

MIGRANT WORKERS' ACCESS TO JUSTICE FOR WAGE THEFT

A global study of promising initiatives

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The **Migrant Justice Institute** (www.migrantjustice.org) undertakes strategic research and legal action to achieve fair treatment, enforcement of rights and just remedies for migrant workers. We chart pragmatic new pathways for decent work and responsible recruitment for migrant workers in Australia and globally, in collaboration with migrant worker communities, governments, business, civil society, trade unions, international organisations, and donors.

Partners

This study was undertaken in partnership with The Solidarity Center and ILAW Network.



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We hope this report will support the inspiring community of practice that contributed to the study, which is clearly eager to collaborate to improve migrant workers' access to justice globally.

Executive summary

Systemic wage theft has long been part of the labour migration landscape in every region of the world. During COVID-19, egregious underpayment of migrant workers was even more widespread as businesses encountered financial pressures and vast numbers of workers were repatriated without payment of their wages. Though every jurisdiction has judicial and/or administrative mechanisms to address wage claims, employers in every country can be confident that very few unpaid migrant workers will ever use those mechanisms to recover their wages. This is because the system is stacked against them at every stage in the wage claim process.

The failure of government and judicial wage recovery mechanisms is not inevitable. This report documents a range of initiatives from around the world that seek to disrupt employer expectations of impunity and enable migrant workers to bring claims and obtain redress for wage theft. These specific, practical reform targets can form the basis of collaborative and evidence-based wage theft campaigns on a global, national and local scale.

The problem: Wage theft and lack of access to justice for migrant workers

Barriers to migrant worker access to justice

Many of the fundamental drivers of wage theft are common across jurisdictions, as are many of the barriers to accessing justice. These include barriers to lodging a complaint, obtaining a determination for the full amount owed, and enforcing a determination and collecting payment.

First, most migrant workers are unlikely to file a claim because they fear being deported, losing their job or other forms of retaliation. For many, it is practically difficult or simply impossible to lodge a claim, especially if they are about to leave the country or have already returned home. Many migrant workers are unaware of their rights or how to seek redress. The vast majority require legal assistance to lodge claims, gather evidence, and engage with government and court offices, particularly when these are not in the worker's language. Most migrant workers cannot access free or low-cost legal assistance, and are not members of a trade union.

Second, if workers do file a claim, the burden of proof generally rests with the worker, and it is extremely difficult for a migrant worker to provide evidence of their work and the wages they were not paid. Government agencies are slow to respond and lack resources to investigate, and court and tribunal processes are cumbersome and lengthy. Employers know that informal dispute resolution processes will favour the employer as the party with greater power, and will generally result in a settlement that is unfair to the worker.

Third, employers and other businesses in supply chains can safely assume that many workers who obtain a successful wage determination never actually receive the wages the employer was ordered to pay. Employers frequently liquidate, disappear or simply refuse to pay, and determinations are unlikely to be enforced. Any penalties for wage theft or consequences for noncompliance with a judgment will not be commercially significant. Businesses in a supply chain will almost certainly not be held responsible for remedying wage theft by their supplier or contractor if those entities liquidate or do not pay their workers, leaving the workers without recourse.

Risks of nonpayment, and burdens of wage recovery, rest with migrant workers rather than business or government

In this context, it is easy and rational for employers to adopt systemic wage theft as a business model. It is equally easy for businesses at the top of supply chains to enjoy the benefits of wages stolen from their suppliers' workers which facilitate the supply of cheaper goods and services, and greater profits.

Migrant workers understand the risks of reporting wage theft, the burdens of making a claim and very low prospects they will recover the money they are owed. Most are acting rationally when they determine they cannot feasibly seek redress or it is not in their best interests to do so.

Deep knowledge gap and lack of research

In every jurisdiction, there is a profound lack of data on the scale and characteristics of wage theft among migrant workers to inform administrative and judicial responses. This is striking given the scale of wage theft in numerous industries globally. No jurisdiction systematically collects data on migrant workers' actions to recover wages and governments have little meaningful data on the operation of their remedial processes and institutions in practice. With limited notable exceptions, few efforts have been made by governments, academic experts or civil society to comprehensively evaluate the effectiveness of particular systems for migrant or other vulnerable workers to determine what works, or how to improve shortcomings. Governments and advocates are generally unaware of approaches to wage theft and innovations in other jurisdictions beyond their own. In short, government responses and allocation of resources to address wage theft for migrant workers are made with almost no evidence base or informed public scrutiny.

Potential solutions: Findings on promising initiatives to improve access to justice for wage theft

As the first stage in addressing these gaps, this study profiles promising initiatives in jurisdictions around the world. These reduce, or have potential to reduce, the risks, burdens and costs for migrant workers of rectifying wage theft, or shift risks and burdens to business and government. The profiled initiatives can equip advocates with specific law and policy reform targets and lend credibility to advocacy demands by pointing to other jurisdictions in which an intervention has already been adopted. However to build an effective ecosystem for detection and remediation of wage theft, a range of these initiatives must be combined, and must rest upon a foundation of labour laws that apply to all workers without distinction. They should complement proactive strategic enforcement led by government as the primary mechanism for addressing wage theft.

Stage 1: Lodging a wage claim or complaint

The report provides examples of promising initiatives to reduce risks to migrant workers of reporting wage theft and lower the burdens of initiating claims to seek redress. These initiatives are designed to:

- **Improve the practical accessibility of wage recovery mechanisms**, including use of technology to allow remote filing and testimony, decentralisation of claims forums, and use of mobile labour courts that attend large migrant worksites, with an extended limitation period in which workers may file a wage claim.
- **Reduce risks of job loss or other forms of retaliation for pursuing a wage claim.** This includes establishing portability of employer-sponsored visas that enables workers to change employers, permitting institutional or third-party plaintiffs to file a complaint while protecting workers' identity, and enacting anti-retaliation laws with a presumption that an employer has unlawfully retaliated if it acts against a worker soon after a complaint.

- **Reduce risks to a migrant worker's immigration status** of reporting wage theft, including firewalls that prevent government labour agencies from sharing information about a worker's immigration status with immigration enforcement authorities.
- **Enable workers to file a claim swiftly before departing the country of employment.** This includes short-term immigration options to stay to pursue a labour claim or assisting workers to rapidly commence wage proceedings with the option of urgent advance testimony before departure.
- **Enable migrant workers to recover wages after returning to their origin country.** This includes technological innovations during COVID-19 that can be replicated and mainstreamed in government and judicial processes, combined with transnational provision of services to migrant workers by organisations with offices across migration corridors. Labour attachés at diplomatic missions in countries of origin and employment can facilitate lodgment and pursuit of wage claims.
- **Increase resourcing for legal services, and incentivise private lawyers to represent migrant workers,** including through awarding attorney's fees and permitting claims on behalf of groups of workers. Unions, civil society, bar associations and law schools can also creatively expand legal services available to migrant workers.
- **Improve effectiveness of government enforcement programs,** including through routine, institutionalised collaborations between government authorities, unions and civil society.
- **Create alternative jurisdictional bases and institutions to remedy wage theft within provincial and municipal government** when a central labour agency is lacking, including through creation of wage theft criminal offences and related enforcement.

Stage 2: Obtaining a determination against an employer for all wages owed

The report identifies promising elements of administrative and judicial processes and rules of evidence that aim to reduce barriers to migrant workers obtaining a timely determination against their employer for the full wages owing. They do this by:

- **Shifting the burden of proof to employers to demonstrate their compliance** with their obligations to pay workers correctly, rather than leaving the burden of adducing evidence with workers. This includes a flexible approach to workers' evidence of the existence of the employment relationship. It also includes legal presumptions in workers' favour as to duration of employment, hours worked, and wages owed, which the employer bears the burden to disprove.
- **Developing technological systems that generate evidence of wage theft,** including requiring employers to provide pay slips and transfer wages electronically, and implementing technology to track regular wage payments and automatically notify government of underpayment based on a worker's entitlements under law and contract.
- **Developing swift processes for adjudicating wage claims** in administrative and legal forums, including fast-track adjudication of small wage claims and one-stop-shop claim resolution forums.
- **Instituting professionalised mediation processes grounded in the parties' legal rights** under law and contract in order to fairly resolve wage disputes, and compelling employers to participate by imposing commercially meaningful consequences if they fail to do so.

Stage 3: Enforcing the determination and ensuring workers can collect payment

The report identifies creative initiatives across a range of jurisdictions to drive business' compliance with wage judgments and reduce enforcement burdens on migrant workers. These are designed to:

- **Leverage governments' function as gatekeeper of opportunities for businesses.** This includes national, provincial and municipal governments, and agencies beyond those that regulate migration or employment. For example, agencies can withhold or revoke a licence, deregister a business, or suspend job orders or trading until the business complies with outstanding wage judgments. These powers can be exercised by agencies that oversee licensing or registration schemes in labour migration, as well as agencies that license other commercial operations such as health certifications for food businesses. Governments at all levels can also condition public procurement of goods and services on suppliers' compliance with wage payment and judgments.
- **Create further meaningful commercial consequences for businesses that ignore wage judgments.** This includes disrupting supply chains by prohibiting transport of goods across state borders until wages are paid, rapid accrual of additional penalties, and giving workers access to commercial assets to fulfil wage claims (through workers' liens, surety bonds and government seizure of assets).
- **Broaden accountability for rectifying wage theft to businesses further up a supply chain.** This includes holding lead firms (and their corporate officers and shareholders) jointly liable for wage nonpayment by their suppliers, holding lead firms and principal contractors jointly liable for wages of subcontractors' workers, and holding host businesses liable for wages of workers supplied by a labour contractor.
- **Provide direct redress for wage theft when no party can be held to account,** through public insolvency schemes and other forms of insurance. These can be funded through general public funds or employer contributions or deposits, or through Project Bank Accounts for large public infrastructure projects.
- **Enable government agencies to proactively pursue payment of wage judgments on workers' behalf.**

Conclusion

The study has illuminated a range of potential paths for governments to establish institutional frameworks that enable migrant workers to remedy wage theft, with examples of how these have been implemented in different jurisdictions around the world. Substantial further research is urgently needed to determine how particular initiatives are working in practice based on data from migrant workers, advocates, service providers, government and judicial bodies. This should include an assessment of factors contributing to positive outcomes, and changes required to address shortcomings in apparently promising initiatives.

Campaigns for specific reforms should sit within a broader commitment to restructure the risks of nonpayment of wages, and the burdens of rectifying wage theft. Currently, these risks and burdens generally lie where they fall – on migrant workers, rather than business and government. This is morally indefensible given the benefits derived by business and national economies from migrant labour and the fact that a migrant worker is the party least able to bear these risks and burdens. It is also an untenable labour compliance strategy that will leave a gaping, and widening, enforcement gap.

To genuinely ensure labour compliance for all workers and create a level playing field for businesses that do not engage in wage theft, governments must accept that wage theft is systemic and not exceptional. Alongside strategic enforcement of labour laws and proactive investigation of breaches, governments must establish systems that empower workers to initiate and swiftly resolve wage claims, by restacking every stage of the wage recovery process in workers' favour.

Part I

Introduction and overview of wage recovery mechanisms



Introduction

Systemic wage theft has long been part of the labour migration landscape in every region of the world. Most migrant workers never recover the wages they are owed. Many of the fundamental drivers of wage theft are common across jurisdictions, as are many of the barriers to accessing justice.

Migrant workers' inability to remedy wage theft has profound consequences for those workers and their communities in countries of origin, as well as for labour standards, business practices and rule of law in countries of employment. Most fundamentally, it is immoral and unfair for an employer to steal the wages a worker has earned for work performed. The inability to remedy wage theft drives many migrant workers further into debt and makes them more vulnerable to future exploitation. It deprives their families and communities of critical income and local spending, undermining broader development goals in migrant countries of origin.

Most countries rely on migrant worker complaints to detect wage theft, rather than extensive proactive government investigation of noncompliance among employers of migrant workers. Because very few migrant workers file complaints, this approach creates fertile ground for exploitation to flourish undetected and undeterred. Employers adopt underpayment as a standard business practice because of their confidence that migrant workers will not bring claims against them and the government will not hold them to account. This in turn creates an unfair competitive advantage over businesses that pay their workers correctly, and allows businesses in a supply chain to unfairly profit from wage theft through cheaper goods and services.

Underpayment of migrant worker wages became even more pervasive during the COVID-19 pandemic, and many migrant workers were repatriated without payment of salaries for extended periods or termination payments.¹ In 2020, a global coalition of civil society organisations launched a campaign for justice for wage theft for migrant workers² and began documenting unremedied wage theft cases across various jurisdictions.³ In 2020 and 2021, the issue was raised as a priority during global and regional forums including the Abu Dhabi Dialogue, Global Forum for Migration and Development, and the Global Compact for Migration regional consultations.⁴

This study was undertaken to support the global campaign and other efforts to improve migrant workers' recovery of unpaid wages. It is well known by activists and migrant workers that **there is no jurisdiction in the world where underpaid migrant workers can expect to recover the full wages owing to them. For the most part, national systems place all of the risks, burdens and costs of rectifying wage theft on migrant workers who cannot, and should not, shoulder these.** Migrant workers not only bear the risk of nonpayment for their work, but also the personal risks and burden of making a wage claim if they are not paid. In most jurisdictions, migrant workers also bear the legal burden of proving they were not paid, as well as the risk of nonpayment of a wage judgment, and the burden of enforcing the judgment.

Because of these deep deficiencies, some advocates are pessimistic about the role of governments and courts in empowering workers to obtain redress for wage theft. However, if they are meaningfully improved, administrative and judicial remedial mechanisms have the potential to systemically deliver remedies to large numbers of migrant workers including those working for businesses outside major supply chains. They must, therefore, remain an important focus of efforts to strengthen migrant workers' access to justice, alongside direct engagement with business and worker collective action.

As advocates seek to improve administrative and judicial wage recovery mechanisms, advocacy demands are often general and high-level, with few examples of specific promising practices to draw on. There is virtually no sharing of data and experiences beyond national contexts and **most advocates are unfamiliar with wage recovery systems,**

and innovations, in other jurisdictions. This is **in part because these systems are critically under-researched** in almost all jurisdictions.

In every jurisdiction, there is very limited data on the scale and characteristics of wage theft among migrant workers to inform administrative and judicial responses. Compounding the lack of data on wage theft, governments have little meaningful data on the operation and effectiveness of remedial processes and institutions for those who make wage claims, and for migrant workers who experience wage theft but do not seek to recover the wages they are owed. Although wage theft is rampant in numerous industries globally, wage recovery is a technical and specialised domestic field in which there are few experts. With a few notable exceptions,⁵ few efforts have been made to comprehensively document and evaluate the effectiveness of particular systems.

Approach to the study and key limitations

As the first stage in addressing these gaps, **this study seeks to equip advocates with reform targets based on innovations in other jurisdictions, and to lend credibility to advocacy demands by pointing to other jurisdictions in which an intervention has already been adopted.** Given the limited data (and resources) available, the authors determined that the most efficient means to identify these initiatives was through engagement with a wide range of experts across each region of the world and a secondary literature review. In order to frame the engagement with experts, the authors presented an outline of common barriers that impede migrant workers recovering unpaid wages and asked experts for examples of initiatives designed to reduce these barriers in their (or another) jurisdiction (see *Methodology*, below, for further details).

This approach has at least five key limitations. First, interviewees were confined to experts and migrant worker organisations, and we were unable to conduct focus groups or interviews with workers due to time and resource constraints. There is a clear need for this research to be conducted in future studies to better understand the range of migrant workers' experiences in accessing and using wage recovery mechanisms in different contexts.

Second, the study is not a comprehensive assessment of wage recovery processes across all jurisdictions. After identifying one or two examples that could sufficiently illustrate a reform target, we did not search for further examples. We also did not systematically review all jurisdictions. Given our limited resources for the project, we relied on a secondary literature review and direct engagement with a broad range of experts from all regions of the world to identify promising initiatives. We likely missed some initiatives that were not reflected through this process or published materials, especially given the very limited extent to which migrant workers' wage recovery is documented and analysed in most jurisdictions. National or regional experts may not have been able to evaluate whether an element of their system is a promising practice compared to other systems. This is because most were unfamiliar with other systems and there is no shared baseline against which to compare their jurisdiction, and because no wage recovery system works comprehensively well.

Third, the authors did not undertake further research to evaluate the operation of the initiatives in practice. Though the report includes observations offered by the consulted experts or apparent in the literature, we did not seek further assessments from other viewpoints. Since there is no wage recovery system that works effectively to enable migrant workers to address wage theft, profiling of initiatives in this report is not an endorsement that the initiatives are successful or being implemented as intended. Inclusion of an initiative in this report is based on its potential rather than its efficacy. There is a pressing need for further research to determine how particular initiatives are working in practice based on interviews with migrant workers, advocates, service providers and government, and collection of other forms of evidence such as case data. This should naturally include an assessment of the factors contributing to positive outcomes, or the reasons why an apparently promising initiative does not work in practice and what needs to change.

Fourth, most migration and labour enforcement systems have elements that are deeply problematic. The profiling of

a promising initiative in this study does not reflect an endorsement of that jurisdiction's broader approach to migrant worker rights and labour regulation.

Finally, access to justice for wage theft has numerous dimensions, including deterrence of future wage theft, punishment of perpetrators, and broader government regulation and enforcement of labour standards. This study has a narrower and deeper focus on migrant workers' ability to recover the wages they are owed, rather than seeking to touch on all approaches to addressing wage theft. In addition, given the focus on wage recovery through administrative and judicial forums, this study does not examine in detail the important role of collective action and trade unions in addressing wage theft through direct engagement with employers or other businesses in a supply chain.

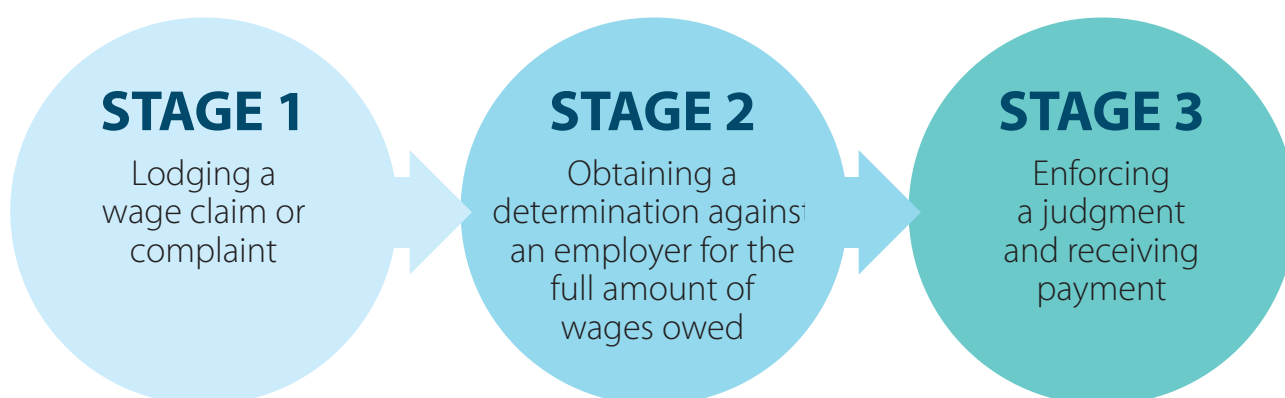
Given the global expanse of this research across highly divergent legal systems, labour migration programs, bureaucratic processes and levels of government resourcing, the report does not seek to develop models. Rather, it presents common advocacy goals and select reforms from other jurisdictions from which policymakers, advocates, donors and international organisations may identify initiatives that could be replicated or adapted in their own context.

These reform targets reduce the risks, burdens and costs for migrant workers of rectifying wage theft, or shift risks and burdens to business and government. Profiled examples include legal and structural reforms, as well as 'technical' changes that have a substantial impact. As Douglas MacLean, Executive Director of Justice Without Borders (JWB), states:

"A Labour Tribunal accepting email communication and testimony via video link might seem very small but if you are thousands of miles away that makes a huge difference. This is a key learning of JWB, the big court victories might get the headlines, but these smaller steps can help thousands of people and can be more impactful!"⁶

Report structure

Three stages of wage recovery



The report is structured around the barriers that migrant workers face at each of the three stages of the wage recovery process. First, migrant workers face barriers to lodging an underpayment complaint or claim. Second, if they do file a claim, it is difficult to secure a determination that the employer must pay them the full outstanding wages they are owed. Third, for the small number of workers who obtain a determination, it is often difficult or impossible to enforce the judgment and the worker cannot recover the debt from the employer.

At each stage, implementation of many of the reforms requires political will on the part of governments to invest adequate initial and ongoing resources, as well as political will to hold businesses to account. Sustained and coordinated advocacy campaigns will therefore be critical to drive reforms to enable access to justice for wage theft, building upon the heightened global coordination and innovation driven by the COVID-19 pandemic.

Methodology

The study commenced with a detailed global review of research studies, academic literature, reports and other secondary materials from a large number of intergovernmental organisations and national and local organisations that assist migrant workers to obtain remedies for wage theft, or advocate for migrant worker rights. These were confined to English language materials with the exception of Arabic, French, Portuguese, Mandarin in relation to Taiwan, Thai and Japanese. Unfortunately, due to resource constraints, we were unable to review materials in Spanish which may have limited our access in relation to information in the Americas. A number of Master of Laws students conducting internships with the International Lawyers Assisting Workers Network (ILAW Network) contributed to this desk research, including providing in-depth studies on certain jurisdictions.

