

Towards Transnational Labor Citizenship: Restructuring Labor Migration to Reinforce Workers' Rights

A Preliminary Report on Emerging Experiments

Jennifer Gordon
Fordham Law School

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TOWARDS TRANSNATIONAL LABOR CITIZENSHIP: RESTRUCTURING LABOR MIGRATION TO REINFORCE WORKERS' RIGHTS A Preliminary Report on Emerging Experiments

Prologue

Any effort to address the challenges of global labor migration demands tremendous humility. Migration for work is a powerful and complex force, propelled by staggering inequalities between countries.¹ An estimated 86 million people today labor outside their nations of origin,² in search of opportunities to achieve a better life for themselves and their families. The flow of migrants is drawn by the hunger of employers in destination countries for a ready low-wage workforce; facilitated by a teeming pool of legitimate and corrupt labor recruiters, private immigration “experts,” and government officials; and channeled through informal migrant networks linking countries and communities. This complexity spells trouble for labor migration policies. The globe is littered with attempts to

¹ The risk of discussing labor migration as if it is a distinct phenomenon, as I do here, is that it implies far too neat a division between those who leave home in search of work and those who migrate for other reasons, including to reunite with family members and to escape war, persecution, or natural disaster. Migrants, like all human beings, have complex and changing motivations, interests, and connections to other people, all of which (in combination with the opportunities and legal regimes they encounter) influence their decisions about where to live and work, and for how long to stay. At the same time, a significant number of migrants identify the quest for better economic prospects as a primary motivation in their decision to leave their home country. My exploration of labor migration in this report is intended to address the role work plays in so many migrants' lives, rather than to imply that “temporary labor migrants” are intrinsically different than others who live and work outside their countries of origin.

² INT'L LABOUR OFFICE, *TOWARDS A FAIR DEAL FOR MIGRANT WORKERS IN THE GLOBAL ECONOMY* 7 (2004). A note on vocabulary. I use the term “origin country” to refer to a state whose nationals leave in search of work abroad, and “destination country” to refer to a state that is primarily a destination for such migrants. It should be noted that many countries both send and receive migrants—for example, Mexico is an origin country with reference to the United States but a destination country for many Central Americans.

I describe the migrants I am chiefly concerned with in this paper, and the work they do, as “low-wage.” I use this label with trepidation. There is nothing inherently low-wage in either the migrants or their labor. Despite my concerns, however, I prefer the term “low-wage” to the pejorative “unskilled.” As Samuel Gompers pointed out many decades ago, “There is no such thing as unskilled work per se . . . the distinction between wage-earners is one of degree only.” Dorothy Sue Cobble, *Reviving the Federation's Historic Role in Organizing* 23-24 (Inst. for the Study of Labor Org.; Working Papers, 1996). See also ROGER WALDINGER & MICHAEL I. LICHTER, *HOW THE OTHER HALF WORKS: IMMIGRATION AND THE SOCIAL ORGANIZATION OF LABOR* 10 (2003) (“While there may well be some jobs for which the label of ‘unskilled’ means what it says, this number is small.” (footnote omitted)).

reshape migration patterns that not only failed to achieve their goals but created a host of new problems along the way.

Humility, then, is required. But humility cannot become an excuse for walking away from the obligation to consider alternatives. Our current patchwork of a labor migration regime has significant benefits—for origin country governments, which currently receive remittances on the scale of \$300 billion per year;³ for many employers and consumers in destination countries, who benefit from the lower prices generated by a wealth of cheap labor; for labor recruiters; and, in complicated ways, for many migrants themselves. But its detriments are enormous. Corruption is endemic. Illegal immigration is becoming the norm. Migrants are abused on the job with sickening regularity. Native workers with the lowest educational levels, those who can least afford it, appear to pay the highest price for the influx of newcomers.⁴

Can we do better? Labor migration is a massive force, but it is not (with few exceptions) a force of nature. Laws and policies may not be driving the migration train, but neither are they irrelevant to its direction. International and domestic legal regimes either directly or obliquely help to shape the decisions that employees, migrants, and others make. At the same time, to work, a new policy must reflect the internal logic of labor migration, and must serve most participants' needs as well or better than the old policy.

This paper is part of an effort to imagine how we might reconfigure global labor migration—with particular attention to the low-wage end of the migrant continuum—so that it improves the lot of workers, both migrant and native born. It is deeply sympathetic to efforts by the International Labor Organization (ILO), non-governmental organizations, and unions to create a global rights-based framework for labor migration, with particular emphasis on international instruments to protect migrants as they move from state to state. Yet no major destination country has ratified the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in the 18 years since its adoption by the UN,⁵ and although the ILO does essential work to advance acceptance of labor standards around the world, it has no enforcement capacity. In the absence of broadly accepted and enforceable international labor

³ Int'l Fund for Agric. Dev. (IFAD), *Sending Money Home: Worldwide Remittance Flows to Developing Countries*, <http://www.ifad.org/events/remittances/maps/>.

⁴ Julie Murray, Jeanne Batalova, & Michael Fix, *The Impact of Immigration on Native Workers: A Fresh Look at the Evidence*, MPI INSIGHT (Migration Pol'y Inst.), July 2006, at 5.

⁵ For a list of countries that have signed and/or ratified the Convention, see United Nations Education, Science and Cultural Organization (UNESCO), *Present State of Ratifications and Signatures of the UN Migration Convention*, http://portal.unesco.org/shs/en/ev.php-URL_ID=3693&URL_DO=DO_TOPIC&URL_SECTION=201.html

standards, this paper examines what governments, civil society organizations, and migrants themselves are doing, and what more they might do, to enhance worker protections.

It begins with a proposal for a new regime, Transnational Labor Citizenship, whose explicit goal is to redistribute some of the gains of labor migration away from the recruiters and employers who currently enjoy them, toward the native workers and migrants whose sacrifices and hard work make those gains possible. Of fundamental importance, Transnational Labor Citizenship seeks to dismantle the wall frequently built between two categories of newcomers: those who are admitted to a country as temporary workers, who have historically been treated as a solution for destination country short-term labor needs, without receiving any rights to social benefits or political participation; and those admitted as permanent immigrants, through programs that provide for family reunification, social benefits, and a path to citizenship. Transnational Labor Citizenship insists that *all* migrants are full human beings, and deserve to be treated as such. In this sense, beyond being a proposal to improve working conditions for all low-wage laborers, Transnational Labor Citizenship is an effort to demonstrate that it is possible to respond to the reality of temporary labor migration while refusing to treat temporary migrants as commodities to be traded on a global market.

In what follows, I set out the Transnational Labor Citizenship idea, which I developed in the context of the United States. I then offer preliminary notes on emerging experiments around the globe that echo two of Transnational Labor Citizenship's central elements: origin country efforts to enforce labor rights for their migrants, and civil society and trade union initiatives to provide continuous support to migrants by linking origin and destination country labor organizations. I reflect on the early lessons these experiments offer with regard to some of the challenges a Transnational Labor Citizenship regime will face, and suggest questions for further study.

I INTRODUCING TRANSNATIONAL LABOR CITIZENSHIP⁶

A. LOW-WAGE LABOR MIGRATION IN THE CONTEXT OF THE UNITED STATES

Over a million new immigrants arrive in the United States each year.⁷ Most come to work. For those who see both the free movement of people and the

⁶ Parts A and B of this section are adapted in part from Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503 (2007).

⁷ Jeffrey S. Passel & D'Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow* (Pew Hispanic Ctr.), Oct. 2, 2008, at 2, available at <http://pewhispanic.org/files/reports/94.pdf>. The figure includes legal immigrants and undocumented arrivals, but not legal temporary migrants.

preservation of decent working conditions as essential to social and economic justice, the ongoing flow of immigrant workers presents a seemingly unsolvable dilemma. To prevent people from moving in search of work is to curtail their chance to build a decent life for themselves and their families. But in the popular view of native workers in the country that receives them, the more immigrants, the more competition, the worse work becomes.

In response, many politicians in the United States have demanded a reduction in immigration. Yet in the face of enormous inequality between countries and globally integrated labor markets, it is deeply unrealistic to think that immigration controls will stop people from moving South to North. The flow of migrants may rise and fall, but one way or another, those who want to migrate will find a way, in numbers generated not only by our formal policies but by decades upon decades of economic and social pressures in both origin and destination countries. To imagine that we can roll back the century or more of migration history between the United States and Mexico (and other countries as well), eradicate the entrenched migrant networks that bind the two countries to each other, and undo the complex web of economic interdependence that characterizes our thoroughly integrated labor markets, is pure fantasy.

In the long term, a genuine solution to the dilemmas of immigration must focus on addressing the underlying factors that bring so many who strive to do better for themselves and their families to leave. When there is sustainable development in nations of origin, the decision *not to migrate* will become a more viable economic option. Until then, the struggle to make “staying put” a choice that more want to make, must go hand in hand with the struggle for migration on fair terms. But as Alejandro Portes and Rubén Rumbaut remind us in their classic *Immigrant America: A Portrait*, “Manual labor migration is . . . not a one-way flow away from poverty and want, but rather a two-way process fueled by the changing needs and interests of those who come and those who profit from their labor.”⁸ No approach will be effective unless it also addresses work and the conditions of labor in the United States.

It is particularly disturbing, then, that the migration of workers to low-wage industries in the United States today is structured in ways that actively undermine minimum workplace standards. Undocumented immigrants account for a large proportion of the immigrant manual laborers in this country.⁹

⁸ ALEJANDRO PORTES AND RUBÉN G. RUMBAUT, *IMMIGRANT AMERICA: A PORTRAIT* 18 (2d ed. 1996).

⁹ An estimated 27% of food processing workers and 29% of roofers and drywall installers are undocumented. Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.* (Pew Hispanic Ctr.), Mar. 7, 2006, at ii-iii, available at <http://pewhispanic.org/files/reports/61.pdf>. Undocumented immigrants make up at least half of

Immigrants without legal working papers are often loath to report employers who pay wages below the legal minimum or create unsafe working conditions, for fear that deportation will be the result. A number of other low-wage laborers are guest workers, brought in on temporary visas for seasonal and agricultural jobs.¹⁰ Guest worker programs in the United States, as around the world, admit migrants to carry out a particular job for a specific employer. A guest worker is a captive employee who cannot leave a bad job for a better one, and who by complaining of abusive treatment risks not only the termination of her visa but her inclusion on an unofficial blacklist that would effectively bar her return.¹¹

The incentives our current labor migration program creates are exactly the opposite of what they should be. Labor migration itself must be reconfigured so that it reinforces, rather than undercutting, the possibility of decent treatment for new migrants and for workers already in the United States.

B. A RESPONSE: TRANSNATIONAL LABOR CITIZENSHIP

This project proposes a comprehensive reform of our labor migration system. In a recent article, I suggest a “thought experiment” about a new immigration regime that I call Transnational Labor Citizenship.¹²

Transnational Labor Citizenship is based on the theory that the only way to create a genuine floor on working conditions in a context of heavy immigration is to link worker self-organization with the enforcement of basic workplace rights in a way that crosses borders just as workers do. It draws on the insights of migration scholars such as Douglas Massey and Jorge Durand, who have noted that restrictive immigration policies and increased border control in the United States since the 1980s have impeded what would otherwise be a much more fluid back-and-forth movement of Latin American labor migrants.¹³ The goal of Transnational Labor Citizenship is to facilitate the ability of migrants to choose to migrate on a temporary basis for as long as they want or need to, while including them in efforts to establish baseline working conditions.

the agricultural workers in the United States. U.S. DEP'T OF LABOR, FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY 2001–2002: A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARMWORKERS 6 (2005), *available at* http://www.doleta.gov/agworker/report9/naws_rpt9.pdf.

¹⁰ The United States has two non-immigrant visa categories for low-wage workers: the H-2A program for agricultural workers and the H-2B program for other seasonal workers. 8 U.S.C. § 1101(a)(15)(H) (2000).

¹¹ For descriptions of the abuses endemic to the guest worker program, see SOUTHERN POVERTY LAW CTR., CLOSE TO SLAVERY: GUESTWORKER PROGRAMS IN THE UNITED STATES (2007), *available at* <http://www.splcenter.org/pdf/static/SPLCguestworker.pdf>.

¹² Gordon, *supra* note 6.

¹³ DOUGLAS S. MASSEY, JORGE DURAND & NOLAN J. MALONE, BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN AN ERA OF ECONOMIC INTEGRATION 128–33 (2002).

In practical terms, under the Transnational Labor Citizenship regime, a migrant would become eligible to work in the United States on a “TLC visa” after joining an organization of transnational workers, rather than through a link to a particular employer as temporary worker schemes currently require. TLC visa holders would be able to work for any employer in the United States with full labor rights and eventual conversion to permanent residence and citizenship if the migrant so desired. The migrant, and his or her family, could come and go at will between the U.S. and the country of origin, remaining here when jobs were plentiful and returning home at slow times, for the harvest on their own farm, or for holidays.

The benefits of the program from the migrant’s perspective need little elaboration. But the obligations participants incur would be serious ones as well. In order to be certified as eligible for a TLC visa by the origin country government, interested migrants would have to join a transnational workers’ organization in or near their home community. To remain in the United States more than a month beyond entry, migrants would also have to join a transnational workers’ organization active in the geographic area of the U.S. where they settled and the industry in which they worked. Equally important, each migrant would be asked to take a “solidarity oath” as a condition of membership. In exchange for employment authorization, TLC visa holders would commit to report employers who violate U.S. workplace laws or labor agreements. Failure to adhere to these requirements would be grounds for removal from the membership in the transnational labor organization and withdrawal of the visa.

To make the solidarity oath real, the U.S.- and origin-country-based transnational labor organizations would work intensively with migrants on the ground, collaborating across borders to defend the rights of their members through a combination of government enforcement, lawsuits, and collective pressure. These organizations would also offer migrants a variety of other services, from English classes to facilitation of remittances to health care accessible in both countries. The groups would be linked to create a network with a strong presence both in origin and destination countries, with a mission of raising the floor on wages and working conditions for *all* workers within the United States. The network would be managed through a coordinating body, which I call the Transnational Worker Justice Collaborative, that would oversee and accredit the member organizations, support their work with each other, monitor the migration process, and generate policy reform efforts. The Collaborative would be free-standing, not a governmental agency or part of an already-existing labor union or worker center either in the United States or in countries of origin. But it would have strong ties to and support from such groups in both countries.

Transnational Labor Citizenship would enhance the enforcement of baseline labor rights and allow migrants to carry benefits and services with them as they moved. Its goal, heretofore elusive, is to facilitate the free movement of people while preventing the erosion of conditions of work in the country that receives them. There is an ongoing debate among scholars of migration about whether today's immigrants are more "transnational" than those in the past, or indeed whether they are transnational at all.¹⁴ Without taking a position in that dispute, it seems clear that U.S. immigration policy and border enforcement operate to make migrants less transnational than they would be if they were permitted to respond to changes in U.S. labor markets and to their own needs and opportunities in their countries of origin. Transnational Labor Citizenship would restore this fluidity, making a back-and-forth pattern of migration an option for as long as a migrant wishes or needs to sustain it, while also addressing the implications of migration for low-wage workers in the United States.¹⁵

I offer Transnational Labor Citizenship as an intervention that readers may take on a number of levels. At its most abstract, Transnational Labor Citizenship stands for the idea that mechanisms to enhance workers rights cannot be seen as an add-on to temporary labor migration schemes. Temporary labor migration programs will continue to degrade workers rights unless they are explicitly and fundamentally designed to reinforce them. In more explicit terms, the central principles of Transnational Labor Citizenship, set out below, suggest routes to the integration of workers rights and migration that can be implemented in a number of ways. Finally, at the most concrete level, the outlines of the Transnational Labor Citizenship proposal offer a specific approach to putting rights at the center of labor migration.

C. CENTRAL PRINCIPLES OF TRANSNATIONAL LABOR CITIZENSHIP

Comprehensive implementation of the Transnational Labor Citizenship proposal in the United States would require a number of changes that are difficult to

¹⁴ For a collection of foundational works advancing the argument for a new transnationalism, see *TOWARDS A TRANSNATIONAL PERSPECTIVE ON MIGRATION: RACE, CLASS, ETHNICITY, AND NATIONALISM RECONSIDERED* (Nina Glick Schiller et al. eds., 1992). Roger Waldinger, David Fitzgerald, Nancy Foner, and Jonathan Fox, among others, have offered critiques of the argument that today's immigrants are "transnational" in ways that significantly distinguish them from past immigrant generations. See generally Nancy Foner, *What's New About Transnationalism? New York Immigrants Today and at the Turn of the Century*, 6 *DIASPORA* 355 (1997); Jonathan Fox, *Unpacking "Transnational Citizenship"*, 8 *ANN. REV. POL. SCI.* 171 (2005); Roger D. Waldinger & David Fitzgerald, *Transnationalism in Question*, 109 *AM. J. SOC.* 1177 (2004).

¹⁵ Unlike guest worker programs that seek to enforce the transient nature of a migrant's stay, Transnational Labor Citizenship would facilitate temporary migration for as long as the migrant wanted it, while offering an optional path to permanent residence and citizenship. The TLC visa would also be extended to migrants' spouses and children.

imagine in the current climate. For one, the United States government would have to be willing to enter into binding agreements about migration with its major origin country partners, something it shows no inclination to consider. The familiar structure of temporary labor migration, with visas tied to job offers from an employer, would have to be scrapped in favor of an unfamiliar scheme of worker solidarity. Scores of new workers organizations and a coordinating body would need to be brought into being. Because of the gap between where we currently stand in the United States and what Transnational Labor Citizenship would require, the proposal can sound impossibly utopian. And yet, if we break Transnational Labor Citizenship down into its key components, and look around the world for examples of experiments that embody aspects of those components, it becomes evident that in other migrant streams what I propose is much closer to being realized or realizable.

At its core, Transnational Labor Citizenship seeks to build incentives and mechanisms for the enforcement of labor standards into labor migration itself, particularly for the low-wage workers who make up the bulk of all migrants. To realize a full version of Transnational Labor Citizenship would require, among other features:

- Multilateral management of labor migration with rights as a central principle: The negotiation of multilateral or regional accords between origin and destination governments that put migrant protections at the center of labor migration programs, and a commitment to cooperation by origin and destination governments to enforce those and other workplace rights.
- “Mobile labor citizenship”: The organization of migrants at both ends of the migrant stream by trade unions and civil society organizations, so that they travel as labor citizens between origin and destination countries, with the ability to assert the rights granted to them. These organizations would be linked to each other through a cross-border advocacy network.
- Collaboration between governments and civil society organizations to enforce workplace standards.¹⁶ The creation of collaborative mechanisms through which, for example, state and federal Departments of Labor could enhance their ability to detect wage violations by learning from workers organizations’ on-the-ground knowledge, and workers organizations in turn could rely on the government to target

¹⁶

A forthcoming paper I am co-authoring with Janice Fine elaborates on this idea.

its resources for workplace rights enforcement in ways that were both effective and sensitive to migrant workers' concerns.

- Mobile benefits: The establishment of schemes for health care and social security, among other benefits, that are affordable for migrants and fully portable across borders.

D. EMERGING EXPERIMENTS

As I note above, several of the elements of Transnational Labor Citizenship that seem most improbable from a U.S. perspective are already beginning to emerge in other parts of the world. This paper examines this phenomenon in two of the core areas highlighted above: efforts by origin countries to link temporary labor migration with specific labor rights and enforcement mechanisms, both unilaterally and through bilateral accords; and initiatives by unions and other civil society groups to build organizing efforts with one foot in migrants' home countries and one at their destinations, so that migrants have access to continuous support for the defense of their rights.

