in 2008 and again in 2012. A decade after it was first signed, the FLOC/NCGA agreement remains the largest and the most sustained example of union representation of guest workers in U.S. history. It currently covers about 7,500 workers labouring for approximately 640 growers through the NCGA.[128]

A primary focus of the FLOC/NCGA contract is the way H-2A workers are recruited for work covered by the agreement.[129] The contract eliminated the "blacklist" through which NCGA growers had barred migrants from return if they demanded respect for their rights. It replaced this with a

[125] For an overview of the FLOC strategy leading up to the campaign, see DAVID DALTON, BUILDING NATIONAL CAMPAIGNS: ACTIVISTS, ALLIANCES, AND HOW CHANGE HAPPENS 32 (2007), book available for download at http://policy-practice.oxfam.org.uk/publications/building-national-campaigns-activists-alliances-and-how-change-happens-115412. For the assertion that NCGA is the largest H-2A employer, see Victoria Bouloubasis, Be Our Guest Worker, THE AM. PROSPECT (Nov. 7, 2013), http://prospect.org/article/be-our-guest-worker.

[126] Author's interview with Baldemar Velasquez (July 18, 2014); Julie M. McKinnon, FLOC sets its sights on future fights, THE BLADE (Oct. 3, 2004), https://www.toledoblade.com/business/2004/10/03/FLOC-sets-its-sights-on-future-fights.html. After the first three years, the food processor has continued to make a small increase annually to the amount it passes through NCGA for workers' wages. Author's interview with Baldemar Velasquez (July 18, 2014).

[127] Teófilo Reyes, 8000 "Guest Workers" Join Farm Union in North Carolina, LAB. NOTES (Sept. 30, 2004), available at http://www.labornotes.org/node/939. The National Labor Relations Act, which governs union recognition in most U.S. industries, does not cover agricultural workers. See, e.g., 29 U.S.C. § 152(3). There is thus no federal law that requires growers to heed a vote for unionization by a majority of their employees; any such agreement must be negotiated between the parties. In that context, litigation such as the De Luna case was a critical factor in bringing NCGA to the table. See De Luna-Guerrero v. North Carolina Grower's Ass'n, Inc., 370 F. Supp. 2d 386 (E.D.N.C. 2005).

[128] Interview with Baldemar Velasquez, Founder and President, Farm Labor Organizing Committee (FLOC) (Mar, 21, 2104). See also Karin Rives, Guest workers note progress: Labor contract has brought changes, RALEIGH NEWS & OBSERVER (Aug. 29, 2005), available at http://www.smfws.com/art8292005.htm.

[129] While the contract does address some other aspects of work—for example, time off and the protection of worker health and safety--it explicitly sets aside wages and housing as beyond its scope. NCGA and FLOC Agreement (effective May 4, 2012-December 31, 2014), Article 4, Section 1 (copy on file with author). The Agreement notes that such terms are governed by laws regarding the H-2A programme, although (as it also mentions) the law sets a floor rather than a ceiling, and growers are free decide to pay more or provide better accommodations than those mandated.

system of seniority, mandating that growers hire workers in order of years worked with the H-2A programme. It also required that growers have just cause for firing and refusing to rehire workers, including a three-warning system before the grower takes action; created a grievance procedure for violations of the contract; and—critically—granted FLOC the right to oversee recruitment.

Rather than barring private recruiters, the process that FLOC has developed limits the control that they can exert over workers' access to visas and employers. The version of the contract in effect today creates four tiers of workers. First priority goes to those designated by growers as "Preferred," including experienced workers and—in a recent addition—their relatives if the employer so chooses.[130] Remaining vacancies are next filled by "Active" workers in order of seniority, independent of employer preferences. The third tier is for workers whose employers designated them 'Preferred', but who wish to switch to 'Active' status and take a job with another employer or come at an earlier time than their employer needs them; those workers get access to the remaining full-season jobs through a bid system the union has created. Finally, any worker with two years or more working in the H-2A programme is permitted to recommend new workers with no experience; those workers can submit bids and are usually hired at the end of the season when relatively little work remains.[131]

Over time, FLOC has made adjustments to other aspects of the recruitment system that continued to breed abuse despite the contract. For example, the FLOC-NCGA agreement now forbids cash payments from workers to recruiters, even though recruiters are legally permitted to charge for the cost of the visa and ground transportation. (Employers must reimburse workers for both expenses soon after arrival). After several years of observing the situation, the union concluded that allowing cash to change hands in this context too often opened the door for recruiters to demand additional side payments from workers. The agreement was amended so that workers deposit money for legitimate expenses with a designated bank, and give recruiters the bank receipt. The recruiter can then arrange for bank-to-bank transfers to the U.S. Consulate and the bus company.[132]

Recruiters fought back against FLOC's incursion on their territory for years. When FLOC opened its Monterrey, Mexico office in 2005, unscrupulous recruiters subjected its staff to escalating harassment and surveillance, broke into its office, and are believed to be responsible for the 2007 torture and murder of Santiago Rafael Cruz, a FLOC organizer, inside the union's Monterrey headquarters.[133] After failing to defeat FLOC, however, and following the institution of protective measures for FLOC by the Inter-American Court of Appeals in the wake of the murder, recruiters have made an uneasy

[130] Employers also have the right to designate a worker "No Return" under certain circumstances; such a designation will bar a worker from participation in the programme. NCGA and FLOC Agreement 2012, Article 5.
[131] Author's interviews with Baldemar Velasquez (Mar. 21, 2014; July 18, 2014); see also NCGA and FLOC Agreement 2012, Article 5.6.
[132] Author's interview with Baldemar Velasquez (Mar. 21, 2014).
[133] Author's interview with Baldemar Velasquez (July 18, 2014); Dan La Botz, Farm Labor Organizer Murdered in Mexico, COUNTERPUNCH (Apr. 14-16, 2007), available at http://www.counterpunch.org/2007/04/14/farm-labor-organizer-murdered-in-mexico/.

peace with the union, and there have been no major incidents since 2007. The Monterrey office continues in operation today as the base for FLOC's Mexico operations. FLOC staff in Monterrey handle grievances, oversee the implementation of the contract's recruitment provisions, and coordinate the union's organizing and leadership training efforts in Mexico.[134]

2. A Trade Union-Sponsored Recruitment and Training Entity: The United Farmworkers' Equitable Food Initiative and CIERTO Recruitment and Training Pilot

The United Farmworkers union (UFW) is known around the world for its pioneering approach to organizing farmworkers. Its greatest successes came in the 1970s and early 1980s, when it negotiated union contracts with growers employing about 50,000 workers, largely in its stronghold state of California.[135] For a multitude of reasons, the UFW proved unable to sustain that level of membership over time. The consolidation of the retail food industry has played a critical role in the union's struggles, as in those of the other organizations profiled here.[136] Growers with UFW contracts began to go out of business because they were unable to cut costs sufficiently to meet the prices demanded by supermarkets and other retailers. The union's current membership is about 4,500.[137] In response, the union has begun to explore new models to improve wages and working conditions for farmworkers within the context of a highly subcontracted industry.[138]

The UFW's leading effort in this regard is its participation in the Equitable Food Initiative (EFI), a multi-stakeholder initiative developed with the support of Oxfam and in collaboration with FLOC and other migrant and farmworker organizations. EFI has a rotating chair, currently held by Erik Nicholson, UFW National Vice President. EFI's mission is to add value to the supply chain through a certification system addressing three issues: farmworker wages and working conditions, environmental stewardship, and food safety.[139] EFI has established an extensive set of standards to cover the three areas under its purview.[140] The Initiative seeks to have a broad impact on industrial agriculture by adding "value and quality throughout the food system, benefiting workers, growers, retailers and consumers alike."[141] It invites major retailers to require EFI certification from their

[134] Author's interview with Baldemar Velasquez (July 18, 2014).
[135] Marshall Ganz, Why David Sometimes Wins: Leadership, Organization, and Strategy in the California Farm Worker Movement 7 (2010).
[136] Author's interview with Erik Nicholson, National Vice President United Farmworkers and Chair, Equitable Food Initiative (May 28, 2014).
[137] UFW 2012 LM2, Line 20, at Union Search, supra note 124.
[138] Interviews with Erik Nicholson, National Vice President United Farmworkers and Chair, Equitable Food Initiative, Tacoma, WA (May 28, 2014 and July 14, 2014); Joe Martinez, Global Advocate and Mexico Program Director, United Farmworkers (Apr. 17, 2014 and July 21, 2014).
[139] EFI at http://www.equitablefood.org/.
[140] EFI Standards are available for download at http://www.equitablefood.org/#!certification/c24gy.
[141] Labor-Management Collaboration Makes for Better Produce, EFI, available at http://www.equitablefood.org/#!what_we_do/cjcr.

growers, with retailers funding the cost of growers' compliance by paying slightly more for certified produce.[142]

EFI launched in 2013 with two retailers: Costco and (on a smaller scale) Bon Appetit, a high-end food service provider. These retailers will be the first to require EFI certification for some, and eventually all, of the fruits and vegetables that they purchase. The UFW's engagement with Costco goes back several decades, but for many years was what Erik Nicholson characterizes as "transactional": the union would let Costco know about problems with the treatment of workers in its supply chain, and ask Costco to respond by refusing to purchase from the grower until the issue was resolved.[143] While Costco did not always do as the UFW asked, Nicholson was impressed by the openness of the company's top employees. A series of conversations about "how to align their value propositions and ours" —Costco's goal of maintaining its reputation as a high-quality, low cost retailer, and particularly of avoiding bad publicity about food safety concerns and forced labour or slavery in its supply chain;[144] and the UFW's commitment to improving farmworkers' lives—moved the two entities to a more collaborative relationship. EFI was designed to offer a concrete road to this end, and Costco has enthusiastically endorsed the Initiative.[145]

Costco began by asking its produce suppliers to volunteer to become EFI certified, while making clear that all its produce purchasing decisions would soon depend on certification and on-going compliance.[146] The salad greens brand Earthbound Organics and Andrews & Williamson, a major strawberry grower with 2,000 acres under production in the U.S. and Mexico, stepped forward. Their first farms were certified in July 2014.[147] Costco and Bon Appetit are covering their suppliers' costs for certification.