Six online regional workshops were held between March and May 2021 in coordination with the ILAW Network which assisted with technical aspects of the workshops and invited ILAW Network members and other experts to participate. Workshops were held for participants in North America, Latin America, Asia, Middle East and North Africa, Africa, and Eastern and Western Europe, with 82 participants in total. These were followed by a range of individual interviews and email exchanges with representatives from migrant rights and trafficking organisations, labour rights organisations, unions, the International Labour Organisation (ILO), current and former government officials, academics, and other experts on wage recovery. The research team conducted an online questionnaire, which was available between April and June 2021 and disseminated through the ILAW Network and to workshop participants, who were in turn asked to refer through their networks. This yielded data from 21 participants. For a list of all organisations consulted through workshops, interviews, questionnaire or email correspondence see *Appendix*.

Terminology

This study focuses on promising initiatives that reduce barriers impeding migrant workers' access to justice for wage theft. This section explains the scope of each of these concepts for the purpose of the study.

Migrant worker

In this report, the term 'migrant worker' refers to any person who is or has been employed in a country of which they are not a national.⁷ This includes undocumented migrant workers, who lack authorisation to live or work in the country of employment, noting that these workers are often excluded from coverage by labour laws and access to wage recovery mechanisms.

Wage theft

There is no formal definition of wage theft.⁸ This report focuses on situations involving **an employer's total or partial nonpayment of remuneration to which a worker is entitled under an applicable law or under a worker's written or unwritten employment contract.**⁹ This includes: payment of wages below the legal minimum or contracted rate; nonpayment of overtime pay; nonpayment of benefits and other worker entitlements under law; nonpayment of severance pay (or, in some jurisdictions, gratuity) required by law; unlawful deductions from wages; and misclassification of a worker's employment to avoid paying correct wages and benefits.¹⁰ This also includes other strategies used by employers to underpay workers, including requiring workers to pay back to the employer wages already paid (to avoid detection where the original payment, but not the repayment, is formally recorded by the employer) or illegal wage deductions.¹¹ The study does not focus on the further structural ways in which workers are denied fair wages for their work that could be considered wage theft, including unfair¹² and discriminatory laws.

Access to justice

Access to justice is a broad concept. This study focuses specifically on **an individual worker's ability to recover wages and other money owed to them** by the employer under law. It does not focus on measures to prevent future wage theft, beyond the systemic deterrent impact of workers' access to justice. Similarly, it does not focus on employer sanctions beyond those that are imposed in order to achieve worker wage recovery, as well as penalties and damages that flow to workers.

Administrative and judicial processes

The focus of this study is on improving bureaucratic, administrative and judicial processes and institutions that provide wage recovery. These include government regulators, agencies, and ministries that investigate wage theft and oversee wage recovery as well as courts and quasi-judicial forums including tribunals. Direct engagement with business, collective action by workers and unions, worker-led social responsibility programs and business-led redress schemes are outside of the scope of this inquiry.

Employer

This report uses the term employer to refer to the direct employer of the migrant worker. In some sections, we discuss holding other corporate entities accountable where they are involved or complicit in nonpayment, including franchises, lead entities of supply chains and individual directors.

Labour provider

Migrant workers are often employed by a labour provider which then deploys the workers to various businesses for periods of time. In some jurisdictions, this entity is called labour hire, a labour supplier or placement agency.

Abbreviations

| Abbreviation | Term in full |
|--------------|---|
| ADGM | Abu Dhabi Global Markets |
| BWI | Building and Wood Workers International |
| CDM | Centro de los Derechos del Migrante (Center for Migrant Rights) |
| COE | Country of employment |
| COO | Country of origin |
| CSO | Civil society organisation |
| DOL | United States Department of Labor |
| DHS | United States Department of Homeland Security |
| FADWU | Federation of Asian Domestic Workers Unions |
| FLEX | Focus on Labour Exploitation |
| FLSA | Fair Labor Standards Act (US) |
| FWO | Fair Work Ombudsman (Australia) |
| GLAA | Gangmasters and Labour Abuse Authority (UK) |
| ICE | United States Immigration and Customs Enforcement |
| ILAW Network | International Lawyers Assisting Workers Network |
| ILO | International Labour Organisation |
| ITUC | International Trade Union Confederation |
| JWB | Justice Without Borders |
| LSPBS | Law Society Pro Bono Services |
| MFA | Migrant Forum Asia |
| MOLVT | Cambodian Ministry of Labour and Vocational Training |
| MOU | Memorandum of Understanding |
| MRCs | Migrant Resource Centres |
| MTUC | The Malaysian Trades Union Congress |
| NELP | National Employment Law Project |
| NGO | Non-government organisation |
| OLSE | San Francisco Office of Labor Standards Enforcement |
| OWWA | Overseas Worker Welfare Association (Philippines) |
| PICUM | Platform for International Cooperation on Undocumented Migrants |
| POEA | Philippine Overseas Employment Administration |
| POLO | Philippine Overseas Labor Office |
| SARTUC | South Asian Regional Trade Union Council |
| SFDPH | San Francisco Department of Public Health |
| TWC | Texas Workforce Commission |
| UFCW Canada | United Food and Commercial Workers Union Canada |
| UNI-MLC | Union Network International |
| WPS | Wage Protection System |
| WSR | Worker-led social responsibility |

Migrant worker wage recovery through administrative and judicial mechanisms: The problem

Every jurisdiction in the world has administrative and legal processes through which migrant workers may seek to recover unpaid wages. However, no jurisdiction has an effective mechanism that systemically enables migrant workers to remedy wage theft. In every jurisdiction, very few migrant workers make a wage claim, and even fewer recover all of the wages they are owed.¹³

This section sets out the typical structure of administrative and judicial wage recovery mechanisms in different contexts, and canvasses common reasons why they are not facilitating wage recovery for migrant workers. The remainder of the report looks beyond the overall low rates of wage recovery to identify green shoots within particular jurisdictions that are reducing barriers to wage recovery for some migrant workers, and illuminate promising paths forward.

Administrative and judicial wage recovery mechanisms

Administrative and judicial mechanisms and processes through which migrant workers may recover unpaid wages broadly fall into three categories: administrative, quasi-judicial, and judicial processes. Different countries of origin and employment may have some or all of these. Bureaucratic or administrative processes are typically connected with a government labour agency or manpower ministry to whom workers (or others) may make a complaint (some agencies may also proactively initiate worksite inspections and litigation against an employer). Immigration or specific migrant worker agencies/ministries may also be involved. The responsible agency may investigate the worker's claim and/or may seek to mediate or otherwise resolve the claim. Some agencies have powers to make determinations against employers, and some seek to enforce determinations and compel payment. These processes vary in their degree of formality, standardised procedures and transparency, with many processes remaining relatively informal and discretionary, and shielded from scrutiny and review. In many jurisdictions a complaint to the relevant government agency or ministry is a mandatory first step in a wage claim, or the main method through which a worker may seek to recover unpaid wages.

Most jurisdictions also have more formalised judicial and/or quasi-judicial processes for resolving wage disputes. There may be a specialised labour tribunal, frequently with an appeals process to a court. In most jurisdictions, courts may hear cases involving wage claims. Some jurisdictions may have a less formal small claims jurisdiction in addition to a standard formal court jurisdiction for more complex and higher value claims. In some jurisdictions wage recovery may flow from criminal prosecution of wage offences.¹⁴

Mediation, or negotiated settlements, is the most common form of dispute resolution for worker wage claims against an employer and is often a mandatory first step for government agency processes as well as tribunal and court processes. For processes within a government agency, mediation, or facilitated negotiation, between a worker and an employer is commonly conducted informally by a government bureaucrat from the relevant agency who is not generally a trained mediator. Pre-trial mediation in the court context may involve more formalised mediation processes.

Federal systems may have multiple forums for wage recovery depending on whether labour is regulated primarily at the state/provincial level or the national level. In some jurisdictions in which federal governments are not effectively enforcing labour laws, states, provinces and cities have established alternative jurisdictional bases for labour enforcement including addressing workers' wage claims.¹⁵

Barriers to wage recovery by migrant workers

There are a range of reasons why migrant workers do not, and cannot, recover unpaid wages through the administrative and judicial mechanisms that exist in each jurisdiction. Many of the barriers to wage recovery are common across jurisdictions, and indeed many are experienced by low-wage workers generally and are compounded by further barriers for migrant workers. Until many of these barriers are reduced or removed, migrant workers will not recover unpaid wages. This study has therefore used these barriers as a starting point for identifying promising initiatives within systems that do not function well overall.

For the purpose of this study's workshops, interviews and survey, we identified some of the most common barriers and grouped these into 7 broad categories. We asked participants to identify any initiatives within their jurisdiction (or others) that are reducing (or might in principle reduce) any of these barriers. This is not an exhaustive list, and not all barriers are present, or present in the same way, in all jurisdictions.

Barriers that impede wage recovery by migrant workers

1. Practical barriers to accessing wage recovery, including:

- Time and effort to pursue claim when working;
- Court/mediation generally during work hours;
- Processes centralised and geographically inaccessible to workers;
- Language barriers without access to interpreters (written information, court documents, legal advice, hearings);
- Workers cannot access necessary technology;
- Workers lack documents required to make claim such as passport, ID card or residency permit;
- Workers cannot stay in country of employment (COE) to pursue claim;
- Repatriated workers cannot file or continue to pursue claim.

2. Migrant workers' lack of capacity to recover wages on their own and inability to obtain assistance, including:

- Lack of awareness or knowledge of rights and/or how to make claim or get legal assistance;
- Inability to calculate the wages owing;
- Lack of evidence or inability to gather evidence (of contract conditions, hours worked, or wages paid);
- Inability to draft, file or serve claim (including difficulty identifying legal identity of employer);
- Shortage of affordable or free legal/paralegal advice and representation (including resource constraints of NGOs and service providers);
- Lack of financial incentives for private attorneys to pursue wage claims (including complexity of claim and no right to attorney fees)
- Inadequate consular support to address wage claims;
- Restrictions on forming or joining trade unions.

3. Risks to migrant workers seeking to recover wages, including:

- Risks to immigration status and ability to remain in the country (including irregular status, lack of portability of visa to new employer);
- Risk of losing job (and visa and livelihood without social welfare, and homelessness for live-in domestic workers) or damaging future job prospects;
- Risk of other forms of retaliation by employer or recruitment agent, (including reporting worker to immigration authorities, fabricating criminal allegations against worker, threats to physical safety);
- Risk of receiving bad legal advice or being overcharged by a lawyer.

4. Psychological factors which deter migrant workers from seeking to recover wages, including:

- Resistance to taking action when other workers are not;
- Pessimism that the system will work to deliver wages or that anything will change;
- Social stigma of revealing poor experiences;
- Reluctance to cause trouble for employer/agent;
- Reluctance to unionise;
- Cultural deference to superiors and reluctance to be a trouble-maker.

5. Institutional weaknesses in government and judicial or quasi-judicial processes, including:

- Long inefficient processes;
- High costs of bringing claims;
- Lack of mandate of government agency (actual or perceived) to handle migrant complaints;
- Unresponsiveness of agency to meritorious claims or requests for assistance;
- Lack of standardised transparent procedures in government agency processes for wage claims (and resulting unresponsiveness);
- Mediation processes are not professionalised, rights-based and accountable and do not rectify power imbalances, resulting in unjust outcomes;
- Inadequate free or low-cost legal/paralegal services;
- Inability to compel employer to participate in dispute resolution proceedings;
- Judgments cannot be enforced (eg enforcement processes inaccessible or ineffective, or employer liquidates or disappears).

6. Laws which operate to prevent migrant workers from remedying wage theft, including:

- Migrant workers excluded from wage protections under labour laws (including misclassification as contractors (especially in the gig economy), carve-outs from labour law for migrant workers, workers in specific industries (domestic work, agriculture) and/or undocumented workers);
- Statutes of limitation disallow wage claims;
- Subcontracting evades responsibility for wage repayment and lack of supply chain responsibility;
- Lack of provision to bring claims simultaneously on behalf of multiple workers;
- Burden of proof of underpayment generally rests with the worker not employer;
- Lack of minimum wage and overtime entitlements.

7. Lack of political will to empower migrant workers, worsened by corruption and poor regulation of labour migration, including:

- Lack of political will to develop and provide sustained resourcing for wage recovery systems for migrant workers in COEs;
- Lack of prioritisation, documentation and remediation of wage theft by countries of origin (COOs);
- Lack of effort to collect, analyse and share data on wage theft and wage recovery for migrant workers;
- Barriers to unionisation (lack of freedom of association, poor union engagement with migrant workers);
 - Lack of political will to shift risk and burden of enforcing labour compliance from workers to employers/business and ensure employer and recruiter accountability in COOs and COEs;
 - Discrimination and devaluing of migrant worker rights, concerns and experiences.

COVID-19 has exacerbated many of these barriers and created new ones. For instance, many workers have been suddenly repatriated from their country of employment during lockdowns and left without recourse for unpaid wages.¹⁶ According to one survey, among 2,252 Indian migrant workers who were repatriated from the Middle East during the first wave of the pandemic, 39 percent reported leaving without recovering unpaid wages.¹⁷ Others who had returned home became stranded in their country of origin, unable to return to their country of employment.¹⁸ For workers who remained in their country of employment, the global economic downturn has caused many employers to liquidate, making it practically impossible for workers to recover past underpayments. Some migrant workers became undocumented due to job loss during the pandemic, making it more difficult to press employers for unpaid wages.¹⁹ Prolonged closure of courts and government agencies due to pandemic lockdowns has affected the length of resolution of cases and access to claims making.²⁰ And in the context of lockdown or economic recession, new legal frameworks have arisen enabling lawful underpayment or nonpayment of wages.²¹ This study does not specifically focus on barriers and responses introduced to address the specific context of COVID-19, though this would be welcome in further studies.

Part II

Reform targets and promising initiatives at each stage of the wage recovery process



Stage 1: Lodging a wage claim or complaint

The following sections set out reform targets at each of the three stages of the wage recovery process: lodging a wage claim or complaint; obtaining a determination against an employer for wages owed; and enforcing judgments and ensuring workers can collect payment. These reform targets are based on promising initiatives that might be successfully adapted to other national or local contexts to improve migrant workers' access to justice. These initiatives are described as 'promising' rather than best practice, acknowledging the study's limitations discussed in Part I.

Migrant workers confront a range of risks and barriers to lodging a claim for unpaid wages, either through government agencies or court or tribunal processes. For a start, migrant workers in some industries are excluded from labour laws and related processes. For those eligible to file wage claims, most processes are inaccessible. Many migrant workers are unaware of their rights, how to seek redress, or where to go for help. The vast majority of migrant workers require legal assistance to complete claims forms, gather necessary evidence, and engage with government and court offices, particularly when these are not in the worker's primary language. Most migrant workers cannot access free or low-cost legal assistance, and most are not members of a trade union, especially in sectors in which organising is especially challenging. Complaints must also generally be lodged in person far from migrant workers' homes and worksites.

Lodging a complaint can carry great risk for workers who fear losing their job or jeopardising their prospects for future work, or other forms of retaliation. Workers who wait until the end of employment to file a claim may be barred by short limitations periods for filing claims, or may be swiftly repatriated without an opportunity to pursue a claim. Migrant workers who no longer hold a valid visa are generally not permitted to remain in the country of employment to file or pursue a wage claim, and it is extremely difficult if not impossible for migrant workers to file or pursue a claim once they have returned home.

1. Ensure labour law covers all migrant workers

Many jurisdictions exclude certain types of work from the scope of labour laws and the mechanisms through which labour rights are enforced, including **domestic work, sex work, and some agricultural work**. Those workers (including migrant workers) are excluded from labour protections including statutory minimum wage laws, and must use civil law rather than labour law to bring claims for unpaid wages. However, some jurisdictions have enacted laws that specifically include these groups. These include laws that extend the coverage of wage protections under labour law to: domestic workers (eg Israel,²² Massachusetts USA²³, Kenya,²⁴ and South Africa²⁵), au pairs (eg Ireland,²⁶ Massachusetts USA),²⁷ and sex workers (eg New Zealand²⁸).

Many migrant workers are also in practice excluded from labour law coverage because they are misclassified as independent contractors rather than employees. This is especially the case in the gig economy. However, decisions in the U.K. (and elsewhere) holding that Uber drivers are in fact employees have disrupted this practice with ramifications in other jurisdictions.²⁹ Recognising the difficulties workers face in challenging misclassification as a contractor more broadly, Massachusetts has enacted a rebuttable **presumption that a worker is an employee rather than independent contractor** in most contexts.³⁰ Under a new California law criminalising wage theft as grand theft, **'employee' is defined to include an independent contractor**.³¹ In the Australian state of New South Wales, clothing outworkers are deemed to be employees of the factory or trader for whom they provide clothing.³²

Frequently, **undocumented workers** are explicitly excluded from coverage under labour laws. However a number of jurisdictions **extend labour law protections to workers regardless of their immigration status**. For example,

Israeli labour law applies equally to all workers, including undocumented workers.³³ The EU Employers' Sanctions Directive³⁴ explicitly includes labour rights protections for undocumented workers, with provisions requiring effective complaint mechanisms and payment of outstanding wages. Jurisprudence from the EU Court of Justice also suggests that undocumented workers are covered by EU employment laws.³⁵ In France, the Labour Code explicitly guarantees the rights of undocumented workers to payment of applicable minimum wages, including overtime. In Argentina, since 2004, undocumented workers have been fully covered under labour laws,³⁶ although the effect of this law is limited in practice because undocumented workers are not protected from referral to immigration authorities and deportation if they complain to the government or file a labour claim against an employer.³⁷ In the US, under the *Fair Labor Standards Act*, workers are legally entitled to wages as employees regardless of migrant status and physical presence.³⁸

In 2013, Thailand³⁹ and Malaysia⁴⁰ introduced **a national minimum wage** which applies equally to migrant workers, and raised awareness among migrant workers. The clarity and increased awareness of a statutory minimum wage applicable to migrant workers led to a dramatic expansion of complaints around underpayment.⁴¹

2. Make claims forums accessible to migrant workers

A number of jurisdictions have taken steps to make claims forums more practically accessible to migrant workers to file claims and attend hearings or provide testimony. This includes provision of free interpreters and translation services,⁴² and offering times⁴³ and locations migrant workers can more easily attend, particularly for those living or working far from the capital where the principal forum is based. For example, Nepal has established **decentralised locations at the district level for filing and mediation of claims**, closer to migrant workers' places of residence.⁴⁴ Since 2011, the ILO has supported the establishment and operation of Migrant Resource Centres (MRCs) in many decentralised locations **near migrant workers' home regions** across Cambodia, Laos, Malaysia, Myanmar, Thailand and Vietnam.⁴⁵ For example, MRC services were established within labour department offices and employment services in 63 provinces across Vietnam.⁴⁶ MRCs provide legal assistance to migrant workers and members of their families to seek redress for unpaid wages and other recruitment and employment violations, and partner with local authorities and civil society organisations to expand the accessibility of the complaints process.⁴⁷ According to the ILO, MRCs and partner NGOs have been highly effective in providing assistance to women migrants, even for those in physically isolated workplaces, through **gender-responsive** outreach via networks of paralegals and a focus on informal sector employment (where women migrants are disproportionately employed).⁴⁸

A number of jurisdictions have also introduced technology to enable migrants to **file documents and attend hearings online** from remote locations, or after they have returned home (see *Enable migrant workers to recover wages after they return home*, below).

The UAE has introduced **mobile labour courts** that come to workers, addressing a range of barriers to wage recovery simultaneously. Using a mobile court bus, a special team from the Abu Dhabi Labour Court and the relevant government ministry⁴⁹ travels to workers' accommodations in response to worker complaints that they have not received their salary for an extended period, and aims to ensure workers' salaries are paid on the spot.⁵⁰ According to government media releases, in response to complaints filed by migrant workers from January 2019 to June 2020, mobile courts delivered over USD 157 million in unpaid wages to 53,000 workers at 'their doorstep'.⁵¹

The practical barriers that impede access often lengthen the time migrant workers need to seek legal assistance, collect necessary evidence and file a claim (especially when they have returned home, or when they have waited until leaving an employer before filing a claim, or when they are initially unaware of their rights or how to seek assistance). Some jurisdictions provide a long period in which all workers may file wage claims, recognising the challenges all vulnerable workers face. For example, in New York State, workers have 6 years to file a wage claim, and 4 years in a number of other US states (with a default 2-year period under the federal *Fair Labor Standards Act*).⁵² In other jurisdictions with far shorter limitations periods, exceptions have been made for migrant workers recognising

the further hurdles they face. For example, British Columbia has **extended the statute of limitations for migrant workers to file wage claims** from the standard 6 months to 2 years.⁵³

3. Protect workers who complain from losing their job or being deported

Protection from job loss or other forms of employer retaliation

One of the most significant barriers to reporting wage theft is migrant workers' fear that their employer or recruiter will retaliate and the worker will lose their current job (and therefore entire livelihood, in the absence of social welfare protections) or be effectively blacklisted for future work opportunities. If a sponsored worker loses their job, they will lose their visa and most jurisdictions do not allow them to easily leave exploitative employment and find a new sponsor. In numerous countries, domestic workers are required to live with their sponsoring employer, and may instantly become homeless if the employer retaliates. In numerous Arab countries, an employer can swiftly have a domestic worker's residence permit cancelled outside ordinary processes by alleging that the worker absconded.