After setting out a range of experiments in both of these areas, I draw preliminary lessons from them to inform future work. I ask what we can learn from the endeavors currently underway about how best to realize the core goals of Transnational Labor Citizenship: creating enforcement practices and institutions that respond to the reality of a transnationally mobile labor force, increasing migrants' ability to remedy the abuses that they face at work, and addressing the needs of both native-born and migrant workers to establish and enforce decent working standards.

II

ORIGIN COUNTRY ENFORCEMENT OF MIGRANT RIGHTS

It is not a simple matter for an origin country to take a stand in favor of its migrants' labor rights. Migrant remittances provide infusions of billions of dollars a year to economies suffering from inadequate job opportunities, weak financial and insurance systems, and limited development prospects. The need for this income gives governments a strong incentive to promote migration and to downplay the costs involved in hiring their nationals, a goal not necessarily furthered by a forceful stand on minimum wages and workplace protections. At the same time, however, few origin country governments are naïve about migration's down sides, and many resist being cast in the role of labor broker, indifferent to how their citizens are treated so long as they keep sending money home. Public outcry over the abuse of migrants abroad, as well as demands for greater protection from the diaspora population itself, have lead a number of origin countries to take measures to intervene in migrants' working conditions.

What follows are examples of ways that countries of origin are seeking to play an active role in the protection of their migrants in workplaces abroad, both in coordination with destination countries and through unilateral initiatives.

A. BILATERAL ACCORDS ON LOW-WAGE LABOR MIGRATION

In order to make workplace protection a centerpiece of labor migration, full Transnational Labor Citizenship would require multilateral partnerships between origin and destination country governments. All parties would participate in the negotiation of the terms of labor migration and in the enforcement of the rights of labor migrants.

Regional agreements about trade are increasingly common. But very few existing trade accords address the movement of people as well as goods across national borders. The European Union is the obvious exception.¹⁷ Where other trade agreements address labor migration at all, they almost exclusively permit the movement of professionals rather than low-wage migrants.¹⁸ Because wealthy governments in high-migration regions such as Asia and North America have been particularly resistant to negotiating regional labor mobility for low-wage workers, I do not focus on regional agreements here. Instead, I explore the more limited—but also simpler and more readily achievable—tool of bi- or multi-lateral temporary labor migration agreements.

¹⁷ The European Union's experience with low-wage labor mobility merits a fuller exploration than I can give it in this report. I will address that subject, and the insights it offers to my Transnational Labor Citizenship proposal, in a separate article.

¹⁸ Other regional arrangements that would permit movement of low-wage as well as professional workers are under consideration. In 2007, the Association of Southeast Asian Nations (ASEAN) issued a Declaration on the Protection and Promotion of the Rights of Migrant Workers, and has recently begun to consider arrangements for greater labor mobility between member nations. ASEAN, ASEAN Cooperation on Labour: An Overview, <http://www.aseansec.org/21009.htm>. The Andean Community in Latin America, including Peru, Ecuador, Colombia, Bolivia, and Venezuela, is moving toward regional labor mobility for a defined set of people, including temporary agricultural workers. Andean Labor Migration Instrument, Decision 545 (2003), available at <http://www.comunidadandina.org/ingles/normativa/D545e.htm>; Kevin O'Neil, Kimberly Hamilton & Demetrios Papademetriou, Migration Policy Inst., *Migration in the Americas* 32 (Global Commission on Int'l Migration, Paper, 2005). In Africa, the Economic Community of West African States (ECOWAS) promises a reciprocal right of "establishment" (i.e., the right to carry out economic activities, including work) to citizens of its fifteen signatory nations, although that promise has not been fully realized. The Common Market for Eastern and Southern Africa (COMESA)'s Protocol on the Free Movement of Persons is still aspirational, but if implemented, it will progressively remove all obstacles to private sector labor mobility among COMESA's 19 member countries. Int'l Org. on Migration, Int'l Dialogue on Migration, Intersessional Workshop on Free Movement of Persons in Reg'l Integration Processes, Supp. Materials 6 (2007), available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/works_hops/free_movement_of_persons_18190607/idm2007_handouts.doc.

In the United States, the suggestion that immigration policy could or should be created through dialogue with origin countries is often met with puzzlement, if not outright disdain. The last time this country approached low-wage labor migration as a matter to be negotiated with a migrant-origin country was in the early years of the *bracero* program, with the signing of an accord with Mexico that brought over four million Mexican guest workers into U.S. fields between 1942 and 1964.¹⁹ Since then, with rare and minor exceptions, the U.S. government has set its immigration policy unilaterally.²⁰ While the U.S. regularly negotiates bilateral and regional treaties with regard to trade, low-wage labor migration has been conspicuously absent from these agreements.²¹ Not so in the rest of the world, which has increasingly turned to bilateral accords between nations as mechanisms to govern the flow of temporary labor migrants.

Bilateral agreements typically facilitate a one-way flow of migrants, committing a particular destination country to set aside a certain number of temporary work visas for citizens of a particular origin country. They often address labor needs within a defined sector, such as construction or agricultural or domestic work. Such agreements are on the rise around the world.²² In 2004, a survey of the 30 countries that make up the Organization for Economic Co-operation and Development (OECD) found 176 bilateral accords about temporary labor recruitment.²³ Latin American countries have signed more than 140 such agreements.²⁴ More recently, Asian-Pacific and Middle Eastern countries have also begun to negotiate bilateral agreements or Memoranda of Understanding

¹⁹ For overviews of the *bracero* program, see generally KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S.* (1992); ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY* (1964).

²⁰ Days before 9/11, President Bush met with then-Mexican president Vicente Fox to discuss a framework for Mexican-US migration. The events of 9/11 derailed that conversation, which has not resumed in the ensuing years. Muzaffar Chishti, *Guest Workers in the House of Labor*, 13 *NEW LAB. F.* 67, 70-71 (2004).

²¹ In rare instances, the United States has included provisions for temporary professional migrants in treaties that are primarily about trade. Examples include the TN visa for certain Canadian and Mexican professionals created by NAFTA, and the set-aside of 1400 temporary visas for Chilean professional workers with employment offers under the Free Trade Agreement negotiated in 2003. O'Neil, Hamilton & Papademetriou, *supra* note 18, at 31. The United States has no bilateral agreements related to low-wage workers.

²² Despite their growing numbers, the existing agreements still regulate a fairly small percentage of total labor migration between countries around the world. Daniela Bobeva & Jean-Pierre Garson, *Overview of Bilateral Agreements and Other Forms of Labour Recruitment*, in *MIGRATION FOR EMPLOYMENT: BILATERAL AGREEMENTS AT A CROSSROADS* 11, 12, 22 (2004).

²³ *Id.* at 12. For a list of OECD countries, see Ratification of the Convention on the OECD, http://www.oecd.org/document/1/0,3343,en_2649_201185_1889402_1_1_1_1,00.html.

²⁴ O'Neil, Hamilton & Papademetriou, *supra* note 18, at 32-33.

(MOU) about temporary labor migration.²⁵ Major origin and destination countries often have multiple agreements. The Philippines has bilateral labor migration agreements or MOU with at least 14 of the nations to which it sends its migrants.²⁶ Spain has temporary labor migration agreements with eight of the countries that make up its immigrant population.²⁷

In theory, a bilateral approach to managing labor migration offers the opportunity for origin and destination countries to escape from the trap of unilateral immigration schemes set by the destination country, schemes that often pair public declarations of opposition to illegal migration with tacit acceptance of large flows of undocumented labor (regulated through crackdowns in times of economic downturn), and negotiate an alternative that benefits both parties alike. Agreements allow destination countries to address cyclical labor needs, and offer origin countries and their citizens access to higher-paying work than is available at home, with the concomitant promise of increased remittances. Importantly for the Transnational Labor Citizenship proposal, such agreements would also seem to provide a forum for origin and destination countries to collaborate on approaches to linking migration and worker protection.

Several bilateral agreements do address the issue of migrant worker rights, and I will turn to them shortly. But first, a dose of realism is in order. Bilateral agreements are commonly far more desired by labor-origin countries than by destination countries, and negotiations take place under the shadow of the power imbalance between the two. Origin countries are often hesitant to demand protections that would make their nationals more costly than migrants from competing states. Not surprisingly, then, most agreements are silent about workplace standards, and all maintain the classic link between a visa and a contract with a particular employer, a requirement that impedes rights enforcement because migrants fear that if they speak up, they will lose their job and thus their visa. Furthermore, a number contain provisions that explicitly curtail migrants' rights. For example, the agreement between Indonesia and Malaysia regarding domestic workers allows an employer to retain the workers'

²⁵ Bobeva & Garson, *supra* note 22, at 11-12. Bilateral agreements tend to be more detailed, more binding, and more action-oriented than MOUs.

²⁶ Dovelyn Rannveig Agunias, *Managing Temporary Migration: Lessons from the Philippine Model*, MPI INSIGHT (Migration Policy Inst.), Oct. 2008, at 33.

²⁷ EDUARDO GERONIMI, LORENZO CACHÓN & EZEQUIEL TEXIDÓ, OFICINA INTERNACIONAL DEL TRABAJO, ACUERDOS BILATERALES DE MIGRACIÓN DE MANO DE OBRA: ESTUDIO DE CASOS 16 (2004), *available at* <http://www.ilo.org/public/english/protection/migrant/download/imp/imp66s.pdf>.

passport in order to guarantee her return, and bars workers from joining unions.²⁸ Thailand's agreements permit employers to withhold 15 percent of a migrant's wages for the same purpose.²⁹

Nonetheless, a few bilateral agreements have begun to explicitly incorporate efforts to enhance migrant labor rights. Most of these contain a pro forma statement that migrants should be granted the same rights as native workers, but do not create the monitoring and enforcement mechanisms necessary to move the expression into the realm of reality.³⁰ Some, however, go further (at least on paper). The following list highlights some migrant-protective features in recent bilateral agreements, with a few notes on obstacles to their implementation.

Migrant-Protective Features of Bilateral Agreements

- **Agreements Drafted or Carried Out with Collaboration from Unions and NGOs.** In the UK, Italy, and the Slovak Republic, the government has considered the recommendations of civil society actors such as migrant organizations and trade unions in negotiating and drafting bilateral agreements.³¹ In Korea, Nepal, and the Philippines, among other places, trade unions are in the process of negotiating with government officials for an official role in pre-departure and post-arrival rights trainings provided to migrants under the terms of bilateral agreements.³²

²⁸ HUMAN RIGHTS WATCH, *HELP WANTED: ABUSES AGAINST FEMALE MIGRANT DOMESTIC WORKERS IN INDONESIA AND MALAYSIA* 81 (2004), available at <http://www.hrw.org/reports/2004/indonesia0704/indonesia0704full.pdf>.

²⁹ Piyasiri Wickramasekara, Int'l Labour Office, *Labour Migration in Asia: Role of Bilateral Agreements and MOUs* 12 (Feb. 17, 2006) (presentation at the Workshop on International Migration and Labour Markets in Asia, Tokyo, Japan), available at http://www.jil.go.jp/foreign/event_r/event/documents/2006sopemi/keynotereport1.pdf. On the other hand, Thailand's government has been praised for its willingness to make its MOUs public, a "best practice" in the field. *Id.* at 12, 19.

³⁰ Stella P. Go, *Asian Labor Migration: The Role of Bilateral Labor and Similar Agreements* 9 (Sept. 2007) (unpublished paper presented at the Reg'l Informal Workshop on Labor Migration in Southeast Asia, Manila, Phil.), available at <http://www.fes.org.ph/2007%20conferences/reading%20and%20presentations/Stella%20Go's%20Paper.pdf>; RENE E. OFRENEO & ISABELO A. SAMONTE, INT'L LABOUR OFFICE, *EMPOWERING FILIPINO MIGRANT WORKERS: POLICY ISSUES AND CHALLENGES* 14, 61 (2005), available at <http://www.oit.org/public/english/protection/migrant/download/imp/imp64.pdf>; Wickramasekara, *supra* note 29, at 16.

³¹ Bobeva & Garson, *supra* note 22, at 19, 28.

³² Interview with Umesh Upadhyaya, Deputy Sec'y Gen., Gen. Fed'n of Nepalese Trade Unions (GEFONT), in Manila, Phil. (Oct. 25, 2008); Interview with Chang-geun Lee, International Director, Korean Confederation of Trade Unions (KCTU), in Manila, Phil. (Oct. 26, 2008); Interview with Josua Mata, Sec'y Gen., Alliance of Progressive Labor (APL), in Manila, Phil. (Oct. 26, 2008).

- **Incorporation of Model Employment Contracts Mandating Minimum Wages and Working Conditions.** Sri Lanka, the Philippines, and Indonesia, among other origin countries, have negotiated bilateral agreements that include model employment contracts.³³ Where no formal bilateral agreement has been adopted, model contracts may still be agreed to by both countries. For example, the Philippine government has negotiated a standard domestic worker contract with Malaysia that guarantees Filipina domestic workers one day a week off and sets a fixed minimum monthly wage.³⁴ In Hong Kong, the Philippines has adopted as a minimum standard the Hong Kong government's model contract for "domestic helpers."³⁵ As I elaborate below, however, migrants often face challenges in enforcing contract provisions once in the destination country.
- **Deputizing of Consular Officers as Rights Monitors.** The Mexico-Canada Seasonal Agricultural Workers Program requires Mexico to assign a consular official as a "liaison officer" to accompany the migrants and monitor and address labor violations. A similar requirement was negotiated as part of the *bracero* program. However, like consular protection programs initiated independent of a bilateral agreement (discussed below), these efforts have been criticized as ineffective.³⁶

³³ For an overview of Philippines contracts as well as copies of several of the Philippine model contracts, see INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM), *LABOUR MIGRATION IN ASIA: PROTECTION OF MIGRANT WORKERS, SUPPORT SERVICES AND ENHANCING DEVELOPMENT BENEFITS* 34-36, 75-79 (2005). On Sri Lanka, see *id.* at 59.

³⁴ HUMAN RIGHTS WATCH, *supra* note 28, at app. D.

³⁵ The contract requires the employer to pay for room, board, and medical care and to provide a weekly day of rest and up to two weeks' paid vacation annually. H.K. Labour Dep't, *Practical Guide For Employment of Foreign Domestic Helpers—What Foreign Domestic Helpers and Their Employers Should Know*, 11, 13, app. I, available at <http://www.labour.gov.hk/eng/public/wcp/FDHguide.pdf>. Hong Kong has assigned responsibility for the enforcement of contract provisions to its Labour Department. NILIM BARUAH & RYSZARD CHOLEWINSKI, *HANDBOOK ON ESTABLISHING EFFECTIVE LABOUR MIGRATION POLICIES IN COUNTRIES OF ORIGIN AND DESTINATION* 52 (2006), available at http://www.osce.org/publications/eea/2006/05/19187_620_en.pdf.

Jordan has also created a model contract for foreign domestic workers. The contract was developed by the government in collaboration with civil society organizations and the UN affiliate UNIFEM, and its use is mandatory for the issuance of an entry visa. BARUAH & CHOLEWINSKI, *supra*, at 35. Despite the contract, which went into effect in 2003, the treatment of migrants overall in Jordan deteriorated to the point where the Philippines stopped new migration in 2008. See discussion *infra* Section II.C.2.

³⁶ With regard to the failings of consular protection during the *bracero* program, see GALARZA, *supra* note 19, at 146, 183-98; David Fitzgerald, *State and Emigration: A Century of Emigration Policy in Mexico* 11-12 (Ctr. for Comparative Immigration Studies, Univ. of Cal., San Diego, Working Paper No. 123, 2005), available at <http://www.ccis-ucsd.org/PUBLICATIONS/wrkg123.pdf>. In the

- **Creation of Alternatives to Private Labor Recruitment.** Under the above-referenced Mexico-Canada bilateral agreement, the Mexican government directly recruits almost 14,000 Mexicans annually for the Canadian guest work program.³⁷ The MOU between the Philippines and Taiwan established the “Special Hiring Program in Taiwan,” a facility run by the Philippine government’s Manila Economic and Cultural Office, through which Taiwanese employers can hire Filipino migrants directly, without the intervention of private recruiters.³⁸ Fees migrants pay through this program are much lower than those charged by for-profit agencies.³⁹

B. UNILATERAL EFFORTS BY ORIGIN COUNTRIES TO PROTECT MIGRANT RIGHTS

Some of the largest destination countries have been unwilling to enter into bilateral labor migration agreements. The United States is only one example. Although the Philippine government has concluded 12 bilateral labor accords, several of its major destination countries—including Japan, Singapore, and Saudi Arabia—have been unwilling to negotiate over labor migration policies.⁴⁰ However, with regard to protecting migrant rights, origin countries are not limited to cooperative arrangements. Either where destination countries are unwilling partners, or as a supplement to bilateral arrangements, origin country governments have experimented with various forms of unilateral action.

Unilateral Efforts by Origin Countries to Protect Migrants

- **Regulation of Recruitment.** An important potential point of intervention for origin countries is the recruitment process, which is notoriously corrupt and exploitative. Because recruitment ordinarily takes place in the country of origin, origin country governments are able to regulate it directly (by contrast with labor abuses that take place on

context of the modern Mexico-Canada program, the inadequacy of Mexican consular protection for workers is frequently noted. TANYA BASOK, *TORTILLAS AND TOMATOES: TRANSMIGRANT MEXICAN HARVESTERS IN CANADA* 111–14 (2002); Kerry Preibisch, *Globalizing Work, Globalizing Citizenship: Community-Migrant Worker Alliances in Southwestern Ontario*, in *ORGANIZING THE TRANSNATIONAL: LABOUR, POLITICS, AND SOCIAL CHANGE* 97, 102 (Luin Goldring & Sailaja Krishnamurti eds., 2007).

³⁷ See Citizenship and Immigration Canada, *Facts and Figures 2006, Annual Flow of Foreign Workers by Top Source Countries 1997-2006*, <http://www.cic.gc.ca/english/resources/statistics/facts2006/temporary/03.asp>.

³⁸ Go, *supra* note 30, at 4.

³⁹ *Manila Warns of Non-existent Jobs in Taiwan*, MANILA STANDARD TODAY, Apr. 17, 2008, available at http://www.manilastandardtoday.com/?page=politics4_april17_2008.

⁴⁰ Go, *supra* note 30, at 3; Wickramasekara, *supra* note 29, at 15.

the job site abroad, where origin governments have no jurisdiction). One alternative, pursued by Pakistan, the Philippines, Sri Lanka, and Romania, among many others, is for the government to create regimes of licenses, fees, and reporting requirements for the recruitment industry.⁴¹ Here again, however, consistent enforcement has proven to be a challenge.⁴²

An often complementary approach is for the government to itself operate as a recruiter, either exclusively or as a public alternative to the private agencies. For example, the Romanian government established its Office for Labour Migration in 2001.⁴³ Among other responsibilities, it recruits workers for jobs in countries where Romania has no bilateral agreement. In this sense, it competes directly with private recruiters. The Philippine and Mexican governments also do direct recruitment for certain temporary programs, as described above. (Recruitment is not the exclusive province of national governments. For example, individual Mexican states have also experimented with direct recruitment for U.S. guest work programs, through their state-run Migration Institutes.)⁴⁴

Finally, the Philippines has passed a law that makes recruiters jointly liable for the workplace violations committed by foreign employers, described in greater detail below.