A pillar of the EFI programme is the involvement of farmworkers at all levels. Workers brought their intimate knowledge of farm labour to the process of developing the standards, reviewing them and

[142] Author's interview with Erik Nicholson (May 28, 2014); author's interview with Joe Martinez (Apr. 17, 2014); for details about certification see EFI Scheme Documentation, EFI, http://www.equitablefood.org/#!certification/c3c7.
[143] Author's interview with Erik Nicholson (July 14, 2014).
[144] Id. For some recent examples of issues with Costco's supply chain, see expose of slavery in Costco's source for Thai shrimp, Kate Hodal et al., Revealed: Asian slave labour producing prawns for supermarkets in United States, United Kingdom, THE GUARDIAN (June 10, 2014), http://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour, and a recall due to salmonella in its house-brand fruit, Bill Marler, Costco gets stung by Salmonella Fruit Recall, FOOD POISON J. (Mar. 13, 2014), http://www.foodpoisonjournal.com/food-recall/costco-gets-stung-by-salmonella-fruit-recall/#.U8U25o1dVDI.
[145] Author's interview with Erik Nicholson (July 14, 2014); for an example of Costco's public support for EFI, see Herb Weisbaum, 'Culture-changing' initiative to stop food contamination on the farm, NBC NEWS (Aug. 19, 2013), http://www.nbcnews.com/health/health-news/culture-changing-initiative-stop-food-contamination-farm-f6C10855682.
[146] Author's interview with Erik Nicholson; see also Stephanie Strom & Steven Greenhouse, On the Front Lines of Food Safety, N.Y. TIMES (May 24, 2013). Costco has since informed several of its suppliers with a higher than normal rate of food safety issues that they must obtain EFI certification in order for Costco to continue purchasing their products. Author's interview with Erik Nicholson.
[147] Author's interview with Erik Nicholson. A large grower will have scores of farms in varying locations; under EFI each farm must be audited and certified individually.

making numerous changes before they were final.[148] EFI requires growers to set up problem-solving structures through which they can work collaboratively with workers to develop ways to eliminate waste and food safety hazards. It also establishes mechanisms through which workers can report unaddressed violations. As one grower seeking EFI certification told the New York Times, referring to the monitoring role that farmworkers play on certified farms, "This program means that instead of one auditor coming around once in a while to check on things, we have 400 auditors on the job all the time."[149] Workers receive higher wages at firms that are EFI-certified, a raise that continues only as long as the grower remains in the programme, thus creating incentives for them to work with the grower to achieve and maintain compliance.[150]

The EFI standards address recruitment as well as working conditions. In order to be certified, a grower must ensure that H-2A recruitment is free of cost to the worker, and that the recruiter complies with recruitment laws in workers' origin countries and in the United States, and does not discriminate on the basis of gender.[151] To offer EFI-certified businesses a way to demonstrate that their recruitment practices meet these requirements, and to train workers on how to work in compliance with the standards—including, most critically, on identifying practices that stand in the way of higher standards on safety, product quality, and productivity, and on ways to collaborate with growers to resolve them—the UFW is in the pilot phase of an initiative called CIERTO (Centro de Investigación, Entrenamiento, y Reclutamiento del Trabajador Organizado, or Workers Centre for Research, Recruitment, and Training). CIERTO is both an alternative, union-run recruitment enterprise, and a unique worker training endeavour. It is currently structured as a project of the UFW with funding provided by Andrews & Williamson, Costco, and foundations, but the intent is to transition over the first five years to an independent 501(c)(3) supported entirely through employer payments.

CIERTO initiated its first pilot in December 2014 at an Andrews and Williamson farm custom-built for the EFI program in Baja California, Mexico.[152] The workers were chosen from Andrews and Williamson's existing employees. The next rounds of training will take place in early 2015, involving a pool of 200-400 would-be migrants from San Luis Potosí. Participants were identified by Respuesta Alternativa, a network of priests and community members dedicated to advancing workers' and human rights. Workers pay a nominal fee to CIERTO for recruitment or the training they receive. Graduates will be certified to work in EFI fields, and will receive an immediate $200 bonus from

[148] Id. The unions involved in developing the EFI—PCUN, FLOC, and the UFW—held discussions about the standards with their members, and all three sent members to a special women farmworker's Congress to spend several days reviewing and revising the standards. Id.
[149] Strom & Greenhouse, On the Front Lines of Food Safety.
[150] EFI at http://www.equitablefood.org/#!certification/c3c.
[151] Compliance Criteria v. 1.0, 'Benchmark H2A', EFI, at 28-30, available at http://www.equitablefood.org/#!certification/c3c7.
[152] EFI decided that the first pilot should involve internal migration to avoid the extra layer of complication added by United States immigration law. The plan is to expand to include H-2A workers by mid-2015. Author's interview with Joe Martinez, UFW (Nov. 12, 2014).

Andrews & Williamson to compensate them for their time and prospective added value to the company. During the first half of 2015, the workers from San Luis Potosí will migrate internally to Baja California to pick strawberries and organic tomatoes in Andrews & Williamson fields. The next stage of the pilot will involve H-2A recruitment of approximately 175 workers for EFI-certified Costco suppliers' fields in the United States. CIERTO plans to rapidly scale up its recruitment and training to cover at least 1000 workers in its second year.[153]

3. A Direct Hire Requirement: The Coalition of Immokalee Workers' Fair Food Program[154]

The Coalition of Immokalee Workers (CIW) is a membership-based human rights organization of farmworkers that has carried out a 15-year Fair Food Campaign to improve the wages and working conditions of tomato pickers in Florida. Through an initial boycott, as well as publicity campaigns and protests, the Fair Food Campaign has won the assent of 12 industry giants including McDonalds, Sodexo, Whole Foods, and—in early 2014—WalMart, to its Fair Food Code of Conduct.[155] In January 2015, the CIW was awarded a Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons.

Like the farm worker unions profiled in this section, CIW came to the realization that a supply chain strategy was necessary following nearly a decade of organizing focused on the local tomato industry in the 1990s. The CIW realized that requiring individual growers to meet their demands for higher pay would only put them at a disadvantage in the market for their produce, because of the downward pressure consolidated retail food companies exerted on prices at the farm level.[156] In 2001, CIW launched a national mobilization of workers, students, people of faith, and other concerned citizens that continues to this day, pressuring retailers to enter the Fair Food Program and promise only to buy from growers that follow the Fair Food Code of Conduct. Taco Bell agreed to join the programme in 2005. Other companies followed.[157]

The Fair Food Code of Conduct was crafted with intensive farm worker input, and—in addition to raising wages—details new mandatory standards that address specific problems in the industry from the farm worker perspective. Among other mandates, the Code requires that participating brands commit to paying growers an additional 1.5 cents per pound of tomatoes purchased in order to permit them to comply with the Code and increase workers' wages while remaining competitive.[158] Most of

[153] *Id*.
[154] This case study is based in part on interviews and observation by the author in Immokalee, Florida, January 11-13, 2014.
[155] Participating Buyers, FAIR FOOD STANDARDS COUNCIL, available at http://fairfoodstandards.org/participating_buyers.html.
[156] Greg Asbed & Sean Sellers, The Fair Food Program: Comprehensive, Verifiable and Sustainable Change for Farmworkers, 16 U. PA. J.L. & SOC. CHANGE 39 (2013).
[157] Id.
[158] The 1.5 cents per pound is for conventional tomatoes. Fair Food Code of Conduct & Selected Guidance, FAIR FOOD STANDARDS COUNCIL, available at http://fairfoodstandards.org/code.html. Cherry, grape, and other specialty tomatoes that take longer to pick require a pass-through of up to 4.5 cents per pound. Email to author from Greg Asbed (July 22, 2014) (on file with author).

that money is passed through to workers, increasing their wages by a third to a half.[159] Thirteen per cent stays with the grower to cover increased payroll taxes and administrative costs due to the wage increase and code compliance.[160] These range from the provision of shade and fresh water in the fields, to the use of time clocks and payment for hours spent waiting for work to begin, to a system of progressive discipline to replace the fear of being fired at the crew leader's whim. If a "zero tolerance" violation—including forced labour, child labour, violence, or sexual assault—is found occurring in a grower's fields, the grower is removed from the Fair Food Program and is no longer able to sell to participating buyers.

The Coalition has founded an independent organization, the Fair Food Standards Council, to oversee the pass-through of the funds from buyer to grower to worker, and the implementation of the agreement. The Council audits each grower extensively at least once per season. Workers on any farm can report violations to the grower, to a 24- hour hotline staffed by Council investigators, or to the Coalition. Retaliation for filing a complaint is forbidden and has been swiftly addressed when it occurs.[161] Fair Food Standards Council investigator Sean Sellers notes the critical role of workers themselves in monitoring and enforcement: "If the audit is a snapshot, the complaint system is a camcorder."[162] CIW members act as educators for other farmworkers under the agreement, with mandatory education sessions taking place at least twice a season at every participating grower. Workers are paid their regular wage while attending these sessions.