A number of jurisdictions have introduced **laws prohibiting employer retaliation** for worker complaints.⁵⁴ A particularly strong example is New York's labour law which establishes a criminal misdemeanour offence of retaliating against, or threatening, an employee for making a complaint or providing information or testimony in a government investigation or exercising other labour rights.⁵⁵ The provision applies to an employer or 'any other person', establishing individual liability of corporate officers and other individuals in addition to the employer. New York's Department of Labor has established **a dedicated unit to deal exclusively with retaliation and ensure these cases are swiftly addressed**.⁵⁶ The provision may be enforced through investigation and orders by the Commissioner of Labor, or through a private right of action by a worker in court which may be exercised regardless of any investigation by the Commissioner.⁵⁷ The Commissioner or court may impose a civil penalty and award significant liquidated damages to the worker plus costs and attorney's fees, in addition to requiring an employer to pay the worker for lost wages and re-hire the worker or provide payment in lieu of reinstatement.⁵⁸ A number of jurisdictions, including California⁵⁹ and New York,⁶⁰ have **anti-retaliation laws that expressly prohibit employers from threatening migrant workers with deportation**.

Anti-retaliation provisions are difficult for migrant workers to use. In insecure casualised jobs, retaliation is hard to prove when it is easy to dismiss workers on other grounds. Recognising this challenge, New Jersey's *Wage Theft Act*, passed in 2019, stipulates that **any disciplinary action taken against a worker within 90 days of filing a complaint is presumptively considered unlawful retaliation**.⁶¹

A number of jurisdictions have reduced migrant workers' vulnerability to retaliation in other ways. In Australia, and some US states and Canadian provinces, **institutional or third-party plaintiffs such as union organisers and worker centre representatives can file a complaint with labour authorities or a claim with a court and thus protect the worker's identity** and help alleviate the fear of retaliation.⁶² A number of jurisdictions have established platforms that enable **anonymous filing of complaints**, though the efficacy of these is unclear. For example, Australia's government labour agency has an online platform for anonymous complaints that is available in 16 different languages,⁶³ and Qatar's new online platform for whistleblowers enables workers in the private sector as well as domestic workers to submit complaints without having to enter any personal identification information.⁶⁴

Recognising that even the strongest retaliation protection laws will normally take months, if not years, to hold the employer accountable and provide a remedy, the US-based National Employment Law Project has recently proposed the concept of an employer-funded **retaliation fund** which would enable workers to quickly access meaningful financial support if they lose their job or otherwise face retaliation for reporting wage theft.⁶⁵

Visa portability to enable workers to change employer

Many migrant workers' visas are tied to a sponsoring employer. If their employment is terminated, they are either

required to leave the country immediately or, in some jurisdictions, given a very short window to find a new sponsoring employer.⁶⁶ The risk of losing their job, and with it their ability to remain in the country of employment, strongly deters workers from pursuing claims against their employer.

A number of jurisdictions permit workers to leave a sponsoring employer and remain in the country for a short period in order to find a new sponsoring employer. Sweden permits migrant workers to change employers within the same occupation category for any reason, although this is only after the first 2 years in which the work permit is limited to a specific employer, and the worker must obtain an extension of their visa.⁶⁷ Mexican workers in Canada under the Canada-Mexico Seasonal Agricultural Worker Program may be transferred to another employer in the program as an outcome of filing a complaint against the employer. This is one of the main mediation approaches adopted by Mexican consulates in Canada who take the lead in dealing with worker complaints under the scheme.⁶⁸

For many migrant workers, the short timeframe provided to find a new employer is inadequate and often amounts to visa loss and departure. Recognising this challenge, **Canada permits migrant workers ‘who are experiencing abuse, or who are at risk of abuse’⁶⁹ to apply for an ‘open permit’ which enables them to leave their employer and circulate freely in the labour market for up to 12 months.**⁷⁰ During that time they may work for any employer (other than those who have been found to be previously noncompliant),⁷¹ and the worker’s family members are also eligible for an open work permit.⁷² Once a worker finds a new sponsoring employer they return to the closed permit system.⁷³ Vulnerable workers may apply for an open work permit themselves or have third party representation/support. In practice, workers face considerable challenges applying for the permit, even with legal assistance. The online application process is lengthy and complex,⁷⁴ and the visa has a range of other limitations,⁷⁵ including the need for detailed evidence to demonstrate abuse that is difficult for workers to gather,⁷⁶ and the requirement that the worker apply while still holding a valid visa, with limited exceptions.⁷⁷ There is still a lack of data on the program, including on the application acceptance rates.⁷⁸

For migrant workers in circular migration programs, the consequences of employer retaliation may extend beyond loss of a migrant worker’s current job to the blacklisting of the worker for return to the country of employment in subsequent seasons. In North Carolina, this concern has been addressed through an agreement between the farm workers’ labour union⁷⁹ and the growers’ association which effectively gives temporary migrant workers in agriculture a **right to return for subsequent seasons**. Previously, the system was one based entirely on grower preferences which enabled growers to blacklist workers who had previously complained of exploitation.⁸⁰

Firewalls between labour and immigration enforcement agencies for secure reporting

Migrant workers are reluctant to approach labour authorities about labour violations if they have breached their visa conditions or are undocumented, fearing punitive measures such as detention, criminal prosecution and/or deportation. Indeed, key international bodies underscore that vesting immigration enforcement duties with labour inspectors undermines effective labour rights enforcement.⁸¹ A number of jurisdictions have recognised this challenge and implemented varying degrees of **separation between immigration authorities and labour authorities and courts** to encourage migrant workers to report labour abuses.

In Israel, there is a **complete firewall separating immigration enforcement authorities from labour enforcement agencies and labour courts** (as well as other agencies with whom migrant workers come into contact for workplace health and safety issues and social security).⁸² The labour enforcement agency is prohibited from transferring information about workers’ immigration status to immigration enforcement, and **in labour courts, immigration status is irrelevant**.⁸³

United States labour law also provides that immigration status is irrelevant to a wage investigation, and no immigration status documentation is required on the Wage and Hour Investigation Form which is used to lodge a claim for unpaid wages.⁸⁴ Under an MOU with the Department of Labor (DOL), Immigration and Customs Enforcement (ICE) agreed to refrain from engaging in civil immigration enforcement activities at a worksite that is subject to a DOL investigation

of a labour dispute (subject to certain exceptions).⁸⁵ Advocates report that the ability to point to a written agreement between DOL and ICE has been useful in fighting immigration worksite raids, but they note that the MOU does not give workers assurance that their immigration status will not be revealed or used against them if they file a wage claim in court.⁸⁶ Some US states have sought to address this challenge. For example, Washington State Evidence Rule 413 presumptively excludes evidence of a party's immigration status from all state civil and criminal cases.⁸⁷ More broadly, in many US states, labour departments standardly do not ask for a complainant's immigration status or record immigration status, and if they learn of it, they do not report it to immigration authorities.⁸⁸ California requires employers to notify employees before and after inspections and audits conducted by immigration officers.⁸⁹

In Belgium, the labour agency will not share a worker's immigration status with immigration authorities if a worker makes a complaint.⁹⁰ Civil society respondents in Belgium report that in practice, where civil or criminal proceedings follow the worker's labour complaint, there is no risk of them being reported to immigration authorities.⁹¹ However, when evidence of undocumented status is gathered in the course of an inspection rather than a complaint, labour inspectors do report this to the police with a limited practical dispensation for workers who subsequently file a claim.⁹²

In countries such as Ireland,⁹³ the UK,⁹⁴ and Australia,⁹⁵ labour agencies are not obligated to report immigration breaches to the immigration agency but are not prevented from doing so.

Different municipal jurisdictions in the US and Canada have established themselves as 'sanctuary cities', preventing public service providers from inquiring about the immigration status of their clients.⁹⁶

4. Enable migrant workers to pursue a wage claim in the country of employment before they are deported

Many migrant workers do not file wage claims while they are still employed for fear they will lose their job and/or their visa, but filing a claim after termination of employment or detection of irregular immigration status is often impossible because they have to leave the jurisdiction immediately.⁹⁷ This may occur because a migrant loses employer sponsorship (possibly as a result of complaining about or leaving an exploitative situation),⁹⁸ or an undocumented migrant is detected by authorities, or simply upon expiry of their legal status in the country. A number of jurisdictions have introduced visa concessions and other arrangements to enable these migrants to pursue a wage claim before leaving the country of employment.

Provision for workers to give urgent advance testimony in wage cases immediately before departure

Israel has established a process through which **a migrant worker who is about to be deported can file a claim before the labour court along with a request to give advance testimony before the case is formally heard.**⁹⁹ This is often done on an urgent basis with one or two days' notice before deportation/departure.¹⁰⁰ Advocates note that although they do not have the advantage of hearing the employer's evidence, allowing workers to testify in person greatly increases the likely success of the claims and the lawyer's ability to pursue the case on the worker's behalf after they return home.¹⁰¹ In advance testimony situations, as in all cases, the labour court provides free interpreters for migrant workers in most languages, which would otherwise be very difficult for the worker's representative to organise on short notice.¹⁰²

Government assistance for undocumented workers to claim wages before deportation

In general, when undocumented workers are detected by immigration authorities they are promptly detained and deported before they have an opportunity to pursue any potential claims for wage theft or other exploitation. However, in France, wherever relevant authorities identify an undocumented worker, they have an obligation to provide the worker with information about their labour rights, employers' obligations and complaints mechanisms. **Where a**

labour inspector discovers that a worker is undocumented or an undocumented worker is detained, the French Office for Immigration and Integration is notified and begins wage recovery proceedings to recover the unpaid wages from the employer and transfer them to the worker, **including when the worker is no longer in the country.**¹⁰³ The US Department of Labor (DOL) also previously had a practice whereby if immigration authorities notified DOL of a worksite raid resulting in detection of undocumented workers, DOL would send investigators to the workers to take statements for wage claims before the workers were deported.¹⁰⁴ Successful resolution of these claims often depended on the presence of working relationships with civil society organisations in the migrants' home countries to which they were deported.¹⁰⁵

Short-term permission to stay in country of employment to pursue wage claim

Ideally, where deportable workers raise claims of labour noncompliance, the government labour agency should automatically apply to immigration authorities for the worker to extend their stay in order to pursue a claim against the employer. This would greatly reduce the burden on workers when making wage claims and enable substantially more workers to do so. Short of this, migrants with insecure immigration status should have access to a streamlined process to apply for a short-term visa with work rights to pursue bona fide claims against their employer.

The authors did not identify any such examples. However, **a small number of jurisdictions enable workers to apply for an extension of their visa, or a new short-term visa (generally without work rights), in order to pursue a wage claim** where they would not otherwise have had a valid visa to remain in the country of employment. In Hong Kong, for example, migrant domestic workers must find new employment and obtain an approved work visa within two weeks of the completion or termination of their employment contract, or otherwise leave Hong Kong.¹⁰⁶ An exception to this 'Two-Week Rule' arises where a worker pursues a claim in the Labour Tribunal, which enables them to **apply for an extension of stay** which is typically valid for up to one month.¹⁰⁷ However, because Labour Tribunal proceedings take around six months on average, the foreign worker must renew their visa many times and, because this visa extension does not carry work rights, the worker must support themselves in Hong Kong without income.¹⁰⁸

In September 2019 a Memorandum of Understanding entered into force between Nepal and Malaysia regarding migrant workers, which included a special arrangement requiring the Malaysian government to provide Nepali workers who have filed a complaint with a **Special Pass until the labour dispute is settled.**¹⁰⁹ The Special Pass does not grant work rights, and it is not known whether applications for the Special Pass are being made or granted.

In the US, the Department of Homeland Security (DHS) has issued a Policy Statement indicating it will adopt policies and practices to increase the willingness of workers to report violations by exploitative employers and cooperate in labour investigations.¹¹⁰ In accordance with the Statement, immigration enforcement agencies must develop plans to provide for immigration relief for non-citizens who are victims of (or witnesses to) exploitative labour practices and ensure they are not placed in immigration proceedings while a labour investigation is on foot. It also requires plans to assist non-citizen victims and witnesses to participate in investigations. At the time of writing this report, plans had not yet been submitted. In the meantime, the Statement directs DHS to continue to exercise its discretion on a case-by-case basis to allow workers to stay in the US if DOL requests their assistance in labour investigations.

In Ireland, the Visa Reactivation Scheme is available to **regularise the status of non-EU workers** who entered Ireland legally on a valid Employment Permit but whose status has become irregular through no fault of their own or who have been exploited in the workplace and wish to change employers.¹¹¹

A number of jurisdictions provide visas to victims of trafficking or witnesses in criminal investigations of forced labour or similar crimes, which may also enable workers to pursue civil wage claims.¹¹²

5. Enable migrant workers to recover wages after they return home

Once migrant workers have returned to their home country it is generally extremely difficult for them to pursue wage claims in the country of employment. A number of initiatives have sought to reduce barriers to doing so, or to

enable wage claims to be brought against recruitment agencies located in the country of origin. Advocates refer to the right and ability of migrant workers to access justice in countries of employment after they return to their country of origin as ‘portable justice’.¹¹³

Consular labour attaché interventions in countries of origin and employment

In some cases, and especially during COVID-19, **consulate labour attachés have sought to obtain Power of Attorney from departing migrant workers** to enable the consulate or embassy to continue to pursue wage claims on their national’s behalf after the worker has left.¹¹⁴ Advocates note that India has done this particularly well, using embassies’ panel of lawyers on retainer to pursue wage claims.¹¹⁵

For a number of South East Asian countries, the ILO has facilitated consultations for labour attachés with government officials in countries of employment to improve their knowledge of labour law and allow for better communication among migrant origin country representatives.¹¹⁶ In the UAE there was previously discussion of the possibility of labour attachés from different migrant origin countries sharing information with each other about exploitative employers and wage claim mediation processes they undertake.¹¹⁷ However, this did not happen due to personnel changes, and despite the potential benefit of coordinated legal service provision, there has generally been reluctance among diplomatic missions to cooperate in this way, potentially due to fear of drawing the attention of country of employment officials to problems among their nationals.¹¹⁸

At least **one country of employment has committed to posting a labour attaché at its consulate in a major migrant country of origin.** In response to challenges of repatriated Filipino workers recovering outstanding wages in Saudi Arabia during COVID-19, the Saudi government concluded an agreement with the government of the Philippines to establish a labour attaché within its embassy in Manila who would be able to receive wage cases directly from repatriated migrant workers.¹¹⁹ At the time of writing this has not yet been implemented,¹²⁰ but if established successfully, it could serve as a model for other countries of employment to facilitate wage claims by workers who have returned home.

Bilateral agreements between migrant countries of origin and employment

Advocates have long sought to enshrine worker rights and enforcement mechanisms in bilateral agreements including MOUs on labour migration and trade agreements.¹²¹ This includes current advocacy efforts within the UN Network on Migration to develop new guidelines for Bilateral Labour Migration Agreements, with a joint bilateral committee that pursues labour cases including wage theft and exploitation by larger employers or those in government supply chains.¹²²

Joint committees have been previously established to address migrant worker labour issues in at least two contexts. When the Bin Laden group of companies collapsed in Saudi Arabia, leaving over USD 800 million in unpaid wages,¹²³ the governments of France, the Philippines, Bangladesh, India and Saudi Arabia established a **joint process for addressing wage claims** and repatriating migrant workers, with wage payments funded by the Saudi Government.¹²⁴ In a different domain, the governments of Malaysia and the Philippines have established a bilateral mechanism to address documentation issues of migrant workers in Sabah and Sarawak.¹²⁵

Unions and legal services that facilitate cross-border claims

A number of unions and civil society organisations have developed innovative models to provide legal assistance to migrant workers who have returned to their country of origin. In the Americas,¹²⁶ Centro de los Derechos del Migrante (Center for Migrant Rights or CDM), a **transnational migrant workers’ rights organisation**, enables migrant workers to pursue wage claims in the US after they have returned to Mexico.¹²⁷ It has offices in the US and Mexico, with US-trained lawyers on staff in the Mexico offices. CDM does significant outreach to migrant workers through in-person pre-departure training in Mexico, its online Contrataados platform, Facebook and other channels, so is often the first point of contact when workers encounter problems. CDM connects workers with legal representation in the US

then provides a range of cross-border litigation support. This includes assisting with communication with the worker including translation, security plans for workers, gathering evidence, written discovery, facilitating depositions and video testimony (including making sure there is a stable connection, sitting with the worker in Mexico, preparing and explaining the process to the worker, and interpreting during the process), and facilitating remote mediation via video between workers and employers. CDM also facilitates administration of settlements and judgments by organising low-cost money transfers to rural banks in Mexico.¹²⁸

In Asia,¹²⁹ Justice Without Borders (JWB) brings cross-border claims for victims of labour exploitation who have returned home. It takes a **migration corridor approach** to supporting domestic workers from Indonesia and the Philippines who were employed in Singapore and Hong Kong, and has staff and partnerships with local organisations in both countries of origin and employment. In addition to representing workers in wage claims, JWB undertakes strategic litigation in a sustained, methodical way in order to establish positive precedents expanding possibilities for cross-border claims. For example, it has successfully appealed Labour Tribunal decisions to the High Court in Hong Kong to establish a precedent for provision of evidence via video link in the Labour Tribunal (see *Technology to enable workers to pursue wage claims remotely* below).¹³⁰

Some organisations **use technology to facilitate litigation** of cross-border claims in the context of complex supply chains. For example, Mexican NGO, ProDESC, has developed the RADAR database to assist lawyers collaborating on claims in Mexican and US courts to securely store and analyse de-identified information about labour abuses received from migrant workers and their communities.¹³¹

While trade unions have generally focused on members in their national context, a number of innovative unions are developing partnerships across migrant worker countries of origin and employment to facilitate worker claims. One of the earliest and strongest examples is the Nepal-Malaysia migration corridor, in which the Nepalese union GEFONT, Union Network International (UNI-MLC), Building and Wood Workers International (BWI) and the Malaysian Trades Union Congress jointly established an SMS helpline for Nepali migrant workers in Malaysia in 2011. The ILO reports that by providing essential services for migrant workers in Malaysia, the helpline has strengthened migrant workers' position in negotiations with their employers and has resulted in referrals to other agencies, including the UN High Commissioner for Refugees.¹³²

Technology to enable workers to pursue wage claims remotely

One of the most significant barriers preventing migrant workers pursuing wage claims after they have returned home is the requirement that workers attend labour tribunals to file documents and/or testify in person. **Restrictions on movement and repatriation of migrant workers during COVID-19 appear to have increased the willingness of courts and the legal profession to use video testimony and electronic filing of documents in wage claims.** In the US, CDM has been able to conduct **mediations via video** between workers in Mexico and US employers in formal and informal contexts.¹³³

In 2018, following Justice Without Borders' strategic litigation, the Hong Kong High Court approved the use of a **video conference for testimony** by a migrant worker who had returned home¹³⁴ and the following year, video conferencing was implemented by the Labour Tribunal.¹³⁵ The Tribunal also confirmed that unions, such as the Hong Kong Federation of Asian Domestic Workers Unions (FADWU) which had supported the first case, can represent workers who are appearing in court from abroad.¹³⁶

Both Saudi Arabia and the UAE have recently allowed civil disputes to be resolved via **digital courts**.¹³⁷ The UAE's digital Abu Dhabi Global Markets (ADGM) courts are now operational for a range of commercial disputes and allow parties to register, **submit documents, file and pay online**, and utilise video conferencing to attend trial hearings remotely.¹³⁸ UAE law now specifically provides for **video conferencing** in specialised courts to hear labour disputes,¹³⁹ with further plans for real-time translations in court proceedings via a screen connecting translators to secretaries of court and judges. Although this does not yet appear to have been used in wage claims by migrant workers, this technology could enable migrant workers (with legal assistance) to pursue wage claims entirely online without having to be physically present at the filing or hearing of claims.¹⁴⁰

6. Enable more lawyers to assist migrant workers

Advocates around the world (and some governments) are exploring innovative initiatives to inform and educate migrant workers about their rights and where to seek help. This includes use of social media, radio, text messaging and other technologies¹⁴¹ as well as more traditional methods including community outreach, training sessions and distribution of printed materials. Nevertheless, in every jurisdiction, almost all migrant workers need assistance to file wage claims. This is often true even when the worker first seeks assistance from a government department or inspectorate.

Government-funded legal services

Governments and advocates have pursued a number of innovative ways to expand legal assistance for migrant workers. Some countries of employment have established **government-funded legal services** for migrant workers, **or extend general legal aid schemes to migrant workers to pursue wage claims**.¹⁴² Numerous jurisdictions have established hotlines of variable quality in terms of availability and quality of assistance provided to migrant workers. Taiwan's migrant worker hotline has been particularly effective,¹⁴³ providing free 24-hour consultation that includes provision of information on migrant workers' rights and legal advice in migrant workers' languages, and an avenue to make formal complaints against employers or recruitment agencies.¹⁴⁴ The hotline received over 133,000 complaints between 2015 and June 2020.¹⁴⁵

Schemes to encourage and build capacity of attorneys to pursue wage claims

In a number of countries, **private bar associations and law societies** have stepped in to fill gaps in government-funded legal assistance. Some bar associations run schemes that require the interest on lawyers' trust accounts¹⁴⁶ to go to funding legal assistance which may be available to migrant workers.¹⁴⁷ Law Societies in some countries, such as Singapore¹⁴⁸ and Malaysia,¹⁴⁹ collaborate with migrant support NGOs to coordinate and support private law firms' pro bono legal assistance for migrant workers.