⁴¹ IOM, *supra* note 24, at 23–27; Dana Diminescu, *Assessment and Evaluation of Bilateral Labour Agreements Signed by Romania*, in MIGRATION FOR EMPLOYMENT: BILATERAL AGREEMENTS AT A CROSSROADS 65, 68–69.

⁴² Philip Martin, *Merchants of Labor: Agents of the Evolving Migration Infrastructure* 3–6 (Int'l Inst. for Labour Studies, Discussion Paper No. 158, 2005), available at <http://www.ilo.org/public/english/bureau/inst/download/dp15805.pdf>.

⁴³ Diminescu, *supra* note 41, at 65, 68–69. The Romanian government's recruitment function has generated some resentment among private recruiters, and has also created tension with the government's role as an enforcer of migrant rights. *Id.* at 69.

⁴⁴ For example, in Zacatecas, the state Migration Institute has developed a program where it directly screens and selects workers for placement in participating companies, eliminating the role of the labor recruiter. Miguel Moctezuma Longoria, *Trabajadores Temporales Contratados por EE.UU.: Informe Sobre el Programa Piloto del Gobierno de Zacatecas* [Temporary Workers Contracted by the U.S.: Report on the Pilot Program of the Government of Zacatecas] (unpublished report, on file with author). The states of Michoacán and Guanajuato have created similar experiments. Interview with Rachel Micah-Jones, Founder and Executive Director, Centro de los Derechos del Migrante, Inc., in Zacatecas, Mex. (May 24, 2006). So has the state of Jalisco. Fitzgerald, *supra* note 36, at 17. In an unusual arrangement, in 2008 the U.S.-based United Farm Workers signed an agreement with the government of the Mexican state of Michoacan to recruit farm workers for unionized jobs under the H-2A temporary agricultural worker program. Susan Ferriss, *UFW Signs Pact with Mexican State for Guest Workers on U.S. Farms*, SACRAMENTO BEE, Apr. 18, 2008, at A4.

- **Regulation of Departure.** Countries that regulate out-migration can require that a departing migrant show a temporary labor contract that meets certain minimum standards in order to receive a departure permit. The Philippines has taken this approach. The complication here is that it is not uncommon for recruiters and employers to require that migrants sign a second, less protective contract on arrival, insisting that its provisions obviate the protections of first contract.⁴⁵ For example, when Filipinos arrive in Saudi Arabia, they are routinely required to sign a second contract waiving their rights under Philippine law.⁴⁶
- **Diplomatic Intervention.** A number of origin countries have placed Labor Attachés or their equivalent in consular offices abroad to conciliate labor disputes when they arise, and/or provide some form of legal representation for migrants on workplace issues. Pakistan, the Philippines, and Sri Lanka, among other countries, have used consular officials to monitor and address guest work conditions abroad.⁴⁷ These efforts have often foundered in the face of inadequate funding and training, the difficulties of intervention in the legal system of another nation, and the contradictory pressures consular officers face as they attempt to maintain good relations with the host country while charged with addressing violations of migrant rights.⁴⁸ In high-profile cases, consulates may file *amicus* briefs or use the tools of diplomacy to address flagrant exploitation. Such interventions are rarely pressed to the point where they might strain relations with the host country.
- **Migrant Rights Education.** A number of origin country governments have begun to collaborate actively with civil society organizations in efforts to give migrants information about their rights before they leave the country. For example, in Sri Lanka, the Philippines, Romania, and Poland, among other countries, the government works with migrant organizations and trade unions to integrate training about rights and remedies into official pre-departure orientations.⁴⁹ Unions and NGOs

⁴⁵ See, e.g., ROBYN RODRIGUEZ, *BROKERING BODIES: THE PHILIPPINE STATE AND THE GLOBALIZATION OF MIGRANT WORKERS* (forthcoming 2009) (manuscript at ch. 6, on file with author) (discussing Filipino workers in Brunei).

⁴⁶ Mary Lou L. Alcid, *Overseas Filipino Workers: Sacrificial Lambs at the Altar of Deregulation*, in *INTERNATIONAL MIGRATION AND SENDING COUNTRIES: PERCEPTIONS, POLICIES AND TRANSNATIONAL RELATIONS* (Eva Østergaard-Nielson ed., 2003) 99, 115-116.

⁴⁷ IOM, *supra* note 33, at 17-18, 21, 23.

⁴⁸ Critiquing the level of protection provided by Philippine consular officers, see RODRIGUEZ, *supra* note 45 (manuscript at ch. 6); OFRENEO & SAMONTE, *supra* note 30, *passim*.

⁴⁹ IOM, *supra* note 33, at 118-20; Bobeva & Garson, *supra* note 22, at 18-19.

in many other countries are pressing for a formal role in these orientations, which in their view currently tend to emphasize compliance with employer demands over rights defense.⁵⁰

- **International Instruments.** Origin countries have also sought to advance migrant rights in the arena of international human rights, working through the ILO and the United Nations to pursue the ratification of international instruments such as the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. To date, however, no major destination country has signed the Convention.⁵¹

C. CONTRASTING APPROACHES: MEXICO AND THE PHILIPPINES

While this summary has so far emphasized commonalities between countries of origin, there are striking differences between origin nations in the way they choose to structure out-migration (or not) and in the way they address violations of the rights of their migrants abroad (or not). To give a sense of the range of approaches, I turn now to an examination of the policies of Mexico and the Philippines, two major origin countries that have approached the management of labor migration and migrant worker protection very differently.

I. Mexico

Nearly twelve million Mexican-born citizens currently live abroad. Ninety-eight percent of them are in the United States, the workplace of fourteen percent of the Mexican labor force.⁵² In 2007 these migrants sent home an estimated twenty-four billion dollars in remittances, two to three percent of the country's GDP.⁵³ Despite the central role of emigration for work in Mexico today and historically, for at least half a century the government has been vehement in its denial that it promotes out-migration as a solution to the country's economic woes.⁵⁴ The

⁵⁰ Interview with Josua Mata, *supra* note 32; Interview with Umesh Upadhyaya, *supra* note 32; Interview with Chang-geun Lee, *supra* note 32.

⁵¹ See *supra* note 5 and accompanying text.

⁵² 11.8 Million, CHICAGO TRIB., Aug. 21, 2008, at C19; *Mexican-Born Persons in the US Civilian Labor Force*, IMMIGRATION FACTS (Migration Policy Inst.), Nov. 2006, at 1, available at http://www.migrationpolicy.org/pubs/FS14_MexicanWorkers2006.pdf.

⁵³ James Painter, *U.S. Woes Slow Migrant Remittances*, BBC NEWS, Mar. 12, 2008, available at <http://news.bbc.co.uk/1/hi/world/americas/7292216.stm>.

⁵⁴ For useful historical overviews of Mexico's emigration policy, see Jorge Durand, *From Traitors to Heroes: 100 Years of Mexican Migration Policies*, MPI MIGRATION INFO. SOURCE, Mar. 2004, available at <http://www.migrationinformation.org/Feature/display.cfm?ID=203>; Fitzgerald, *supra* note 36; Marc R. Rosenblum, *Moving Beyond the Policy of No Policy: Emigration from Mexico and Central America*, 46 LATIN AM. POL. & SOC'Y 91 (2004).

Mexican government today characterizes out-migration as the product of global forces rather than state policy. In the words of the current director of the Mexican Ministry of Foreign Relations' Bureau of Consular Protection, the government is "not in the business of promoting labor migration, facilitating it, or recruiting workers for other countries."⁵⁵ Nor does it seek to regulate the out-flow of migrants, in part a recognition of the impossibility of effectively managing movement across its nearly 2000-mile border with the United States.⁵⁶

Despite the disavowal, the Mexican government's approach to migration is not entirely hands-off. It has negotiated a bilateral agreement with Canada governing temporary migration of agricultural workers, and since the late 1990s has sought to treat migration to the United States as a bilateral matter as well, albeit with less success.⁵⁷ In the past decade Mexico has also created a large-scale program to build ties with its citizens abroad and to encourage their continued remittances and investment.⁵⁸

One area where the Mexican government has not pursued a cohesive policy, however, is with regard to the labor rights of its migrants. Unlike many other major migrant-origin countries, Mexico's consulates in the United States have no organized program to assist migrants with workplace problems, although individual consuls may take an interest in labor matters. A few consulates have agreements with the U.S. Department of Labor (DOL), under which the DOL agrees to provide training on workers rights to consul staff and at consulate events.⁵⁹ Other consulates have occasionally filed amicus briefs or hired counsel to intervene in court cases where Mexican workers' interests were at stake.⁶⁰ At

⁵⁵ Interview with Daniel Hernandez Joseph, Dir. Gen. for Prot. & Consular Affairs, Bureau of Consular Prot., Ministry of Foreign Relations of Mex. (SRE), in Mexico City, Mex. (Mar. 5, 2008).

⁵⁶ Although there is a legal requirement that labor migrants demonstrate a work contract and compliance with destination entry requirements before departing, the government does not enforce it. Fitzgerald, *supra* note 36, at 15-16.

⁵⁷ Rosenblum, *supra* note 54, at 108-13.

⁵⁸ Fitzgerald, *supra* note 36, at 14; Rosenblum, *supra* note 54, at 111-12. Policies have included the creation of an Institute of Mexicans Abroad, through which migrants advise the Mexican government on its policies; provision by the consulates of the "matricula consular," a form of official i.d.; dual nationality; the granting of the vote in Mexican elections to Mexican citizens abroad; and the creation of the "three for one" program, which matches migrant remittance contributions to development projects through official channels at a rate of three to one. Gustavo Cano & Alexandra Delano, *The Mexican Government and Organised Mexican Immigrants in the United States: A Historical Analysis of Political Transnationalism (1848-2005)*, 33 J. ETHNIC & MIGRATION STUD. 695 (2005).

⁵⁹ For an example of such an agreement involving the Mexican Consulate in Houston, see U.S. Dep't of Labor, Occupational Safety & Health Admin., Alliance Agreement (Mar. 24 2006), available at http://www.osha.gov/dcsp/alliances/regional/reg6/mex_con_houston_final.html.

⁶⁰ In 1998, for example, the Mexican government joined a lawsuit against DeCoster Egg Farm, claiming violations of wage standards and other labor laws. This was Mexico's first lawsuit

times, a consular officer may form a relationship with a local union or workers' rights organization.⁶¹ But Daniel Hernandez Joseph, director of the Mexican government's Bureau of Consular Protection, describes the defense of workers rights as one of the lowest priorities of an overburdened consular staff.⁶² Mexico sets no minimum requirements for the employment of its nationals in the United States, provides no model contracts or agreements, has no limits on out-migration, does no pre-departure rights education, and makes minimal efforts to regulate recruitment on Mexican soil.

Should it wish to use them, the Mexican government has tools at its disposal to control exploitative labor recruitment. For example, Article 28 of Mexico's Federal Labor Law mandates that labor contractors recruiting in Mexico register with the government, pay the workers' travel costs and visa fees in advance, file a copy of the labor contract, and post a bond in case workers' rights are violated. Yet there are no documented cases in which the Mexican government has enforced this law against a labor recruiter.⁶³

In a recent interview, Mr. Hernandez explained Mexico's lack of investment in worker protection in the United States as the product of the indifference of the Mexican public to violations of the rights of Mexican migrant workers. He contrasts this with Mexicans' insistence on a consular response to border deaths, repatriation of bodies, and the death penalty, which has resulted in the channeling of millions of dollars into diplomatic initiatives in those areas.⁶⁴ Other factors are likely at work as well. Unlike repatriation, for example, rights defense puts the Mexican consulate in direct conflict with the employers they otherwise see as desirable allies.

against a U.S. employer. *Northeast: Poultry, Eggs*, 4 RURAL MIGRATION NEWS (Jul. 1998), available at http://migration.ucdavis.edu/rmn/more.php?id=283_0_2_0.

⁶¹ This happened in the mid-2000s in the metro-New York region, when then-Consul (now Ambassador) Arturo Sarukhan made an effort to build relationships with worker centers in the context of conflicts over Mexican day laborers in New York and New Jersey. Personal Communication with Arturo Sarukhan, Mexican Consul, in N.Y., N.Y. (Oct. 28, 2005). For a note on an informal collaboration between the Mexican consulate in Chicago and a union seeking to organize Mexican immigrants, see Leon Fink, *Labor Joins La Marcha: How New Immigrant Activists Restored the Meaning of May Day* (2008) (unpublished manuscript, on file with author).

⁶² Daniel Hernandez Joseph, Dir. Gen. for Prot. & Consular Affairs, Bureau of Consular Prot., Ministry of Foreign Relations of Mex. (SRE), Remarks at the Binational Labor Justice Convening (Oct. 6, 2007); Interview with Daniel Hernandez Joseph, *supra* note 55.

⁶³ Jorge Fernandez Souza, Magistrate Judge, Professor of Law and former Dean, Universidad Autónoma Metropolitana, México, Remarks at the Binational Labor Justice Convening (Oct. 6, 2007). For an argument for the application of Article 28 by U.S. courts, see Kati L. Griffith, *Globalizing U.S. Employment Statutes Through Foreign Law Influence: Mexico's Foreign Employer Provision and Recruited Mexican Workers*, 29 COMP. LAB. L. & POL'Y J. 383 (2008).

⁶⁴ Interview with Daniel Hernandez Joseph, *supra* note 55.

2. The Philippines

Today, more than 8.2 million Filipinos live in over 190 countries, representing a quarter of the Philippine labor force.⁶⁵ In 2007, remittances sent home by Filipino Overseas Foreign Workers totaled over fourteen billion dollars, approximately ten percent of the country's GDP.⁶⁶ As these numbers indicate, even more than Mexico, the Philippines is one of the world's most active exporters of labor. It is also among its most organized, with a broad range of laws and institutions designed to channel migration and to regulate recruiters, employers, and migrants themselves. By contrast with Mexico, it offers an example of an origin country that takes a more proactive—although still conflict-ridden—approach both to the management (and encouragement) of labor migration and to enforcing migrant labor rights.

The Philippines already had a long history of emigration for work by 1974, when then-President Ferdinand Marcos announced a new policy affirmatively promoting temporary legal migration as a source of jobs for Filipinos and income for Philippine development.⁶⁷ Subsequently, the government's involvement in the migration process increased significantly, and emigration rates soared. In the ensuing decades, the Philippine state built a range of institutions to encourage and regulate migration based on labor contracts abroad.

The Philippines Overseas Employment Agency (POEA) is the government body charged with managing out-migration. All recruitment agencies must be licensed by the POEA, and only licensed agencies or the POEA's own direct recruitment programs are permitted to place workers in overseas jobs. The POEA is charged with monitoring private recruitment agencies, although its capacity to do this is limited.⁶⁸ Whether migrants find work through the government or via an agency it regulates, the contracts they sign are enforceable under Philippine law.⁶⁹ If the

⁶⁵ Dovelyn Rannveig Agunias & Neil G. Ruiz, *Protecting Overseas Workers: Lessons and Cautions from the Philippines*, INSIGHT (Migration Policy Inst.), Sept. 2007, at 2, available at http://www.migrationpolicy.org/pubs/MigDevInsight_091807.pdf.

⁶⁶ AFX News Limited, *Philippines 2007 Overseas Workers' Remittances at Record 14.4 Billion Dollars*, Feb. 15, 2007, available at <http://www.forbes.com/markets/feeds/afx/2008/02/15/afx4659876.html>. For comparison purposes, in 2007, Mexico received about \$24 billion in remittances, for a total of 2-3% of its GDP. Painter, *supra* note 53.

⁶⁷ Agunias & Ruiz, *supra* note 65, at 2, 6; JOAQUIN L. GONZALEZ III, *PHILIPPINE LABOUR MIGRATION: CRITICAL DIMENSIONS OF PUBLIC POLICY* 33-36 (1998); Kevin O'Neil, *Labor Export as Government Policy: The Case of the Philippines*, MPI MIGRATION INFO. SOURCE, Jan. 2004, <http://www.migrationinformation.org/USFocus/display.cfm?ID=191>. While this effort has increased the percentage of Filipinos who migrate legally, there is still a significant amount of illegal migration. *Id.*

⁶⁸ Agunias, *supra* note 26, at 16-17.

⁶⁹ O'Neil, *supra* note 67.

foreign employer does not respect the terms of the contract, the Philippine employment agency is held jointly liable for the violations.⁷⁰ This measure was intended to give Filipino migrant workers a way to seek redress for labor abuses once they return to their home country, in recognition of the often insurmountable difficulties of pursuing a case directly against the employer while working abroad on a contract.⁷¹ The POEA also sets minimum standards for employment in specific industries,⁷² processes employment contracts, and certifies workers as qualified to depart for overseas employment. Finally, the POEA seeks to develop new overseas work opportunities for Filipinos and itself recruits workers for some overseas jobs.⁷³

The Overseas Workers Welfare Administration (OWWA) is the principle agency through which the Philippines government offers services to migrants. OWWA manages a \$246 million welfare fund that is financed through the mandatory contributions of migrants (and, nominally, their employers, although the employer portion of the fee is frequently passed on to the worker as well).⁷⁴ It provides contributing migrants with life and disability insurance, loans, education subsidies and training, repatriation assistance, legal representation, and worker protection.⁷⁵ The OWWA also collaborates with migrants rights groups, recruiters, and civil society organizations to conduct pre-departure orientations that are tailored to particular industries and cover skills, rights, and the culture and customs of the host country.⁷⁶ It has a staff of 580, including 180 in countries with the largest numbers of Overseas Foreign Workers.⁷⁷

In 1995, the Philippine government officially shifted from an affirmative pro-migration stance to a more protective attitude, in response to the wave of mass demonstrations that followed the killing of Flor Contemplacion, a Filipina Overseas Foreign Worker put to death in Singapore on a murder charge.⁷⁸ The 1995 Migrant Workers and Overseas Filipinos Act declares that “the State does not promote overseas employment as a means to sustain economic growth and achieve national development,” and mandates that the “State shall deploy overseas

⁷⁰ Philippine Migrant Workers and Overseas Filipinos Act of 1995, Rep. Act No. 8042 § 10 (1995).

⁷¹ See *Narcan Inc. Shipping and Placement Agency v. Nat’l Labor Relations Comm’n*, C.A. G.R. No. 66264 at 7 (2006), available at <http://ca.supremecourt.gov.ph/cardis/SP66264.pdf>.

⁷² IOM, *supra* note 33, at 34-36, app. F, G at 75-79.

⁷³ Alcid, *supra* note 46, at 106-07.

⁷⁴ Agunias & Ruiz, *supra* note 65, at 10, 12; Posting of Aubrey Makilan to Migrants News Monitor, <http://migrantsnews.blogspot.com/2008/01/congress-oversight-of-owwa-funds-sought.html> (Jan. 13, 2008, 4:07 p.m.).

⁷⁵ Agunias & Ruiz, *supra* note 65, at 14-19.

⁷⁶ IOM, *supra* note 33, at 118-19, 202.

⁷⁷ Agunias & Ruiz, *supra* note 65, at 9-10.

⁷⁸ *Id.* at 7.