The Fair Food Code of Conduct forbids labour intermediaries and mandates that the growers hire all field workers directly. If a grower is found violating the direct hire requirement and does not remedy the violation within four weeks, participating buyers must stop purchasing from that grower.[163] This approach is facilitated by the structure of the local labour market, which to date has largely depended on immigrants already present in the United States, rather than H-2A visa-holders who migrate from other countries on a seasonal basis.[164] Instead of using overseas recruiters, as is the norm with the H-2A programme, growers historically have fulfilled their labour needs by arranging for U.S.-based farm labour contractors to supply crews of migrants as needed. Such contractors, like guest worker recruiters, play important roles as labour market intermediaries (including assembling, transporting, employing, and overseeing crews of workers), but are notorious for their abuses, ranging from

[159] The amount of the wage increase is not fixed, and increases with each new retailer that joins the programme.
[160] Author's interview with Sean Sellers, Investigator, Fair Food Standards Council, Florida (Jan. 12, 2014). Strikingly, the Fair Food Program has also brought some unanticipated financial benefits to participating growers, in that buyers have proven willing to pay a premium of $2 per box for tomatoes from growers certified by the Program. Id.
[161] For examples of how this and other provisions of the Fair Food Code have been enforced, as well as analysis of obstacles, see Fair Food Program Report, 2011-2013, FAIR FOOD STANDARDS COUNCIL, available at http://www.fairfoodstandards.org/reports/FFP_2011-13_web_v1.0.pdf.
[162] Id.
[163] Fair Food Code of Conduct & Selected Guidance, Part I Points 5 and 6; Part 2, "Article II Violations" and "Consequences of Article II Violations."
[164] The Fair Food Program is currently contemplating an expansion that would bring H-2A workers into its ambit. Email communication from Greg Asbed (September 27, 2014).

exorbitant charges for everything from fresh water to a ride to work in an unsafe van, to demanding sexual favours in exchange for a place on a crew, to outright slavery.[165]

The coercive power of the contractor is also addressed through the Fair Food Program's provision barring crew leaders from taking money from workers for any service. The direct hire requirement represents a third model for managing labour recruitment, alongside FLOC's collectively bargained approach and the UFW's alternative recruitment entity. Fair Food Standards Council investigators report that the result of the direct hiring provision has been a shift to one of two models. Growers with larger operations have begun to bring former contractors in house, hiring them as direct employees to fill many of the same roles they played when independent. Others, including many smaller growers, continue to pay intermediaries to provide transportation and oversight in the fields, but cover all costs themselves. Since the Fair Food Standards Council also monitors wages, such growers have not been able to pass this expense on to workers.[166]

As of the 2015 season, several Fair Food Program growers have begun hiring workers through the H-2A programme. CIW and the Fair Food Standards Council are currently designing education and audit modules that relate specifically to guest worker recruitment issues. The Fair Food Program will hold growers accountable for all H-2A recruiter abuses, including fees and other coercive practices.[167]

[165] The Coalition has been a part of seven successful prosecutions of farm labour contractors for slavery since 1997. Sean Sellers & Greg Asbed, The History and Evolution of Forced Labor in Florida Agriculture, 5 *RACE/ETHNICITY: MULTIDISCIPLINARY GLOBAL CONTEXTS* 1, 38-40 (Autumn 2011).
[166] Author's interview with Sean Sellers; author's interview with Matthew Wooten, Investigator, Fair Food Standards Council, Florida (Jan. 12, 2014).
[167] Email to author from Laura Safer Espinoza, Executive Director, Fair Food Standards Council (October 6, 2014) (on file with author).

5. Concluding remarks and recommendations

A. Caveats

Before making recommendations about joint liability approaches to regulating recruitment based on these case studies and additional research, several caveats are required.

First and foremost, such an approach will only work in some contexts. At a minimum, for a government-based joint liability regime to succeed, it should be rooted in countries characterized by some respect for the rule of law, where government actors have a strong commitment to protecting migrants and workers, some freedom to innovate, and at least limited resources at their disposal. Ideally both the origin and the destination country will share these characteristics. If not, they are more essential in the destination country, because it is there that liability against the employer will need to be imposed. Likewise, there must be some check on corruption, particularly with regard to the bribery of government officials in origin countries.[168] Countries without these attributes are poor candidates except in the rare cases where civil society groups have the power to step into the breach and exert pressure on recruiters and employers on their own.

Another key to success is the presence in both origin and destination nations of one or more trade unions and non-governmental organizations that see migrants as their constituents, advocate for them actively, and are in a position to participate in the government initiative or at least to act as a watchdog over it. Because these factors differ widely around the globe, what works to improve recruitment in Mexico for jobs in the United States may not necessarily have traction in other migrant streams.

Even where the baseline conditions are present, important questions remain. In all efforts to control recruitment abuses, there is the danger that regulation will simply drive more of the recruitment industry underground. Whether this occurs in a joint liability regime will depend to a large extent on the nature of the recruitment market. Such efforts are less likely to succeed in markets where many small recruiters serve many disparate employers, particularly where those employers are stand-alone firms rather than subcontractors in product/service chains. While it may be difficult to ever fully exclude informal recruiters from the labour market, in situations where most recruiters supply labour to firms in product/service chains capped by major companies, it may be easier to drive the recruitment market toward compliance.[169]

[168] See, e.g., Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 77-79.
[169] Those recruitment agencies are still likely to continue working with chains of brokers and sub-agents down to the village level. To bring those chains into compliance will require replicating the joint liability approach in the origin country, and targeting the agency at the top of the chain for the violations of its subcontractors.

Another perennial concern is whether recruiters and employers will simply pass on to workers the additional costs associated with the new regime. To some extent, this is inevitable. But there are ways to reduce the risk. At the origin, a requirement that any legally-mandated charges (such as a government visa fee) be paid to recruiters via bank deposit, as in the FLOC agreement, draws a bright line that can be easily communicated to migrants, and creates bank documentation of any transaction where money changes hands. This should go some distance toward limiting recruiters' ability to take advantage of workers' confusion about permissible costs. At the destination, coupling the joint liability regime with enhanced enforcement of minimum wage laws (both the national minimum wage and any premium that employers are required to pay in order to hire migrants from abroad) sets a floor on wages. Since most migrants in agricultural and other seasonal jobs are paid at or near the minimum permissible wage, enforcement of that floor will limit the employer's capacity to make deductions from workers' wages to cover recruitment costs, because doing so would bring pay below the minimum. When employers do make illegal deductions, permitting migrants to recover the money from employers through a basic administrative process for claiming unpaid wages, as Manitoba does, is an important component of such a regime.

Finally, what of the pervasive origin country fear that regulating recruitment via a chain liability, no less than in other ways, will make its migrants more expensive and therefore less competitive in the global market for mobile labour? Here, a joint liability approach has an advantage over efforts to control recruitment by an origin nation on its own. Such regimes take recruitment costs out of competition, which should be the ideal from the origin country perspective.[170] When the employer is the principal target of enforcement, and the liability attaches to recruitment from any country—as it should, and as all destination country efforts profiled here do—it does not matter where in the world that employer looks for workers: all recruiters will have to comply with the same baseline standards.

The following recommendations are thus based on information gathered in the case studies of this report and are presented as a basis for further discussion.

[170] This highlights a sequencing issue for joint liability initiatives. To achieve the goal of taking recruitment costs out of competition, the destination country must make the first move in mandating that all employers use compliant recruiters. But few origin countries have a pool of "good" agencies in a position to meet these standards as soon as they go into effect. I thank Bassina Farbenblum for this observation. A step toward addressing this would be for destination governments to build in substantial lead time before a joint liability provision goes into effect, and to use that time to coordinate publicity with government officials in key origin countries about the standards recruiters will be expected to meet, ideally coupled with support for agencies that wish to become certified.

B. Recommendations

- **Establish a clear set of standards to govern recruiters at the national level and delineate liability for violations of those standards.**

  Related observations:

  a) Standards can be established legislatively, or—with attention to the caveats set out below—via a voluntary agreement such as a code of conduct.[171]

     Standards can be set in the destination country, the origin country, or a combination. Where laws in the origin and destination country differ, the ideal is to harmonize them by bilateral agreement. If this is not possible, standards originating in destination countries should also require compliance with laws on recruitment in effect in the origin country, and vice versa.

  b) A firm's acceptance of responsibility for recruitment in its supply chain should not be left entirely to discretion. Voluntary schemes may thus be inadequate unless they are coupled with government or civil society mechanisms that create incentives significant enough to induce participation by the vast majority of firms in the relevant market. Actors higher up the supply chain can be brought into a joint liability regime in different ways, as the case studies demonstrate:

     A law in the destination country can make employers legally and financially responsible if their recruiters violate the standards. The law can also offer employers access to a significant benefit—such as temporary work visas—on a demonstration that their recruiters comply with the standards.

     A law in the origin country can require the employer to sign a contract agreeing to joint liability for recruitment abuses before hiring workers from that country. This is unlikely to be successful unless there is active enforcement in both the origin and destination country.

     Efforts by workers and consumers can encourage employers to take responsibility for recruitment in its labor supply chain.

[171] As to the contents of the standards, the ILRWG's eight Core Principles offer an excellent starting point. ILRWG, The American Dream Up for Sale, supra note 7, at 6.

c) Recruiters should be liable for their own violations and also for those of the sub-agents to which they are directly linked.

- **Enforcement is critical. Application of the standards must be timely, consistent, and widespread, imposing penalties and/or creating positive incentives that are significant enough to change the behaviour of all market actors, including the employers.**

Related observations:

a) Firms make rational decisions about compliance depending on the financial impact of the sanction for violations and their calculation of the likelihood that the penalty will actually be applied in their case.[172] Thus, joint liability approaches will work only to the extent that sanctions for contracting with non-compliant recruiters are meaningful and routinely applied.[173]

b) When the goal is to reshape a market so that actors within it change their behaviour, the penalties/rewards must be of a magnitude to compete with the penalties/rewards that the market metes out.

One example of a powerful incentive is the requirement that the employer demonstrate its recruiter(s)' compliance with the standards as a prerequisite for access to visas for temporary workers.