The US-Mexico cross-border organisation CDM is often the first contact point for exploited Mexican workers in the US. When workers contact CDM seeking help to recover wages, the organisation determines if they have a viable case and refers them to an appropriate nonprofit, law firm or government agency in the US. Many legal service providers lack capacity to manage intake lines or screen cases, so CDM's approach to **vetting meritorious cases** enables workers to access representation by private lawyers or NGOs that might not otherwise have been possible. CDM also provides technical support to lawyers who are willing to take on migrant worker cases but lack expertise in cross-border litigation.¹⁵⁰

Analysis and documentation of avenues for accessing justice have been used to build legal assistance capacity. For example, some organisations have created **detailed manuals on wage recovery processes** to expand and deepen the capacity of frontline organisations to bring wage claims on behalf of migrant workers, and expand the pool of lawyers for these claims to include pro bono lawyers at commercial law firms with limited experience representing migrant workers.¹⁵¹

Awarding attorney's fees to incentivise private lawyers

In some jurisdictions, the possibility of being awarded **attorney fees incentivises private lawyers** to represent migrant workers (ie the employer is required to pay the worker's legal costs if the worker's claim is successful).¹⁵² However, a traditional costs jurisdiction which simply awards attorney's fees and costs to the successful party could leave an unsuccessful worker bearing the employer's legal costs, and would severely deter migrant workers from pursuing redress. The US *Fair Labor Standards Act* (FLSA) provides that **the employer must pay the worker's attorney's fees and costs in any successful court action to recover unpaid wages, although when the worker is unsuccessful each party bears its own costs**.¹⁵³ In the Philippines, the possibility of being awarded attorney's fees has attracted private lawyers to represent migrant workers (at least in cases where larger amounts of money are involved such as some seafarer cases).¹⁵⁴ This also suggests the importance of being able to group similar claims in

order to incentivise private lawyers to represent workers in wage claims and to allow unions to more easily pursue multiple members' claims together (see *Allow multiple workers to bring grouped claims against an employer* below).

Private lawyers may also be discouraged by the prospect that many wage claims settle out of court and there would not be an opportunity for an award of attorney's fees. In the US, because the worker has a legal entitlement to payment of their attorney's fees and costs in any court action, this must be factored into settlement negotiations. For example, the Massachusetts Supreme Judicial Court has ruled that **employers must pay the worker's attorney's fees and costs in settlement agreements**, in addition to paying the unpaid wages.¹⁵⁵

Union representation of workers in administrative and judicial wage claims

Trade unions have supported migrant workers to recover unpaid wages through administrative and judicial mechanisms, in addition to wage recovery through collective action and direct engagement with the employer.¹⁵⁶ For example, in the ILO's Qatar office, staff of 4 global unions act as community liaison officers for migrant workers along sectoral rather than nationality lines, providing legal assistance and other support services.¹⁵⁷ New unions have also been created in emerging industries with strong migrant workers presence. In Colombia, where the Ministry of Labour frequently fails to investigate undocumented migrant worker complaints, a new union for local food delivery riders has strengthened migrant worker power by integrating the claims of undocumented migrant workers with local workers.¹⁵⁸

In Australia, an 'employee organisation' (which includes a union) can apply to the Federal Court on behalf of employees in relation to wage claims and other labour law violations.¹⁵⁹ Unions such as the National Union of Workers have brought a number of collective wage claims against employers on behalf of groups of workers including migrant workers.¹⁶⁰

Legal assistance provided by migrants' countries of origin

Recognising that migrant workers' first port of call for assistance with labour disputes is often their consulate, the UN Special Rapporteur on the human rights of migrants has recommended that consulates collect better data on the complaints they receive from migrant workers, and establish a roster of competent local lawyers to provide assistance.¹⁶¹ To varying degrees, some **migrant worker origin countries have established schemes to provide legal assistance to their workers abroad**, including consular assistance.¹⁶² The two countries that have done this on the largest scale are the Philippines and India. For example, duty officers from two Filipino governmental bodies, the Philippine Overseas Labor Office (POLO) and the Overseas Worker Welfare Association (OWWA) are assigned to the Filipino embassy in Qatar. They have supported workers to file legal complaints resulting in wage recovery and end-of-contract benefits for workers, though the number of workers assisted remains small compared to the need for assistance.¹⁶³

Numerous **Indian embassies and consulates in the Gulf have a panel of Indian lawyers on retainer to assist migrant workers** with clerical legal work and pre-court stages of wage claims and other disputes (court cases are run by local Gulf lawyers).¹⁶⁴ Typically the embassy retains the law firms for which the Indian lawyers work rather than the individual lawyers themselves which creates efficiencies.¹⁶⁵ In Qatar, the Indian Embassy has a regular open day.¹⁶⁶ In 2015, India's Ministry of External Affairs launched an online Consular Grievances Management System (MADAD) for lodgment of complaints by migrant workers.¹⁶⁷ The portal allows online forwarding, tracking and escalation of migrant worker claims.¹⁶⁸

Other initiatives to provide legal advice and representation

Law school clinics have been established to provide legal aid to migrant workers seeking to recover wages, including a fledgling legal aid program at Qatar University.¹⁶⁹

In a number of jurisdictions, particularly in the Middle East where legal services are scarce and local connections are useful to resolve wage claims, **communities of expat nationals** support migrant workers to pursue claims.¹⁷⁰ This

includes informal assistance with claims, as well as more formal assistance such as the legal aid clinic established in 2019 by the Indian Community Benevolent Forum in Qatar.¹⁷¹

7. Allow multiple workers to bring grouped claims against an employer

Most wage recovery processes require each worker to submit a separate claim that is individually adjudicated. This is generally the case even for workers who have similar underpayment claims against the same employer, who must each obtain legal assistance and lodge claim documents separately. In addition to multiplying costs and burdens on workers and their representatives, this also creates delays in wage recovery mechanisms which must consider each claim afresh. It may also yield inconsistent outcomes when cases are addressed by different decision-makers.

These challenges can be alleviated by dispute resolution mechanisms which permit **similar claims of multiple workers against the same employer to be grouped together for the purpose of lodging the claim and mediation or adjudication**. For example, in the US, similarly situated workers may bring a collective action¹⁷² or class action¹⁷³ for unpaid wages. One expert has observed that the ability to aggregate claims is critical to workers' ability to bring claims for small amounts of wages, and around 95 percent of private worker wage claims in the US have generally been brought through grouped claims.¹⁷⁴ Over the past six years businesses have increasingly sought to stymie these successes with private employer contracts that require workers to waive their rights to bring collective or class wage claims.¹⁷⁵ Instead, workers are required to participate in confidential arbitration of claims on an individual basis with no transparency or public accountability.¹⁷⁶ This has suppressed worker wage claims through courts, and driven workers to federal and state departments of labour for assistance to recover wages, putting greater resource pressure on public agencies.¹⁷⁷

In Australia, trade unions can bring grouped wage claims on behalf of members under the federal labour law.¹⁷⁸ Standard provisions also allow for class actions on behalf of groups of workers which have increased substantially in recent years.¹⁷⁹ There are also examples of mechanisms adjudicating grouped claims on behalf of large numbers of similarly situated migrant workers in countries that do not permit them to unionise.¹⁸⁰

8. Undertake government-initiated investigations and prosecution of wage theft as part of strategic enforcement

Though this report focuses on migrant workers' ability to pursue claims for unpaid wages, many experts believe that government-initiated investigations and wage recovery are far preferable to reactive enforcement that places the burden on workers to lodge complaints.¹⁸¹ This section briefly addresses several key innovations in government-initiated enforcement but does not examine this important area in detail.

A national labour agency that undertakes effective strategic enforcement

Most countries have a labour agency with power to undertake investigations in response to complaints of wage theft and other labour violations, as well as power to order rectification by the employer. A number of labour regulators also engage in proactive strategic enforcement that results in payment of outstanding wages to workers. Due to under-resourcing, lack of political will and other limitations, labour regulators generally detect and remedy a small fraction of cases of wage theft among migrant workers.¹⁸²

To effectively detect, deter and remedy wage theft, strategic enforcement should include: proactively undertaking audits and investigations of employers rather than waiting for complaints from workers; focusing resources on key industries with high rates of violations; use of criminal prosecutions; strategic use of publicity of enforcement; using licensing to drive enforcement; and seeking up-chain joint employer liability.¹⁸³ It should also include administrative compliance measures of increasing severity which can be used to penalise employers for wage theft and promote wage recovery without recourse to litigation, and deep and ongoing partnerships with unions and civil society.¹⁸⁴

Dedicated support and liaison with migrant workers within enforcement agency

Given the diverse laws, legal processes and institutions which facilitate wage recovery, migrant workers frequently lack knowledge of their legal rights. Many do not know where or how to file complaints and are unlikely to seek information from a government body in which they have little trust. Some jurisdictions have established a **government agency** which is **dedicated to providing support, advice and/or referrals, and which is accessible, trusted, responsive and knowledgeable about the various services available to migrant workers**. The New York State Department of Labor includes a Division of Immigrant Policies and Affairs to conduct outreach to ensure its services are responsible and accessible to the immigrant and refugee population of that state.¹⁸⁵ In Israel, for example, an Ombudsman for foreign workers sits inside the labour ministry and can represent migrant workers.¹⁸⁶

Some experts suggest that **enforcement efforts will remain ineffective without routine, institutionalised collaborations between unions and civil society and government authorities**.¹⁸⁷ The California Strategic Enforcement Partnership creates deep and ongoing relationships between the California Labor Commissioner, the National Employment Law Project and 14 workers' rights and legal advocacy organisations focusing on six low-wage high-violation industries.¹⁸⁸ Given that workers are unlikely to overcome their fear of employer retaliation without support and collective action, the partner organisations provide workers with legal advice on the consequences of pursuing certain claims. They also provide worker intake, assessment and case referral to the relevant agency to collect unpaid wages and strengthen labour compliance more generally.

New jurisdictional bases for city and provincial government agencies to pursue wage theft cases

In a number of jurisdictions, where a central or federal labour agency does not effectively investigate and enforce wage claims, **lower levels of government have created alternative jurisdictional bases and institutions to more forcefully address wage theft**.

In the past five years, many US cities, counties and states have established laws and enforcement agencies to address wage theft and other labour abuses.¹⁸⁹ In some countries, **states or provinces have established specific criminal offences of wage theft** that can be prosecuted by the local agencies (resulting in wage recovery for workers). Prosecutors in other jurisdictions are pursuing wage theft cases under existing larceny and theft offences. In 2020, the state of Victoria (Australia) introduced a new wage theft criminal statute in response to gaps in labour enforcement by the Australian national government (employment is regulated at the federal level but states can regulate crime in many areas). The new Wage Inspectorate of Victoria has strong investigation powers,¹⁹⁰ and jurisdiction to prosecute a range of offences associated with wage theft.¹⁹¹ California has recently passed a law classifying as grand theft the intentional theft of wages, gratuities and benefits to a value of \$950 over 12 months, punishable by imprisonment.¹⁹² State authorities are authorised to recover money owed to workers as restitution. The law treats independent contractors as employees for this purpose, creating a new jurisdictional basis for state authorities to recover money owing to independent contractors.¹⁹³

In federal systems, establishing responsibilities for wage recovery and labour enforcement within multiple levels of government is a valuable way of 'hedging bets' for enforcement as governments and political will shift with electoral cycles.¹⁹⁴ Another benefit in federal systems is that states can pilot more protective or innovative approaches which can then be adopted at the federal level.¹⁹⁵ **However this remains a second-best option to a strong, consistently effective single federal enforcement system.**¹⁹⁶ The establishment of multiple institutions and mechanisms with overlapping jurisdictions can also create confusion for migrant workers, as in Canada, where migrant workers often need legal assistance to understand the various federal and provincial options for recovering unpaid wages and determine which is most appropriate.¹⁹⁷

Stage 2: Obtaining a determination against an employer for all wages owed

Migrant workers who are able to file a wage claim frequently confront a range of further obstacles to obtaining a determination or judgment against the employer for the full amount of wages owed. Migrant workers usually bear the burden of proving wage theft and face evidentiary barriers to establishing an employment relationship and proving hours worked and wages (un)paid. Judicial processes are slow and often result in justice long delayed, and mediation processes are commonly unfair to workers and result in unjust outcomes.

1. Adopt flexible approaches to evidence of an employment relationship and terms of employment

In many jurisdictions, it is common for migrant workers to perform work without a written contract of employment, and/or to be misclassified as independent contractors rather than employees (see also *Ensure labour law covers all migrant workers*, above). They then face challenges demonstrating that an employment relationship existed, in order to trigger the coverage of labour laws.¹⁹⁸

Recognising this challenge, courts in some jurisdictions take a practical, worker-centred approach to determining the existence of an employment relationship where the employer denies any relationship with the worker.¹⁹⁹ Courts in Europe accept a **wide range of evidence** from workers including emails, text messages, voicemails, wage slips, any kind of attendance list or log, photos, uniforms, company ID badges or security passes, and witness statements. In Portugal, for example, contracts of co-workers or a declaration from a trade union stating the existence of a labour relationship can be used as proof.²⁰⁰ In the UK, even in the complete absence of documentary evidence on the part of the worker, a number of Employment Appeal Tribunal judges find in workers' favour on the basis that the worker's efforts to bring a case in itself suggests the existence of an employment relationship.²⁰¹

In some jurisdictions, migrant workers' employment is governed by contract, but their recruitment agency or employer does not provide a copy of the original contract, or substitutes the original contract for a new one with poorer wages and conditions. Recognising this challenge, the government of Saudi Arabia, through its new Labour Relations Initiative, has announced plans to provide **digital documentation of contracts** to provide access to proof of the terms of employment,²⁰² similar to Qatar's digital authentication system for migrant worker contracts.²⁰³ Blockchain contracts are being developed elsewhere to prevent contract substitution throughout the recruitment and employment process.

In Southeast Asia, where domestic workers commonly do not receive a copy of their contract, Justice Without Borders has addressed this challenge by innovatively using data access laws across the migration route to obtain worker contracts. For example, in Indonesia, they have **used public information laws to obtain contracts of documented migrant workers** from the government labour agency (BP2MI) in order to bring wage claims in the country of employment.²⁰⁴ In Singapore, JWB has **obtained copies of domestic worker contracts from private agencies using data protection laws** that enable individuals to request information relating to them from private corporations.²⁰⁵ Registries, including those related to licensing of labour provider agencies, can also be key sources of documentation for workers.²⁰⁶

2. Develop technological systems that generate evidence of wage theft

Migrant workers often struggle to present evidence that they have not been paid the wages they are owed. This may be because they do not have records of wages paid in cash, records have been falsified, or they lack evidence

of hours worked or work performed. In jurisdictions with complex statutory wage rates, workers may also struggle to determine the quantum of wages they are owed. A number of governments and civil society actors have used technology to reduce these barriers.

Requirements that employers provide pay slips and transfer wages electronically

To address the challenge of proving whether wages were in fact paid or the amount that was paid, numerous jurisdictions have introduced mandatory electronic transfer of wages into a bank account at regular intervals. For example in 2018, the Thai government responded to rampant nonpayment of wages in the fishing sector by introducing a **legal requirement that wages be paid electronically into a bank account at least once a month.**²⁰⁷ Though there remain enforcement challenges, the mandated regularity of wage payments has shifted the practice of workers having to wait until the boat owner was paid before they would receive their wages. In Belgium, employers are required to pay all employees via bank deposits rather than in cash.²⁰⁸ Between 2009 and 2021, all of the Gulf states have similarly introduced mandatory electronic wage payments for certain categories of workers. Though electronic transfer of wages reduces barriers to demonstrating wage theft, it may present obstacles for migrant workers who do not have a local bank account, face practical barriers to accessing banking, and/or have low financial literacy that result in a preference to receive wages in cash. For these reasons the ILO has also encouraged exploration of other electronic payment methods such as pre-paid salary cards.²⁰⁹

In addition to proving the amount paid, migrant workers face challenges determining how the amount paid was calculated, whether it correctly reflected the hours worked and whether the employer made any improper deductions. To address these challenges, jurisdictions such as Australia **require employers to provide workers with a pay slip** for every pay period within one day of payment of wages. This must include details of the employer's name and business registration number, gross and net pay, if relevant the hourly rate and number of hours worked, any benefits, overtime or other allowances, and details of any deductions made.²¹⁰ Employers may be fined for providing incorrect pay slips or failure to provide pay slips, and an employer that does not provide pay slips bears the burden of proving the worker was paid correctly if the worker brings a wage claim (see *Place the burden of proof on employers and place legal presumptions in workers' favour for wage claims*).²¹¹

Use of technology to prove hours worked and nonpayment of wages

A number of jurisdictions have developed technological platforms to assist migrant workers prove wage theft. A number of Gulf countries have gone beyond mandatory electronic wage payments and enabled **automatic notification of government if an employer has not deposited wages.**²¹² For example, Qatar's Wage Protection System (WPS) automatically alerts the government if an employer has failed to make any electronic wage payment by the designated date (although government action is not automatic and it generally remains incumbent on the worker to pursue a complaint).²¹³ WPS data can be used in workers' wage claims before the Labour Disputes Settlement Committees, shifting the burden of proof to the employer to provide evidence or testimony that disproves the accuracy of WPS data, and expediting resolution of claims.²¹⁴

The potential of the WPS could be better realised²¹⁵ if it also applied to domestic workers,²¹⁶ and if it were extended beyond simply checking if wages have been paid to also checking whether the amount paid is correct as stated in the contract including overtime.²¹⁷ It could be further strengthened by addressing opportunities for employer wage manipulation (such as miscalculation of overtime, end of service payments, annual leave payments or improper deductions)²¹⁸ which workers struggle to prove because they do not receive pay slips and they cannot access WPS data themselves. Enforcement could be improved by requiring repeat offender employers to deposit pre-payments on the system to ensure timely wage payments to all workers, especially in sectors that commonly have salary delays and 'pay when paid' subcontracting practices.²¹⁹

A challenge that is more difficult to overcome is the criminal practice whereby unscrupulous employers circumvent wage detection systems by transferring the agreed wages into the worker's account but retain the worker's bank

card and subsequently use the card to withdraw some or all of the money for themselves.²²⁰ Some banks in the Gulf have introduced fingerprint and other biometric ATM access features that can address this issue.²²¹ However, these do not address the situation in which employers simply coerce workers to withdraw money and pay it to the employer.

Many migrant workers are paid based on the number of hours they work, presenting opportunities for the employer to claim that the worker worked fewer hours than was in fact the case. To address this challenge, in 2017 the Australian labour agency developed the Record My Hours **smartphone app for workers which automatically records when they enter and leave the worksite**. It uses geofencing functionality that leverages features like Maps, GPS, and the phone's location services.²²² No data is held by the FWO; rather, data recorded by workers is stored on workers' phones and may be uploaded by workers onto cloud storage, or exported via email.²²³ It is available in 18 languages.

Many migrant workers who are paid by the hour also work in jurisdictions with complex statutory or contractual pay rates that include specific overtime rates, rates for work undertaken on evenings, weekends and holidays, and different statutory rates of pay for different industries and levels of appointment. Migrant workers are often unaware of these variations or unable to identify relevant rates that apply to them, and confront difficulties calculating the full amount of wages they are owed for hours worked across different times. To address these challenges, a number of CSOs, unions and governments have created **online wage calculators** to assist migrant workers to determine the quantum of wages they are owed for work performed over a period of time. These include an ILO calculator in Malaysia²²⁴ and a platform created by the Australian labour regulator.²²⁵ In general, these do not result in more workers making claims, but can reduce time to prepare a claim for migrant workers who are already motivated and assisted to pursue wage recovery.²²⁶

3. Place the burden of proof on employers and create legal presumptions in workers' favour for wage claims

Recognising the barriers workers face in proving underpayment, a number of jurisdictions have introduced laws that shift the burden of proof to employers under certain circumstances, with a presumption in the worker's favour in the absence of evidence to the contrary.

Presumptions in workers' favour on duration of employment

It can be difficult for workers to prove the duration of their employment. The EU has addressed this challenge within its Employer Sanctions Directive, which mandates that **once an employment relationship is found to exist, there is a presumption that it has lasted three months**.²²⁷ The burden of proof rests on the employer to prove the employment relationship was less than three months and the burden of proof rests with the worker to prove it was more than three months. In some countries, such as the Netherlands, this has been increased to a presumption of six months of employment.²²⁸

Presumptions in workers' favour on hours worked and wages owed

In Israel,²²⁹ Brazil²³⁰ and Belgium,²³¹ **once a worker has established the employment relationship, the burden shifts to the employer** to disprove a worker's claims in relation to wages owed. In these jurisdictions, the employee does not have the onus of proving that labour obligations were not met.

Israeli law places the **burden on the employer to disprove the worker's claimed hours worked**, once the migrant worker has demonstrated that they worked for the employer.²³² In Belgium, in the absence of a written contract, there is a presumption of full-time employment.²³³ Belgian courts have also shifted the burden of proof to the employer to prove hours worked if the employer does not have a time registration system.²³⁴

Australia has **shifted the burden of proof to the employer where the employer has not provided the worker with pay slips** documenting wages paid, as required under labour law.²³⁵ Under these circumstances, there is a

presumption that the worker was not paid all wages owed, which the employer is required to disprove. The US Supreme Court has similarly held that, in the absence of records, employee testimony creates a presumption of the hours worked and amount paid to the worker.²³⁶

4. Develop fast-track wage recovery processes

The government of the state of Victoria (Australia) recently announced the introduction of a ‘fast-track process’ through which its new Wage Inspectorate can bring cases to recover stolen wages up to AUD 50,000 through the Magistrate’s Court. This may overcome the complex, time consuming and expensive federal judicial process through which workers currently recover small wage claims.²³⁷

In 2018, the UAE established a ‘one-day labour court’ in Abu Dhabi to speed up rulings and settle disputes between workers and employers where the case is straightforward and the value of the claim is less than approximately USD 5,000.²³⁸ This is in addition to rapid adjudication of wage claims at worksites by Mobile Labour Courts, discussed above (see *Make claims forums accessible to migrant workers*, above).

Advocates have recommended that fast track wage claims be available, in particular, to survivors of trafficking as the first step, rather than the last priority in processes that prioritise penal sanctions.²³⁹ However, the authors were unable to identify an example of this practice since most governments focus heavily on the criminal aspect of trafficking which often does not align with worker priorities.