Filipino workers only in countries where the rights of Filipino migrant workers are protected.”⁷⁹ Among other new worker protections, the Act created the position of Overseas Welfare Officer, officials placed in 28 embassies and consulates in countries with high levels of Filipino immigration, and charged with responding to complaints of worker abuse. Overseas Welfare Officers investigate reports of abuse, attempt to resolve disputes between migrants and employers through negotiation, and, if necessary, hire lawyers to represent migrants with labor claims in courts abroad.⁸⁰

As noted above, the Philippines has also begun to incorporate country-specific model labor contracts in the bilateral agreements it negotiates. In addition, the government has at times cut off the supply of new Filipino labor migrants from countries where violations are particularly severe. The Philippines has imposed this sanction against five destination nations so far, including briefly in 2008 against Jordan, a country with which it had negotiated a migration agreement, because of reports of the abuse of domestic workers by employers there.⁸¹ Finally, the Philippines has been active in ratifying international migrant protective agreements, and in pushing for migrant protections in a range of international fora.⁸²

The Philippines has paid a price for its reputation as a nation that demands respect for its migrants’ rights. For example, Filipina migrants are being supplanted in the Hong Kong market for domestic workers by those from other, less rights-protective countries such as Indonesia.⁸³ Observers suggest that the shift is the result of the higher wage requirements and greater rights awareness of Filipinas relative to their Indonesian competitors.⁸⁴ The Philippines has sought to

⁷⁹ Philippine Migrant Workers and Overseas Filipinos Act of 1995, Rep. Act No. 8042, §§ (2)(c), 4 (1995).

⁸⁰ BARUAH & CHOLEWINSKI, *supra* note 35, at 57; Agunias & Ruiz, *supra* note 65, at 19.

⁸¹ The ban was initiated in January 2008. *Philippines: No More Workers to Jordan*, ASSOCIATED PRESS, Jan. 23, 2008, available at http://www.usatoday.com/news/world/2008-01-23-903913811_x.htm. It was lifted in August 2008. *Philippines Allows Workers to Jordan*, ASSOCIATED PRESS, Aug. 1, 2008, available at <http://www.ihl.com/articles/ap/2008/08/01/asia/AS-Philippines-Jordan.php>. The Philippines has terminated formal labor migration to Nigeria, Afghanistan, Lebanon, and Iraq on similar grounds. *Id.* The Philippines had imposed a similar ban on official migration to Jordan in 1990, but lifted it in 2005 after new protective provisions were approved by the Jordanian government. Philippines Dep’t of Labor & Employment, *Deployment Ban of DH to Jordan Lifted*, Mar. 3, 2005, <http://www.dole.gov.ph/news/details.asp?id=N000000452>.

⁸² Go, *supra* note 30, at 11-12.

⁸³ NICOLE CONSTABLE, *MAID TO ORDER IN HONG KONG: STORIES OF MIGRANT WORKERS* vii (2d ed., 2007); Hsiao-Chuan Hsia, *Transnationalism from Below: The Case Study of Asian Migrants Coordinating Body 4-5* (Jul. 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.

⁸⁴ CONSTABLE, *supra* note 83, at 86-88; Hsia, *supra* note 83, at 8-9.

address the issue of competition head-on by negotiating a Memorandum of Understanding with Indonesia, the first to be concluded between two origin countries. The 2003 accord establishes a joint commitment to train and certify migrants, promote the rights of migrant workers abroad, and provide legal assistance in defense of migrant labor rights.⁸⁵

For all the breadth of Philippine protections for migrants, however, implementation has often fallen short of the laws on paper. In part, the problem reflects weaknesses in the particular institutions charged with enforcement.⁸⁶ Philippine migrant-protective agencies are chronically understaffed.⁸⁷ Critics have charged that the labor attachés assigned to address employment violations at consulates are often political appointees without specialized experience in the field.⁸⁸ There is a general lack of transparency and public accountability in Philippine migrant service programs, and accusations of corruption and waste at the Overseas Workers Welfare Administration are not infrequent.⁸⁹ Even where the Philippine government has been most innovative—for example, with the legislation that imposes joint liability on recruiters for foreign employers' violations—it is hampered by its own overburdened legal institutions, which make timely and effective prosecution difficult.⁹⁰

In addition, and more broadly, the limitations in the Philippine government's approach to enforcing migrants' labor rights reflect the tension between its desire to maintain good relations with destination states and its position as defender of its migrants' rights. Despite its official proclamations, the Philippine government continues to rely heavily on out-migration. As sociologist Robyn Rodriguez notes in her study of the Philippine government's role in a conflict between Philippine migrants and the factory where they worked in Brunei, the government's reluctance to jeopardize its diplomatic relationships with key destination countries may lead it to pressure migrants to settle or drop claims rather than acting as their advocate.⁹¹ Furthermore, as noted above, many of the mechanisms that the Philippine government has established to protect migrant rights—the model contracts and minimum wages, the requirement that migrants show a valid contract to receive an exit permit, the liability of recruiters for employer

⁸⁵ Go, *supra* note 30, at 4–5.

⁸⁶ RODRIGUEZ, *supra* note 45 (manuscript at ch. 6); Agunias, *supra* note 26 at 16–24; Agunias & Ruiz, *supra* note 65; Xinying Chi, Note, *Challenging Managed Temporary Labor Migration as a Model for Rights and Development for Labor-Sending Countries*, 40 N.Y.U. J. INT'L L. & POL. 497, 514–16 (2008); OFRENEO & SAMONTE, *supra* note 30.

⁸⁷ Agunias, *supra* note 26, at 16.

⁸⁸ Chi, *supra* note 86, at 515; OFRENEO & SAMONTE, *supra* note 30, at 62.

⁸⁹ Agunias & Ruiz, *supra* note 65, *passim*.

⁹⁰ Chi, *supra* note 86, at 514–16.

⁹¹ RODRIGUEZ, *supra* note 45 (manuscript at ch. 6).

violations—can be, and often are, short-circuited by the common requirement that migrants sign a second, less protective contract on arrival in the destination country.⁹² For all of these reasons, migrants seeking the Philippine government's assistance with workplace problems have often found that the government does not deliver on its promises of protection.

D. CHALLENGES AND LESSONS LEARNED

This overview leaves no doubt that there is an alternative to labor migration policy set unilaterally by destination countries. In many places around the world, the management of labor migration is happening bi-laterally. And although countries of origin face considerable incentives to downplay the issue of migrant rights, domestic politics around emigration are complex, and there are also reasons for an origin nation to take pro-active steps to defend the rights of its migrants. As the comparison between Mexico and the Philippines illustrates, the degree of domestic political pressure around the issue may be an important factor in whether a country moves rights into the foreground of its emigration policy. So too is geography, as the Philippines with its island configuration has greater control over out-migration and a broader range of potential destination partners than Mexico, which is locked in a relationship with a single major destination country with which it shares an extensive border.

How effective an origin country can be once it has decided to take on labor rights as an issue is another matter. Neither the independent efforts of origin states to protect migrant rights nor the protective mechanisms of bilateral agreements have been systematically evaluated. What is clear from a review of anecdotal critiques and of the literature assessing other aspects of origin-state migration policy is that the protections established on paper are rarely fully implemented, when they are implemented at all. Origin states have a weak hand in negotiations over labor migration, and what protections they do establish are often compromised both by practical limits on an origin country's capacity to enforce workplace laws outside its territory (especially given weak domestic legal institutions),⁹³ and by tensions over whether enforcement makes sense given the country's goal of sustaining a high level of labor emigration.

In the global marketplace for jobs, there is significant pressure on origin countries to soft-peddle issues of migrant rights in order to make their nationals more

⁹² For a critique of the functioning of the model contract in the context of Hong Kong, see CONSTABLE, *supra* note 83, at ch. 6. Government-mandated contracts are worth little unless the destination country puts its weight behind enforcement. Gwenann S. Manseau, *Contractual Solutions for Migrant Labourers: The Case of Domestic Workers in the Middle East*, 2 HUM. RTS. L. COMMENT. 25, 30 (2006).

⁹³ Chi, *supra* note 86, at 511-16; OFRENEO & SAMONTE, *supra* note 30, at 14.

desirable as temporary workers. As these cases make evident, the negotiation of bilateral (as opposed to multi-lateral or regional) labor migration agreements intensifies this concern, as origin countries fear that if they try to make migrant rights a priority they may be passed over as potential “partners” by destination countries, in favor of nations that demand less. To avoid this outcome, some countries that once set minimum wages for their migrants, such as Pakistan, have abandoned that effort and now limit their approach to regulating recruitment agencies and addressing gross violations of human rights abroad.⁹⁴ Multilateral or regional agreements, by contrast, have the capacity to take labor rights out of competition, setting the same rights baseline for all origin and destination nations. For this reason, they are far preferable to a bilateral approach from a migrants’ rights perspective.

Finally, the cases reinforce the impression that no matter how creative or active an origin country is in the protection of migrant workers rights, there are limits to what it can achieve without the active cooperation of the destination country. Not only do destination countries hold most of the bargaining power, but it is on destination country territory that labor violations occur and it is destination country laws and legal institutions that are largely used to remedy them. Halfway measures that rely exclusively on an origin country’s efforts are thus unlikely to meet with significant success. If migrant protections are to be made real, destination countries must take the lead by making rights central to the design of their labor migration programs and by creating and adequately funding concrete mechanisms to enforce workplace protections for migrants.

If destination countries do call for a Transnational Labor Citizenship-like program, there are reasons to believe that it might hold appeal for origin countries as well. Transnational Labor Citizenship would create more slots for labor migrants, raise migrant wages, and remove impediments to return migration, all developments that are in origin countries’ interest. Were destination countries to make this a priority, it would also open the door for negotiation of such agreements on a regional basis rather than the less effective country-by-country approach. Finally, since Transnational Labor Citizenship would create a network of interlinked worker-protective organizations in the origin and destination countries and facilitate direct collaboration between origin countries, workers’ organizations, and destination country governments on efforts to enforce workplace standards, it would address origin country concerns about the inadequacy of their current tools for migrant worker defense.

⁹⁴ IOM, *supra* note 33, at 33.

III EMERGING EXAMPLES OF MOBILE LABOR CITIZENSHIP

A. UNDERSTANDING MOBILE LABOR CITIZENSHIP

At the heart of the Transnational Labor Citizenship proposal is the idea that both migrants and workers in the destination country will be best protected if migrants travel across borders as “labor citizens.” To achieve this, migrants would have ties to workers’ organizations in their home countries before departure, as well as in the destination communities where they labor for all or part of the year. I refer to this as mobile labor citizenship. In the fullest form of the proposal, it is that membership and the fulfillment of its obligations, rather than a link to an employer, that would entitle migrants to a work visa in the destination country.

Collaborations between origin and destination country workers’ organizations to ensure migrants’ rights are part of a broader spectrum of global labor solidarity. In North America and the EU in particular, global solidarity is most often enacted through campaigns in which unions (and sometimes advocacy organizations) in different countries join forces to pressure a transnational corporation to improve its treatment of workers. The objective of such campaigns is usually to win a specific victory relating to a particular job site or sites in a single country. As capital moves ever more freely across borders, such campaigns are becoming more common, and more necessary.⁹⁵ Cross-border solidarity is an essential component of any strategy to raise wages and working conditions in the global economy. But its focus is on *holding mobile capital accountable* on a case-by-case basis.⁹⁶ In this it is distinct from Transnational Labor Citizenship, which seeks to strengthen the hand of migrants themselves as they cross borders, with the goal of *building mobile labor’s capacity to defend its rights* on a continuous basis across a wide swath of employers.⁹⁷ Mobile labor citizenship, a core component of Transnational Labor

⁹⁵ For a historical overview of labor’s cross-border efforts, see Beverly J. Silver, *FORCES OF LABOR: WORKERS’ MOVEMENTS AND GLOBALIZATION SINCE 1870* (2003). Examples of recent campaigns are set out in *GLOBAL UNIONS: CHALLENGING TRANSNATIONAL CAPITAL THROUGH CROSS-BORDER CAMPAIGNS* (Kate Bronfenbrenner ed., 2007) [hereinafter *GLOBAL UNIONS*], and *GLOBAL UNIONS? THEORY AND STRATEGIES OF ORGANIZED LABOUR IN THE GLOBAL POLITICAL ECONOMY* (Jeffrey Harrod & Robert O’Brien eds., 2002). For a critical perspective, see Alan Howard, *The Future of Global Unions: Is Solidarity Still Forever?*, *DISSENT MAG.*, Fall 2007, at 62.

⁹⁶ Global Union Federations have also begun to negotiate international framework agreements with transnational firms as a way to commit them to a uniform set of labor practices around the globe. See generally Dimitris Stevis & Terry Boswell, *International Framework Agreements: Opportunities and Challenges for Global Unionism*, in *GLOBAL UNIONS*, *supra* note 95, at 174.

⁹⁷ A common critique of some efforts to hold global capital accountable—in particular, private monitoring agreements negotiated between transnational brands and non-governmental organizations—is that the process disempowers workers who labor for the brands’ subcontractors, who often have no say in the terms or implementation of those agreements, and whose employers may use the agreements to avoid unionization. For one such critique, see JILL

Citizenship, requires the creation of organizing structures and relationships that correspond to the realities of migration. Compared with other forms of global labor solidarity, mobile labor citizenship is in its infancy. Yet unions and NGOs around the world are beginning to recognize the need for it and to explore its potential.

Mobile labor citizenship is one aspect of efforts by trade unions around the world to develop a positive response to the latest wave of global immigration. Unions in EU and North American destination countries have experimented for several decades now with models for welcoming new immigrants (including the undocumented) into their ranks and for defending the rights of migrants as workers. In the United States, unions have made great strides in organizing immigrants.⁹⁸ In doing so, however, they have largely worked alone. With exceptions that are so few as to prove the rule,⁹⁹ they have not collaborated with origin country unions to organize migrants from those countries, nor—other than the Farm Labor Organizing Committee, whose approach I discuss below—do they maintain a presence accessible to their members in their countries of origin. Much the same could be said of most unions in Canada.¹⁰⁰ While there has been a little more experimentation in the EU, particularly with collaboration between unions

ESBENSHADE, MONITORING SWEATSHOPS: WORKERS, CONSUMERS, AND THE GLOBAL APPAREL INDUSTRY 198-201 (2004). Transnational Labor Citizenship can be understood as a response to that unfinished agenda, in that it addresses global working conditions from the workers' perspective and with their active involvement. Mark Barenberg offers an alternative monitoring model in *Toward a Democratic Model of Transnational Labour Monitoring?*, in *REGULATING LABOUR IN THE WAKE OF GLOBALISATION: NEW CHALLENGES, NEW INSTITUTIONS* 37 (Brian Bercusson & Cynthia Estlund eds., 2008).

⁹⁸ For a sampling of writing on organized labor's new attention to immigrant workers, see RUTH MILKMAN, *L.A. STORY: IMMIGRANT WORKERS AND THE FUTURE OF THE U.S. LABOR MOVEMENT* (2006); IMMANUEL NESS, *IMMIGRANTS, UNIONS, AND THE NEW U.S. LABOR MARKET* (2005); *ORGANIZING IMMIGRANTS: THE CHALLENGE FOR UNIONS IN CONTEMPORARY CALIFORNIA* (Ruth Milkman ed., 2000).

⁹⁹ The only example of which I am aware where an origin country union was directly involved in an organizing campaign involving immigrants within the U.S. was the collaboration between the independent Mexican union FAT (the Frente Autónomo de Trabajadores) and the independent U.S. union UE (the United Electrical workers union). Among other collaborative efforts, a FAT organizer came to Milwaukee for several weeks in 1994 to help the UE organize Mexican immigrant workers at the AceCo foundry there. Terry Davis, *Cross-border Organizing Comes Home: UE & FAT in Mexico & Milwaukee*, 23 *LAB. RES. REV.* 23 (1995).

¹⁰⁰ For example, in its efforts to improve working conditions for migrant agricultural workers, the United Food and Commercial Workers Canada launched a network of five regional Migrant Worker Support Centers. United Food and Commercial Workers Canada, *UFCW Canada National Report on the Status of Migrant Farm Workers in Canada 3* (2004) available at <http://www.ufcw.ca/Theme/UFCW/files/AgWorkersReport2004ENG.pdf>. It also won representation elections at four farms. Jennifer Hill, *Binational Guestworker Unions: Moving Guestworkers into the House of Labor*, 35 *FORDHAM URB. L.J.* 307, 320 (2008). But these endeavors have no link to origin country institutions.

in Western and Eastern European countries, the vast majority of those efforts remain unilateral as well.¹⁰¹

The efforts of destination country unions and NGOs are essential to ensure that migrants' rights are respected. But particularly in situations where migrants travel back and forth between their home and destination countries, there are limits to what a one-sided approach can achieve. Transnational Labor Citizenship calls for an acknowledgment that where migrants continue to move transnationally, a high level of coordination between origin and destination country workers' organizations is important to ensure that migrants are able to defend their rights. A coordinated mobile labor citizenship approach would complement the many other efforts that destination *and* origin country workers' organizations currently have underway to respond to the needs of migrants.

Mobile labor citizenship is taking different forms around the world. In its most literal incarnation, a number of Global Union Federations or GUFs (international industry-based confederations of national unions, formerly called International Trade Secretariats) are experimenting with "union passports," documents that permit individuals who belong to one of their affiliated unions in an origin country to claim certain benefits from sister unions in a destination country. This represents a significant shift for the Global Union Federations, which had previously focused more on bringing their member unions together to pressure transnational capital than on enhancing unions' capacity to organize mobile workers. The Global Union Federation for professional and commercial service workers, Union-Network International (UNI) has launched the "UNI Passport."¹⁰² The International Union of Food, Agricultural, and Allied Workers

¹⁰¹ A number of EU unions have initiated programs to reach and incorporate immigrant members (including the undocumented), but most of these programs have been implemented unilaterally rather than in collaboration with their origin-country counterparts. See descriptions of contemporary union approaches to immigrants in Spain, Italy, and France in JULIE R. WATTS, *IMMIGRATION POLICY AND THE CHALLENGE OF GLOBALIZATION: UNIONS AND EMPLOYERS IN UNLIKELY ALLIANCE* (2002).

One interesting exception is a decade-long collaboration between the Building Trades Council in Rome, Italy, and its counterpart in Romania, through which the Romanian unions send four staff to the Rome council to help organize Romanian migrant workers there. Telephone Interviews with James O'Leary, Executive Dir., Int'l Labor Mgmt. Alliance (Oct. 8, 2008, Oct. 10, 2008). Another is the European Migrant Workers Union, launched in 2004 by IG BAU, the German construction workers' union, with intermittent collaboration with its Polish counterpart. Marcus Kahmann, *The Posting of Workers in the German Construction Industry: Responses and Problems of Trade Union Action*, 12 *TRANSFER* 183, 190-94 (2006); Nathan Lillie & Ian Greer, *Industrial Relations, Migration, and Neoliberal Politics: The Case of the European Construction Sector*, 35 *POL. & SOC'Y* 551, 564-68 (2007).