Other potential sanctions against employers include the loss of a license to do business, withdrawal of a certificate of occupancy, or a bar from competition for government contracts. Stop-work orders and the seizing of goods produced under non-compliant conditions are two penalties that have been used in other contexts.[174]

c) This dynamic changes the market for recruitment services. From the recruitment agency's perspective, the standards—once easy to ignore because the government was unable or unwilling to enforce them and because migrants were willing to pay large sums whatever the law said—become a precondition for access to the lifeblood of jobs abroad.

[172] For an analysis of factors influencing firms' decisions as to whether to comply with workplace standards, see David Weil, Public Enforcement/Private Monitoring: Evaluating a New Approach to Regulating the Minimum Wage, 58 INDUS. & LAB. REL. REV. 238, 239-240 (Jan. 2005).
[173] In the case of sanction via law, this requires a well-staffed enforcement body or a self-executing process. Where the sanction comes through public protest, it means that the organization responsible for the campaign not only must generate meaningful pressure initially, but must credibly be able to threaten to renew the pressure if the company fails to comply with its promises.
[174] For an overview of such penalties in the joint liability context, see Ruckelshaus et al., Who's the Boss, supra note 52, at 37.

In markets where employers regularly face joint liability for their recruiters' violations, non-compliant recruiters should find that many employers are unwilling to contract with them.

Likewise, presuming that liability applies all the way up the chain, brands at the top of supply networks will begin to ask their subcontractors to show that they are only working with compliant recruiters.

This market consequence is the primary enforcement mechanism against recruiters within a joint liability approach.

d) Effective enforcement such as this costs money.

Whether funded publicly, through union dues or private donations, or some combination, all of these initiatives must be adequately resourced in order to have their intended impact.

Symbolic efforts without funding behind them will fail, and indeed may increase the sense among recruiters that they are free to do what they wish because they are beyond the reach of regulation.

- **Both destination and origin country governments have critical roles to play in a joint liability regime.**

Related observations:

a) Information-sharing is critical.

Origin country governments should adopt policies that generate accurate information about recruiters, and should make that data publicly available. Such policies include:

— Creating a registry and licensing regime with accurate information about the status of individual recruiters, and making this information available to the public through a real-time, searchable database.[175]

— Documenting recruitment abuses through inspections of recruitment agencies and confidential worker interviews, as well as by collecting information about problematic recruiters from agencies charged with

[175] For detailed recommendations of best practices for the creation of registries and licensing regimes for recruitment, see Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 73-79.

addressing migrant claims and from labour attaches in embassies abroad, and incorporating this information in the public database.

Destination country governments should collect information about an employer's relationship with recruiters as a part of the visa application process, and should make that data publicly available. (Origin countries that require government approval before a migrant departs to work abroad should do the same.)

Information sharing between agencies is essential, since recruitment abuses often go hand in hand with poor working conditions and other violations of the law.

b) In the destination country, *enforcement power against employers* whose recruiters violate the standards should be held by an agency with a worker-protective mandate and broad expertise regarding minimum wage and other basic workplace standards. Similarly, in the origin country, *enforcement power against recruiters* who violate the standards should be held by an agency with a worker-protective mandate and broad expertise regarding the treatment of migrant workers. This is particularly important since an entity solely charged with enforcing recruitment laws would be more easily captured by the recruitment industry.

c) Both origin and destination country laws regarding recruitment must be systematically enforced, and remedies for breaches must be accessible to migrant workers.[176]

d) Both origin and destination country laws imposing joint liability in the recruitment context should include a private right of action, so that workers can bring claims in court.

- **Create a safe harbour for employers who use a particular subset of recruiters.**

Related observations:

a) Under a joint liability regime, employers must find a way to assure themselves, and the enforcers of chain responsibility for recruitment standards, that the recruitment agencies they hire are free of violations. As a result, the imposition of supply chain responsibility for recruitment will generate employer demand for a "recruiter seal of approval" as proof that a firm has done due diligence in contracting its recruitment agencies, and/or the option of gaining a safe harbour by using a designated recruitment process.[177]

[176] For studies highlighting the inaccessibility of processes and remedies in the home country for migrant workers, see Paoletti et al., Migrant Workers' Access to Justice, supra note 7 (on Nepal); Farbenblum et al., Migrant Workers' Access to Justice, supra note 7 (on Indonesia).

[177] The creation of a public registry for recruiters coupled with a safe harbour for employers that use registered agencies has been included several times in legislation proposed in the US Congress in recent years, most notably in S. 744, the

b) There is a range of ways to create such a seal of approval or safe harbour.

Government-run registration and licensing

— Both origin and destination governments can establish recruiter registries and licensing programs. Where an origin-destination pair both have such programs, the destination country should require that recruiters based in the country of origin be licensed at home, as a precondition for licensing in the destination country.Countries have experimented with numerous requirements for licensing, including bonding, background checks, minimum and maximum sizes for firms, training programs, and other mandates. Likewise, there is a range of approaches to inspections and penalties. It is critical that countries establishing new programs learn about what works and what doesn't from those that have gone before.[178]

— Programs in origin countries should incorporate registration and licensing requirements for agents and sub-agents as well as for principal recruitment agencies. Principal recruitment agencies should be held liable for the violations of their non-licensed agents and sub-agents.

— Government licensing programs may consider creating regularly updated, searchable on-line databases that note all actions taken in relation to each recruiter, including the reasons for suspensions and revocations. As one example, Singapore has developed a recruiter licensing database that includes many of these elements.[179]

— Registration and licensing programs are only worthwhile if their requirements are consistently enforced. Programs should not be established unless there is the political will to fund them at a level that permits adequate staffing.

Comprehensive Immigration Reform bill that passed the Senate in 2013 but was never enacted. Such a proposal has not yet been made law.

[178] For a very recent comprehensive review of licensing programs in Colombo Process countries and their destination states, and a detailed set of recommendations that reflect lessons learned, see Jones, What Works in Recruitment Monitoring (draft), supra note 7 ("Part I: Recruitment Monitoring"). For an example of how other countries' experiences can be used to guide the creation of a new licensing program in a specific context, see Lily S. Axelrod & Micaela Pacheco Ceballos, Strengthening Migrant Workers Protections: Implementing a Registry and Licensing Program in accordance with the New Recruitment Agency Regulation [in Mexico], PRODESC (July 2014), available at http://www.prodesc.org.mx/wp-content/uploads/2014/07/Strengthening-Migrant-Workers-Protections-Policy-Brief.pdf.

[179] Employment Agency Directories, MINISTRY OF MANPOWER (Jan. 10, 2013 11:22AM) (Singapore), available at http://www.mom.gov.sg/foreign-manpower/employment-agencies/employment-agency-directory/Pages/employment-agency-directory.aspx.

Voluntary certification

— Voluntary certification systems come with considerable risks. If an initiative does offer an employer a safe harbour for using a recruiter that has obtained certification through a voluntary initiative, it must take great care to ensure that the certification process is rigorous and free of conflicts of interest.

> Even the best certification systems may be undone by competing schemes set up by recruiter representatives, with similar names but much laxer standards; by recruiters' lack of control over their sub-agents, so the firm may be certified as compliant while workers in villages continue to pay bribes to brokers who are part of the recruiter's chain; by the fact that recruiters often meet with would-be migrants in the field, rather than at a fixed site that would be easier for an auditor to observe; and by the fast-changing nature of the industry.[180]

— While there is no such thing as an ironclad regime, lessons from effective product chain liability initiatives, including in particular the Fair Food Program profiled above, suggest that the following are important factors:[181]

> Ensure that recruiters and employers are consulted regarding the code, but that they do not hold explicit or functional decision-making power about either the standards or their application.

[180] Similar problems have plagued garment production certification programs. For two books exploring these issues from quite different perspectives, see JILL ESBENSHADE, MONITORING SWEATSHOPS: WORKERS, CONSUMERS, AND THE APPAREL INDUSTRY (2004); RICHARD LOCKE, THE PROMISE AND LIMITS OF PRIVATE POWER: PROMOTING LABOR STANDARDS IN A GLOBAL ECONOMY (2013)**;** see also Mark Barenberg, Toward a Democratic Model of Transnational Labour Monitoring? (Brian Bercusson and Cynthia Estlund, eds., Hart 2008); Declan Walsh & Steven Greenhouse, Inspectors Certified Pakistani Factory as Safe before Disaster, N.Y. TIMES (Sept. 19, 2012), available at http://www.nytimes.com/2012/09/20/world/asia/pakistan-factory-passed-inspection-before-fire.html?pagewanted=all.

[181] In addition to building on the successful elements of the Fair Food Program, the recommendations in this section draw on the examples of the Accord on Building and Fire Safety in Bangladesh, available at http://bangladeshaccord.org/ (for a useful analysis of the advances in the Accord, see Benjamin Hensler & Jeremy Blasi, Making Global Corporations' Labor Rights Commitments Legally Enforceable: The Bangladesh Breakthrough, WORKER RIGHTS CONSORTIUM (June 18, 2013), available at http://www.cleanclothes.org/resources/recommended-reading/making-global-corporations2019-labor-rights-commitments-legally-enforceable-the-bangladesh-breakthrough; the insights of Mark Barenberg, including those expressed in Toward a Democratic Model of Transnational Labour Monitoring?; and discussions with Jeremy Blasi regarding the Workers Rights Consortium. See author's interviews with Mark Barenberg, Professor, Columbia University School of Law; co-founder, Workers Rights Consortium, New York (Aug. 22, 2013) and Jeremy Blasi, formerly Director of Research and Investigations, currently Senior Consultant, Workers Rights Consortium (Oct. 15, 2013).

In addition to covering recruitment costs, employers should be required to pay some part of the additional expenses their recruiters must make in order to comply.

Monitors should be independent of the recruitment and employment firms, and should not be paid by the entities they audit.