5. Develop fair, professionalised and rights-based mediation processes in which employers are compelled to participate

Most wage claims are not in fact resolved by court processes, but rather by informal negotiation between the parties or mediation involving an independent third party. In many countries, mediation between the worker and employer is the main dispute resolution method used by government agencies to whom migrant workers make wage complaints. It is also often a mandatory first step in a court process.

Fair, professionalised and rights-based mediation processes for resolving wage claims

Given the many barriers migrant workers face to recovering wages through courts or tribunals, mediation of wage claims can deliver wage recovery to migrant workers in a low-cost and timely way. However, in many countries, mediation is performed by bureaucrats who are not trained mediators, and lack legal expertise in relation to relevant laws and contractual arrangements between the worker and employer. Their performance indicators are often based simply on ‘resolution’ of claims or disputes rather than outcomes.²⁴⁰ As a result, mediation processes are often divorced from migrant workers’ legal rights. Because the power asymmetry between migrant workers and their employers remains uncorrected (especially without legal representation), migrant workers tend to accept a compromise outcome that is far less than their lawful entitlement.²⁴¹ For most migrant workers, immediacy of payment is of paramount importance, especially when faced with the alternatives of a prolonged and costly adversarial process, or walking away with nothing.

A detailed analysis of mediation processes is beyond the scope of this study, but demands in-depth further research drawing on effective mediation practices between vulnerable individuals and businesses in the labour migration context and in other areas of law in which mediation processes are better established. At the very least, mediation must be conducted by professional trained mediators with technical experts who can calculate and advise on the amount owed to the worker under statute and contract. Workers should ideally also have legal representation or an advocate accompanying them.

Government agencies should enforce the outcome of mediation. However, if the mediation process or outcome was clearly unfair, the parties should have an opportunity to bring a claim through formal mechanisms. In some contexts, the finality of mediation settlement agreements presents a barrier for migrant workers who are then barred

from pursuing that claim through another forum such as a court or tribunal because the same matter cannot be re-litigated. Under the Philippines' Single Entry Approach, where settlement of the claim through mediation in the country of employment is proven to be 'contrary to law, morals, public order and policy', the settlement can be overturned and will not bar the filing of a claim against a recruiter in the Philippines.²⁴² Of course, this is a very high burden for a migrant worker to meet, especially when they have been given assistance in the process and have apparently agreed to the settlement outcome.²⁴³

Employers compelled to participate in mediation

In all regions of the world, migrant workers often abandon wage claims because the employer simply does not attend the mediation or tribunal process, in the knowledge that they cannot (or will not) be legally compelled to do so and that the worker is unlikely to pursue the matter in court. A number of jurisdictions have introduced consequences for employer non-participation. Most commonly this is limited to a fine or obligation to pay the mediation fees, though **some jurisdictions automatically escalate the case to court or arbitration²⁴⁴ or even enter a default judgment in favour of the party requesting the mediation.**²⁴⁵ (Further consequences for nonpayment of wages are set out in *Rapid accrual of additional penalties to compel payment*, below.) It has been recommended in Australia that where an employer fails to engage in mediation by the government regulator, legislation should establish a presumption in court that the worker's wage claims are accurate.²⁴⁶

The Philippine Overseas Employment Administration (POEA) is able to leverage its powers to **remove the accreditation of foreign employers and suspend or revoke the licenses of recruitment agencies** in order to facilitate effective conciliation and enforce employer/recruiter compliance with approved settlements through the mandatory conciliation-mediation process.²⁴⁷ Cambodia has introduced a dispute resolution process for migrant worker grievances designed to **compel participation through short timeframes and rapid escalation to the next enforcement level, or default judgment, if the recruitment agency does not participate.**²⁴⁸

Stage 3: Enforcing judgments and ensuring workers can collect payment

Many workers who obtain a successful judgment or determination of wages owed by the employer never actually receive the wages the employer was ordered to pay.²⁴⁹ This is most often because the employer liquidates, disappears or simply refuses to pay. **Employers know they are very unlikely to encounter any meaningful financial or other consequence for noncompliance with a wage judgment, and migrant workers are rarely able to undertake enforcement proceedings to compel payment.** Businesses in a supply chain can safely assume they will not be held responsible for remedying wage theft by their supplier or contractor if those entities liquidate or do not pay their workers, leaving the workers without recourse. In each of the six regional workshops held as part of this project, participants identified enforcement of judgments as a key overriding concern.

A number of creative initiatives have been implemented to enable migrant workers to enforce determinations or judgments or recover their outstanding wages in other ways.

1. Government agencies should proactively pursue payment of wage judgments on workers' behalf

In some jurisdictions, government agencies have the power to proactively pursue payment of a wage determination on behalf of a migrant worker. In France, for example, the migrant integration agency plays a significant role in enforcing final decisions that require employers to make a payment to an undocumented worker. In these cases, labour court registries are required to send a copy of the decision to the French Office for Immigration and Integration to **commence recovery proceedings against the employer and transfer unpaid wages to the worker** – regardless of whether the worker remains in France or has returned home.²⁵⁰ As this is the agency tasked with migrant integration (rather than border enforcement), provision of this information does not in itself trigger immigration enforcement action against an undocumented worker who is still in France. Though there is no formal firewall to protect undocumented workers who bring claims to court from action by immigration authorities, apparently this has almost never occurred and is broadly viewed as undesirable.²⁵¹

In some other jurisdictions, labour regulators can pursue payment of wages for workers after determining wages are owing. For example, in Australia, **the labour regulator issues a range of notices, penalties and enforceable agreements that compel repayment of wages, which the regulator can escalate to litigation if the employer does not comply.**²⁵² Although these notices often result in wage recovery, they are only issued in a small proportion of wage theft cases.²⁵³ Because of the resources involved in federal court litigation, only around 50 cases are pursued each year.²⁵⁴ As a result, the broader impact of these efforts remains somewhat limited.

In at least two jurisdictions, **labour authorities can physically go to the employer and demand payment on the spot.** In Belgium, labour inspectors from the Social Legislation Inspectorate can encourage the employer to pay wages 'on the spot' when they come across unpaid undocumented workers during inspections,²⁵⁵ to avoid further action being taken against the employer.²⁵⁶ The UAE's mobile labour courts (see *Make claims forums accessible to migrant workers*, above) conduct hearings and mediation at the workers' accommodation and aim to ensure that all the workers' pending salaries are paid on the spot.²⁵⁷

2. Create meaningful commercial consequences for businesses that ignore wage judgments

In the absence of strong labour enforcement, a number of jurisdictions have used other regulatory schemes to establish meaningful commercial consequences for employers that do not comply with wage judgments. In general, more significant commercial consequences are likely to be used less frequently by regulators, either due to a lack of political will to impose such serious consequences on employers, or to avoid putting an employer out of business with associated job losses. Governments are therefore faced with the challenge of establishing consequences that are sufficiently serious to be commercially meaningful, without being so significant that they are rarely invoked.

Rapid accrual of additional penalties to compel payment

A number of jurisdictions have sought to compel swift rectification of underpayment by establishing regimes for **rapidly escalating penalties for each day wages remain unpaid**. For example, in the US District of Columbia, **if an employer fails to pay timely wages to its employees, the employer is liable for a further 10 percent of the unpaid wages for each working day that the failure persists, or an amount equal to treble the unpaid wages**, whichever is smaller.²⁵⁸ Advocates have found that the potential for such a penalty creates **a strong incentive for an employer to settle a claim for the full amount owing or up to double that amount**.²⁵⁹ In the Netherlands, labour inspectors can issue a fine whereby the employer must pay €500 per underpaid employee for every day that employee is not paid (up to a maximum of €40,000 per employee) however in practice this tool seems to be rarely if ever used.²⁶⁰ In Brazil, a Senate Bill introduced in 2015 (not ultimately passed), sought to increase the penalties on employers in cases of wage default.²⁶¹ It would have imposed a 5 percent fine in case of late payment, with an additional 1 percent interest rate per day of delay until the effective date of payment.

Labour migration registration and licensing consequences

In response to exploitative practices throughout the labour migration cycle, many jurisdictions have established licensing or registration requirements for providers that facilitate labour migration. These include migrant recruitment and placement agencies in countries of origin and employment, labour providers, and direct employers of migrant workers. A number of **jurisdictions have used their powers to deny, suspend or rescind a licence in order to create a significant commercial consequence for noncompliance with a wage judgment**.

For example, attachés from the Philippine Overseas Labor Office (POLO) based in countries of employment can demand that an employer attend a mediation session with a Filipino worker who has made a complaint. If the employer does not attend or wages remain outstanding, POLO can suspend the accreditation of the principal or foreign employer until wages are paid.²⁶² The Philippine Overseas Employment Administration also has power to remove the **accreditation of foreign employers** and **suspend or revoke the licences** of Philippines-based recruitment agencies if payments are not made.²⁶³ The worker is also able to trigger this process by filing a case before the labour courts in the Philippines, based on the joint and several liability of recruiters and employers for contractual breaches.²⁶⁴

In Qatar, automatic determination of nonpayment of wages through the electronic Wage Protection System (WPS) has resulted in prohibition on companies recruiting migrant workers or renewing contracts until the nonpayment is rectified (though the WPS can only detect nonpayment and not underpayment).²⁶⁵ Similarly in Israel, **employers who do not pay workers their salary can be put on probation or lose their permit to employ migrant workers** for a period.²⁶⁶ This has serious consequences for businesses in industries such as agriculture that are heavily reliant on migrant workers.²⁶⁷

Under the Canada-Mexico Seasonal Agricultural Worker Program, Mexico can **ban employers** in Canada from hiring Mexican workers under the program, though in practice this is generally only used in serious abuse cases rather than wage cases.²⁶⁸ Canada's federal government website also lists employers who have been decertified from the program.²⁶⁹ During the Obama administration, the US Department of Labor took a proactive approach that sought to

better coordinate the H-2A employer certification process in the agricultural sector with wage and hour enforcement, using information relating to prior violations to prevent those with numerous violations from obtaining certification in the future.²⁷⁰

In many jurisdictions, migrant workers are employed by a labour provider which then deploys the workers to various businesses for periods of time. A number of jurisdictions have enacted **licensing or registration schemes for labour providers** that connect the granting and renewal of licenses with ongoing labour compliance. In the UK,²⁷¹ and some Australian states²⁷² and Canadian provinces,²⁷³ the bodies enforcing these schemes have the right to suspend, vary or cancel licences for failure to comply with licensing conditions, including labour law compliance.²⁷⁴ These schemes create a deterrent against wage theft for labour providers, and drive users to only contract with licensed providers who can be located and held to account for wage theft (unlike many who disappear overnight or phoenix as a new company).²⁷⁵

Some licensing authorities have established channels through which workers may report wage underpayment that trigger investigations by the authority and result in wage recovery. For example, the UK Gangmasters and Labour Abuse Authority (GLAA), which operates in the agriculture, food and fish processing industries, similarly **pressures labour providers to comply with labour laws through exercise of ‘soft power’ with which it identifies a problem and threatens to cancel or withhold a licence if the problem is not resolved.**²⁷⁶ The GLAA has recently increased its emphasis on seeking to recover money for workers as part of its licensing and enforcement process.²⁷⁷ However, this informal power remains underutilised, and is only used in the narrow set of industries the GLAA regulates.²⁷⁸ Although the GLAA has recently increased the amount of money recovered in a year by about 70 percent, the GBP 267,000 recovered in the last financial year amounts to a small fraction of the likely amount of wages owed to workers, and wages are not recouped for undocumented workers.²⁷⁹ The Queensland (Australia) Labour Hire Licensing Compliance Unit exercises similar soft power, undertaking inspections in response to worker complaints through its online ‘Report a Problem’ portal.²⁸⁰ It has verified worker-reported underpayments in numerous cases resulting in recovery of unpaid wages for those workers,²⁸¹ though these are a small number compared with the scale of violations by labour providers.

Licensing consequences impacting broader operation as a commercial business and consumer pressure

Some jurisdictions have linked outstanding wage judgments with an employer’s ability to do business. Chicago’s Anti Wage Theft Ordinance allows the city to **revoke any business licence** of an employer found guilty of wage theft,²⁸² and cities and counties in Florida and New Jersey have passed similar ordinances.²⁸³ In the absence of specific connections between outstanding wage judgments and licensing, some licence issuing agencies have used **general licensing law requirements of ‘good moral character’, or ‘financial responsibility’ to promote compliance with labour laws.** For example, in 2010, the New York State Racing and Wagering Board revoked the licence of a thoroughbred horse trainer on the grounds of ‘financial irresponsibility’²⁸⁴ as a result of ignoring a state labour department order regarding overtime violations.²⁸⁵

In some jurisdictions, **noncompliance with wage judgments can result in loss of certifications such as health certificates that are necessary to operate within a particular industry.** This can be **a particularly powerful tool for small and medium businesses that are not part of a supply chain** in which pressure can be brought to bear by other actors or supply chain consequences. For example, under the Jersey City Wage Theft Ordinance, the city department responsible for issuing and renewing a business license sends a request to the New Jersey Department of Labor and Workforce Development for any wage claim forms filed against a licence applicant. Businesses with outstanding claim forms will have 30 days to prove payment or that they have appealed the order. Failure to pay will result in business licence suspension.²⁸⁶

The Houston Wage Theft Ordinance establishes **licensing consequences for outstanding wage judgments.** A public database on the city’s website lists those companies with a documented record of wage theft. The Ordinance

provides that if an employer is included in a wage theft database and currently holds, or wishes to apply for or renew, a license or permit issued by the city (such as restaurants or food services), the director or licensing official or board shall revoke or refuse to issue or renew any permit for five years.²⁸⁷

The San Francisco Department of Public Health (SFDPH) similarly has authority to revoke or suspend a restaurant permit when a business violates any local, state, or federal law.²⁸⁸ The San Francisco Office of Labor Standards Enforcement (OLSE) has collaborated with SFDPH in the exercise of its permit authority to compel resolution of wage underpayment cases to restaurant workers.²⁸⁹ Also in California, the Santa Clara Permit Enforcement Program allows the County to **temporarily suspend or revoke a restaurant business' food health permit if a business does not comply with an existing court judgment for wage theft** or other workplace violation.²⁹⁰ The program is administered through a collaboration between the Santa Clara Office of Labor Standards and the Santa Clara County Department of Environmental Health - Consumer and Environmental Protection Agency.

The Santa Clara Office of Labour Standards also enables **consumer pressure** to be leveraged through the inclusion of information about outstanding wage theft violations in the county's 'SCCDineout' **app which allows diners to check restaurants'** food safety compliance records on their smartphones.²⁹¹ The Office also started a program where **restaurants will be closed for a minimum of five days for failing to satisfy an outstanding wage theft judgment, with notice to the public as to the reason for the suspension.**²⁹² A number of other jurisdictions also publish lists of employers that have outstanding wage judgments.²⁹³

In New York's garment industry, if the state Labor Commissioner finds that the manufacture of clothing involves wage violations, the Commissioner may notify consumers by **placing a tag on relevant articles of clothing with the words 'unlawfully manufactured'**, and it is a misdemeanor offence to remove the tag.²⁹⁴

Conditioning eligibility for public procurement on compliance with wage payments

Governments at all levels (city, provincial and national) can exercise powerful leverage to drive businesses to pay workers' wages correctly and comply with wage judgments by making this a condition of supplying goods and services to government. For example, in the Australian Capital Territory, in order to tender for government work, companies must obtain a Secure Local Jobs Code Certificate requiring compliance with all workplace laws.²⁹⁵ One or multiple breaches of the Code can lead to suspension or cancellation of a Code Certificate or conditions may be added to it, including prohibition on applying for a further Code Certificate for 12 months.²⁹⁶

Under Houston's Wage Theft Ordinance, companies that appear in a database of employers with a documented record of wage theft are ineligible for city contracts and subcontracts.²⁹⁷ Similarly, in Qatar a scheme being piloted by the Public Works Authority requires contract bids to demonstrate a clean record in the Wage Protection System (still at an early stage so data on efficacy is unavailable).²⁹⁸

Giving workers access to commercial assets to fulfil wage claims: Workers' liens, surety bonds, and government seizure of assets

Various jurisdictions in North America have established mechanisms through which a worker or a government may freeze or seize the commercial assets of a business (or even its corporate officers) in order to satisfy an outstanding wage claim. For example, a number of US states have introduced or enacted laws that enable a worker with an outstanding wage claim to impose a **worker lien on the employer's property or assets which prevents the employer from being able to use those assets for other purposes.** A new Washington State law allows for the imposition of administrative liens and bank levies on an employer that has a judgment against it for unpaid wages.²⁹⁹

A wage lien established through this civil action gives the claimant rights to the employer's property as a means of enforcing collection of the debt.³⁰⁰ Texas has enacted a similar provision that allows for wage liens against employers and publicly lists all employers that have liens greater than USD 2,000 against them.³⁰¹

The US states of Wisconsin and Maryland go further, allowing an investigation agency to file a pre-judgment lien

against employers.³⁰² For instance, in cases where the Wisconsin Department of Workforce Development believes that an employer's assets are at risk of being liquidated while a wage claim is being investigated, the **government department can file a lien against the employer's property while the investigation is pending.**³⁰³

A bill which has been introduced in the state of New York goes further still. The SWEAT Bill,³⁰⁴ if passed, would allow **current and former employees to obtain a lien against an employer's real or personal property based merely on an allegation of underpayment** of wages rather than a judgment.³⁰⁵ Such an 'employee lien' could be imposed not only against corporate entities, but personally against individuals, including managers, human resources personnel, and supervisors, in the amount of the perceived value of the employee's wage claim, plus damages.

Going even further, New York City and New York State have passed **laws requiring all businesses in specific industries with high violation rates to post a bond**, including car washes (required to register with New York City and post a wage bond)³⁰⁶ and nail salons (required to post a wage bond with the state).³⁰⁷ These appear to be having a positive impact.

The Texas Workforce Commission (TWC) has power to compel an employer to post a **surety bond** issued by a surety company if the employer is convicted of two labour law violations or if a final wage payment order remains unpaid for more than ten days. If an employer fails to deposit the bond required, the Commission may pursue a court order that the employer cease doing business until they furnish the bond.³⁰⁸

In British Columbia (Canada), the **government may directly seize assets** of recruiters or employers to pay a worker any wages lost because of the contravention of the labour migration legislation (which includes misrepresenting employment opportunities including wages, benefits or other terms of employment), as well as reasonable and actual out of pocket expenses incurred by the person due to the contravention.³⁰⁹

Disruption of supply of goods and services until wages paid

In recent years, advocates have sought to achieve behavioural change and accountability for worker exploitation by creating commercial consequences associated with disruption of the movement of goods within a supply chain. These commercial consequences generally dwarf the amount of money a business would lose in any fines or penalties that are rarely commercially meaningful. For perishable goods such as fresh produce, they create urgency to resolve the issue within hours or days in order to risk losing the entire value of the product.

At the international level, a number of jurisdictions including the US have enacted **laws that prohibit international importation of goods** produced in supply chains with modern slavery or forced labour.³¹⁰ These have successfully been used to disrupt supply chains involving worker exploitation, by stopping goods at the border and preventing their importation into key markets.³¹¹ Wage remedies have been required in at least one case, after a finding of forced labour under the US scheme.³¹² These types of laws could potentially be replicated or expanded beyond forced labour and modern slavery to include blocks on importation of goods from businesses with outstanding wage payments to workers (and other labour noncompliance falling short of forced labour).

Similar laws already operate in relation to movement of goods *within* the US by blocking the importation of goods across state/provincial boundaries. The *Hot Goods Act*, a powerful but underutilised law, **prohibits the domestic shipping of goods in interstate commerce if those goods were produced in violation of the minimum wage, overtime or child labour provisions of the Fair Labor Standards Act (FLSA).**³¹³ The Act covers manufactured goods, agricultural goods or any other product sold or shipped in interstate commerce. If an employer does not voluntarily agree to withhold goods from shipment pending resolution of an investigation, the Department of Labor (DOL) may seek an injunction to prevent shipment of the affected goods and effectively seize and freeze those goods. This provision applies when DOL finds instances of wage theft and extends liability to people and entities that manufacture or handle goods produced using unfair labour standards. DOL has also begun to use a less formal enforcement mechanism known as a 'hot goods' objection, in which DOL notifies the employer and employer's customers that the employer has violated the FLSA, and 'the goods are potentially "hot goods"'. DOL's use of the 'hot

goods' objection—the threat of an injunction—effectively places a freeze upon goods.³¹⁴

Historically, DOL has used the hot goods injunction predominantly in the garment industry to reduce the incidence of sweatshops. The tool is especially useful for premises-based jobs that are able to be inspected,³¹⁵ and more recently, the tool has been used in the agricultural industry.³¹⁶ DOL is currently working to implement similar provisions that relate to services, in addition to goods.³¹⁷ Such provisions exist in state jurisdictions such as New York (for garments)³¹⁸ and California,³¹⁹ but are similarly underutilised.³²⁰ In the context of workers compensation claims, Massachusetts provides that if an employer has failed to provide compensation to a worker, the commissioner may serve a **stop work order** on the employer requiring immediate cessation of all business operations at the job site until rectified.³²¹

Former Head of DOL's Wage and Hour Division, David Weil, observes that the hot goods authority and Enhanced Compliance Agreements are important tools available under the law to have an impact on wage recovery and increased compliance, but need to be applied with incredible care and precision to be effective and administratively sustainable.³²² These tools are considered far more powerful than fines because they strike at the root of the wage theft problem compared with small penalties that become business as usual in the businesses where the violations pop up.³²³

3. Extend liability for wage payment beyond the direct employer

In addition to the use of importation bans to create broader commercial supply chain consequences for employer noncompliance, numerous jurisdictions have imposed legal joint liability for unpaid wages on other entities beyond the direct employer. This includes liability of businesses for wages of workers supplied by labour contractors, liability of clients and principal contractors for nonpayment of subcontractors' workers, and liability on buyers in production supply chains, and personal liability of corporate officers. Advocates are also seeking to use existing domestic laws on principles of agency and employment relationships to hold principals liable for satisfying unpaid wage claims, particularly in the wake of COVID-19.