¹⁰² UNI Global Union, The UNI Passport, http://www.union-network.org/Unisite/Groups/PMS/issues_passport.htm; UNI Passport Application & Information, <http://www.union-network.org/Unisite/Groups/PMS/Passport/LeafletEng.pdf>; UNI Passport Scheme, <http://www.union->

(IUF) has an “International Union Card.”¹⁰³ Most recently, in late 2008 the Building and Woodworkers International (BWI) initiated its “Migrant Workers Rights Passport,” which includes information about the bearer’s union history, work experience, and training; summarizes relevant laws in major destination countries; and entitles the bearer to the support of participating BWI unions.¹⁰⁴

To date, the GUF passport approach appears to represent more of a symbolic statement than a source of tangible improvements in the working conditions of most migrants. One problem is that neither the mechanisms for incorporating migrants who appear at a destination country union’s door nor the funding to support the provision of benefits to newcomers have yet been fully worked out. A more fundamental challenge arises from the fact that migrants who are unionized at home may work in a different industry and/or in a non-union sector at their destination—and vice versa. This undermines the assumption on which GUF-sponsored union passport efforts are built: that migrants who are affiliated with a union in one country will consistently remain within the same industry (and within a unionized sector of the industry) after they cross borders, so that they can carry their union membership with them to a union in the other country that belongs to the same GUF.

More concrete benefits are emerging from partnerships between individual origin and destination country unions around the world. Some of these only involve brief consultation or support, but others are evolving into sustained collaborations. In what follows, I offer a series of preliminary summaries of new initiatives that take different approaches to ensuring that migrants are organized as labor citizens wherever they are in the migrant stream. Two of the efforts I profile are in the global construction industry: a new protocol for hiring unionized construction workers from origin countries when there is a labor shortage among unionized construction workers in a destination country; and a range of origin/destination union collaborations to organize migrant construction workers in Asia. The other two efforts are located in the core low-wage migrant industries of agriculture and domestic work. One is a destination country farm workers’ union that has opened an office in the country of origin of the majority of its members; and the other is an

network.org/unipm.nsf/9548462b9349db27c125681100260673/4fad77f585b1bd09c1256c44003elf6b/\$FILE/DanD.'s%20passport%20scheme-e.doc.

¹⁰³ The Federation’s full name is the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations. On the IUF’s International Union Card, see the organization’s publication, IUF, WORKERS AND UNIONS ON THE MOVE: ORGANISING AND DEFENDING MIGRANT WORKERS IN AGRICULTURE AND ALLIED SECTORS 28 (May 2008), available at <http://www.iufdocuments.org/www/documents/IUFmigrantworkersmanual-e.pdf>.

¹⁰⁴ BWI Migrant Workers Rights Passport (on file with author); The BWI Migrant Workers Rights Campaign 17-18 (2008) [hereinafter BWI Pamphlet] (on file with author); Interview with Jin Sook Lee, Reg’l Project Coordinator, BWI, Asia-Pacific Region, in Manila, Phil. (Oct. 29, 2008).

origin country labor federation that has sent an organizer to a destination country to organize domestic workers there.¹⁰⁵

Although I highlight Global Union passports and destination/origin country partnerships here because of my interest in mobile labor citizenship, it is important to make clear that they do not stand alone. Passports and partnerships are only one component of broader migrants rights campaigns, which may include efforts to provide accurate information to migrants before departure and after arrival, ensure that migrants' existing rights are respected, bolster domestic and international laws, and fight exploitative recruitment practices. Numerous Global Union Federations, national labor federations, unions, and NGOs have undertaken such campaigns in recent years, both independent of each other and through networks that bring them together.

Most of the cross-border collaborations I describe in the following sections are very new. Some are only in the planning stages and others have just begun to be implemented, which limits the conclusions I can draw about the impact of their approaches. Keeping in mind that most of these experiments are in their infancy, I focus on analyzing their models rather than on their outcomes. While all of these efforts have in common a commitment to union membership that is portable across borders, they differ in important ways. One addresses workers who are recognized as highly skilled, while others focus on workers at the lower end of the wage/skill ladder. Some are linked to existing guest worker programs and thus work only with legal migrants. Others are more inclusive, taking the existing labor market demographics and migration pattern as a given, and seeking to bring into their ambit as many migrants working in the industry as possible. At the conclusion of this section, I contrast the efforts I discuss along these and other lines, assessing their eventual potential to achieve the core workplace standards-enhancing goals of Transnational Labor Citizenship.

B. THE EXPERIMENTS

I. Construction: Two Approaches

The construction industry today is at once thoroughly global and intensely local. Construction firms are increasingly part of multinational alliances. Construction contracts are frequently funded by transnational capital.¹⁰⁶ And yet, the

¹⁰⁵ Readers interested in learning about additional efforts may wish to review brief summaries of other collaborations in the ILO's recently-published manual, *IN SEARCH OF DECENT WORK—MIGRANT WORKERS' RIGHTS: A MANUAL FOR TRADE UNIONISTS* 110-11 (2008); and in the recent pamphlet, *UNIONS WITHOUT BORDERS (A PRIMER ON GLOBAL UNIONS AND WHAT THEY CAN DO FOR MIGRANT WORKERS)* (2008).

¹⁰⁶ Jeff Grabelsky, *Construction or De-construction? The Road to Revival in the Building Trades*, 16 *NEW LAB. F.* 47, 49-50 (2007);

production or harvesting of building materials, and construction itself, must be carried out in a set location, and thus require the hiring of local labor. The quest to reduce labor costs has led forestry companies, wood factories, and construction contractors around the globe to seek out migrant workers.¹⁰⁷ Meanwhile, the construction industry worldwide has seen the growth of small companies operating in violation of regulations about wages, safety, and other standards, in a further effort to cut costs.¹⁰⁸ Such companies underbid each other for jobs in a subcontracting system made up of increasingly informalized enterprises. When the migrant reaches his destination, he is often hired by such companies at rates that undercut union-negotiated wages and working conditions in the destination country. Although the current global financial crisis is reflected in an overall reduction in construction jobs, it has also driven an intensified quest for cheap labor. With origin country economies feeling the downturn alongside their destination country counterparts, it seems likely that workers will continue to cross borders in search of work in the building trades.

Worker mobility in construction is nothing new. Building trades unions are organized to reflect the reality that most workers in the industry are not tied to a particular employer, instead moving from job to job as one project concludes and another begins. In an era when “mobile worker” meant someone who moved state to state, construction unions in the United States developed a complex set of rules to manage the rights of “travelers,” union members who travel for work across lines of local union jurisdiction.¹⁰⁹ The traveler system permitted building trade unions to fill employers’ demand for labor without admitting new workers to the union on a permanent basis who would compete for work when times were tight. Through this system, many local workers, particularly immigrants, women, and people of color, were excluded from construction unions and the jobs they

¹⁰⁷ Grabelsky, *supra* note 106, at 49-50; Brian Lockett, “Global Hiring Hall” Proposed as New Strategy for Responding to Shortages of Skilled Labor, 53 BNA LAB. REP. 281 (Apr. 25, 2007).

¹⁰⁸ For the Building and Wood Workers’ International (BWI)’s analysis of this phenomenon, see BWI, Building & Construction, <http://www.bwint.org/default.asp?Issue=CONSTR&Language=EN>.

¹⁰⁹ Where a local building trade union could not supply enough workers for a new construction project in its region, the local would call for union members from other locals around the country to come in to do the work. Travelers were almost never admitted to the local where the new work was taking place; they were expected to move on when the work concluded. Non-union construction workers in the local area were either permitted to do the work on a short-term basis (but not admitted to the union) or excluded entirely. LLOYD ULMAN, *THE RISE OF THE NATIONAL TRADE UNION: THE DEVELOPMENT AND SIGNIFICANCE OF ITS STRUCTURE, GOVERNING INSTITUTIONS, AND ECONOMIC POLICIES* pt. II (1955); Int’l Brotherhood of Electrical Workers, Local 25, Travel Comm. Meeting, Rules of the Road, available at <https://www.ibew25.org/node/1316>; Personal Communication with Jeffrey Grabelsky, Dir., Constr. Indus. Program, Cornell Univ., Sch. of Indus. & Labor Relations, in N.Y., N.Y. (June 18, 2008).

controlled.¹¹⁰ For many years, the effect of the building trades restrictive strategy was to make the construction unions the near-exclusive province of white men. Unions may defend restrictive models as driven by the need to limit economic competition, and dispute charges that they are rooted in xenophobia or racism.¹¹¹ Yet when the effect of limiting economic competition is largely to exclude workers of color from union membership, the line between the two can be hard to parse.

In recent years, however, facing a dramatic decline in union density, many North American building trades unions (and especially those who work with general construction workers rather than high-skilled trades, such as the Bricklayers, Laborers, and Carpenters) have rejected a restrictive approach to organizing in favor of a proactive effort to bring new workers—including native-born workers of color and sometimes also immigrants—into union membership.¹¹² Elsewhere in the world, a number of building trades unions have begun to experiment with different approaches to organizing that, like the workers in question, have a foot in each of the origin and destination country.

a. *Union-to-Union Worker Referrals*

The International Labor Management Alliance (ILMA), a non-profit organization incorporated in the United States and Italy, was founded in 2006 with the support of construction unions, unionized employers, and labor-management programs in both destination and origin countries.¹¹³ It seeks to promote labor-management collaboration at the international level on issues such as workforce development,

¹¹⁰ For an overview of how building trades unions have historically controlled membership, including vis-à-vis immigrants, see Gordon, *supra* note 6, at 515-17. For an in-depth discussion, see GRACE PALLADINO, *SKILLED HANDS, STRONG SPIRITS: A CENTURY OF BUILDING TRADES HISTORY* 141-44 (2005).

¹¹¹ See, e.g., Herman D. Bloch, *Craft Unions and the Negro in Historical Perspective*, 43 J. NEGRO HIST. 10, 10 (1958) (“[W]hite workers discriminated against Negro employment. . . . They justified their position by emphasizing the scarcity of work. Race prejudice, they declared, was not the issue; in other words, industrialization and not trade unionism produced discrimination.”).

¹¹² Miriam Jordan, *Rebuilding Plan: Carpenters Union Courts Immigrants to Increase Clout—Undocumented Workers See Risk of Firings, Fewer Jobs*, WALL ST. J., Dec. 15, 2005, at A1 (discussing union efforts to court immigrants); Nate Schweber, *Worked Over? Union Organizers Say Immigrants Get Cheated*, HERALD NEWS (Passaic County, N.J.), Sept. 6, 2004, at A1 (recounting outreach efforts by the Laborers’ International Union of North America to reach out to immigrants on construction sites in New Jersey); Nicole Andrea Silverman, *Deserving of Decent Work: The Complications of Organizing Irregular Workers Without Legal Rights* (Univ. of Oxford, Ctr. on Migration, Policy and Soc’y, Working Paper No. 21, 2005) (discussing a case study of efforts by the New England Regional Council of Carpenters to organize Latino immigrant workers). Much of this new organizing is generated by union locals rather than the international.

¹¹³ This description is based on International Labor Management Alliance (ILMA), Int’l Union Worker Referral Protocol (June 8, 2008) (draft on file with author); ILMA Home Page, <http://www.internationalbuilders.org/>; Telephone Interviews with James O’Leary, Executive Dir., ILMA (Oct. 13, 2006, Nov. 6, 2006); Telephone Interviews with James O’Leary, *supra* note 101.

corporate social responsibility, worker training, and migration. As one of its projects, ILMA has initiated a concept for an international union worker referral protocol (ILMA Protocol), which brokers agreements between contractors and unions to fill available short-term union jobs with union members from an origin country where the union in the destination country cannot meet the demand for workers with its existing members.

The ILMA Protocol launched its pilot project in 2007, with a collaboration between the welders' union and unionized construction contractors in the oil sands petroleum industry in Alberta, Canada, and welders' unions in Brazil and Argentina. Under the pilot, once a Canadian union has determined that neither its locals nor its counterparts elsewhere in North America can supply a sufficient number of welders for a job, the union sends representatives to Brazilian and Argentine unions with a surplus of unionized welders. The Brazilian and Argentine union members are screened to ensure that they meet Canadian welding standards. The participating contractor requests permission from the Canadian government to hire temporary foreign workers; once approval is granted, the contractor makes job offers to the Brazilian and Argentine union members through their unions, which help the workers with the visa application process. Visas in hand, the workers travel to Canada, where they are paid at full union scale for their labor. Dues and the cost of services are shared by both unions. When the job is complete, the visas expire, and the workers return home. In 2008, approximately 200 unionized welders recruited from Argentina and Brazil through the ILMA Protocol traveled to Alberta on Canadian temporary work visas.

Given North American construction unions' history of restrictive organizing approaches and their recent steps toward greater inclusiveness, a strategy that involves using temporary workers from other countries to fill destination country construction jobs risks being accused of reviving the "traveler" tradition and perpetuating exclusion in the building trades. The ILMA project, however, is designed only to meet short-term spikes in demand, and is not a replacement for local workforce development. According to Executive Director James O'Leary, "the ILMA advocates training local workers first and foremost, and believes greater efforts should be made to recruit minorities in order to increase the local labor supply and expand union market share in the long term."¹¹⁴ O'Leary indicates that the ILMA Protocol has built-in economic disincentives for using temporary workers that should provide an impetus for local workforce development. In the pilot, Canadian oil companies and contractors were required to pay a substantial set of fees and costs to use the program.

¹¹⁴ Telephone Interviews with James O'Leary, *supra* note 101.

b. *Partnerships between Origin and Destination Country Unions*

The Building and Wood Workers International (BWI), the Global Union Federation of construction, forestry, and wood-working unions, has a membership of over 300 unions from 135 countries, representing twelve million members worldwide.¹¹⁵ For many years, BWI responded to changing conditions in the building industries by attempting to rein in contractor abuses. Its efforts to hold mobile capital accountable included calling for increased enforcement of domestic labor regulations and for the development of international standards on contracted labor, and creating a solidarity framework through which member unions could support each other's campaigns.¹¹⁶

In recent years, recognizing that pressuring mobile capital is only half of the battle, BWI has developed a complementary focus on organizing and defending the rights of mobile labor. In 2004, it launched its Asia-Pacific Migration Project.¹¹⁷ The BWI Migration Project's goal is to address the exploitation of migrants by recruiters and employers through a combination of education strategies for migrants and native workers, rights advocacy on international and domestic levels (often in collaboration with NGOs), and the development of active partnerships between origin and destination country BWI affiliates in order to organize migrants together with local workers.

The Project began by seeking to build consensus among BWI's member unions in destination countries around the principle that migrant workers should be paid at the same rate as native workers, and to secure their commitment to organize the migrants present in their industry to that end, while involving origin country unions as partners in that effort wherever possible. Today, some four years later, a number of its member unions are actively involved in cross-border collaborations. Ultimately, as a part of its broader goal of organizing migrants and enforcing their rights, BWI hopes to facilitate the growth of "dual membership," so that "migrant workers who are trade union members in their home country can be recognized as

¹¹⁵ About BWI, <http://www.bwint.org/default.asp?Issue=About&Language=EN>. The BWI is the product of the merger of the International Federation of Building and Wood Workers (IFBWW) and the World Federation of Building and Wood Workers (WFBW), which took place in December of 2005. In the United States, BWI member unions include the Laborers, the Teamsters, the Machinists, the Sheet Metal Workers, and others. BWI Address Book, <http://www.bwint.org/default.asp?Issue=conta&Language=EN>.

¹¹⁶ BWI Building & Construction, <http://www.bwint.org/default.asp?Issue=CONSTR&Language=EN>; BWI Migrant Workers, <http://www.bwint.org/default.asp?Issue=Migrant%20workers%20and%20posted%20workers&Language=EN>; BWI Solidarity <http://www.bwint.org/default.asp?Issue=Solid&Language=EN>.

¹¹⁷ The description that follows draws on the BWI Pamphlet, *supra* note 104; Telephone Interview with Jin Sook Lee, Reg'l Project Coordinator, BWI, Asia-Pacific Region (Feb. 12, 2008); Interview with Jin Sook Lee, *supra* note 104, as well as on other materials cited below.

full members by the union in the industry where they work in the destination country,”¹¹⁸ including concrete arrangements regarding dues sharing, the portability of benefits, and the funding of services for migrant members. The BWI Passport described above is the starting point for this approach.

The collaborations fostered by the BWI Migration Project have taken numerous forms, reflecting the very different political, historical, and institutional contexts in which they operate. In addition, although the participating unions refer to their work as *organizing migrants*, with a connotation of collective bargaining, they are not solely—or sometimes even primarily—focused on unionization. Most rely on multiple strategies to defend and expand the rights of both documented and undocumented workers, including worker education, legal representation, public protest, and policy interventions at the local, national, and international levels. And the majority target their rights education efforts and offer their legal representation to all migrant workers in their industries, not just to members or even potential members.

One approach undertaken by BWI affiliates has been the negotiation of cooperation agreements between unions in origin and destination countries. The first agreement was signed in March 2007 by BWI affiliates in Nepal (an origin country) and Malaysia (a destination country). In their “Memorandum of Understanding Regarding Migrant Workers” they commit to “work jointly in strategizing, developing, and implementing . . . an organizing program geared towards Nepalese migrant workers,”¹¹⁹ primarily targeting the 70,000 Nepalese workers in the Malaysian timber industry.¹²⁰ Shortly after the agreement was finalized, the Malaysian union trained a migrant worker from Nepal to work as an organizer in Malaysian timber plants.¹²¹ With his help, the Malaysian union has organized ten new companies in the past year, and now counts 1,500 migrants among its 10,000 members compared to a negligible number before the initiative went into effect.¹²²

Another approach with which BWI affiliates have experimented is the establishment of a migrant local in a destination country. In 2007, with support from Nepalese and Hong Kong unions and from BWI, Nepalese construction

¹¹⁸ Telephone Interview with Jin Sook Lee, *supra* note 117.

¹¹⁹ Memorandum of Understanding Regarding Migrant Workers Between Timber Employees Union Peninsular Malaysia (TEUPM) and Central Union of Painters, Plumber, Elector and Construction Workers (CUPPEC), Mar. 12, 2007 (on file with author).

¹²⁰ Building and Wood Workers Int’l, *BWI Unions in Nepal and Malaysia Agree to Work Jointly on Migration Issue*, <http://www.bwint.org/default.asp?index=757&Language=EN>.

¹²¹ Interview with Mohd. Khalid B. Atan, Gen. Sec’y, Timber Employees Union of Peninsular Malay., in Manila, Phil. (Oct. 26, 2008); Telephone Interview with Jin Sook Lee, *supra* note 117.

¹²² Interview with Mohd. Khalid B. Atan, *supra* note 121.

workers in Hong Kong founded the Nepalese Construction Workers Union, affiliated with the Hong Kong Confederation of Trade Unions.¹²³ In December 2007, the collaboration was formalized through an agreement signed by the Nepalese construction union CUPPEC and the Hong Kong General Construction Site Workers Union, promising to “work jointly together on activities to ensure that the rights of all Nepalese workers—both migrant and immigrant—are protected in Hong [Kong] through a trade union membership.”¹²⁴ In its first year, the Nepalese Construction Workers Union has grown to 500 members.¹²⁵

The possibilities for origin and destination country union collaborations have been most thoroughly explored in countries where one or more national labor federations are strongly committed to cross-border solidarity and to migrant organizing. Nepal is an example of an origin country with such a federation, and Korea has a similarly committed destination country federation. A brief overview of the efforts led by the labor federations in each of these countries follows. In both countries, bi-national partnerships predated the BWI effort and also extend outside the construction industry, but have been solidified with BWI’s support.