Compliance should be assessed through multiple mechanisms:

Employers should be required to share all information about the recruiters they use, and recruiters should be required to share all information about the employers they supply.

Inspections should be frequent and thorough, and should incorporate confidential interviews with workers, both at and away from work.

Recruiters and employers should give full access to financial documents during audits.

Workers should be deputized as monitors and should have multiple routes to report violations, including through trade unions, other legitimate worker representatives, or trusted non-governmental organizations.

Non-compliance that is not quickly remedied should result in swift suspensions and removals.

The results of inspections should be shared with firms and workers via web, email, and hand-outs.

Alternatives to Traditional Recruiters

— A complementary approach to licensing is to offer employers immunity from joint liability (or other benefits, such as faster processing) if they contract workers via a designated entity. Alternatives can take a range of forms.

Direct recruitment: The employer recruits and hires workers itself, rather than through an intermediary. The CIW mandate of direct hiring for all participating growers is an example of such an

approach. Government officials enforcing the Manitoba law and the UK GLA believe that they have increased the number of firms recruiting directly rather than through intermediaries.[182]

Government recruitment: An origin country government establishes a department and public procedure through which all recruitment, or recruitment for a particular sector, must occur. A state or provincial government can do the same. These arrangements may be made unilaterally, or as part of a bilateral agreement with a destination country.

Non-profit recruitment: A trade union or non-governmental organization establishes its own intermediary, for example the UFW's pilot CIERTO effort, or offers its seal of approval to an existing non-profit or government entity.

Recruitment via a private "good recruiter": A private recruiter is explicitly founded on good recruitment principles that are consistent with the initiative's standards.[183] There have been a number of efforts to create "good recruiter" models. However, most struggle to stay in business because they must compete with other recruiters that do not adhere to the same high standards. Creating a safe harbour for such efforts in the context of an effective joint liability initiative should help bolster their sustainability.

- **Incorporate significant roles for migrant workers themselves in the design of policy about recruitment and in its monitoring and enforcement.[184]**

  Related observations:

  a) Key roles for workers include:

  Policy designers, recommending standards and procedures based on their intimate knowledge of how the recruitment system works.

[182] Author's interview with Jay Short; author's interview with Paul Broadbent, Chair, UK Gangmasters' Licensing Authority (Sept. 5, 2013).
[183] Two examples are FSI International in Nepal (http://www.fsi-worldwide.com/) and The Fair Hiring Initiative in the Philippines. See also descriptions in Jureidini, Migrant Labour Recruitment to Qatar, supra note 7, at 73-74.
[184] For an argument in favour of this approach along with several case studies, see Janice Fine & Jennifer Gordon, Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations, 38 POL. & SOC'Y 552 (2010). For a description of roles that NGOs and unions may be able to play in the defense of migrants' rights during recruitment, see Jones, What Works in Recruitment Monitoring (draft), supra note 7, at 109-114.

Monitors, deputized to observe recruiter behaviour and provided with multiple routes to report non-compliance.

Participants in organizing efforts which create economic pressure that can encourage firms at the top of the supply chain to adopt enhanced standards and in collective bargaining through trade unions to change the behaviour of governments, employers, and recruiters.

Peer educators, providing information pre- and post- departure not only about formal rights but about real conditions and sources of support on the ground.

— Would-be migrants should learn about their rights during recruitment/employment and how to enforce them before they have decided to migrate or committed to a particular recruiter, rather than (if at all) at sessions immediately before they depart, once all of these decisions have been made.

b) To play these roles, migrant workers need institutional support from trade unions and non-governmental organizations that they can access both at home and while working. The ideal situation involves collaboration between origin and destination civil society organizations that offer them representation bridging the two locations.[185]

- **Protect migrant workers from retaliation when they exercise their rights.**

Related observations:

a) Any recruitment firm whose employees or agents threaten the worker or her family members with retaliation must be barred from the program.

b) Blacklisting of migrant workers who raise complaints, by employers or by any recruiter (including public agencies[186]), must be prohibited.

[185] See Gordon, Roles for Workers and Unions in Regulating Labour Recruitment in Mexico (forthcoming 2015). For two examples of organizations in the United States that seek to make transnational justice more available to cross-border migrant workers in North and Central America, see Centro de los Derechos del Migrante, www.cdmigrante.org, and Global Workers Justice Alliance, www.globalworkers.org. For profiles of collaborations between unions and other workers' organizations in origin and destination countries, see Jennifer Gordon, Towards Transnational Labor Citizenship: Restructuring Labor Migration to Reinforce Workers' Rights, UC BERKELEY L. SCH., THE CHIEF JUSTICE EARL WARREN INST. ON RACE, ETHNICITY, & DIVERSITY (2009), available at https://www.law.berkeley.edu/files/Gordon_Transnatl_Labor_Final.pdf.

[186] For an illustration of why such protections are necessary even in the context of government recruitment, see the British Columbia Labour Relations Board's (BCLRB) 2014 decision in Certain Employees of Sidhu & Sons Nursery Ltd., BCLRB (Mar. 20, 2014), available at http://s3.amazonaws.com/migrants_heroku_production/datas/1509/2014canlii12415_original.pdf?1396367837. The BCLRB found that the Mexican Consulate in Vancouver had blacklisted several Mexican citizens employed on temporary visas in British Columbia, making it impossible to return to their jobs the following season, because they had supported an organizing effort by the United Food and Culinary Workers Union Canada.

c) To this end, one requirement that employers could be required to mandate for their labour supply chains (and that also could be incorporated in destination country immigration legislation) is presumptive re-hire for temporary migrant workers, who otherwise face extended periods of uncertainty about whether they will be called back for the next season.

Presumptive re-hire offers workers some protection from retaliation by the employer and recruiter for the migrants' efforts to address violations on the job.

FLOC's system offers one example of how this might work.[187]

d) Migrant mobility between jobs in the destination country is essential. If a worker is fired or mistreated by the employer for defending her rights, she must be able to change jobs while keeping her visa, and should have a right to remain and work in the destination country while her claim against the employer is on-going.

- **Involve active transnational collaboration between origin and destination country governments and between origin and destination trade unions and other civil society actors.**

Related observations:

a) While an origin or a destination country can establish joint liability for recruitment unilaterally, to truly hold firms and agencies liable for each other's violations requires bilateral collaboration.

In most of the case studies I have offered here, however, and in spite of some formal agreements to collaborate, destination and origin country actors largely work alone, each within its own domestic legal regime.

— As the Manitoba and Netherlands case studies and all of the organizing examples make clear, an effort run entirely from a destination country can be successful from the destination country's perspective if it drives employers toward direct employment or toward the use of the recruiters it certifies.

— However, destination-country-only approaches face problems of proof and a lack of information about the recruitment industry in origin countries, do not

[187] NGA's Forced Labor Prevention Accord, currently under development, represents another approach to presumptive re-hire. Author's interview with Jennifer J. Rosenbaum, Legal and Policy Director, National Guestworkers Alliance, New Orleans (Apr. 25, 2014); author's interview with Saket Soni, Founder and Executive Director, National Guestworkers Alliance, New Orleans (Apr. 24, 2014); see also Michelle Chen, What if Your Ability to Stay in This Country Depended on Your Employer.

tap origin country actors' knowledge of the recruitment industry, minimize the origin country government's responsibility for addressing recruitment violations, and risk creating solutions that serve destination country interests only.

When origin country regulates recruitment in partnership with a destination country that has similar goals, and each party enforces the regulations within its own jurisdiction while sharing information across borders, the arrangement mitigates concerns about disadvantaging the origin country's access to jobs abroad, while enhancing the enforcement capacity along the chain as a whole.

b) Where government-to-government bilateral agreement is not possible, it may be feasible to achieve bilateral pilot projects through collaboration with individual government agencies, or with state or provincial authorities.

c) Links between advocates and trade unions in both countries are essential. It is critical that these transnational relationships be built on a foundation of transparency, democratic decision-making, and shared resources, to address the misunderstandings and power imbalances that so often stymie true collaboration in such contexts.

Bibliography

Abella, M. 2004. "The role of recruiters in labour migration", in D. Massey and J.E. Taylor (eds): *International Migration Prospects and Policies in a Global Market* (Oxford University Press).

—; Martin, P. 2014. *Measuring Recruitment or Migration Costs*, a Technical Report for KNOMAD, 4 May.

Agunias, D.R. 2009. *Guiding the Invisible Hand: Making Migration Intermediaries Work for Development*, report for United Nations Development Programme Human Development, Apr. Available at: http://hdr.undp.org/sites/default/files/hdrp_2009_22.pdf.

—. 2010. *Migration's Middlemen: Regulating Recruitment Agencies in the Philippines-United Arab Emirates Corridor*, report for Migration Policy Institute (MPI), Washington, D.C., June. Available at: http://migrationpolicy.org/research/migrations-middlemen-regulating-recruitment-agencies-philippines-united-arab-emirates.

—. 2012. *Regulating Private Recruitment in the Asia-Middle East Labour Migration Corridor*, report for MPI, Washington, D.C., Aug. Available at: http://www.migrationpolicy.org/research/regulating-private-recruitment-asia-middle-east.

Allain, J.; Crane, A.; LeBaron, G.; Behbahani, L. 2013. *Forced Labour's Business Models and Supply Chains*, a report for Joseph Rowntree Foundation, UK, May. Available at: http://www.jrf.org.uk/sites/files/jrf/forced-labour-business-full.pdf.

Ancheita, A.C.; Bonnici, G.L. 2013. *Quo Vadis? Recruitment and Contracting of Migrant Workers and Their Access to Social Security: The Dynamics of Temporary Migrant Labour Systems in North and Central America*, INEDIM Working Paper Series Working Paper No. 4 (Mexico City).