Liability for workers supplied by labour providers

California law **treats a host business as the direct employer of workers supplied by a labour provider.**³²⁴ It mandates that a business shares all civil legal responsibility and liability for workers supplied by a labour provider, including the payment of wages and securing workers compensation.³²⁵ The business cannot contract out of these responsibilities, though the business may enforce remedies against the labour provider for liability created by the contractor's actions.³²⁶ The statute also prohibits retaliation against a worker for filing a complaint, and requires the business and labour provider to make records available to government enforcement agencies as if it were the direct employer.³²⁷

Liability for workers of contractors and subcontractors

Industries such as construction typically involve multiple levels of subcontracting. When workers of a subcontractor are not paid (often because the subcontractor has not been paid by the contractor, or the subcontractor becomes insolvent), the workers have no recourse against the contractor or lead firm. A number of jurisdictions have made **lead firms and principal contractors jointly liable for subcontractors' workers'** receipt of wages (or payments) and labour conditions, most commonly in public works projects.³²⁸

For example, in France, the client must approve the subcontractors and the method of their payment before any agreement with the main contractor is finalised.³²⁹ The client and the principal contractor are then jointly liable for payment to the subcontractors who can claim directly against the client if the contractor fails to pay.³³⁰ Under the relevant legislation, subcontractors have a right to direct payment from the client for 'public works' (ie works ordered by the national government, local entities or public companies). For other or 'private works', subcontractors that have been approved by the client can claim payment from the client if the main contractor fails to pay the

amounts due.³³¹ The principal contractor is required to check and report on subcontractors' payment of workers.³³² Other European jurisdictions similarly establish joint liability, including a requirement in Belgium that the principal contractor pay wages of subcontractors' workers if the latter fails to do so,³³³ and in Greece, that the client pays wages if the principal contractor fails to do so.³³⁴ Under Brazilian law, first tier contractors can be held responsible for subcontractors' noncompliance with labour obligations,³³⁵ and a labour court guideline further extends chain liability to certain project owners in construction projects.³³⁶

A number of US states have recently introduced laws imposing automatic liability in situations involving subcontracting, and other states are expected to follow suit.³³⁷ For example, in Maryland, a **general contractor is jointly and severally liable for wages that have not been paid to workers of subcontractors, including lower-tier subcontractors. The general contractor is also liable for liquidated damages of up to three times the wage, as well as reasonable attorney's fees and costs.**³³⁸ In Virginia, in construction projects over USD 500,000, in addition to the liability of the general contractor for unpaid wages of subcontractors at any tier, **general contractors are deemed to be the employer of the subcontractor's employees for the purpose of civil and criminal penalties for unpaid wages** (ranging from misdemeanours to felonies).³³⁹ These laws provide some levels of protection for general contractors acting in good faith.³⁴⁰

In California, in addition to liability for wages, a direct contractor for private construction work is also liable for all sub-tier subcontractors' unpaid employee benefits and contributions (for labour within the scope of the contract between the direct contractor and the project owner).³⁴¹ This is the case even if the contractor has already paid the subcontractor(s) in full.

Some jurisdictions have established liability for unpaid wages between businesses outside the subcontracting context. For example, in response to widespread underpayment of migrant workers in franchise businesses, Australia established **liability of franchisors and of holding companies for underpayment of workers in franchisee businesses** in which the franchisor has a significant degree of influence or control.³⁴²

Following widespread nonpayment of workers in garment manufacturing during COVID-19, garment workers and their unions have brought test case litigation to **hold global apparel brands liable for unpaid wages as joint employers**, along with their suppliers.³⁴³ Coordinated by the Asia Wage Floor Alliance, these cases have been brought under existing national employment and commercial laws in four Asian countries of production – India, Indonesia, Sri Lanka and Pakistan – and the strategy is being explored in Bangladesh and Cambodia.³⁴⁴

Liability of recruitment and placement agencies

A number of jurisdictions **hold recruitment and placement agencies jointly and severally liable for compliance with the worker's contractual and/or statutory employment rights**, including unpaid wages.³⁴⁵ This theoretically enables migrant workers to pursue wage claims against recruiters after returning home if they were unable to pursue a claim against the employer before leaving the country of employment. For example, in the Philippines, both the foreign employer and the recruitment agency have 'joint and solidary liability' for any monetary claims arising from an employment relationship with a Filipino worker, meaning that the migrant worker can pursue the recruitment agency in the Philippines for the entirety of a wage claim.³⁴⁶ However, few workers in fact bring successful claims against recruitment agencies in most jurisdictions³⁴⁷ because, as with wage claims against employers, returned migrant workers confront obstacles to pursuing these claims and enforcing judgments against recruitment agencies, including where recruiters cease operations or have inadequate assets.³⁴⁸

Personal liability of corporate officers and shareholders

In general, a company's directors and other corporate officers are not held personally responsible for fulfilling the company's debts if the company defaults. However, a number of jurisdictions have been willing to 'pierce the corporate veil' to hold corporate officers accountable for egregious corporate conduct. In some jurisdictions, this includes

fulfilment of outstanding worker wage claims. For example, under the US *Fair Labor Standards Act*³⁴⁹ **corporate officers with operational control of the enterprise, such as a company's CEO, can be held jointly and severally liable for fulfilling unpaid wage claims,³⁵⁰ even if the officer was not responsible for the nonpayment of wages.**³⁵¹ A number of US state laws similarly hold corporate officers jointly liable for fulfilling wage claims.³⁵² In New York, liability extends beyond corporate officers to include the **ten largest shareholders of a corporation** (or members of a public company), who can be held jointly and severally liable for all debts, wages, and salaries due and owing to employees.³⁵³ The provision applies to any domestic or foreign corporation that provides services in New York, regardless of where the business is incorporated.³⁵⁴ However, there are few cases indicating this has been applied.³⁵⁵ Under a new Washington state law, **employees can bring civil actions to enforce wage claims and hold the employer's corporate officers liable for additional damages if the wage violation was wilful.**³⁵⁶

4. Establish government schemes and other funds to pay wages where the employer will not or cannot pay

A number of governments have recognised the challenges workers face in recovering the wages they are owed if the employer becomes insolvent or simply refuses to pay the outstanding judgment (in the absence of meaningful consequences for noncompliance). A range of schemes have been established to cover worker claims for outstanding wages. Advocates also recommend **prioritisation of workers with unpaid wages among creditors in an employer's insolvency proceedings.**³⁵⁷

Government guarantees for wage payment if employer cannot or does not pay

Some jurisdictions have **government funds that can cover worker wage payments in the event an employer liquidates, and extend this coverage to migrant workers.** For example, the UK National Insurance Fund automatically entitles workers to recover up to eight weeks of unpaid wages when their employer liquidates. Migrant workers are eligible for the payment if they have paid National Insurance and are on the payroll at the time of liquidation.³⁵⁸ Canada's Wage Earner Protection Program also provides unpaid wages to migrant workers with a valid social insurance number when an employer has gone bankrupt or become subject to receivership.³⁵⁹

Some jurisdictions **extend coverage of insolvency funds to undocumented workers.**³⁶⁰ For example, under Oregon's Wage Security Fund, any employee can recover their wage claim judgments from the fund when the employer has ceased doing business and does not have sufficient assets to pay the wage claim, and the claim cannot otherwise be fully and promptly paid.³⁶¹ The Fund is financed through employer taxes.

The EU 'Employers' Insolvency Directive' (2008/94/EC) grants rights to all workers (including migrant workers and undocumented workers) in relation to their employer's insolvency and obliges member states to ensure government agencies take over outstanding remuneration claims resulting from insolvency (Article 3). The liability of these agencies can be limited but minimum standards are established (Article 4).³⁶² In the Netherlands, undocumented workers are entitled to access insolvency benefits under certain circumstances.³⁶³

In 2020, Qatar established a Workers' Support and Insurance Fund which may pay workers directly for outstanding wage judgments issued by a Qatari court or dispute resolution authority and then seek reimbursement from the employer.³⁶⁴ Though considered a promising development, it has so far resulted in very few payouts.³⁶⁵ Qatar's Supreme Committee for Delivery and Legacy, which oversees contracting for the construction of stadia for the World Cup, is also authorised to repay unpaid wages to workers who were not paid by its contractors (and the Committee can then recoup these funds from contractors).³⁶⁶ According to one social audit, despite documented noncompliance with wage payments among contractors, the Supreme Committee appears to have provided direct redress to workers in very few cases.³⁶⁷

In October 2018, the UAE Government announced the introduction of a **compulsory employer-funded insurance scheme, Taa-Meen.**³⁶⁸ Employers would contribute AED 60 (USD 16) per employee a year to insure against worker

claims for unpaid end-of-service benefits, vacation allowance, overtime allowance, unpaid wages, return ticket and compensation for work injury. The scheme would provide coverage of AED 20,000 (USD 5,400) per worker. In April 2021, the Ministry of Human Resources and Emiratization announced that employers that fail to pay their employees' wages will be required to pay increased insurance premiums.³⁶⁹ The effectiveness of this scheme is not yet known.

Though government (or private) insurance schemes serve the critical function of ensuring workers receive the wages they are owed where there is no other recourse for payment, they are not a substitute for strengthened enforcement as they may reduce employer accountability and may not provide a sufficient deterrent against future wage theft on their own.

Project bank accounts and swift dispute adjudication to release payments to subcontractors in large construction projects

Large construction projects generally involve multiple levels of contracting and subcontracting. Migrant workers employed by subcontractors often do not get paid because the subcontractor has not been paid by the contractor, potentially because the contractor has not been paid by the lead client. In addition to holding lead firms and contractors jointly liable for wage payments for subcontractor employees (see *Extend liability for wage payment beyond the direct employer*, above), governments have introduced further approaches to addressing these issues in the construction industry. Modified versions of these models could potentially be adopted by corporations in other industries with multi-tiered supply chains such as apparel and manufacturing.

Some jurisdictions have introduced legislation establishing **project bank accounts (PBAs) within large construction projects**. This is a **ring-fenced account held in trust for the contractual supply chain, through which contractors may access funds to pay workers in cases where money has not flowed to the employer from a contractor or lead client**. For example, in 2009, the UK determined that all public bodies must adopt PBAs to tier 3 contractors on future contracts unless there are compelling reasons to not do so.³⁷⁰ The city of Seoul has developed a similar scheme, called the Subcontract Payment Monitoring System (sPMS), whereby all funds spent by the Seoul Metropolitan Government on construction projects are paid through a PBA administered by the general contractor.³⁷¹ A process is established for a subcontractor, who has not yet been paid for work undertaken, to request the rapid transfer of funds from the Seoul government to the account to meet labour costs.³⁷²

Other jurisdictions have established mechanisms for **rapidly resolving disputes and compelling payment within construction project supply chains**. For example, the UK has introduced a process of rapid adjudication to ensure that disputed items in payment claims, which are often the major cause of interim payment delay, are rapidly adjudicated.³⁷³ This facilitates the payment of undisputed items while the disputed items are being discussed and agreed. This approach has since been followed by Ireland, Singapore, Malaysia and Australia.³⁷⁴ In the Australian state of New South Wales, contractors have a non-derogable right to progress payments³⁷⁵ and parties have access to a rapid adjudication process for payment disputes, in which the adjudicator must issue a binding decision within 14 days.³⁷⁶

In a number of jurisdictions, including the UK, New Zealand, Singapore, Malaysia, Ireland and various states in Australia, **prompt payment legislation bans 'pay when paid' clauses** in contracts, in order to improve the flow of payment down the supply chain.³⁷⁷

Use of registration deposits to repay wages

In some jurisdictions such as the Philippines,³⁷⁸ Nepal³⁷⁹ and Cambodia,³⁸⁰ **funds to satisfy a judgment against a recruitment agency (such as wages owed to the migrant worker) may be taken out of the deposit paid by the recruitment agency as a condition of obtaining a licence**. Though in theory this could provide an important safeguard for workers to enforce judgments, in countries such as Cambodia workers are rarely able to access recruiter deposits³⁸¹ and, in the Philippines, agencies often hold insufficient deposit balances to cover claims awarded to workers.³⁸² Recruitment agencies' close relationships with government may also contribute to government reluctance

to access recruiter deposits to pay worker claims.

Canadian provinces such as Quebec, British Columbia and Alberta require mandatory licensing for Temporary Help Agencies which includes payment of a surety bond ranging from USD 15,000-25,000. In Quebec the security deposit may be used to guarantee the performance of a judgment, in the event that the Agency or its client enterprises fail to pay their employees.³⁸³ In Saskatchewan, recruiters and consultants must deposit USD 16,500 to obtain a licence, which can be used to pay workers.³⁸⁴ Data was not available on instances in which deposits have been used to pay workers.

In Sweden, before employers of berry pickers receive permission to recruit migrant workers from abroad, they must first provide the Migration Agency with a bank guarantee attesting that funds are available to cover wage payments.³⁸⁵ Employers must also guarantee that wages will be paid despite poor availability of berries or where berry pickers are not skilled enough to pick the predicted amounts.

In the UAE, prior to the introduction of the employer-funded insurance scheme (mentioned above), upon determining wages were owed to migrant workers, government ministry officials had the power to liquidate the employer company's bank guarantee and used the funds to pay workers and provide tickets for those wishing to return home.³⁸⁶

Private insurance schemes to cover wage claims

It may be possible for insurers to establish private schemes under which a business (or individual) could insure itself against wage claims by workers in the same way as businesses are insured against worker compensation claims for accidents and injuries at work. These could accompany initiatives for holding entities other than direct employers accountable for satisfying unpaid wage claims. The authors were unable to identify examples of this having been implemented in any jurisdiction.

5. Enable workers to access recovered wages through banks in their home country

In some instances in which employers do in fact comply with wage judgments, workers are nevertheless unable to receive those payments because they have returned home, often to rural areas, and do not have access to a bank account in which to deposit a cheque in foreign currency or cannot receive an electronic bank transfer at low cost.

US/Mexico-based organisation CDM has addressed this challenge by developing a **transnational settlement distribution mechanism** in partnership with Mexico's Banco de Ahorro Nacional y Servicios Financieros, which provides transfers to Mexico from US attorney trust accounts at a low cost to ensure that migrants can easily and safely receive their settlement funds from US lawsuits in Mexican pesos.³⁸⁷ This has allowed CDM to assist US law firms and non-profits to distribute hundreds of thousands of dollars of settlement funds to Mexican-based clients, many of whom are located in rural areas.³⁸⁸

Many jurisdictions retain wages recovered by the government, permitting workers to claim these within a period of time. Some jurisdictions, such as the US,³⁸⁹ have a website on which workers can search for employers that have paid wages but these are significantly underutilised because they depend on workers being aware of the website and the employer's legal identity and able to conduct an online search in English.

Alternatives to government and judicial processes for wage recovery

This study focuses on wage recovery through government and judicial processes in order to identify concrete goals for improving these. Because these processes do not deliver swift, consistent remedies for wage theft to migrant workers, advocates often pursue alternative channels for recovering wages for migrant workers. Further research is required to evaluate promising practices within these approaches and determine how they can be most effectively implemented and leveraged alongside government-based mechanisms.

The most common method used by migrant worker advocates and lawyers to recover wages is **direct contact or negotiation with the employer**. Frontline organisations in the UK have observed that the involvement of any third party (not necessarily a lawyer) creates pressure on the employer and increases the likelihood the employer will pay the migrant worker the money owed.³⁹⁰ However, in many jurisdictions, demand letters are commonly ignored by employers who do not anticipate meaningful action or consequences, or employers settle the matter for a small fraction of the amount owed to the worker. In contrast, Israel's main organisation providing legal services to migrant workers, Kav Laoved, estimates that in over 90 percent of cases in which they represent workers the employer settles and pays the worker the full amount they are owed. The legal director attributes this high success rate to the serious legal and reputational consequences if the case goes to government or court enforcement (including suspension of their permit to employ migrant workers), and the fact that the organisation is well known for its expertise in labour cases and for only pursuing credible claims that it has vetted.³⁹¹

Trade unions in numerous countries have developed successful initiatives to build and exert migrant worker power through **worker organising, collective action and direct engagement with employers**. Numerous unions are now looking to build power through stronger connections through **transnational unions and between national unions across migration corridors** (see also *Unions and legal services that facilitate cross-border claims* above).

In the US, at least two **worker-led social responsibility (WSR) programs** have used the leverage of lead firms in their supply chain to overcome many of the barriers that impede farmworkers – particularly migrant farmworkers – from remedying wage theft.³⁹² The Fair Food Program (founded by the Coalition of Immokalee Workers) and the Milk with Dignity Program (founded by Migrant Justice) secure binding commitments by buyers in the produce and dairy industries, to require their supplier farms to meet the standards in worker-created codes of conduct.³⁹³ The programs drive enforcement through prompt market consequences such as suspensions of purchases from noncompliant suppliers.³⁹⁴ The programs provide worker-to-worker rights education sessions and create private systems in which workers can make confidential complaints and participate in investigations conducted by NGO teams that do not consider immigration status.³⁹⁵ WSR programs reduce retaliation risks by immediately suspending purchase orders from employers that retaliate against a complainant worker. However, some farmworkers still experience immigration fears that impede reporting and present ongoing challenges for WSR programs.

In a range of countries of origin and employment, civil society organisations are **training migrant paralegals** to expand delivery of legal assistance and information across migrant communities. NGOs such as Issara Institute (Southeast Asia) also strategically **develop relationships with businesses at the top of supply chains**, and empower migrant workers to leverage those relationships to exert pressure to remedy (and prevent) wage theft.³⁹⁶ In response to public pressure, **individual businesses have also established internal remedial mechanisms** to remedy large-scale underpayments, such as 7-Eleven's Wage Repayment Program in Australia which overcame many of the barriers that prevented thousands of migrant workers from seeking to recover their wages through government mechanisms.³⁹⁷

Part III

Conclusion and future directions for research



Future directions for data and research: Evidence-based responses to wage theft

Governments in every country have invested resources in agencies and institutions that are intended to facilitate wage recovery, but it is clear that none of these systems substantially prevent or address wage theft and exploitation of migrant workers. Compounding limitations of political will for wholesale reforms, **few governments can confidently identify specific changes that would concretely improve their mechanisms. This is because there is a profound lack of reliable data and evaluation of the operation of wage recovery processes and institutions in virtually every country. Most governments (and advocates) are also unaware of practices in other jurisdictions.** As a former New York Department of Labor Deputy Commissioner observed, ‘a big problem in this whole field is the lack of metrics ... there’s been very little studying of what works and what doesn’t’.³⁹⁸

In order to improve migrant workers’ access to justice for wage theft, **advocates, scholars and government must develop a deep knowledge base and understanding of the operation of wage recovery mechanisms at national and sub-national levels.** This data must include the views and experiences of migrant workers and other vulnerable workers who are the intended users or beneficiaries of these mechanisms. This research is in its infancy and should be developed on a number of planes.

1. Undertake research on underpaid migrant workers who do not seek to remedy wage theft

Many governments invest in responses to wage theft with little evidence to guide them. Indeed, they frequently mischaracterise the wage theft problem among migrant workers as the behaviour of a small number of unscrupulous employers among a majority who follow the rules, rather than a systemic widespread problem resulting from workplace power imbalances and weak enforcement.³⁹⁹ This leads to enforcement and remediation models that rely heavily on worker complaints,⁴⁰⁰ with a further incorrect assumption that workers can, and will, enforce their rights and report noncompliance.

In most, if not all, countries, very few migrant workers who experience wage theft file a complaint or claim. Indeed, our research on over 4,000 migrant workers in Australia revealed that fewer than 1 in 10 workers who experienced wage theft took any action, including seeking advice or help from anyone including friends.⁴⁰¹ If wage recovery mechanisms are to be improved, it is critical to understand the barriers that impede the overwhelming majority of underpaid migrant workers from contacting an organisation for assistance, reporting wage theft, or making a claim to recover wages. Aside from a small number of studies that we and others have undertaken in a handful of jurisdictions,⁴⁰² there remains extremely limited **large-scale empirical research on the barriers impeding migrant workers from making wage claims and how these can be overcome.**

Current metrics generally do not shed light on the proportion of underpaid migrant workers who do not complain or seek to recover wages or the reasons why they do not take action. This research is critical to developing effective mechanisms and responses to wage theft, as well as maximising the effectiveness of service providers and trade unions seeking to support migrant workers. Understanding the decisions migrant workers make around coming forward and the factors that would better enable them to do so requires substantial resources and must be undertaken with involvement of organisations and researchers trusted by migrant worker communities and with strong worker engagement. Nuanced data should be collected in relation to specific national and other cohorts of workers, including gender analysis, and in the context of specific industries. This is because wage theft is experienced, and responded to, differently by different groups of migrant workers.⁴⁰³

2. Governments: Collect and publish data on wage recovery actions, processes and outcomes in national contexts

Wage recovery processes are generally poorly understood within national contexts, beyond the small number of expert practitioners in this specialised field of labour law. Limited (if any) data is collected and published on the pursuit or outcomes of wage claims through mediation, tribunals and/or courts. Understanding of the operation of wage recovery mechanisms is therefore low or mostly based on information that is anecdotal and unsystematic.