In Nepal, the General Federation of Nepalese Trade Unions (GEFONT) has been providing supporting to Nepalese migrants in Asian countries since 1993.¹²⁶ GEFONT is comprised of 26 union affiliates with a total of over 300,000 members.¹²⁷ It began by organizing committees of Nepalese migrants in Hong Kong, Korea, Malaysia, India, and elsewhere, and then sought trade union partners in those destination countries with which the migrants could affiliate. GEFONT gives participating migrants GEFONT membership cards, so they gain a formal affiliation with the Nepalese labor movement even as they organize into destination country unions. GEFONT and its member unions now have active partnerships with Hong Kong, Korean, and Malaysian unions, as described in this section. Although GEFONT does not have funding to send organizers abroad, its staff takes advantage of travel money available in conjunction with conferences, and of BWI’s support, to spend time with the committees at critical moments. For example, BWI provided funding for GEFONT to make two weeklong visits to Hong Kong to help train the leaders of the new Nepalese Construction Workers

¹²³ Gurung Tulajang, President, Nepalese Constr. Workers Union in H.K., Presentation at the BWI Forum on Migration, Manila, Phil. (Oct. 24, 2008).

¹²⁴ Memorandum of Understanding Regarding Organizing of Nepalese Migrant and Immigrant Workers, Dec. 16, 2007, available at www.bwint.org/pdfs/CSGWU-CCUPEC%20Revised.pdf.

¹²⁵ E-mail from Jin Sook Lee, Reg’l Project Coordinator, BWI, Asia-Pacific Region, to author (Nov. 24, 2008, 04:48 EST) (on file with author).

¹²⁶ This description of GEFONT’s work is based on my interview with Umesh Upadhyaya, *supra* note 32.

¹²⁷ GEFONT website, http://www.gefont.org/gefont_brief.asp#membership.

Union there. GEFONT has also established a Migrant Desk in Nepal so it can provide services to migrants who return after having been injured at work or cheated by an employer or recruiting agency abroad.

In Korea, the Korean Confederation of Trade Unions (KCTU) has also systematically sought out relationships with unions in origin countries.¹²⁸ KCTU's membership stands at over 650,000 through its 19 affiliated industry-based federations and additional regional councils.¹²⁹ Not surprisingly, given both groups' commitments to migrant organizing, KCTU's collaboration with GEFONT has been strong. The two federations have worked together to encourage undocumented Nepalese migrant workers to join Korea's pioneering Migrants' Trade Union, a KCTU affiliate.¹³⁰ KCTU and GEFONT have jointly pressured the Korean and Nepalese governments to incorporate migrant protections in the recently-signed Memorandum of Understanding on temporary labor migration between those countries, sought to address onerous requirements for the available visas, and educated migrants about their rights.¹³¹ The KCTU has also developed a working relationship with the Philippine labor federation KMU (Kilusang Mayo Uno) and a KMU-supported community organization for Filipinos in Korea. In Bangladesh, where the political situation of military dictatorship has made it difficult for KCTU to find a democratic trade union federation with which it can partner, KCTU is working with leaders of the Migrant Trade Union who have been deported back to Bangladesh. The goal is for the leaders to establish a network of Bangladeshi migrants and organizations with which KCTU can collaborate.¹³²

2. Two Industries at the Bottom of the Wage Ladder

a. *Agriculture: A Destination Country Union Builds a Base in an Origin Country*

¹²⁸ This description is based on my interview with Chang-geun Lee, *supra* note 32.

¹²⁹ About KCTU, *available at* http://kctu.org/2003/html/sub_01.php. Updated membership statistics: E-mail from Chang-geun Lee to author (January 13, 2009, 20:12 EST) (on file with author).

¹³⁰ Interview with Chang-geun Lee, *supra* note 32. For a brief description of the Migrants' Trade Union, see Wol-San Liem, *History of Migrant Workers Trade Union*, KOREA TIMES, Aug. 21, 2007, *available at* http://www.koreatimes.co.kr/www/news/special/2008/11/177_8684.html. The Migrants' Trade Union has approximately 300 members. *Id.*

¹³¹ Interview with Umesh Upadhyaya, *supra* note 32; Interview with Chang-geun Lee, *supra* note 32.

¹³² Interview with Chang-geun Lee, *supra* note 32; Abul Basher M. Moniruzzaman (Masum), former Gen. Sec'y, Migrant Trade Union, Presentation at the Global Union Forum on Migration, Manila, Phil. (Oct. 25, 2008). On Masum's deportation, see Public Statement, Amnesty Int'l, Republic of Korea (South Korea): AI Condemns Secret Deportations of Senior Migrant Trade Union Officials (Dec. 14, 2007), *available at* <http://www.amnestyusa.org/document.php?lang=e&id=ENGASA250082007>.

Although many in the United States associate “guest work” exclusively with the *bracero* program that brought Mexican field hands to the United States from the 1940s through the early 1960s, in fact throughout the 20th and 21st centuries the U.S. has been host to guest workers from around the world.¹³³ Guest workers have rarely, if ever, been unionized, and the programs are notorious for their abuses.¹³⁴ Recently, however, both the United Farm Workers union and the Farm Labor Organizing Committee (FLOC) have negotiated collective bargaining agreements protecting agricultural guest workers in the United States, called “H-2As” after the provision in the law that authorizes their visas.¹³⁵ Likewise, in 2006 and 2007 the United Food and Commercial Workers in Canada won elections on four different farms in Manitoba and Quebec, representing the first groups of guest workers to organize in Canada.¹³⁶ Of these three efforts, only one—FLOC’s—has established a presence in the country of origin of the guest workers it has organized.

The 2004 FLOC contract with the North Carolina Growers’ Association (NCGA)—the largest employer of guest workers in the U.S.—was the first of its kind in North America.¹³⁷ Earlier that year, the NCGA had entered into an agreement with FLOC and Mount Olive Pickle Company, the corporation to which many of the NCGA growers sold their produce, in order to end FLOC’s five-year boycott campaign against Mt. Olive and to relieve the pressure created by a stream of migrant lawsuits against the NCGA.¹³⁸ The NCGA agreed to recognize the union on a showing of majority support from the workers.¹³⁹ FLOC collected the requisite majority of cards and negotiated a collective bargaining agreement with the NCGA. The contract, which covers over 5000 H-2A workers, did not

¹³³ Cindy Hahamovitch, *Creating Perfect Immigrants: Guestworkers of the World in Historical Perspective*, 44 LAB. HIST. 69, 70, 79–80 (2003).

¹³⁴ On the abuse of guest workers, see generally SOUTHERN POVERTY LAW CTR., *supra* note 11; for a discussion of the historical lack of guest worker organizing, see Gordon, *supra* note 6, at 553–54; Hill, *supra* note 100, at 308–10.

¹³⁵ The UFW agreement, covering nearly 4000 H-2A workers brought to the United States by Global Horizons, a major labor contractor, was announced in the spring of 2006. See Jerry Hirsch, *Farm Labor Contractor, Union in Pact*, L.A. TIMES, Apr. 12, 2006, at C2.

¹³⁶ Hill, *supra* note 100, at 320.

¹³⁷ Karin Rives, *Guest Workers Note Progress*, RALEIGH NEWS & OBSERVER, Aug. 29, 2005, available at <http://www.smfws.com/art8292005.htm>.

¹³⁸ A major incentive for the growers in signing the agreement was to create a grievance processing mechanism that would resolve disputes with migrants more swiftly, at a lower-cost, and with less conflict than litigation. Interview with Brendan Greene, former FLOC Organizer & Cástulo Benavides, then-FLOC Organizer and current FLOC Dir. of Mexico Operations, in Monterrey, Mex. (May 22, 2006).

¹³⁹ Teófilo Reyes, 8000 “Guest Workers” Join Farm Union in North Carolina, LAB. NOTES, Oct. 2004, available at <http://www.labornotes.org/node/939>.

address wage and benefit standards, which are established by law under the H-2A program. Yet it dramatically changed the landscape for NCGA's employees. It eliminated growers' capacity to "blacklist" workers who were outspoken in defense of their rights, instead mandating that the NCGA contract guest workers in order of seniority and, within seniority rank, by union membership.¹⁴⁰ It created a "just cause" standard for both firing and refusal to rehire, established a grievance procedure exclusively available to H-2A workers under the FLOC contract, and gave FLOC the right to oversee recruitment in Mexico.¹⁴¹ The contract was amended and renewed in 2008.¹⁴²

Importantly, North Carolina is a so-called "Right to Work" state, meaning that workers hired by the NCGA are not obligated to become FLOC members, and they enjoy the protections of the contract whether or not they join FLOC and pay dues. This redoubles the importance to FLOC of forming relationships with the workers in their home country and of providing services that illustrate the benefits of union membership. To increase its ability to organize Mexican H-2A workers, FLOC opened an office in Monterrey, Mexico in March 2005.¹⁴³ FLOC's Monterrey office carries out three significant functions: enforcing the contract rights of members still in Mexico, particularly regarding seniority for those yet to be called for work; fighting exploitative labor contractors; and serving as the headquarters for the union's Mexico-based organizing efforts.

FLOC has experimented with several approaches to maintaining contact with migrants in their home communities. For a time, during the winter, FLOC's staff visited the Mexican villages where they had the greatest concentration of members, holding house meetings to discuss worker concerns and union strategies, and convening regional gatherings for members to get to know each other across villages, receive training on contract enforcement, and elect local representatives. More recently, FLOC's Mexico-based staff has focused on responding to worker requests for placement, grievance processing, and other services from its Monterrey base, and meets with workers in groups when they pass through Monterrey on their way to North Carolina. In the spring, as the

¹⁴⁰ *Id.*; Farm Labor Organizing Committee (FLOC), *Resumen del Acuerdo: Contrato Laboral Entre FLOC y la NCGA 2004–2008* [Summary of the Agreement: Labor Contract Between FLOC and the NCGA 2004–2008] 7–11, 13–16, 28 (on file with author) (describing the seniority system, the governance system, and the protections against unjust firing and failure to rehire).

¹⁴¹ FLOC, *supra* note 140, at 7–11, 28.

¹⁴² North Carolina Growers Association, Inc. and its Member Growers and Farm Labor Organizing Committee, Contract, Feb. 1, 2008–Dec. 31, 2008, *available at* [http://www.ncgrowers.org/NCGA-FLOC%20CBA%20\(2.1.2008%20-%2012.31.2008\).doc](http://www.ncgrowers.org/NCGA-FLOC%20CBA%20(2.1.2008%20-%2012.31.2008).doc); Personal Communication with Cástulo Benavides, Dir. of Mexico Operations, FLOC, in Mexico City, Mex. (Mar. 7, 2008).

¹⁴³ *U.S. Unions' Mexico Office Will Aid Guestworkers*, 19 LAB. REL. WEEK (BNA) 424 (Mar. 31, 2005).

migrants return to North Carolina, they are welcomed by FLOC's staff there, who greet the buses as they roll up from the border, and assume the tasks of coordinating workers committee meetings and pursuing grievances while the workers are in the field.¹⁴⁴

FLOC is currently seeking to expand the scope of its representation of H-2A workers through a campaign against R. J. Reynolds Tobacco Company, whose suppliers hire the majority of agricultural workers in North Carolina. A key goal of the campaign is to get the company and its growers to agree to an agreement under which the current workforce, which is largely undocumented, would be re-hired as H-2A workers who would work under a contract negotiated with FLOC, similar to the arrangement with the NCGA.¹⁴⁵

b. *Domestic Work: An Origin Country Union Builds a Base in a Destination Country*

A large majority of women migrants are domestic workers, among the most vulnerable and isolated of all migrants.¹⁴⁶ Few traditional unions address their needs, and they face special difficulty in enforcing their rights because their workplace is their employer's home as well as, often, their own.

New models of organizing and advocacy are emerging to address domestic workers' concerns. Hong Kong, where domestic workers have a high level of organization, is now home to ten or more domestic worker unions.¹⁴⁷ The Hong Kong Confederation of Trade Unions, one of the area's labor federations, has four domestic worker affiliates: two representing Filipina migrants, one representing Indonesians, and one representing local Chinese women.¹⁴⁸ Unlike traditional unions, these organizations do not negotiate collective bargaining agreements

¹⁴⁴ Interview with Brendan Greene & Cástulo Benavides, *supra* note 138; Telephone Interview with Cástulo Benavides, Dir. of Mex. Operations, FLOC (Aug. 19, 2008).

¹⁴⁵ Telephone Interview with Cástulo Benavides, *supra* note 144.

¹⁴⁶ HUMAN RIGHTS WATCH, SWEPT UNDER THE RUG: ABUSES AGAINST DOMESTIC WORKERS AROUND THE WORLD 3 (2006) available at <http://hrw.org/reports/2006/wrd0706/wrd0706web.pdf>. I emphasize domestic workers here because domestic worker organizations with a transnational focus and an emphasis on rights enforcement have begun to emerge around the world. Health care—including skilled nurses and lower-skilled health aides—is an industry that also draws large numbers of migrant women, although the level of transnational worker organization appears to be lower in that field. Professional associations of nurses abound, including those with chapters both in origin and destination countries. But I have not yet located examples of mobile labor citizenship in the health care field, i.e., instances where labor organizations sought to develop a presence in both origin and destination countries in order to better organize and serve migrant nurses.

¹⁴⁷ Interview with Elizabeth Tang, Chief Executive, H.K. Confederation of Trade Unions, in H.K. (Oct. 21, 2008).

¹⁴⁸ *Id.*

directly with employers. Instead, they provide rights education and organizing training, assist workers whose rights have been violated, and mobilize workers to demand better government policies regarding the payment and treatment of domestic workers. In addition to an unusual number of domestic worker unions, Hong Kong also hosts well over 25 non-governmental organizations that serve migrant domestic workers' needs.¹⁴⁹

Since 2005, Hong Kong has been home to a unique experiment in mobile labor citizenship. The Alliance for Progressive Labor (APL), a Philippine labor federation committed to social movement unionism, has placed two of its organizers in Hong Kong, to build a Philippine domestic worker union into a political base both for migrants in Hong Kong and for the APL and Akbayan, the political party with which it is associated in the Philippines.¹⁵⁰ In addition to organizing women in Hong Kong, APL continues working with them when they travel back home. When a domestic worker from the Philippines leaves Hong Kong after a dispute with her employer, for example, APL-Hong Kong contacts the APL office in the region of the Philippines she is returning to, so that APL staff can help her pursue her case and continue to build a relationship with her.¹⁵¹ Building a membership base of individuals has proven challenging because of migrants' high turnover rate, limited free time, and fear. The group's individual membership has fluctuated widely, from fewer than 50 to 200 dues-paying members over the past three years. As a complementary approach that will allow it to reach a larger scale, the APL has begun to affiliate existing Filipino migrant associations in Hong Kong, organized by migrants with ties to particular regions of the Philippines. Nine associations have affiliated to date, with a total of 600 members. Eventually, the APL hopes to found the Hong Kong Asian Domestic Workers Union, incorporating not just APL-Hong Kong but Indonesian, Thai, and Nepalese domestic workers as well. The APL receives support for its work from two Hong Kong organizations: the Hong Kong Confederation of Trade Unions and the Asian Migrant Centre, a migrants' advocacy organization.

¹⁴⁹ Michele Ford & Nicola Piper, *Southern Sites of Female Agency: Informal Regimes and Female Migrant Labour Resistance in East and Southeast Asia* 14 (City Univ. of H.K., Southeast Asia Research Ctr., Working Paper No. 82, 2006), available at http://www.cityu.edu.hk/searc/WP82_06_MFord&NPiper.pdf; Amy Sim, *Organising Discontent: NGOs for Southeast Asian Migrant Workers in Hong Kong*, 31 *ASIAN J. SOC. SCI.* 478, 487-88 (2003).

¹⁵⁰ My description of APL's work in Hong Kong is drawn from the following sources: Interview with Elizabeth Tang, *supra* note 147; Interview with Josua Mata, *supra* note 32; Interview with Gigi Torres, Organizer, APL-Hong Kong, in H.K. (Oct. 21, 2008); Mary Lou L. Alcid, *NGO-Labor Union Cooperation in the Promotion of the Rights and Interests of Landbased Overseas Filipino Workers*, 15 *ASIAN & PAC. MIGRATION J.* 335, 353-55 (2006).

¹⁵¹ Interview with Gigi Torres, *supra* note 150.

Around the world, domestic workers' organizations are more often structured as non-profits than as unions, although there is considerable overlap in the combination of service, education, advocacy and mobilization strategies they use. Domestic worker organizing efforts represent a dynamic and organic response to the exploitation that occurs at the intersection of gender, migration, and globalization. Their analysis and strategy is uniquely tailored to the experiences of women migrants, and they have created what is arguably the richest array of cross-border networks and campaigns of all migrant groups. Like APL-Hong Kong, many domestic worker organizations are members of national groupings of domestic workers as well as regional networks such as the Asian Domestic Workers Network and the Migrant Forum in Asia, which bring together domestic worker organizations in Asian origin and destination countries.¹⁵² Through these networks, domestic worker organizations seek to increase international as well as national-level awareness of the exploitation of domestic workers and of the need for effective protections.¹⁵³ Current campaigns publicize trafficking and illegal recruitment practices, call for the recognition of domestic work as work, and press the ILO to develop a convention on the rights of domestic workers.¹⁵⁴

C. CHALLENGES AND LESSONS LEARNED

As the examples I profile reveal, a wide range of experiments with mobile labor citizenship have begun emerging over the past few years in industries with high levels of migration. The fact that so many unions and workers' organizations have independently arrived at these models affirms the organic need for new transnational organizing and advocacy structures to address the realities of global labor migration.

At the same time, it is important to reiterate just how new most of the examples I offer here are. In most cases it is far too early to assess even their initial results, much less to draw conclusions about their ultimate success or failure. Having outlined the different models and noted their first steps toward realization, I instead sketch some preliminary thoughts about the obstacles the groups have faced to date and the incentives that have nonetheless driven them to continue collaborating across borders. I then comment on a set of issues the models raise for Transnational Labor Citizenship. I conclude with some thoughts on future

¹⁵² For a description of the Asian Domestic Workers Network (ADWN), see ADWN, An Asian Network on Local Adult Domestic Workers (on file with author); IUF, Respect and Rights for Domestic Workers, ADWN Profile, <http://www.domesticworkerrights.org/?q=node/22>. For a description of the Migrant Forum's work, see Migrant Forum in Asia Home Page, <http://www.mfasia.org/>; Mary Lou Alcid, *The Multilevel Approach to Promoting Asian Migrant Workers' Rights: The MFA Experience*, 42 INT'L MIGRATION 169 (2004).

¹⁵³ See Ford & Piper, *supra* note 149, at 11-12.

¹⁵⁴ ADWN, *supra* note 152; Migrant Forum in Asia Home Page, *supra* note 152.

challenges. Preliminary as they are, it is my hope that these observations will be useful for other unions or civil society organizations engaged in, or considering, experiments with mobile labor citizenship, as well as for the ultimate design of a Transnational Labor Citizenship regime.