Anner, M.; Bair, J.; Blasi, J. 2013. "Towards Joint Liability in Global Supply Chains: Addressing the Root Causes of Labour Violations in International Subcontracting Networks", in *Comparative Labor Law and Policy Journal*, Vol. 35, No. 1, pp. 1-43.

Asbed. G.; Sellers, S. 2013. "The Fair Food Program: Comprehensive, Verifiable and Sustainable Change for Farmworkers", in *University of Pennsylvania Journal of Law and Social Change*, Vol. 16, No. 1, pp. 39-48.

Axelrod, L.S.; Pacheco, M. 2014. *Strengthening Migrant Workers Protections: Implementing a Registry and Licensing Program in accordance with the New Recruitment Agency Regulation*, report for ProDESC, Mexico City, July. Available at: http://www.prodesc.org.mx/wp-content/uploads/2014/07/Strengthening-Migrant-Workers-Protections-Policy-Brief.pdf.

Barenberg, M. 2008. "Toward a Democratic Model of Transnational Labour Monitoring?", in B. Bercusson and C. Estlund (eds): Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions (Portland, OR, Hart Publishing), pp. 37-65.

Bauer, M.; Stewart, M. 2013. *Close to Slavery: Guestworker Programs in the United States*, report for Southern Poverty Law Center, Montgomery, AL, Feb. Available at: http://www.splcenter.org/sites/default/files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf.

Bobeva, D.; Garson, J.P. 2004. "Overview of Bilateral Agreements and Other Forms of Labour Recruitment", in *Migration for Employment - Bilateral Agreements at a Crossroads* (Paris, Organisation for Economic Co-operation and Development (OECD) Publishing), pp. 11-12.

Bouloubasis, V. 2013. "Be Our Guest Worker", in The American Prospect, 7 Nov. Available at: http://prospect.org/article/be-our-guest-worker.

Carr, E.G. 2010. "Search for a Round Peg: Seeking a Remedy for Recruitment Abuses in the U.S. Guest Worker Program", in *Columbia Journal of Law and Social Problems*, Vol. 43, pp. 399-446.

Centro de los Derechos del Migrante, Inc. (CDM). 2013. *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change*, report by CDM, Mexico City. Available at: http://www.cdmigrante.org/wp-content/uploads/2013/01/Recruitment-Revealed_Fundamental-Flaws-in-the-H-2-Temporary-Worker-Program-and-Recommendations-for-Change.pdf.

Chen, M. 2014. "What if Your Ability to Stay in This Country Depended on Your Employer", in The National Blog, 12 June. Available at: http://www.thenation.com/blog/180192/what-if-your-ability-stay-country-depended-your-employer# [27 Jan. 2015].

Chuang, J.A. Forthcoming. *Exploitation Creep and the Unmaking of Human Trafficking Law* (Washington, D.C., *American Journal of International Law*).

Coe, N.M.; Jone, K.; Ward, K. 2010. "The Business of Temporary Staffing: A Developing Research Agenda", in *Geography Compass*, Vol, 4, No. 8, pp. 1055-1068.

Cohn, D.; Gonzalez-Barrera, A.; Cuddington, D. 2013. *Remittances to Latin America Recover—but Not to Mexico*, report for Pew Research Center, Washington, D.C., 15 Nov. Available at: http://www.pewhispanic.org/files/2013/12/Remittances_11-2013_FINAL.pdf.

Constable, N. 2007. *Maid to Order in Hong Kong: Stories of Migrant Workers* (Ithaca, NY, Cornell University Press).

Dalton, D. 2007. *Building National Campaigns: Activists, Alliances, and How Change Happens* (Oxford, UK, Oxfam, GB).

Esbenshade, J. 2004. *Monitoring Sweatshops: Workers, Consumers, and the Global Apparel Industry* (Philadelphia, Temple University Press).

Fair Food Standards Council. 2013. *Fair Food Program Report, 2011-2013*. Available at: http://www.fairfoodstandards.org/reports/FFP_2011-13_web_v1.0.pdf [26 Jan. 2015].

Faraday, F. 2014. *Profiting from the Precarious: How recruitment practices exploit migrant workers,* report for Metcalf Foundation, Ontario, Canada, Apr.

Farbenblum, B.; Taylor-Nicholson, E.; Paoletti, S. 2013. *Migrant Workers' Access to Justice at Home: Indonesia* (New York, USA, Open Society Foundation). Available at: http://www.opensocietyfoundations.org/sites/default/files/migrant-worker-justice-indonesia-20131015.pdf.

—. 2013. *Migrant Workers' Access to Justice at Home: Indonesia*, Migrant Workers' Access to Justice Series (New York, Open Society Foundations). Available at: http://www.opensocietyfoundations.org/sites/default/files/migrant-worker-justice-indonesia-20131015.pdf.

Fernandez, B. 2013. "Traffickers, Brokers, Employment Agents, and Social Networks: The Regulation of Intermediaries in the Migration of Ethiopian Domestic Workers to the Middle East", in *International Migration Review*, Vol. 47, No. 4, pp. 814-843.

Fine, J.; Gordon, J. 2010. "Strengthening Labour Standards Enforcement through Partnerships with Workers' Organizations", in *Politics & Society*, Vol. 38, pp. 552-585.

Fudge, J. 2011. "Global Care Chains, Employment Agencies and the Conundrum of Jurisdiction: Decent Work for Domestic Workers in Canada", in *Canadian Journal of Women and the Law*, Vol. 23, No. 1, pp. 235-246.

—; Parrott, D. 2013. "Placing Filipino Caregivers in Canadian Homes: Regulating Transnational Employment Agencies in British Columbia", in J. Fudge and K. Strauss (eds): *Temporary Work, Agencies and Unfree Labour: Insecurity in the New World of Work* (New York, Routledge).

Ganz, M. 2010. *Why David Sometimes Wins: Leadership, Organization, and Strategy in the California Farm Worker Movement* (New York, Oxford University Press).

Global Workers Justice Alliance. 2011. "Why Transparency in the Recruiter Supply Chain is Important in the Effort to Reduce Exploitation of H-2 Workers: A Global Workers Justice Alliance Position Paper" (Brooklyn, New York). Available at: http://www.globalworkers.org/sites/default/files/recruiter_supply_chain_disclosure_gwja_sept_2011.pdf.

—. 2012. "Visas, Inc: Corporate Control and Policy Incoherence in the U.S. Temporary Labor System" (Brooklyn, New York). Available at: http://www.globalworkers.org/sites/default/files/visas_inc/index.html#/44/ [27 Jan. 2015].

—. 2013. "Confiscation of Property Titles in Guatemala by Recruiters of Temporary Workers with H-2B Visas" (Huehuetenango, Guatemala). Available at: http://www.globalworkers.org/our-work/publications/confiscation-property-titles (in Spanish only) [27 Jan. 2015].

Gordon, J. 2009. "Towards Transnational Labour Citizenship: Restructuring Labour Migration to Reinforce Workers' Rights", in *Restructuring Labor Migration*. Available at: https://www.law.berkeley.edu/files/Gordon_Transnatl_Labor_Final.pdf.

—. 2010. "People Are Not Bananas: How Immigration Differs from Trade", in *Northwestern Law Review*, Vol. 104, No. 3, pp. 1109-1146.

—. 2011. "Free Movement and Equal Rights for Low-Wage Workers? What the United States Can Learn from the New EU Migration to Britain", issue brief for *The Chief Justice Earl Warren Institute*

on Law and Social Policy, Berkeley, May. Available at: http://www.law.berkeley.edu/img/Gordon_Issue_Brief_May_2011_FINAL.pdf.

—. Forthcoming. *Roles for Workers and Unions in Regulating Labour Recruitment in Mexico*.

Government of Canada. 2012. *Facts and Figures 2012 – Immigration overview: Permanent and temporary residents*. Available at: http://www.cic.gc.ca/English/resources/statistics/facts2012/permanent/10.asp [26 Jan. 2015].

Government of Saskatchewan. 2013. *Foreign Worker Recruitment and Immigration Services Act: Protecting Foreign Workers and Immigrants Coming to Saskatchewan* (Saskatchewan, CAN, Ministry of the Economy). Available at: http://www.saskimmigrationcanada.ca/FWRIS-act-fact-sheet-for-foreign-workers-and-immigrants.

Hensler, B.; Blasi, J. 2013. "Making Global Corporations' Labour Rights Commitments Legally Enforceable: The Bangladesh Breakthrough", in *Worker Rights Consortium*. Available at: http://www.cleanclothes.org/resources/recommended-reading/making-global-corporations2019-labour-rights-commitments-legally-enforceable-the-bangladesh-breakthrough.

Hernandez-Leon, R. 2005. *The Migration Industry in the Mexico-U.S. Migratory System*, On-Line Working Paper Series CCPR-049-05 (Los Angeles, California Center for Population Research). Available at: http://www.diplomatie.gouv.fr/fr/IMG/pdf/migrationindustry_mexico.pdf.

Hodal, K.; Kelly, C.; Lawrence, F. 2014. "Revealed: Asian slave labour producing prawns for supermarkets in US, UK", in The Guardian (10 June). Available at: http://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour.

Houwerzijl, M.; Peters, S. 2008. *Liability in subcontracting processes in the European construction sector: Netherlands*, report for Eurofound, Dublin. Available at: http://www.eurofound.europa.eu/publications/htmlfiles/ef08877.htm.

Hsia, H.C. 2007. *Transnationalism from Below: The Case Study of Asian Migrants Coordinating Body* at the 15th International Symposium of the International Consortium for Social Development, Hong Kong, July. Available at: http://www.apmigrants.org/papers/Transnationalism_fr_below.pdf.

International Labour Office (ILO). 2005. *Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and rights at Work 2005*, Report I (B), International Labour Conference, 93rd Session, Geneva, 2005 (Geneva).

—. 2007. *Guide to Private Employment Agencies: Regulation, monitoring and enforcement* (Geneva). Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/instructionalmaterial/wcms_083275.pdf.