In virtually every jurisdiction, government policy makers, advocates, donors and others would benefit greatly from better quality research on the operation of national wage recovery mechanisms in practice. This must include **systematic data collection tracking metrics that enable meaningful analysis of experiences and outcomes for migrant workers**, going significantly beyond tracking numbers of cases and whether these cases were ‘resolved’.⁴⁰⁴ In particular, governments should specifically collect data on wage claims by migrant workers that include the amount the worker claims is owing, the employer’s response, the amount determined to be owing by the government agency or court, and whether the worker received payment from the employer and the amount. Because government agencies generally do not collect this information on quantum of money sought and received, it is very difficult to evaluate whether the agency ‘successfully’ resolved a case (which is the notation that is generally recorded), or whether the case was in fact ‘resolved’ with the worker receiving a fraction of what they were owed or withdrawing their complaint.

Research must also include triangulated data from migrant workers, advocates, government and employers on their experiences engaging with wage recovery processes, as well as analysis of other forms of data such as judgments and case files. This research should include an assessment of the factors contributing to positive outcomes, or why an apparently promising initiative does not work in practice and the changes that are needed. It must also include analysis of differentiated experiences and needs across industries and cohorts of migrant workers.

Government agencies should publish annual reports with aggregated data on wage claims, and give researchers access to de-identified data on individual claims to enable further nuanced analysis. Government labour agencies, ministries and ombudsmen should collect and publish data on the treatment path and outcome for all migrant workers who contact the agency, including whether a worker who calls a hotline later pursues a claim and any assistance or action by the agency. It must be noted that absence of a firewall between labour enforcement and immigration enforcement agencies will impede agencies’ ability to collect information on immigration status in order to understand the specific experiences of migrant workers (and will likely deter migrants with problematic immigration status from approaching the agency at all).

In order to generate published data that is meaningful, many countries require **technical assistance and ongoing training and support to establish systems that enable them to collect and analyse data** on their mechanisms. The ILO and IOM can play important roles in this regard. For example, in Myanmar, ILO staff observed that the provision of technical assistance to establish data collection systems for the country’s migrant worker complaint mechanism led to major improvements in the data available.⁴⁰⁵

Where governments do collect quality data, researchers and civil society organisations can provide meaningful analyses of the data that can improve worker organising, support services for workers and government responses to wage theft. For example, the Santa Clara County Wage Theft Coalition conducted a detailed analysis of over 25,000 wage theft cases, based on case data provided by US Department of Labor’s Wage and Hour Division, the California Division of Labor Standards Enforcement and the San Jose Office of Equality Assurance. Data enabled the Coalition to provide a city-by-city visualisation of wage theft complaints, along with industry-based information including the total number of employees affected, and the total amount of unpaid wages sought.⁴⁰⁶

3. Advocates: Document and test wage claim processes to demonstrate problems and possible solutions

Recognising that governments' limited collection of data impedes efforts to promote institutional reform, advocates in several jurisdictions have undertaken data collection to exert pressure on government agencies to improve their processes or more proactively investigate a claim. For example, in Jordan and Kuwait, the Solidarity Center is implementing a legal aid program to provide legal support to migrant worker victims of wage theft, and **developing a database to analyse the cases and demonstrate systemic legal and procedural gaps or poor practices.**⁴⁰⁷

Justice Without Borders (JWB) conducts litigation and documents processes and outcomes to diagnose systemic barriers in courts' approaches to cross-border wage claims, and identify opportunities for replicable and sustainable reforms. By **bringing litigation and documenting processes and outcomes in a methodical way**, JWB seeks to gain a deep understanding of particular bureaucratic, quasi-judicial and judicial processes to determine which barriers are systemic and arise consistently and which are one-off and vary between individual decision-makers. These findings enable JWB to identify opportunities for making processes more accessible, effective and coherent. For instance, where line staff in government agencies in Singapore and Indonesia were applying different procedural requirements to the lodgement of wage claims, JWB documented these deficiencies, then **strategically engaged** with the agencies to **achieve fairer and more standardised application processes**. Where JWB encounters good practice by an individual decision-maker (eg a bureaucrat allowing lodgment of documents by email rather than hard copy), it documents these and seeks to replicate outcomes by pointing to these precedents in future encounters with other decision-makers.⁴⁰⁸

The US National Employment Law Project (NELP) has sought to promote depth and collaboration in advocacy for improved wage recovery processes across state and federal jurisdictions by producing accessible public reports and briefs that review existing processes and propose reform measures with detailed guidance on how to operationalise these. This includes draft legislation and policies and justifications for implementation. Where possible, they provide examples from contexts in which these measures have been implemented in specific cities or states in the US.⁴⁰⁹

4. Cross-jurisdictional collaboration and sharing of what works and lessons learned

Conducting this study has revealed the exceptionally limited awareness that governments, advocates and researchers have of wage recovery processes and promising developments in other jurisdictions. The study has equally revealed the importance of **facilitating ongoing exchange of information and ideas across national and regional borders** as innovations are developed and tested, and **supporting a community of practice** among labour and migration experts and advocates working in this field. Donors and international organisations can play a critical role in this respect, and should also identify **opportunities to support expansion and replication of positive developments**. In order to do this effectively, donors and international organisations should support **further research to examine particular initiatives in greater detail and determine whether interventions identified (or others) are replicable in particular national contexts, in what modified form and under what conditions**, and where there may be political will to implement certain initiatives or strategies to generate it.

Government law- and policy-makers should undertake similar exchanges across jurisdictions, collaborating to facilitate transnational wage claims within migration corridors, and sharing approaches and information on what works as they address common challenges at their national levels. This learning and collaboration can be undertaken bilaterally and should be **placed on the agendas of regional and global migration forums**. The **ILO and IOM** are also well-placed to facilitate this knowledge exchange and collaboration.

5. Further research on promising approaches and analysis of opportunities

Virtually every reform target identified in this report would benefit from deeper examination of promising examples. In particular, there is a need for data gathering on how particular initiatives are working in practice (including migrant worker experiences), the impact on wage recovery and deterrence, the conditions that gave rise to the initiative and that contribute to its efficacy and limitations, and costing. There are also promising opportunities to introduce and evaluate pilots that can be built upon or replicated, including in particular contexts such as specific industries, migration corridors or cohorts of workers (eg based on gender or nationality).

Alongside this research to drive improvements to government and judicial wage recovery mechanisms, there is a pressing need for research to evaluate what works and why in relation to wage theft deterrence practices, worker empowerment through trade unions and other forms of collective action, and restructuring of the drivers of wage theft within industries and the global economy.

Conclusion

Businesses will continue to engage in wage theft because they can reliably do so with impunity, and others in their industry are doing the same. **Employers know that very few migrant workers will take action in relation to wage theft because the system is stacked against them at every stage in the wage recovery process.**

First, most migrant workers are unlikely to file a claim because they fear losing their job and permission to remain in the country of employment, or because without assistance it is too hard or impossible to lodge a claim, especially if they are about to leave the country or have already returned home. Second, employers know that if workers do file a claim, the burden of proof rests with the worker, and it will be extremely difficult for a migrant worker to provide evidence of their work and the wages they were not paid. Employers know that court and tribunal processes will be complex and slow, and that informal dispute resolution favours employers as the party with greater power, and generally results in settlements that are unfair to workers. Third, employers and other businesses in supply chains know that even if migrant workers prove wage theft, determinations are unlikely to be enforced. Any penalties for wage theft or consequences for noncompliance with a judgment will not be commercially significant.

In this context, it is easy and rational for employers to adopt systemic wage theft as a business model. It is equally easy for businesses at the top of supply chains to enjoy the benefits of wages stolen from their suppliers' workers which result in the supply of cheaper goods and services, and greater profits.

Migrant workers understand the risks of reporting wage theft or seeking to recover wages from their employer. They are aware of the burdens of making a claim and the very low prospects that they will recover the money they are owed. Most are acting rationally when they determine they cannot feasibly seek redress or it is not in their best interests to do so.

The study demonstrates that **this situation is not inevitable**. The report has illuminated a range of potential paths for governments to disrupt employer expectations of impunity and create systems that enable migrant workers to bring claims and obtain redress for wage theft.

Resting upon a foundation of labour laws and enforcement mechanisms applying to all workers without distinction, governments can implement impactful reforms at each of the three stages of the wage recovery process.

First, governments can remove risks to immigration status of reporting wage theft, and improve the practical accessibility of wage recovery mechanisms in a range of concrete ways. Legal assistance for migrant workers can be creatively expanded, including through incentives for private lawyers and creating efficiencies with claims on behalf of groups of workers (alongside increased resourcing for services from government and other sources). Visa portability can enable migrant workers to change employers and bring wage claims against former exploitative employers without fear of retaliation and job loss. Systems and processes can enable workers to file a claim swiftly before departing the country of employment, or after returning to their origin country. Innovations during COVID-19 have demonstrated the transformative potential of technology, combined with transnational service provision, to make this possible for large numbers of workers.

Second, it is critical that governments develop swift, fair wage recovery processes that result in accurate determinations of the full amount of wages owed by employers to migrant workers. Employers can be required to submit to professionalised, rights-based mediation, with meaningful consequences if they fail to participate. In a legal dispute, the burden can lie with employers to demonstrate their compliance with their obligations to pay workers correctly, including through presumptions in workers' favour as to duration of employment, hours worked, and wages owed,

rather than leaving the burden of adducing evidence of these matters with workers. A flexible approach can be taken to workers' evidence of the existence of the employment relationship.

Third, governments can also embrace new initiatives to more effectively compel employers to satisfy wage claims, including leveraging their function as gatekeeper of opportunities for businesses. For example, agencies that oversee licensing or registration schemes in labour migration – and other commercial operations – can use the threat of a range of meaningful commercial consequences to compel employers to rectify underpayment. This includes the possibility that failure to obtain a licence, deregistration, suspension of job orders or trading, or revocation of licences will flow from outstanding wage judgments. Governments can also condition public procurement of goods and services on suppliers' compliance with wage payment and judgments. These initiatives can be implemented by municipal, provincial and national government agencies, including agencies that do not regulate migration or employment.

Where the employer will not or cannot rectify wage theft, governments can provide migrant workers with access to an employer's commercial assets. Governments can also broaden accountability for rectifying wage theft to businesses further up a supply chain, including by holding lead firms (and corporate officers) jointly liable for wage nonpayment and related penalties. Governments can create other meaningful commercial consequences for lead firms in supply chains to drive swift rectification of wage theft, either through downward pressure on the employer to do so or incentivising lead firms to do so. This includes prohibiting the shipment of goods in a specific supply chain until businesses have satisfied wage payments.

Finally, when all else fails, governments can step in and redress wage theft through public insolvency schemes and other forms of insurance that can be funded through general public funds or employer contributions or deposits.

These specific, practical reform targets can form the basis of global, national and local wage theft campaigns. Substantial further research is urgently needed to examine the conditions under which these are effective, and how they can be replicated, tailored and improved.

Campaigns for specific reforms should sit within a broader commitment to restructure the risks of nonpayment of wages, and the burdens of rectifying wage theft. Currently, these risks and burdens generally lie where they fall – on migrant workers, rather than business and government. This is morally indefensible given the benefits derived by business and national economies from migrant labour and the fact that migrant workers are the party least able to bear these risks and burdens. It is also an untenable labour compliance strategy that will leave a gaping enforcement gap.

To genuinely ensure labour compliance for all workers and create a level playing field for businesses that do not engage in wage theft, governments must accept that wage theft is systemic and not exceptional. It therefore demands strategic enforcement of labour laws and proactive investigation of breaches in industries in which migrant workers predominate, rather than relying on complaints by migrant workers. At the same time, effective enforcement of labour laws critically depends on empowering workers to initiate and swiftly resolve wage claims, by restacking every stage of the wage recovery process in workers' favour.

Appendix: List of organisations consulted in this study

African Centre for Migration & Society (South Africa)
African Diaspora Workers Network (South Africa)
ASM Freeworkers (Philippines)
Building and Wood Worker's International
Centro de los Derechos del Migrante (Center for Migrant Rights) (US, Mexico)
Centre for Indian Migrant Studies (India)
Engineers Against Poverty (UK)
Equidem (Nepal)
Equidem (UK)
FairSquare (UK)
FAIRWORK Belgium
Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg, Labour Inspectorate (Belgium)
Focus on Labour Exploitation - FLEX (UK)
General Federation of Bahrain Trade Unions
Global Labour Justice (US)
Human Trafficking Legal Center (US)
Humanity United (US)
ILAW Network (Georgia)
ILAW Network (Kenya)
ILAW Network Latinoamérica
International Labour Organisation (Ship to Shore Rights South-East Asia programme, Fair Migration - Regional Office for Arab States, Qatar, Governance of Tripartism)
Issara Institute (Thailand)
ITCILO
International Trade Union Confederation (Africa)
Justice in Motion (US)
Justice Without Borders (South East Asia)
Justicia for Migrant Workers (Canada)
Kav Laoved (Israel)
KUDHEIHA Workers (Kenya)
Kuwait Trade Union Federation (KTUF)
La Strada International (The Netherlands)
Law Society Pro Bono Services (Singapore)
Lawyers Beyond Borders (Philippines)

Lawyers for Human Rights (South Africa)
Maunga Maanda & Associates (Zimbabwe)
Michigan Migrant Legal Aid (US)
Migrant Forum in Asia
Migrant Rights Centre Ireland
Migrant-Rights.org (GCC and India)
Migrant Worker Center (BC, Canada)
Milk With Dignity Standards Council (US)
National Employment Law Project (US)
Open Society Foundations International Migration Initiative (UK)
People Forum for Human Rights (Nepal)
PICUM (Belgium)
Polaris Project (US)
Prodesc (Peru)
Queensland Labour Hire Licensing Compliance Unit (Australia)
Santa Clara County Wage Theft Coalition (US)
SAORSA (Georgia)
Scalabrini Centre of Cape Town (South Africa)
SINTIAB National Union of Food and Beverages Industry Workers (Mozambique)
Solidarity Center (Colombia)
Solidarity Center (Georgia)
Solidarity Center (Jordan)
Solidarity Center (Kyrgyzstan)
Solidarity Center (US)
South Asian Regional Trade Union Council (SARTUC, Nepal)
TENAGANITA (Malaysia)
The Remedy Project (Hong Kong)
Women's Link Worldwide (Spain)
Zimbabwe Isolated Women in South Africa (ZIWISA, South Africa)

The following academics were consulted:

Dr Pablo Ceriani Cernadas, Institute for Justice and Human Rights, National University of Lanús (Argentina)

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Terri Gerstein, Director of the State and Local Enforcement Project in the Labor and Worklife Program, Harvard Law School (US)

Dr Katharine Jones, Associate Professor in Centre for Trust, Peace and Social Relations, Coventry University (UK)

Dr Rajai 'Ray' Jureidini, Professor of Migration, Human Rights, and Ethics at Research Center for Islamic Legislation and Ethics Islamic Studies, Hamad Bin Khalifa University (Qatar)

Sarah Paoletti, Practice Professor of Law and Director of Transnational Legal Clinic, University of Pennsylvania (US)

Andres Felipe Sanchez, Universidad Santo Tomas (Colombia)

Dr Nik Theodore, Professor and Department Head of Department of Urban Planning and Policy and Director of Center for Urban Economic Development in University of Illinois Chicago (US)

Dr Diana Zacca Thomaz, Research Fellow, Coventry University (UK)

Eric Tucker, Professor at Osgoode Hall Law School, York University (Canada)

Dr Leah F. Vosko, Professor of Political Science and Canada Research Chair in the Political Economy of Gender & Work (Tier 1), York University (Canada)

Dr David Weil, Dean and Professor of the Heller School for Social Policy and Management, Brandeis University (US)

Endnotes

- 1 Laura Foley and Nicola Piper, 'Returning Home Empty Handed: Examining How COVID-19 Exacerbates the Nonpayment of Temporary Migrant Workers' Wages' (2021) *Global Social Policy* 1; Equidem, *The Cost of Contagion: The Human Rights Impacts of COVID-19 on Migrant Workers in the Gulf* (Report, November 2020); Asia Floor Wage Alliance, *Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains* (Report, July 2021); Worker Rights Consortium, *FIRE, THEN ROBBED: Fashion Brands' Complicity in Wage Theft During Covid-19* (Report, April 2021); Clean Clothes Campaign, *Unpaid in the Pandemic: An Estimate of What the Garment Industry Owes its Workers* (Report, August 2020); Business & Human Rights Resource Centre, 'COVID-19: Spike in Allegations of Labour Abuse Against Migrant Workers in the Gulf' (Blog Post, 23 September 2020) <<https://www.business-humanrights.org/en/blog/spike-in-allegations-of-labour-abuse-against-migrant-workers-in-the-gulf/>>.
- 2 See www.justiceforwagetheft.org. The campaign is led by Migrant Forum Asia, the Cross-regional Center for Refugees and Migrants, Lawyers Beyond Borders, South Asian Regional Trade Union Council (SARTUC), Solidarity Center and ASEAN Services Employees Trade Union Council. Each of them lobby governments and partners at the national and regional levels.
- 3 Migrant Forum in Asia, *Crying Out For Justice: Vol 1* (Report, April 2021); Migrant Forum in Asia, *Crying Out For Justice: Vol 2* (Report, June 2021).
- 4 Interview with William Gois, Migrant Forum in Asia (Bassina Farbenblum, 25 August 2021).
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- 6 Interview with Douglas MacLean, Justice Without Borders (Bassina Farbenblum, 21 June 2021).
- 7 *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) art 2. Our definition is arguably broader than those contained in this Convention or ILO Conventions, as it does not exclude any sub-categories of migrant workers such as refugees, international students or seafarers.
- 8 In Article 1 of the *ILO Protection Of Wages Convention 1949* (No 95), the definition of wages includes remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.
- 9 This definition draws on definitions in Benjamin Harkins, 'Base Motives: The Case for an Increased Focus on Wage Theft Against Migrant Workers' (2020) 15 *Anti-Trafficking Review* 42, 45; Migrant Forum in Asia Vol 1 (n 3) 5.
- 10 Migrant Forum in Asia Vol 1 (n 3) 5.
- 11 It is very common for migrants to be charged for costs they are not legally responsible for (eg levy payments in Malaysia) or above market prices for employer-provided necessities like food or housing.
- 12 These can include, for example, laws with restrictive definitions and performance-based payment, or laws which permit nonpayment of wages during periods of absence due to illness.
- 13 Several ILO instruments protect migrant workers' rights to access justice, at least on terms equivalent to nationals of the country of employment. See, eg, *Migration for Employment Convention (Revised) 1949 (ILO Convention No 97)* art 6(1)(d) ('Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters: ... (d) legal proceedings relating to the matters referred to in this Convention'); *Migration for Employment Convention (Revised) 1949 (ILO Convention No 97)* art 5(3) ('The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof'); Annex II, art 6(3) (same); *Migrant Workers (Supplementary Provisions) Convention, 1975 (ILO Convention No 143)* art 9(2) ('In case of dispute about the rights referred to in the preceding paragraph [rights arising out of past employment as regards remuneration, social security and other benefits], the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative').
- 14 See, eg, 'Wage Inspectorate Victoria', *VIC Government* (Web Page) <<https://www.vic.gov.au/wage-inspectorate-victoria>>; Economic Policy Institute, *How District Attorneys and State Attorneys General Are Fighting Workplace Abuses* (Report, May 2021). In the US, the following laws (among others) criminalise wage theft: NY Labor Law (McKinney) § 198-a (2011); Mich. Comp. Laws § 408.484 (1978); NJ Stat. § 34:11-57 (2020).
- 15 This has especially been the case in the United States as labour standards and enforcement declined under the Trump administration. See generally Terri Gerstein, 'State and Local Workers' Rights Innovations: New Players, New Laws, New Methods of Enforcement' (2021) 65(1) *Saint Louis University Law Journal* 45. Similar initiatives are emerging in Australia, such as the wage theft inspectorate recently established in Victoria (*Wage Theft Act 2020* (Vic)).
- 16 See n 1.
- 17 S Irudaya Rajan and CS Akhil, 'Empty-Handed and Demoralized: New Evidences of Wage Theft Among Indian Return Migrants During COVID-19' (Policy Brief, August 2021).
- 18 Equidem (n 1) 59.
- 19 Migrant Forum in Asia Vol 1 (n 3) 16.
- 20 Guna Subramaniam, 'The Compounding Impacts of COVID-19 on Migrant Workers Across Asia', Institute for Human Rights and Business (Blog Post, 22 July 2020) <<https://www.ihrb.org/focus-areas/migrant-workers/covid-19-migrant-workers-overview>>.
- 21 See, eg, The Government of Saudi Arabia considers that the consequences of COVID-19 constitute *force majeure* and is thereby a reason to terminate an employment contract: Abdulrahman AlAjlan et al, 'Saudi Arabia: COVID-19 Employment Related Developments', *Baker McKenzie* (Blog Post, 9 April 2020) <<https://me-insights.bakermckenzie.com/2020/04/09/saudi-arabia-COVID-19-employment-related-developments/>>. Qatar, Saudi Arabia and the United Arab Emirates (UAE) all passed laws that allow employers to place migrant workers on unpaid leave or to reduce hours/wages with the worker's consent. However, the kafala system makes it almost impossible for migrant workers to oppose contractual changes because this would result in loss of employment and sponsorship to remain in the country: Equidem (n 1) 109. See generally *Ministerial Resolution No. 279 of 2020 Regarding the Stability of Employment in Private Sector Companies, During the Period of Applying Precautionary Measures to Contain the Spread of the Novel Coronavirus* (United Arab Emirates, 2020).
- 22 'Worker's Rights Leaflet – Hourly Salary', Kav LaOved (Web Page, n.d.) <<https://www.kavlaoved.org.il/en/leaflethoursalary/>>.
- 23 *Domestic Workers Bill of Rights*, M.G.L. 149 § 190 (2015).
- 24 *Employment Act 2007* (Kenya), although minimum wage provisions appear to be poorly enforced: George Owidhi, 'Analysis Of Working Conditions And Wages Of Domestic Workers In Kenya' (February 2017) <<https://alrei.org/education/analysis-of-working-conditions-and-wages-of-domestic-workers-in-kenya-by-george-owidhi-economist>>.
- 25 *Labour Relations Act 66 of 1995* (South Africa) and *Basic Conditions of Employment Act, 1997* (South Africa).
- 26 *McCormack v Generoso* (Labour Court, Ireland) MWD181 (2018) <<https://www.workplacerelations.ie/en/cases/2018/january/mwd181.html>>.
- 27 *Domestic Workers Bill of Rights*, MGL 149 § 190 (2015).
- 28 New Zealand recognises sex work as legitimate work under the *Prostitution Reform Act 2003* (NZ), affording sex workers the same labour protections as other workers. For example, in the wake of COVID-19, sex workers received unemployment benefits. See Decriminalize Sex Work, 'New Zealand: The Ideal Legal Framework for Decriminalized Sex Work' (Web Page, n.d.) <<https://decriminalizesexwork.org/why-decriminalization/briefing-papers/new-zealand-ideal-legal-framework>>. The state of NSW in Australia was the first jurisdiction in the world to decriminalise adult sex work. The *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulation 2017* (Cth) set requirements for health and safety at work and cover every place of work in NSW, including sexual services premises (SSP). See also SafeWork NSW, 'Regulation of Sex Work in NSW' (Web Page, n.d.) <<https://www.safework.nsw.gov.au/print-guide?source=566034>>.
- 29 *Uber BV v Aslam* [2021] UKSC 5. For determinations in other jurisdictions, see ILAW Network, *Taken for a Ride: Litigating the Digital Platform Model* (Report, March 2021).
- 30 Mass Gen Laws § 148B.