1. Cross-Border Collaboration: Obstacles and Incentives

a. *Obstacles*

i. Why Unions May Be Reluctant to Organize Migrants

Origin and destination unions may each hesitate to invest time and energy in migrant organizing, albeit for very different reasons.¹⁵⁵

Destination country unions may be reluctant to initiate campaigns with migrants because they see them as competitors rather than fellow workers, and are concerned that migrants are taking scarce jobs and undercutting union wages.¹⁵⁶ They may press governments to exclude migrants from the country rather than seeking to organize them, or respond to the call for equal pay for all workers (a central tenet, for example, of BWI's migrant rights' campaign) by citing the inferior skills of migrants as a reason that they are not qualified for union membership and pay scale.¹⁵⁷ And yet, destination country union resistance to immigration is complex and can co-exist with deep commitments to solidarity.¹⁵⁸ In the United States as in a number of other destination countries, the universe of workers that unions have seen as potential members rather than competitors has expanded slowly over time, often after an effort to bar a group of workers has failed and their continuing presence in the labor market threatens to undermine organizing efforts. In pragmatic terms, reluctant destination country unions seem most likely to turn to organizing migrants when they are persuaded that unless

¹⁵⁵ For a fascinating historical example of origin and destination country unions' differing perspectives on migration, see Harvey A. Levenstein, *The AFL and Mexican Immigration in the 1920s: An Experiment in Labor Diplomacy*, 48 HISP. AM. HIST. REV. 206 (1968) (Levenstein describes a series of negotiations between the AFL and the Mexican union CROM in the 1920s over the terms of never-realized accord on migration. The AFL wanted CROM to ask the Mexican government to restrict out-migration, while CROM wanted the AFL to create "international union cards" that would guarantee a Mexican union member "full rights in the counterpart to his union if he moved across the border." *Id.* at 213.) I thank Janice Fine for bringing this article to my attention.

¹⁵⁶ For an overview of union attitudes toward immigrants in the United States, see Gordon, *supra* note 6, at 531-45; Janice Fine & Daniel Tichenor, *A Movement Wrestling: American Labor's Enduring Struggle with Immigration, 1866-2007* (forthcoming).

¹⁵⁷ Telephone Interview with Jin Sook Lee, *supra* note 117.

¹⁵⁸ Gordon, *supra* note 6, at 515-24. Brian Burgoon, Janice Fine, Wade Jacoby and Daniel Tichenor develop this argument in depth in their forthcoming article, *Towards a New Understanding of Immigration and American Unionism: Conflict, Policy Activism and Union Density* (on file with author).

they do, they will lose their foothold in an industry, or that organizing newcomers is the only way to avoid being undone by competition from them.

Origin country unions have a different set of concerns. They may perceive a destination country union's insistence on a high level of standards for migrant workers as protectionist. Furthermore, the rights of out-migrants may be very low on origin country unions' list of priorities. A number of origin country union leaders I interviewed noted that their members perceive migrants as relatively well-off.¹⁵⁹ Their members' primary concern lies not with those who choose to leave but with those who have stayed behind. Given extremely limited resources and difficult battles to fight at home, origin country unions may thus be reluctant to extend their work abroad unless they perceive potential concrete returns.

Even destination and origin country unions that are inclined to consider organizing migrants face practical obstacles to initiating collaborative work across national borders. A destination country union that notes an increase in its industry of, say, Bangladeshi workers, may know little or nothing about the labor movement in Bangladesh, and feel ill equipped to search for or make contact with potential partners. The same is true of an origin country union that recognizes that its members are starting to journey to a new destination. The expense of cross-border work and the difficulty of communicating across language and cultural barriers may further inhibit exploration.

ii. Challenges Encountered by Projects Already Underway

Once destination and origin country unions commit to working together, they face a new set of challenges.

Perhaps not surprisingly, many of the obstacles these projects have encountered relate to the difficulties of organizing temporary migrants, rather than to cross-border collaboration per se. Migrants legally present on a short-term work visa recognize that their ability to remain in the country depends on maintaining a good relationship with their employer. They are also constantly reminded of the temporary nature of their stay, which provides little incentive to develop attachments with destination country institutions. Undocumented immigrants live with even greater uncertainty: they may be able to remain for years—or they may be deported the next day. The impact of this reality has been painfully

¹⁵⁹ Interview with Umesh Upadhyaya, *supra* note 32; Interview with Gigi Torres, *supra* note 150; Interview with Josua Mata, *supra* note 32; Telephone Interview with Jin Sook Lee, *supra* note 117. For a description of the same phenomenon in the context of the Mexican labor movement, see Julie Watts, *Mexico-U.S. Migration and Labor Unions: Obstacles to Building Cross-Border Solidarity* 3-4 (Univ. of Cal., San Diego, Ctr. for Comparative Immigration Studies, Working Paper No. 79, 2003), available at <http://www.ccis-ucsd.org/publications/wrkg79.pdf>.

evident in Korea, where the government has repeatedly deported leaders of the Migrants' Trade Union in apparent retaliation for their organizing work.¹⁶⁰ But it recurs elsewhere, from Malaysia (where employers in the timber industry use the short duration of work visas to ensure that migrants, once organized, are quickly replaced)¹⁶¹ to Hong Kong (where domestic workers disappear from APL-Hong Kong overnight as they are fired, their contracts end, or they leave to marry or pursue another opportunity).¹⁶²

Many migrants live as well as work on their employers' property, and may take an extra job in their hours off, if they have any, further limiting their freedom to participate in organizing. Finally, migrants' financial need is great, and what may seem like low wages to native workers can look much more desirable when they will be sent home to a family waiting in an origin country. All of these factors limit the time migrants have to devote to defending their rights, their incentive to stand up on their own or others' behalf, and the likelihood that they will remain engaged with an organizing effort over a substantial period of time.¹⁶³ The leaders I interviewed put migrants' temporariness, vulnerability, financial need, and fear at the top of their list of impediments to successful organizing.¹⁶⁴

Funding is another significant obstacle. From an origin country perspective in particular, the price tag of work in destination countries can seem staggeringly high. As Josua Mata of APL notes, to place one organizer in Hong Kong costs APL four times what it would to add an organizer to its Philippine staff.¹⁶⁵ With the exception of ILMA, whose participating migrants are bound to contribute dues by the terms of their collective bargaining agreements, many of these efforts are not yet systematically collecting dues from migrants.¹⁶⁶ As a result, the majority of collaborative efforts are funded through grants from foundations and Trade Union Solidarity Support Organizations, and to a lesser extent by contributions from

¹⁶⁰ Public Statement, Amnesty Int'l, Republic of Korea (South Korea): Government Must Respect the Right to Freedom of Association of All Migrant Workers (Sept. 12, 2008), *available at* <http://www.amnesty.org/en/library/asset/ASA25/009/2008/en/bf0aa668-80cd-11dd-8e5e-43ea85d15a69/asa250092008en.pdf>.

¹⁶¹ Interview with Mohd. Khalid B. Atan, *supra* note 121.

¹⁶² Interview with Gigi Torres, *supra* note 150.

¹⁶³ Jennifer Gordon & R.A. Lenhardt, *Rethinking Work and Citizenship*, 55 UCLA L. REV. 1161, 1213-15 (2008).

¹⁶⁴ Interview with Gigi Torres, *supra* note 150; Interview with Josua Mata, *supra* note 32; Interview with Umesh Upadhyaya, *supra* note 32; Interview with Chang-geun Lee, *supra* note 32; Interview with Mohd. Khalid B. Atan, *supra* note 121.

¹⁶⁵ Interview with Josua Mata, *supra* note 32.

¹⁶⁶ When an H-2A worker chooses to join FLOC, FLOC collects dues from that worker. But because North Carolina is a "right to work" state, guest workers do not have to become dues-paying members of FLOC to benefit from FLOC's agreement with the NCGA.

destination country unions and GUFs.¹⁶⁷ Even with outside support, these collaborations are seriously underfunded. Most organizers from origin and destination country unions working in collaboration with each other cannot afford to meet face-to-face except in conjunction with conferences organized by the Global Union Federations or other parties such as the ILO. To the extent that more migrants come to benefit from collective bargaining through mobile labor citizenship, increased dues collection and dues-sharing arrangements should provide more sustainable sources of support.

b. *Incentives to Initiate and Continue Cross-Border Collaborations*

Given the considerable obstacles, what has led the union partners I feature here to begin and sustain mobile labor citizenship efforts with partners from other countries?

For a number of the unions engaged in cross-border collaborations, ideological commitments—including to global solidarity—were an important initial factor. Chang-geun Lee, the International Director of KCTU, for example, describes KCTU's engagement with a number of origin country unions on migration issues as part and parcel of KCTU's broader commitment to building a strong alliance of democratic trade unions throughout Asia.¹⁶⁸ For the APL in the Philippines, organizing migrants was an outgrowth of the Alliance's recognition of the impact of globalization on the Philippine workforce, and of its commitment to "social movement unionism," both of which led it to see migrants as Filipino workers, rather than outsiders to the Philippine labor movement.¹⁶⁹ For its part, GEFONT in Nepal sees work with migrants as part of its efforts to build a strong, independent, and democratic labor movement in that country.¹⁷⁰

Pragmatic factors complement these ideological ones. For destination country unions, a recognition of the difficulty of organizing migrants led them to seek out origin country partners as a way to overcome barriers of communication and trust. The Korean, Malaysian, and Hong Kong destination country union representatives who I interviewed, for example, relied on their partner unions from the Philippines and Nepal to reach migrants before they left with know-your-rights materials and contact information for the destination country union, and to meet with groups of migrants abroad to encourage them to become members of the destination country

¹⁶⁷ Trade Union Solidarity Support Organizations (TUSSOs) are foundations run by EU unions that channel funds from EU governments as well as EU unions to solidarity projects in developing countries. The Asian projects I profile are overwhelmingly supported by TUSSOs. Interview with Jin Sook Lee, *supra* note 104.

¹⁶⁸ Interview with Chang-geun Lee, *supra* note 32.

¹⁶⁹ Interview with Josua Mata, *supra* note 32; Interview with Gigi Torres, *supra* note 150.

¹⁷⁰ Interview with Umesh Upadhyaya, *supra* note 32.

unions.¹⁷¹ Where origin country union staff or members were stationed in destination countries, as with APL-Hong Kong and the Nepal-Malaysia agreement that posted a Nepalese organizer in Malaysian timber factories, this benefit was intensified.

Unions in origin countries had their own practical reasons for seeking out destination country partners. In the case of the ILMA Protocol, mobile labor citizenship delivered jobs and visas to origin country union members, a powerful incentive for collaboration. In the more common case where union members did not receive immigration benefits as a function of their participation, origin country unions saw working with migrants in destination countries as a chance to build credibility and create attachment to the union among migrants likely to eventually return home.¹⁷² Josua Mata, Secretary General of the APL, notes an explicit domestic political agenda that spurs the APL's involvement in Hong Kong. "We want to build a political base of migrants," he notes, "because we believe that migrants can be a source of autonomous political power in the Philippines."¹⁷³

Once the partnerships were underway, destination and origin country unions began to see benefits that sustained them through the challenges. First and foremost, the collaborations allowed the partners to create organizing structures and advocacy programs that reflected the bi-national reality of migrant lives. For example, collaborative efforts permitted unions to help migrants pursue legal cases against employers and recruiters that otherwise would have been dropped when the migrant returned home (in the case of a claim against an employer initiated by a destination country union) or moved back abroad (in the case of a claim against a recruiter initiated by an origin country union), since the partners could rely on each other to facilitate contact with the migrant wherever she was.¹⁷⁴ The collaborations also magnified the impact of each participant's efforts

¹⁷¹ Interview with Chang-geun Lee, *supra* note 32; Interview with Mohd. Khalid B. Atan, *supra* note 121; Interview with Josua Mata, *supra* note 32; Interview with Gigi Torres, *supra* note 150.

¹⁷² Interview with Umesh Upadhyaya, *supra* note 32; Interview with Josua Mata, *supra* note 32; Telephone Interview with Jin Sook Lee, *supra* note 117.

¹⁷³ Interview with Josua Mata, *supra* note 32. Especially now that migrants can vote from overseas, APL believes that migrants' independence, their relatively high incomes and educational levels, and their exposure to the workings of functional, democratic governments, makes them a constituency that will demand more of the Philippine government and—because of their numbers and the value of their remittances—is likely to be heard. *Id.*

¹⁷⁴ Interview with Umesh Upadhyaya, *supra* note 32; Interview with Gigi Torres, *supra* note 150. On a similar principle, two legal advocacy organizations founded in the past few years in North America—Centro de los Derechos del Migrante, in Zacatecas, Mexico, and the Global Workers Justice Alliance in New York—assist migrant workers and their attorneys in pursuing workplace related legal claims as the migrants move between origin and destination countries. Centro de los Derechos del Migrante website, <http://www.cdmigrante.org>; Site visit, Centro de los Derechos del Migrante, Inc., Zacatecas, Mex. (May 24–26, 2006); Global Workers Justice Alliance Home Page, <http://www.globalworkers.org/>.

to shape government policy. In several instances, union partners created simultaneous pressure within origin and destination countries to address recruiting abuses and flaws in government benefit schemes for migrants, or issued bilateral calls for improvement in the rights protections afforded through an agreement between two governments.¹⁷⁵ Most directly, several of the partnerships resulted in notable increases in migrant union membership, as with the Malaysian and Hong Kong Nepalese construction efforts.

One recurring feature of the cross-border partnerships is the presence of a coordinating entity, whether a Global Union Federation such as BWI or a separate organization such as ILMA. These coordinating bodies have played essential roles in helping partners locate each other, and in facilitating communication across geographic distances and cultural and linguistic gulfs. They brought partners together at international conferences and regional meetings, where they could evaluate their work, learn about other initiatives, and plan for the future; provided ongoing technical assistance to help the collaborations overcome roadblocks or develop new strategies; and mediated between the concerns of destination and origin country unions when they differed.¹⁷⁶ The coordinating bodies also raised funds for the collaborations and drove efforts to expand successful models to new countries.

2. Insights for Future Transnational Labor Citizenship Efforts

Because of the early stage of development of the endeavors I profile, some of the most critical questions about them remain to be answered. To date, none have more than a few thousand migrant members, and the majority have only a few hundred. Their impact on working conditions has likewise been modest. To succeed, a Transnational Labor Citizenship regime will eventually need to encompass large numbers of workers, with incentives that ensure the participation of governments, businesses, and the migrants themselves. Over time, will mobile labor citizenship remain the province of small experiments, or will some be able to grow to a scale where they can have a meaningful effect on a labor market? Which approaches will prove most successful in finding leverage points

¹⁷⁵ Interview with Umesh Upadhyaya, *supra* note 32; Interview with Chang-geun Lee, *supra* note 32; Interview with Josua Mata, *supra* note 32.

¹⁷⁶ Another example of an emerging coordinating entity is the newly-launched Binational Labor Justice Initiative, co-run by the Centro de los Derechos del Migrante in Zacatecas and ProDESC, a human rights organization based in Mexico City. The Initiative brings together labor lawyers, advocates, and organizers from the United States and Mexico to collaborate on campaigns to strengthen migrants' rights and to enhance organizing and legal enforcement strategies on both sides of the border. Interview with Alejandra Ancheita, Executive Dir., El Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC), in Mexico City, Mex. (Mar. 4, 2008); Binational Labor Justice Initiative Profile, *available at* <http://www.cdmigrante.org/Binational%20Flyer%20english.PDF>.

that compel employers and nations to participate in efforts to improve working conditions, allowing workers to build genuine power in a world of transnational mobility? It is too early to tell.

Nonetheless, and with recognition that much of what I can say at this stage is speculative, there are several regards in which these experiments already appear to offer useful insights for the design of a future Transnational Labor Citizenship regime. I group my observations in two categories. First, I draw on the experience of FLOC and ILMA, the two efforts in which unions work with employers to facilitate access to visas (a key element of the Transnational Labor Citizenship proposal), to consider the complications that can ensue when a labor organization plays this role, and to explore the reasons why employers might find it desirable to work with a union on a mobile labor citizenship endeavor. Second, I turn to issues of inclusiveness in a Transnational Labor Citizenship regime, calling for an approach to mobile labor citizenship that encompasses a wide range of workers, is diverse in form and strategy, and is open to grappling with differing views about core issues.

a. *When Workers Organizations Are a Conduit to Jobs and Visas*

The case studies are divided between the efforts that link union representation to the provision of temporary work visas, and those that do not. Most of the endeavors I profile are not involved in the visa allocation process. The two exceptions are the ILMA Protocol and FLOC. Because of their active engagement with temporary migration programs, these groups' experiences are of particular interest for the Transnational Labor Citizenship proposal. Being in a position to offer (or facilitate access to) such a valuable immigration benefit has obvious advantages for the participating unions. But there are also disadvantages in a system that puts unions in the position of helping migrants get jobs and visas in destination countries. The complications encountered by ILMA and FLOC suggest that a Transnational Labor Citizenship regime would have to be designed with particular care to avoid a shift in the union's role away from worker representation toward a recruitment function, and attendant concerns about backlash from existing recruiters and about corruption. In addition, because ILMA and FLOC both—of necessity—have worked closely with employers, their experience offers the opportunity to reflect on what a Transnational Labor Citizenship regime may offer from the perspective of businesses.

i. Unions and Labor Recruitment

When a union becomes a conduit to a job and a visa, its role shifts vis-à-vis both workers and the employer. In some industries in North America, notably construction, unions have long run hiring halls to which employers have turned for qualified workers. But FLOC and ILMA's efforts go beyond a "global hiring hall" model. They are facilitating migrant workers' access to legal immigration status as well as employment. Because the union is also in a position to put would-be migrants in contact with employers and vice versa across the barriers of language, distance, and poor communication systems in remote communities, it becomes to at least some degree an intermediary in the process of labor recruitment. Whether or not this is how the union views itself, there is a danger that some workers will come to see the union, in the words of a former FLOC organizer, "as a cog in the recruiting system."¹⁷⁷

This new role may create tension with a union's commitment to be an advocate for workers. If a union's campaigns for better wages and working conditions require taking an adversarial stance toward employers, it may feel a conflict with its ability to continue to provide access to jobs for migrant members, an ability that requires co-operative relationships with employers. To help manage this conflict, a workers organization in this position may want to consider creating a separate entity that manages the mobile labor citizenship effort. That is essentially what unions participating in the ILMA project have done; they retain their individual identities and allegiances but are involved in ILMA for the purpose of facilitating the migration of union members to fill labor shortages.

The closer a union comes to the role of labor recruiter, the more attentive it will also need to be to the danger of corruption. When workers' organizations control or even influence access to visas, their staff will inevitably face the temptations of bribes and personal profit from side deals that have long plagued the labor recruitment industry. The ILMA Protocol's pilot project encountered these perils almost immediately, as a Canadian union representative in the Alberta local co-opted a counterpart in the Brazilian union and began his own recruitment business, using confidential lists he had accessed through his union position.¹⁷⁸ ILMA was able to overcome this obstacle and go on to a successful pilot, but it illustrates the fact that in an eventual Transnational Labor Citizenship regime, workers' organizations would have to exercise enormous vigilance (and would need to be subject to continual outside monitoring) to ensure that their recruitment processes remained open and fair. In a related vein, great care would need to be taken to ensure that Transnational Labor Citizenship does not become

¹⁷⁷ Interview with Brendan Greene & Cástulo Benavides, *supra* note 138.

¹⁷⁸ Affidavits of Valter Souza, President, and Derli Santúrio dos Santos, Admin. Dir., Sindicato dos Trabalhadores nas Indústrias da Construção Civil de Porto Alegre (STICC) [Union of Civil Constr. Indus. Workers of Porto Alegre] (Apr. 9, 2008).

a way to reinforce the power of corrupt and undemocratic unions, particularly in corporatist regimes.