—. 2014. *World of Work Report 2014: Developing with Jobs* (Geneva). Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_243961.pdf.

The International Labor Recruitment Working Group. 2013. "The American Dream Up for Sale: A Blueprint for Ending International Labour Recruitment Abuse", Feb. Available at: http://www.cdmigrante.org/wp-content/uploads/2013/02/Final-E-version-ILRWG-report2.pdf.

—. 2013a. "Senate Bill Improvements to International Labor Recruitment". Available at: https://fairlaborrecruitment.files.wordpress.com/2013/06/senate-bill-ilr-2-pager-7-17-2013.pdf.

Jones, K. Forthcoming. *What Works in Recruitment Monitoring and Welfare Assistance: A review of how international recruitment and welfare assistance is regulated, monitored and enforced in Colombo Process Member States and key CPMS destination States* (International Organization for Migration).

Jureidini, R. 2014. *Migrant Labour Recruitment to Qatar*, report for Qatar Foundation Migrant Worker Welfare Initiative, Doha, Qatar. Available at: http://www.qscience.com/userimages/ContentEditor/1404811243939/Migrant_Labour_Recruitment_to_Qatar_Web_Final.pdf.

Jus Sempre Global Aliiance. 2014. "Wage gap charts for Mexico vis-à-vis selected developed and 'emerging' economies, with available wage and PPP data (1996-2012)". Available at: http://www.jussemper.org/Resources/Labour%20Resources/WGC-AEM/Resources/WagegapsMexAEM.pdf.

La Botz, D. 2007. "Farm Labour Organizer Murdered in Mexico", in CounterPunch. Available at: http://www.counterpunch.org/2007/04/14/farm-labour-organizer-murdered-in-mexico/.

Lenhardt, R.; Gordon, J. 2010. *Rethinking Work and Citizenship*, in *UCLA Law Review*, Vol. 55, pp. 1161-1228.

Lindquist, J. 2012. "The Elementary School Teacher, the Thug and his Grandmother: Informal Brokers and Transnational Migration from Indonesia", in *Pacific Affairs*, Vol. 85, No. 1, pp. 69-89.

Locke, R. 2013. *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy* (Cambridge, UK, Cambridge University Press).

Marler, B. 2014. "Costco gets stung by Salmonella Fruit Recall", in Food Poison Journal. Available at: http://www.foodpoisonjournal.com/food-recall/costco-gets-stung-by-salmonella-fruit-recall/#.U8U25o1dVDI.

Martin, P. 2005. *Merchants of Labour: Agents of the evolving migration infrastructure*, Discussion Paper for International Institute for Labour Studies No. DP/158/2005, (Geneva).

Massey, D.S. 1999. "International Migration at the Dawn of the Twenty-First Century: The Role of the State", in *Population and Development Review*, Vol. 25, No. 2, pp. 303-322.

McKinnon, J.M. 2004. "FLOC sets its sights on future fights", in The Blade, 3 Oct. Available at: https://www.toledoblade.com/business/2004/10/03/FLOC-sets-its-sights-on-future-fights.html [27 Jan. 2015].

National Guestworker Alliance (NGA); Pennsylvania State University, Dickinson School of Law's Center for Immigrants' Rights. 2012. "Leveling the Playing Field: Reforming the H-2B Program to Protect Guestworkers and U.S. Workers". Available at: http://www.guestworkeralliance.org/wp-content/uploads/2012/06/Leveling-the-Playing-Field-final.pdf.

North Carolina Growers Association (NCGA) and Farm Labor Organizing Committee (FLOC). 2012. "Agreement" (copy on file with author).

Ofreneo, R.E.; Samonte, I.A. 2005. *Empowering Filipino Migrant Workers: Policy Issues and Challenges,* report for International Labour Office, Geneva. Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_160550.pdf.

Paoletti, S.; Taylor-Nicholson, E.; Sijapati, B.; Farbenblum, B. 2014. *Migrant Workers' Access to Justice at Home: Nepal* (New York, USA, Open Society Foundation). Available at: http://www.opensocietyfoundations.org/sites/default/files/migrant-nepal-report-english-20140610_1.pdf.

Prassl, J. 2014. *Insourcing Responsibility: A Functional Notion of the Employer* at National Employment Law Project's (NELP) Outsourced Work: Insourcing Responsibility Conference, 12-13 May. Available at: http://nelp.3cdn.net/100101adf5769a9ca9_arm6ivozh.pdf.

Preston, J. 2012. "Company Banned in Effort to Protect Foreign Students From Exploitation", in New York Times, 1 Feb. Available at: http://www.nytimes.com/2012/02/02/us/company-firm-banned-in-effort-to-protect-foreign-students.html?pagewanted=1&_r=0 [27 Jan. 2015].

Rajan, S.I.; Varghese, V.J.; Jayakumar, M.S. *Overseas Recruitment Practices in India* (Thiruvananthapuram, IND, Ministry of Overseas Indian Affairs). Available at: http://www.oit.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/presentation/wcms_100010.pdf.

Reyes, T. 2004. "8000 'Guest Workers' Join Farm Union in North Carolina", in Labor Notes, 30 Sept. Available at: http://www.labornotes.org/2004/09/8000-'guest-workers'-join-farm-union-north-carolina.

Rives, K. 2005. "Guest workers note progress: Labor contract has brought changes", in Raleigh News & Observer, 29 Aug. Available at: http://www.smfws.com/art8292005.htm [27 Jan. 2015].

Rodriguez, R.M. 2010. *Migrants for Export: How the Philippine State Brokers Labour to the World* (Minneapolis, MN, University of Minnesota Press).

Rogaly, B. 2008. "Migrant workers in the ILO's 'Global Alliance Against Forced Labour' report: a critical appraisal", in *Third World Quarterly*, Vol. 29, No. 7, pp. 1431-1447.

Ruckelshaus, C.; Smith, R.; Leberstein, S.; Cho, E. 2014. *Who's the Boss: Restoring Accountability for Labour Standards in Outsourced Work* (New York, USA, National Employment Law Project).

Sellers, S.; Asbed, G. 2011. "The History and Evolution of Forced Labour in Florida Agriculture", in *Race/Ethnicity: Multidisciplinary Global Contexts*, Vol. 5, No.1.

Skrivankova, K. 2010. *Between decent work and forced labour: examining the continuum of exploitation*, Joseph Rowntree Foundation Programme paper: Forced Labour, UK, Nov.

Smith, R. 2007. "Guest Workers or Forced Labour", in *New Labor Forum*, Vol. 16, No. 3/4, pp. 70-78.

Soni, S. 2014. "The Nation", 6 Jan. Available at: http://www.guestworkeralliance.org/2014/01/welcome-to-the-new-america-low-wage-nation-jan-2014-the-nation/.

Sorensen, N.N.; Gammeltoft-Hansen, T. 2013. "Introduction", in T. Gammeltoft-Hansen and N.N. Sorensen (eds): *The Migration Industry and the Commercialization of International Migration* (Oxford, Routledge), pp. 1-23.

Strom, S.; Greenhouse, S. 2013. "On the Front Lines of Food Safety", in New York Time, 24 May.

Taylor-Nicholson, E.; Paoletti, S.; Sijapati, B.; Farbenblum, B. 2014. *Labour Migration Agents: Regulation, Accountability and Alternatives*, policy brief for Centre for the Study of Labour and Mobility, Kathmandu, Nepal, June. Available at: http://www.ceslam.org/docs/publicationManagement/CESLAM%20Policy%20Brief%205.pdf.

Varona, R. 2013. *License to Exploit: A Report on the Recruitment Practices and Problems Experienced by Filipino Domestic Workers in Hong Kong*, report for Alliance of Progressive Labor & Progressive Labor Union of Domestic Workers in Hong Kong, Quezon City, Philippines, Oct. Available at: http://archive.idwfed.org/resource.php?id=100.

Waddington, C. 2003. *International Migration Policies in Asia: A Synthesis of ILO and Other Literature on Policies Seeking to Manage the Recruitment and Protection of Migrants, Facilitate Remittances and Their Investment* at the Regional Conference on Migration, Development and Pro-Poor Policy Choices in Asia, Dhaka, 22-24 June.

Walsh, D.; Greenhouse, S. 2012. "Inspectors Certified Pakistani Factory as Safe before Disaster", in New York Times, 19 Sept. Available at: http://www.nytimes.com/2012/09/20/world/asia/pakistan-factory-passed-inspection-before-fire.html?pagewanted=all [27 Jan. 2015].

Washington State Department of Labor & Industries. 2013. *Employers' Guide to Workers' Compensation Insurance in Washington State*. Available at: http://www.lni.wa.gov/IPUB/101-002-000.pdf [26 Jan. 2015].

Weil, D. 2005. "Public Enforcement/Private Monitoring: Evaluating a New Approach to Regulating the Minimum Wage", in *Industrial and Labor Relations Review*, Vol. 58, No. 2, pp. 238-257.

—. 2010. *Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division* (Boston University). Available at: http://www.dol.gov/whd/resources/strategicEnforcement.pdf.

Weisbaum, H. 2013. "'Culture-changing' initiative to stop food contamination on the farm", in NBC News, Aug. (New York).

Wickramasekara, P. 2011. *Labour migration in South Asia: A review of issues, policies and practices*, International Migration Paper for ILO No. 108, (Geneva).

—. 2012. *Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers Through Bilateral Agreements and Memoranda of Understanding*, report for International Labour Organization, Philippines, Feb. Available at: http://apmigration.ilo.org/resources/something-is-better-than-nothing-enhancing-the-protection-of-indian-migrant-workers-through-bilateral-agreements-and-memoranda-of-understanding.