Backlash from existing recruitment firms is a final concern in situations where unions are perceived as competing with established labor recruiters. Labor recruiters make vast sums of money from their role as intermediaries in the migration process.¹⁷⁹ A mobile labor citizenship effort that diminishes the power and income of existing recruiters—as such efforts inevitably do when they allot jobs through seniority (as with FLOC) or union affiliation (as with the ILMA Protocol), rather than through a combination of official payments and bribes to a third party—will likely encounter a negative reaction. FLOC, for example, has faced repeated threats from established labor recruiters, and attributes the tragic 2007 torture and murder of its organizer Santiago Rafael to retribution for the union's intervention in existing recruitment networks.¹⁸⁰

ii. What Problems Does Mobile Labor Citizenship Solve for Employers?

Under current immigration regimes, in order to offer visas FLOC and ILMA must work actively with employers. The reverse is not true: employers can hire guest workers without any obligation to work with unions. The voluntary participation of unionized construction firms in ILMA's Protocol and the North Carolina Growers' Association in FLOC's H-2A contract offers the opportunity to consider why a cross-border migration scheme involving unions may be affirmatively of interest to employers.

I would speculate that several factors are at work here (and would continue to be salient in a Transnational Labor Citizenship regime).¹⁸¹ First, employers are more likely to see collaboration with a union on a mobile labor citizenship effort as desirable if they have trouble getting an adequate labor supply through ordinary channels. The shortage of skilled welders in North America, in ILMA's case, and the increasing difficulty growers faced in hiring undocumented workers,¹⁸² in

¹⁷⁹ SOUTHERN POVERTY LAW CTR., *supra* note 11, Pt. 3, at 9-14.

¹⁸⁰ Farm Labor Organizing Committee, AFL-CIO, Santiago Rafael Cruz 1977-2007, <http://www.floc.com/Santiago.htm>.

¹⁸¹ For the purposes of this report, my primary focus was on interviewing those who were organizing migrants in mobile labor citizenship efforts. Interviews in the future with participating employers will allow me to make less speculative statements about their interests and motivations.

¹⁸² These difficulties were attributable in the program's early years to the fact that undocumented workers had other employment options more appealing than those offered by the NCGA. This was particularly true in industries such as tobacco, where there are periods of intense labor combined with stretches of time when a small amount of work needs to be done each day. Employers had difficulty ensuring a steady labor supply because undocumented workers would leave during the slow times. Interview with Brendan Greene & Cástulo

FLOC's, made those organizations' new proposals for facilitating the flow of workers on fair terms more appealing to employers than they otherwise would have been. In a related sense, to the extent that a mobile labor citizenship effort assures employers that the workers they hire will have the necessary training and experience, it is also more likely to be attractive to them. This is particularly evident in high-skilled industries, and is a role that the ILMA Protocol hopes to fill transnationally as building trade unions have come to do nationally. But FLOC has also found that growers value its role as a conduit to a reliable workforce with experience in particular agricultural tasks.¹⁸³

Pre-existing labor market conditions are only part of the story. Organizations can also exert pressure that in turn makes an agreement that ensures labor peace more attractive to employers. In the case of FLOC, for example, the union's boycott was the impetus for the North Carolina Growers Association to recognize the union and bargain a contract that covered guest workers.

Finally, collaboration with a union to hire legally authorized workers is a way for employers to avoid prosecution under immigration laws. Across the skill spectrum, and particularly as enforcement of employer sanctions rises and makes the employment of undocumented workers a riskier strategy, employers may see mobile labor citizenship as a safe harbor from liability. In a Transnational Labor Citizenship regime, which would be accompanied by intensified enforcement of minimum wage and other workplace protections, employers may see a similar value in working closely with workers' organizations to assure that they are in compliance with the law.

b. Toward an Inclusive Form of Transnational Labor Citizenship

The racial and gender dimensions of global labor migration are inescapable. Low-wage migrant laborers are overwhelmingly people of color, and increasingly female. While the movement of poorer, darker-skinned people to wealthier, whiter lands is an old story,¹⁸⁴ the feminization of the migrant stream is a relatively new phenomenon. In many origin countries, women workers now make up the majority of the outflow of migrants.¹⁸⁵ In both origin and destination

Benavides, *supra* note 138. In later years the growers also faced increasing risks associated with hiring undocumented workers, as the government intensified its raids and employer sanctions enforcement. Telephone Interview with Cástulo Benavides, *supra* note 144.

¹⁸³ Interview with Cástulo Benavides, *supra* note 144.

¹⁸⁴ It is not, however, the only story. For example, migration between African countries and from Eastern to Western European countries is characterized by differences in income and ethnicity, but not necessarily race.

¹⁸⁵ For example, women make up an estimated 76% of legal Indonesian migrants, 69% of Sri Lankan migrants and 70% of Philippine migrants. HUMAN RIGHTS WATCH, *HELP WANTED*, *supra* note 20, at 9 & n.4.

countries, women, workers of color, and non-union workers are less likely to be formally organized or represented. They are therefore less likely to have a voice when new mobile labor citizenship experiments are developed. Mobile labor citizenship arrangements that do not make a conscious effort to include women workers, workers of color, and non-union as well as union workers, risk reinforcing historical patterns of exclusion. If Transnational Labor Citizenship is to succeed in achieving its goal of improving working conditions for all workers in an industry, whatever their race, national origin, or gender, it must be designed from the beginning to be as inclusive as possible. This inclusiveness must be reflected not just in the range of workers who have access to membership, but in the role that migrants actually play in designing, pursuing, and evaluating the goals of the organizations to which they belong.¹⁸⁶ In other words, a fully inclusive Transnational Labor Citizenship regime would also be a truly participatory one.

i. Diversity in Organizational Form, Strategy, and Standards

Several things flow from a commitment to maximum inclusion. One is the recognition that if Transnational Labor Citizenship is to encompass a wide array of workers, it will also have to be open to a range of workers' organizations. To defend their workplace rights, migrants and their supporters may need to build new institutions, as evidenced by the emergence of the new set of domestic worker organization I profile, and the growth of immigrant worker centers in the United States over the past two decades as well.¹⁸⁷ The new and hybrid forms of organizations that migrants develop will need to be welcome alongside unions in a full Transnational Labor Citizenship regime. A diversity of organizational forms will inevitably be accompanied by a diversity of strategies, as the varied structures that the current mobile labor citizenship endeavors have developed for their initiatives illustrate. Each group will approach the defense of migrants' rights in ways that make sense given its political and economic circumstances, its organizing traditions, and the labor market in which it operates, rather than replicating an externally-designed blueprint.

Another dimension of diversity that an inclusive Transnational Labor citizenship regime will need to grapple with is diversity in substantive goals. One example relates to labor standards. Most of the endeavors I describe engage with two sets of standards simultaneously: they seek both to strengthen and enforce the rights of all migrants set by law (i.e., the minimums to which migrants are entitled by virtue

¹⁸⁶ For a description of an immigrant workers' organization structured to maximize bottom-up participation, see JENNIFER GORDON, *SUBURBAN SWEATSHOPS*, ch. 2-3 (2005).

¹⁸⁷ On workers centers, see JANICE FINE, *WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM* (2006).

of domestic regulation or international agreements), and to demand a higher level of bargained standards for a smaller group of migrants who can be incorporated into collective agreements. In the highest and lowest wage industries that I profile, however, the groups focus exclusively on one or the other. The ILMA Protocol, serving high-skilled building trades workers, only works within the framework of collective bargaining agreements that guarantee wages substantially higher than the legal minimum. It can proceed this way in the Canadian welding industry because of the highly skilled nature of the job, a long history of unionization, and a scarcity of native-born unionized workers, all of which generate high levels of bargaining power. The domestic worker organizing efforts, by contrast, did not seek to bargain collectively at all.¹⁸⁸ Instead, they focused exclusively on enforcing wage standards set by law and on enhancing those standards through public policy interventions. This strategy reflects the very low levels of unionization in domestic work, the dispersion of workers in individual households rather than formal workplaces, and the fact that most domestic workers are women with tenuous immigration status and very weak bargaining power.¹⁸⁹

In each of these cases, the workers' organization analyzed its circumstances and decided on the standards it could successfully demand. But consensus over standards in a broadly inclusive mobile labor citizenship effort may be harder to come by, as I explore in the next section.

ii. A Challenge of Inclusion: Different Perspectives on Standards

An inclusive approach has intuitive appeal. Among the other challenges that inclusiveness raises, however, is that the broader a range of workers Transnational Labor Citizenship encompasses, the more likely it is that its participants will have different perspectives about substantive standards.

Such conflicts are common between employers and unions in migration settings unmediated by mobile labor citizenship regimes. In the EU today, for example, a number of unions are engaged in disputes with corporations over whether migrants "posted" to a job (e.g., when a Latvian construction company bids on and

¹⁸⁸ Nonetheless, domestic worker efforts in Hong Kong have demonstrated that public policy measures and contracts are not necessarily mutually exclusive. Because the Hong Kong government has established a model contract that applies to all migrant domestic workers, domestic worker organizations there exert public pressure to collectively change the terms of private contracts. Interview with Elizabeth Tang, *supra* note 147; Interview with Gigi Torres, *supra* note 150.

¹⁸⁹ Although FLOC, which represents low-wage agricultural workers, does bargain collectively, its agreement with the North Carolina Growers Association does not address wages (which are set by law for guest workers), dealing instead with seniority, safety issues, and the process of union representation.

wins a job contract in Sweden, and brings Latvian laborers to Sweden do the work) should be paid according to legislated minimum standards or according to higher industry standards set through bargaining.¹⁹⁰

That employers and unions disagree on the appropriate level of standards is not surprising. But when mobile labor citizenship efforts encompass both origin and destination country workers' organizations, conflict over standards may arise there too. Migrants and their unions or organizations may be willing to accept wages set at a lower level than native workers, both because the money they earn goes farther in their home economies and because migrants fear that they will lose their ability to compete for jobs if the minimum is set substantially above the rate they currently receive. This issue has arisen in Hong Kong, where the Hong Kong Confederation of Trade Unions (HKCTU), with 180,000 members through its 87 affiliated federations and unions,¹⁹¹ counts among its members four migrant-only unions (three for domestic workers and one for construction workers) as well as numerous unions that are predominately native-born or have a mix of members. Over the past few years, as the HKCTU spearheaded a successful fight to establish a minimum wage for Hong Kong, there has been quiet dissent from at least one of the domestic worker unions, born of the fear that its members would no longer be able to get jobs under the proposed higher wage.¹⁹²

Global Union Federations, which must reconcile the views of their member unions around the world, and national labor federations such as HKCTU that count unions with significant migrant memberships among their affiliates, have particularly important roles to play in resolving conflicts such as these. The HKCTU continues to work to broker a compromise in the situation I highlight above, but is firmly committed to the notion that there must be one set of minimum wage standards for all workers in Hong Kong, lest the door open to an inferior set of standards for migrants overall.¹⁹³ This principle of equal treatment

¹⁹⁰ The disputes relate to the interpretation of the EU Posted Workers Directive (European Parliament and Council Directive 96/71/EC, 1997 O.J. (L 18) 1), which mandates that posted workers be able to demand either their home or host country's minimum workplace standards, whichever are higher. But what constitutes the "minimum?" In a series of recent cases, unions in EU destination countries have attempted to use the threat of strikes and other forms of collective action to require employers using posted labor to comply with the pay scale set out in destination country collective bargaining agreements, rather than lower or non-existent national minimums. In the 2007 and 2008 *Viking*, *Laval*, and *Rüffert* cases, the European Court of Justice found that each of these attempts violated the EU's Freedom of Establishment for businesses seeking to operate across national lines, albeit for different reasons. Case C-438/05, *Int'l Transp. Workers' Fed'n v. Viking Line ABP*, 2007 ECJ (Dec. 11, 2007); Case C-341/05, *Laval un Partneri Ltd. V. Svenska Byggnadsarbetaref rbundet*, 2007 ECJ (Dec. 18, 2007); Case C-346/06 *Dirk Rüffert v. Land Niedersachsen* 2008 ECJ (Apr. 3, 2008).

¹⁹¹ HKCTU Home Page, <http://www.hkctu.org.hk/english/>.

¹⁹² Interview with Elizabeth Tang, *supra* note 147.

¹⁹³ *Id.*

for all workers is also the motivating force behind BWT's campaigns and collaborations. An interesting contrast in approach can be found in the work of the International Transport Workers Federation, the Global Union Federation that represents seafarers in a longtime global market for labor. I profile the three-tiered compromise that Federation has reached—painfully and over many years—in the box that follows.

International Transport Workers' Federation "Flag of Convenience" Campaign

Since 1948, ship owners have been able to hire workers from any country they choose. The International Transport Workers' Federation's "Flag of Convenience" Campaign has sought to foreclose shipping companies' ability to profit by paying lower wages to seafarers from less developed countries. The Federation does not oppose open hiring practices, but instead holds companies to wage levels approved by the Federation's Fair Practices Committee, no matter the country of origin of the seafarers on board. As with all efforts to establish a global floor on wages, the Federation has had to find some way to unite the very different perspectives of its member unions from high and low income countries. The three wage levels that the Fair Practices Committee has established vary by the segment of the market in which the company operates, an approach that has allowed the Federation to permit the wage differentials that have proven essential to "the delicate inter-union consensus which holds the campaign together."¹⁹⁴ At the lowest level, where the operating company, the ship, and the crew are all from the same developing country, unions are permitted to negotiate wages that may be considerably lower than the international standards that the Federation has set for other segments of the labor market.¹⁹⁵ This agreement has kept the developing country unions within the Federation, rather than pushing them to the outside where they would have an incentive to undercut higher wages negotiated by developed country seafarers unions on ships that hire internationally.¹⁹⁶

By virtue of their allegiances both to migrant and native-born workers, Global Union Federations such as BWI and the Seafarers are forced to grapple with the different perspectives of origin and destination country workers, and to negotiate approaches that take both sets of interests into account. That is not to say that Global Union Federations represent all workers' interests. Although they may

¹⁹⁴ NATHAN LILLIE, A GLOBAL UNION FOR GLOBAL WORKERS: COLLECTIVE BARGAINING AND REGULATORY POLITICS IN MARITIME SHIPPING 4 (2006). For a description of the Flag of Convenience Campaign generally, see *id.* at 3-4 & ch. 3.

¹⁹⁵ For other calls to create standards that reflect sensitivity to less advantaged actors in the economic system rather than displacing them, see Jane E. Larson, *Negotiating Informality Within Formality: Land and Housing in the Texas Colonias*, in LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY 140 (Boaventura de Sousa Santos & César A. Rodríguez-Garavito eds., 2005) (calling for informal, flexible housing regulation that is sensitive to the needs of poor residents); SASKIA SASSEN, *GLOBALIZATION AND ITS DISCONTENTS* 166 (1998) (calling for flexible schemes of economic regulation to support the growth of small businesses currently located in the underground economy).

¹⁹⁶ LILLIE, *supra* note 131, at 4.

collaborate with non-governmental organizations, most global union federations have no formal mechanism for including the perspective of unorganized workers in their deliberations. Nonetheless, the processes they have developed to take into account the wide range of perspectives held by their member organizations illustrate the sorts of negotiation and coordination that will be essential to the ultimate success of Transnational Labor Citizenship.

CONCLUSION

In the context of today's global labor migration regimes, it would represent a tremendous step forward if migrant workers were uniformly granted the same rights as their native counterparts. Even so, it is one thing to grant rights on paper, and quite another to give migrants the power, the tools, and the support to enforce them in reality. Transnational Labor Citizenship begins with the fundamental need for equal rights and then asks, *what more is necessary to make migrants true labor citizens?* I argue that linking the right to migrate for work to membership in workers' organizations in origin and destination nations, and requiring migrants to report workplace violations with the support of those organizations, would go a long way toward establishing a baseline of fair working conditions.

The experiments I have described in this report hint at the possibility of a new approach to labor migration, one that puts workers' rights *and* workers' capacity to enforce those rights at the center rather than on the periphery. The initiatives I profile have many lessons to teach about the possibilities for future efforts, and may well provide the foundation for much larger endeavors. At the same time, they demonstrate many of the challenges that must be overcome before a fuller form of Transnational Labor Citizenship is imaginable.

A few concluding reflections. First, it is important to note that all of the experiments I highlight remain structured around traditional guest worker programs, so that the visa on which migrants travel is tied to a particular job and employer. As I argue in the opening pages of this paper, that link is a breeding ground for the exploitation of migrants, a fact that is mitigated but not eliminated by the important role that unions are playing in those efforts. The full version of Transnational Labor Citizenship would have to sever this connection, freeing workers to change employers at will.

Second, these experiments make clear that given the diversity of migrant workers and the differences between the contexts into which they migrate, there can be no one-size-fits-all Transnational Labor Citizenship. Each set of collaborations will need to be individually crafted to reflect the structure and characteristics of the industries from which they emerge; the laws and political systems of the nations

where they are located; and the unique histories, organizations, leaders, and ideologies of participating trade unions and civil society organizations. Whatever form the individual efforts take, however, a central coordinating body will be essential to bring them together, facilitate the negotiation of agreements between them, channel funding and other sources of support, and monitor their work. A range of existing institutions—including Global Union Federations and the ILO—might well play this role, but it is also important to consider the possibility of creating new entities for this purpose.

Third, taken together, the examples reinforce the need to pursue approaches to migrant labor protection that combine bottom up and top-down strategies. The fact that so few of the emerging governmental labor migration agreements contain migrant-protective provisions, and that existing provisions are rarely enforced, illustrates that getting origin and destination governments to the negotiating table is only half of the battle. The resulting agreements are unlikely to favor migrants' interests absent sustained pressure, and even the best agreements will require funding, training, and ongoing public and private institutional support to realize their goals. Bottom up engagement, generated by migrant organizations and trade unions, is essential to assure that the concerns of migrants are taken seriously and that rights on paper (whether legislated or bargained) consistently translate to rights in reality.

Finally, the efforts underway leave no doubt that Transnational Labor Citizenship will require true bi- and multi-lateralism both with regard to governments and civil society organizations, and the creation of coordinating entities to bring the parties together, help them negotiate their differences, and monitor their work. To improve working conditions for native workers and migrants alike, governments and workers' organizations will need to engage with each other to build a shared perspective on decent work, and a shared program to make decent work a reality. Transnational Labor Citizenship is a first step toward that distant but essential goal.

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Umesh Upadhyaya, Deputy-Secretary General, General Federation of Nepalese Trade Unions, Nepal

About the Author

Jennifer Gordon is Associate Professor of Law at Fordham Law School in New York City, where she teaches Immigration Law, Labor Law, and seminars on public interest law and the relationship of law to organizing. Prior to joining the Fordham faculty, in 1992 Gordon founded the Workplace Project in New York, a nationally recognized grassroots workers center that organizes low-wage Latino immigrants to fight for just treatment on the job. After leaving the Workplace Project in 1998, she was the J. Skelly Wright Fellow at Yale Law School. Gordon has also worked as a consultant to the AFL-CIO, the Campaign for Human Development of the Catholic Church, and the Ford Foundation, among others. Her book Suburban Sweatshops: The Fight for Immigrant Rights was published in 2005 by the Belknap imprint of Harvard University Press. Gordon was chosen in 1995 as one of National Law Journal's forty leading lawyers under the age of 40 in the United States. In 1998, she was named "Outstanding Public Interest Advocate of the Year" by the National Association for Public Interest Law (now Equal Justice Works). She was awarded a MacArthur Prize Fellowship in 1999.