—. 2013. *Regulation of the Recruitment Process and Reduction of Migration Costs: Comparative Analysis of South Asia* at Intergovernmental Regional Seminar on Promoting Cooperation for Safe Migration and Decent Work Conference, Dhaka, 1-2 July. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2478461.

World Bank. 2011. *The Nepal-Qatar Remittance Corridor: Enhancing the Impact and Integrity of Remittance Flows by Reducing Inefficiencies in the Migration Process*. Available at: http://issuu.com/world.bank.publications/docs/9780821370506/27#/signin [27 Jan. 2015].

—. 2014a. *Remittances to developing countries to stay robust this year, despite increased deportations of migrant workers, says WB*. Available at: http://www.worldbank.org/en/news/press-release/2014/04/11/remittances-developing-countries-deportations-migrant-workers-wb.print [27 Jan. 2015].

—. 2014b. *Migration and Remittances: Recent Developments and* Outlook. Available at: http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief22.pdf [27 Jan. 2015].

Cases Cited

Arriaga v. Fla. Pac. Farms, L.L.C., 305 F.3d 1228 (11th Cir. 2002).

Certain Employees of Sidhu & Sons Nursery Ltd., B.C.L.R.B. No. B56/2014.

En Banc Brief for Secretary of Labour as Amici Curiae, Castellanos-Contreras, et al. v. Decatur Hotels, LLC et al., 622 F.3d 393 (5th Cir. 2010) (No. 06-4340).

De Luna-Guerrero v. North Carolina Grower's Ass'n, Inc., 370 F. Supp. 2d 386 (E.D.N.C. 2005).

Rivera v. Brickman Group, Ltd., No. 05-1518, 2008 WL 81570 (E.D. Pa. Jan. 7, 2008).

Rivera v. Peri & Sons Farms, Inc., 735 F.3d 892 (9th Cir. 2013), cert. den., June 2014.

International, National, and State Laws and Regulations Cited

International

ILO Convention 97, Migration for Employment (Revised 1949)

ILO Convention 143, Migrant Workers (Supplementary Provisions) (1975)

ILO Convention 181, Private Employment Agencies (Revised 1997)

ILO, Protocol of 2014 to the Forced Labour Convention, 1930

United Nations, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, U.N. Doc. A/RES/45/158 (Dec. 18, 1990).

National and State, by Country

Bangladesh, "Accord on Building and Fire Safety in Bangladesh." Available at: http://bangladeshaccord.org/

Canada, Manitoba Worker Recruitment and Protection Act (2008)

Canada, Operational Bulletin 275-C, Temporary Foreign Worker Program–Operational Instructions for the Implementation of the Immigration and Refugee Protection Regulatory Amendments, at Section 2.5 (Apr. 1, 2011)

Canada, Saskatchewan Code of Conduct for Foreign Worker Recruiters, SASKATCHEWAN IMMIGR. Available at: http://www.saskimmigrationcanada.ca/code-of-conduct-for-foreign-worker-recruiters

Canada, Worker Recruitment and Protection Act (2014). Available at: http://www.gov.mb.ca/labour/standards/asset_library/pdf/wrapa_valid_licensees.pdf

Mexico, Ley Federal de Trabajo, Art 14, Section II

Mexico, Ley Federal de Trabajo, Art. 539-D

Mexico, 57 STPS Agency Regs, Art. 10, Section I

Netherlands, Labour Market Intermediaries Act (Wet Allocatie Arbeidskrachten door Intermediairs) (July 1, 1998)

Netherlands, Burgerlijk Wetboek (Civil Code) 2010, Art. 7:692

Philippines, Memorandum of Understanding between the Department of Labor and Employment of the Government of the Republic of the Philippines and the Department of Labour and Immigration of the Government of Manitoba, Canada; Concerning: Co-Operation in Human Resource Deployment and Development (2010).

Philippines, Migrant Workers and Overseas Filipinos Act of 1995, Rep. Act No. 8042

Philippines, POEA Governing Board Resolution No. 6, Series of 2006

Philippines, POEA Memoranda of Understanding with the Canadian Provinces of Manitoba, Saskatchewan, British Columbia, and Alberta.

Philippines, POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, Philippine Overseas Employment Administration, Regulation, Part II, Rule 5, Section 3 (2002)

Philippines, POEA Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as Amended by the Rep. Act No. 10022 (2010)

Philippines, POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, Section 1, Rule IV

Singapore, Ministry of Manpower, "Employment Agency Directories". Available at: http://www.mom.gov.sg/foreign-manpower/employment-agencies/employment-agency-directory/Pages/employment-agency-directory.aspx [10 Jan. 2013]

United States, Federal Regulations:

8 C.F.R. § 214.2(h)(6)(i)(B)(4)

20 C.F.R. § 655.135(j)

20 C.F.R. § 655.135(k)

20 C.F.R. § 655.22(g)(2)

29 U.S.C. § 152(3)

United States, California Foreign Labor Recruitment Law, S.B. 477, 2013-4 Sess (Cal. 2013). Available at: http://legiscan.com/CA/text/SB477/2013

Appendix: Interviews conducted for this paper

Alejandra Ancheita, Founder and Executive Director, ProDESC, Mexico City (September 4, 2013, and March 10, 2014)

Greg Asbed, Co-founder and Staff, Coalition of Immokalee Workers, Florida (January 11 and 12, 2014)

Mark Barenberg, Professor, Columbia University School of Law; co-founder, Workers Rights Consortium, New York (August 22, 2013)

Lucas Benitez, Co-founder & Staff, Coalition of Immokalee Workers, Florida (January 11, 2014)

Jeremy Blasi, formerly Director of Research and Investigations, currently Senior Consultant, Workers Rights Consortium (October 15, 2013)

Klara Boonstra, General Counsel, FNV Netherlands (November 4, 2013)

Paul Broadbent, Chair, UK Gangmasters' Licensing Authority (September 5, 2013)

Cathleen Caron, Founder and Executive Director, Global Workers Justice Alliance, New York (October 13, 2013)

Simone de Geus, Policy Advisor, Inspectie SZW, Netherlands (November 5, 2013)

Tatiana Devia, Investigator, Fair Food Standards Council, Florida (January 12, 2014)

Darryl Dixon, Director of Strategy, UK Gangmasters' Licensing Authority (October 2, 2013)

Jeriel Domingo, Philippines Overseas Employment Agency, Deputy Administrator and Officer in Charge, Adjudication and Licensing Regulation Office (July 22, 2014)

Angel Garcia, Human Resources Manager, Pacific Tomatoes, Florida (January 13, 2014)

Atzín Gordillo Acevedo, Organizer, ProDESC, Mexico City (March 10 and June 30, 2014)

Olivia Guzmán, Elected Representative, Coalición de Trabajadores y Trabajadoras Temporales de Sinaloa (Sinaloa Coalition of Temporary Workers), Mexico City (March 12, 2014)

Jacob Horwitz, Organizer, National Guestworkers Alliance, New Orleans (April 24 and 25, 2014)

Roland Huisman, Director, SNA, Netherlands (November 6, 2013)

Sytske Jonkman, Inspector, SNA, Netherlands (November 6, 2013)

Paul Kenneally, Enforcement Officer and union representative, UK Gangmasters' Licensing Authority (September 5, 2013)

Shannon Lederer, formerly Associate Director for International Affairs, American Federation of Teachers; currently Director of Immigration/Assistant Director for Policy, AFL-CIO (August 9, 2013)

Dante Lopez, Director of Organizing, ProDESC, Mexico City (June 30, 2014)

Jerrol Marten, General Manager, Comensha, Netherlands (November 4, 2013)

Joe Martinez, Global Advocate and Mexico Program Director, United Farm Workers (April 17 and July 21, 2014)

Rachel Micah-Jones, Founder and Executive Director, Centro de los Derechos del Migrante, Maryland (June 22 and July 24, 2012; July 30, 2014)

Erik Nicholson, National Vice President United Farm Workers and Chair, Equitable Food Initiative, Tacoma, WA (May 28 and July 14, 2014)

Jaime Padilla, Research Analyst, United Farmworkers (August 15, 2013)

Julia Perkins, Staff, Coalition of Immokalee Workers, Florida (January 11, 2014)

Patricia Pittman, Founder and Executive Director, Alliance for Ethical International Recruitment Practices (August 1, 2013)

Willem Plessen, Manager of Social Affairs, Randstad Holding Co.; Professor, University of Tilburg School of Law, Netherlands (November 6, 2013)

Joba Reyes, Member, Coalición de Trabajadores y Trabajadoras Temporales de Sinaloa (Sinaloa Coalition of Temporary Workers), Mexico (March 12, 2014)

Gerardo Reyes Chávez, Staff, Coalition of Immokalee Workers, Florida (January 11, 2014)

Conny Rijken, Professor, University of Tilburg School of Law, Netherlands (October 9 and November 6, 2013)

Jennifer J. Rosenbaum, Legal and Policy Director, National Guestworkers Alliance, New Orleans (April 24 and 25, 2014)

Laura Safer Espinoza, Executive Director, Fair Food Standards Council, Florida (January 11, 2014)

Valeria Scorza, Deputy Director, ProDESC, Mexico City (March 10, 2104)

Sean Sellers, Investigator, Fair Food Standards Council, Florida (January 12, 2014)

Jay Short, Manager of Special Investigations, Manitoba Employment Standards Branch, Canada (April 14, 2014)

Saket Soni, Founder and Executive Director, National Guestworkers Alliance, New Orleans (April 16 and 24, 2014)

Floris van Dijk, Inspectie SZW, seconded at Comensha, Netherlands (November 4, 2013)

Baldemar Velasquez, Founder and President, FLOC, Ohio (March 21 and July 18, 2014)

Peter Vonk, Senior Policy Advisor, Inspectie SZW, Netherlands (November 5, 2013)

Matthew Wooten, Investigator, Fair Food Standards Council, Florida (January 12, 2014)