- 31 See Assembly Bill No 1003 (27 September 2021) <https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20120220AB1003>. Wage theft Amendment to be found in Cal Penal Code § 487m. However, Proposition 22, allowing ride share companies to keep classifying drivers as independent contractors rather than employees and excluding these app-based workers from foundational labour laws, was passed in November 2020. This ballot initiative aims to strip workers of core protections including overtime pay, unemployment insurance, and paid sick leave. In August 2021, a California Superior Court judge ruled that Proposition 22 violates the California constitution and must be struck down in its entirety. The decision will undoubtedly be appealed by app-based companies. See Brian Chen and Laura Padin, 'Prop 22 Was a Failure for California's App-Based Workers. Now, It's Also Unconstitutional', *National Employment Law Project* (Blog Post, 16 September 2021) <<https://www.nelp.org/blog/prop-22-unconstitutional/>>.
- 32 *Industrial Relations Act 1996* (NSW) sch 1(f).
- 33 *Esther Segai Gersagher v the Knesset* (HCJ 2293/17, 23 April 2020). The court found that the Minimum Wage Law (5747-1987) applies to 'all workers in Israel without exception' and cannot be violated even with the consent of the employee.
- 34 *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 Providing for Minimum Standards on Sanctions and Measures Against Employers of Illegally Staying Third-Country Nationals* [2009] OJ L 168, arts 6, 13.
- 35 *Tümer v Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen* (C-311/13) [2014] CJEU 2337.
- 36 *Law No 25.871* (Argentina) arts 55, 59. See also Barbara Hines, 'The Right to Migrate as a Human Right: The Current Argentine Immigration Law' (2010) 43(3) *Cornell International Law Journal* 471.
- 37 Lila García, 'Argentina's Migration Law: Changes Challenging the Human Right to Migrate', *Border Criminologies* (Blog Post, 11 September 2017) <<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2017/09/argentina>>.
- 38 Louis Pechman and Laura Rodriguez, 'Rights of Undocumented Workers in Wage Theft Cases', *New York Law Journal* (online, 13 March 2020) <<https://www.law.com/newyorklawjournal/2020/03/13/rights-of-undocumented-workers-in-wage-theft-cases/?sretur=20210726063334>>. Jennifer Lee, 'Legalizing Undocumented Work' (2021) 42 *Cardozo Law Review* (forthcoming).
- 39 *Wage Committee Announcement on Minimum Wage Rate (No 7)* (Thailand); *Explanation and Summary of Minimum Wage Rate 2013* (Thailand).
- 40 *Minimum Wages Order 2012* (Malaysia).
- 41 Interview with ILO staff member (Bassina Farbenblum, 25 June 2021).
- 42 For example, Israel provides free interpreters in labour court proceedings in most languages spoken by its major migrant worker populations: Interview with Michal Tadjer, Kav LaOved (Bassina Farbenblum, 12 October 2021).
- 43 For example, among reforms introduced in 2018, Qatar's Labour Disputes Settlement Committees began holding sessions in the afternoons from Sunday to Thursday, in order to enable migrant workers to attend outside regular working hours: Amnesty International, *All Work, No Pay: The Struggle of Qatar's Migrant Workers for Justice* (Report, 2019) 16-17. Some jurisdictions such as Hong Kong may require an employer to pay the costs of a worker's lost wages and expenses incurred as a result of attending the tribunal, in addition to the worker's attorney's fees, if the worker's claim is successful: Nawin Santikarn, The Remedy Project (Asia Workshop, 22 April 2021). See also *Labour Tribunal Ordinance* (Hong Kong) cap 28.
- 44 Previously, returned migrant workers were required to travel to Kathmandu in order to pursue claims against recruiters. Following law reforms in 2019, the District Administration Office can receive complaints against institutions at a district level, and Chief District Officers can mediate grievance cases against individual agents. See The Five Corridors Project, *Nepal to Kuwait and Qatar: Fair Recruitment in Review* (Report, July 2021) 123. Nepal also offers decentralised free legal services for returned migrant workers in several districts: see Emily Kawahigashi, 'Foreign Employment and Decentralization In Nepal' (Blog Post, 27 May 2018) <<https://www.omprakash.org/blog/foreign-employment-and-decentralization-in-nepal>>.
- 45 ILO, *Access to Justice for Migrant Workers in South-East Asia* (Report, 2017) 1. These have been supported by the ILO's TRIANGLE in ASEAN programme.
- 46 *Ibid* 19.
- 47 *Ibid* 1. Since 2012, they have assisted over 60,000 beneficiaries to obtain USD 2 million in compensation: International Federation of Red Cross and Red Crescent Societies, 'Migrant Worker Resource Centres, Asia-Pacific' (Web Page, n.d.) <<https://migrationsmartpractices.ifrc.org/smart-practice/migrant-worker-resource-centres-asia-pacific/>>.
- 48 ILO (n 45) 22.
- 49 Ministry of Human Resources and Emiratization (MOHRE).
- 50 Ismail Sebugwaawo, '23,000 Abu Dhabi Workers Get Dh261 Million Unpaid Salaries at Doorstep, Thanks to Mobile Court', *Khaleej Times* (online, 21 August 2020) <<https://www.khaleejtimes.com/news/crime-and-courts/23000-uae-workers-get-dh261-million-unpaid-salaries-at-doorstep-thanks-to-mobile-court>>.
- 51 *Ibid*; 'Abu Dhabi Mobile Court Settles 53,000 Workers' Dues Worth Over Dh577 Million', *Gulf Today* (online, 20 August 2020) <<https://www.gulftoday.ae/news/2020/08/20/abu-dhabi-mobile-court-settles-53000-workers-dues-worth-over-dhs577-million>>.
- 52 NY state statute of limitations for wage claims is 6 years: *New York Labor Law* § 198. Other states have 4 years, and the *Fair Labor Standards Act* § 255 specifies 2 years.
- 53 *Temporary Foreign Worker Protection Act*, SBC 2018, c 45. For time limits for migrant worker complaints in other provinces, see Leanne Dixon-Perera, *Regulatory Approaches to International Labour Recruitment in Canada* (Report, June 2020).
- 54 See, eg, the Criminal Code of Canada which makes it a criminal offence for an employer to retaliate, or threaten to retaliate, against a worker in relation to a complaint to the authorities. The offence carries a maximum penalty of 5 years imprisonment. See *Criminal Code*, RSC 1985 c C-46, pt X.
- 55 *New York Labor Law* § 215(1).
- 56 See further New York State Department of Labor, 'Retaliation Against Employees Prohibited' (Fact Sheet, n.d.) <<https://media.postercompliance.com/data/2019/12/NY-FS11-8-19.pdf>>. The California Labor & Workforce Development Agency has established a similar unit. See 'Retaliation Complaint Investigation Unit', *California Department of Industrial Relations* (Web Page, December 2020) <<https://www.dir.ca.gov/dlse/dlseRetaliation.html>>.
- 57 *New York Labor Law* § 215(1)-(2).
- 58 *Ibid* § 215(1)(b), (2). The Ontario *Employment Standards Act* also prohibits employers from penalising, or threatening to penalise, workers for filing a complaint, and more generally, for trying to exercise any rights under the Act: see Government of Ontario, 'Your Guide to the Employment Standards Act: Reprisals' (Web Page, 31 October 2019) <<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reprisals>>, cited in The Five Corridors Project, *Mexico to Canada: Fair Recruitment in Review* (Report, July 2021) 129). The employer can be ordered to reinstate the worker and/or to compensate them for any loss incurred due to a violation of the Act. It is not clear whether these laws are used in practice.
- 59 Daniel Costa, *California Leads the Way: A Look at California Laws that Help Protect Labor Standards for Unauthorized Immigrant Workers* (Report, March 2018). In Canada, British Columbia prohibits recruiters and employers from retaliating against workers for filing complaints and prohibits them from threatening deportation or other actions for which there is no lawful cause: see *Temporary Foreign Worker Protection Act*, SBC 2018, c 45 ss 3, 10, 20, 32, 35, 38, 41, 46, 55.
- 60 Letitia James (NY State Att'y Gen.), 'Bill Protecting Immigrant Workers From Workplace Harassment Signed Into Law' (Press Release, 29 July 2019) <<https://ag.ny.gov/press-release/2019/ag-james-bill-protecting-immigrant-workers-workplace-harassment-signed-law>>.
- 61 *Labor and Workmen's Compensation*, NJ Stat Ann § 34:11-4.10 (2019).
- 62 The Australian *Fair Work Act 2009* (Cth) permits unions to bring court proceedings in relation to Employment Standard violations experienced by individual workers if they are entitled to represent that employee. If the violation relates to a workplace agreement or workplace determination that binds the union, the union can also make an application in its own right, on behalf of an employee, or both. The Canadian province of Saskatchewan allows 'the employee or a third party such as a parent, friend or a member of the community' to submit a written claim against an employer, which the Compliance and Review Unit then investigates: see Leah F Vosko, 'Rights without Remedies': Enforcing Employment Standards in Ontario by Maximizing Voice among Workers in Precarious Jobs' (2013) 50(4) *Osgoode Hall Law Journal* 845. In California, the *Labor Code* § 218.7 (2018) allows the Commissioner of Labour and the Unions to file suit on behalf of an unpaid employee. See also Juan D De Lara, Ellen R Reese and Jason Struna, 'Organizing Temporary, Subcontracted, and Immigrant Workers: Lessons from Change to Win's Warehouse Workers United Campaign' (2016) 41(4) *Labor Studies Journal* 309, 324; David W Croysdale and Anne M Carroll, 'A \$21 Million Lesson for Joint Employers', *The National Law Review* (online, 16 June 2014) <<https://www.natlawreview.com/article/21-million-lesson-joint-employers>>. For example, the Warehouse Workers United filed a lawsuit in a US district court against three employers on behalf of workers at Walmart subject

to wage violations, including underpayment and retaliation for making complaints about poor working conditions. One of the employers, Schneider Logistics Inc (which managed the warehouse in question), agreed to pay USD 21 million to settle the lawsuit.

- 63 'Anonymous Report', Fair Work Ombudsman (Web Page, n.d.) <<https://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/anonymous-report/anonymous-tipoff>>.
- 64 'Qatar Launches Whistleblower Platform', *Migrant Rights* (online, 17 June 2021) <<https://www.migrant-rights.org/2021/06/qatar-launches-whistleblower-platform/>>. This platform also helps third parties who witness violations to raise them with authorities. While no names or ID numbers are required to lodge the complaint, the government requires provision of a Qatari mobile number to verify the legitimacy of the complaint. This may raise confidentiality concerns for some workers and also prevents workers from lodging a complaint after they have left Qatar and no longer have a local mobile number.
- The complaints need to be submitted in Arabic or English, although there are user guides and FAQs available on the platform website in nine other languages: Ministry of Administrative Development, Labour and Social Affairs, 'Unified Platform for Complaints and Whistleblowers' (Web Page, n.d.) <<https://www.adlsa.gov.qa/en/E-Services/Pages/E-ServiceDetails.aspx?EServiceName=Unified%20Platform%20for%20Complaints%20and%20Whistleblowers>>.
- 65 Laura Huizar, 'Retaliation Funds: A New Tool to Tackle Wage Theft' (Policy Brief, April 2021). To ensure workers have access to prompt and meaningful financial support, NELP proposes that a retaliation fund should only require a worker to show that they filed a wage theft complaint, that their employer had notice of the complaint, and that their employer fired them or cut their pay after learning of the complaint. NELP recommends that a state or local enforcement agency that establishes a retaliation fund should partner with community-based organisations that can help with worker outreach, education and implementation.
- 66 See, ILO Recommendation 151, Article 31 ('A migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorisation of residence should be extended accordingly').
- 67 Migrationsverket, 'Work Permit When You Plan to Change Jobs', *Changing Jobs* (Web Page, 1 July 2021) <<https://www.migrationsverket.se/English/Private-individuals/Working-in-Sweden/Employed/Changing-jobs.html>>.
- 68 The Five Corridors Project (n 58) 128.
- 69 Abuse is defined in the policy as any of the following: physical abuse, including assault and forcible confinement sexual abuse, including sexual contact without consent; psychological abuse, including threats and intimidation; and financial abuse, including fraud and extortion. See Government of Canada, 'Open Work Permits for Vulnerable Workers', *Temporary Workers* (Web Page, 11 June 2021) <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html#definition>>.
- 70 Government of Canada, 'Open Work Permits for Vulnerable Workers', *Temporary Workers* (Web Page, 11 June 2021) <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html#definition>>. See also United Food and Commercial Workers Union Canada (UFCW Canada), *The Status of Migrant Farm Workers in Canada, 2020* (Report, 2020) 27 <<http://www.ufcw.ca/templates/ufcwcanada/images/awa/publications/UFCW-Canada-Status-of-Migrant-Workers-Report-2020.pdf>>.
- 71 An open work permit allows migrant workers to work for any employer in Canada apart from those who have already been identified as 'noncompliant' in their employment practices (Government of Canada, 'Employers Who Have Been Found Noncompliant', *Work in Canada* (Web Page, 20 August 2021) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/employers-non-compliant.html>>).
- 72 Eleni Kachulis and Mayra Perez-Leclerc, *Temporary Foreign Workers in Canada* (Report, 16 April 2020) 5.
- 73 Government of Canada, 'Vulnerable Foreign Workers Who Are Victims of Abuse', *Work in Canada Temporarily* (Web Page, 27 May 2021) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/vulnerable-workers.html>>.
- 74 The UFCW Canada has been supporting workers in applying for these open permits. It estimates that it allocates 25-30 hours to support one worker to complete the application and file it electronically with all evidence. See UFCW Canada (n 70).
- 75 Workers encounter barriers in relation to language and the cost of translation services (applications and evidence must be in English or French). The Five Corridors Project (n 58) 130. When a worker does receive an open work permit to leave an abusive employer, they still face challenges in securing a new job, applying for employment insurance and finding new housing if their accommodation was being provided by the previous employer. See Government of Canada (n 73).
- 76 Evidence might include work contracts, pay slips, memos/warnings, videos, audio, images, and any evidence that is not in English or French needs to be translated by a certified translator. The evidence needs to be detailed, showing dates and places where events transpired: UFCW Canada (n 70) 27.
- 77 *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 207.1(1)(b). See also Government of Canada, 'Open Work Permits for Vulnerable Workers', *Temporary Workers* (Web Page, 11 June 2021) <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html>>.
- 78 One circular indicated a 80% to 90% acceptance rate: Leah Vosko, York University (North America Workshop, 26 March 2021). However, caseworker data from the program's first year indicated that only approximately 50% of applicants had been approved: Natalie Drolet, Migrant Workers Centre (North America Workshop, 26 March 2021).
- 79 This is the Farm Labor Organizing Committee (FLOC). See FLOC, 'About FLOC' (Web Page, n.d.) <<http://www.floc.com/wordpress/about-floc/>>.
- 80 Jennifer Gordon, 'Roles for Workers and Unions in Regulating Labour Recruitment in Mexico' in Joanna Howe and Rosemary Owens (eds), *Temporary Labour Migration in the Global Era* (Hart Bloomsbury, 2016) 329.
- 81 See, eg, ILO Committee of Experts and Organisation for Security and Co-operation in Europe (OSCE) Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings; ILO Committee of Experts observations with regard to Bahrain under the ILO Labour Inspection Convention, 1947 (No 81), see ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Report, February 2017) 434; Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *An Agenda for Prevention: Trafficking for Labour Exploitation* (Report, 2011) 12.
- 82 Interview with Michal Tadjer (n 42).
- 83 Ibid.
- 84 *Fair Labor Standards Act of 1938*, 29 USC § 203(e)(1). See also Pechman and Rodriguez (n 38).
- 85 *Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites*, signed 7 December 2011 <<https://www.nilc.org/wp-content/uploads/2015/11/DHS-ICE-DOL-MOU-2011-03-31.pdf>>.
- 86 Prof Sarah Paoletti, University of Pennsylvania (North America Workshop, 26 March 2021).
- 87 *Washington Rules of Evidence* § 413 (2019) <https://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&ruleid=GAER0413&pdf=1>.
- 88 Email correspondence from Terri Gerstein, Harvard Law School (Bassina Farbenblum, 6 October 2021).
- 89 Cal Labor Code § 90.2. Previously, Cal Labor Code §§ 7285.1, 7285.2 explicitly prohibited employers from allowing immigration officers access to their workplace without a warrant or subpoena (enacted by AB 450, the Immigrant Worker Protection Act). However, this provision was overturned by the 9th Circuit Court of Appeals in *United States v California*, 921 F 3d 865 (9th Cir, 2019).
- 90 Email correspondence with Nancy Segers, Federale Overheidsdienst Werkgelegenheid (Laurie Berg, 21 September 2021).
- 91 Interview with Jan Knockaert, FAIRWORK Belgium (Laurie Berg, 3 September 2021). See also Wintermayr and Weatherburn (n 5) 79.
- 92 Email correspondence with Nancy Segers (n 90). There is an informal agreement between the Belgian labour inspection service, Myria (the Federal Migration Centre), and FAIRWORK Belgium (a non-profit legal service for undocumented and insecure migrant workers) that if a worker files a complaint with the assistance of Myria or FAIRWORK Belgium which leads to a workplace inspection, the worker will not be placed in detention but will instead receive an order to leave the territory in 30 days: In addition, where there is a fine for informal work, this fine is waived if the worker files a complaint or is a potential victim of trafficking or exploitation: PICUM (n 5) 25, 34-35.

- 93 In Ireland, the Workplace Relations Commission Adjudication Service has no obligation to report undocumented workers, and in the experience of the Migrant Rights Centre Ireland, does not report claimants to immigration authorities: PICUM (n 5) 33.
- 94 In the UK where there is no firewall, as an advocacy strategy, the NGO Focus on Labour Exploitation (FLEX) proactively works with labour inspectors to clarify that they don't have a legal obligation to share immigration status of the workers that come into contact with: Meri Åhlberg, FLEX (Europe Workshop, 20 April 2021).
- 95 In Australia, since 2017 a formal arrangement has been on foot between the national labour regulator, the Fair Work Ombudsman (FWO) and immigration authorities in the Department of Home Affairs (DHA). Under this 'Assurance Protocol', where a visa-holder has breached a work-related visa condition, reports workplace exploitation to the FWO and is actively participating in a FWO investigation, DHA states that it 'usually won't cancel [the] visa'. This assurance extends only to temporary visa holders who have work entitlements attached to their visa, and where there is no other basis for visa cancellation. See DHA, 'Workers Rights and Visa Protections', *Working in Australia* (Web Page, 23 April 2021) <<https://immi.homeaffairs.gov.au/visas/working-in-australia/work-rights-and-exploitation>>.
- 96 See eg Martin Macias Jr, 'Los Angeles City Council Declares LA a Sanctuary City', *Courthouse News Service* (online, 8 February 2018) <<https://www.courthousenews.com/los-angeles-city-council-declares-la-a-sanctuary-city/>>; Ethan Stark-Miller, 'Where Are New York's Sanctuary Cities?', *City & State New York* (online, 3 July 2019) <<https://www.cityandstateny.com/politics/2019/07/where-are-new-yorks-sanctuary-cities/177191/>>; Chris Fox, 'Mayor John Tory Reaffirms Toronto's Sanctuary City Status', *CBC News* (online, 31 January 2017) <<https://www.cbc.ca/news/canada/toronto/you-are-welcome-here-councillors-tell-immigrants-in-wake-of-u-s-ban-1.3960716>>.
- 97 See ILO *Recommendation No 151* (adopted 24 Jun 1975) art 5 ('Each Member should ensure that national laws and regulations concerning residence in its territory are so applied that the lawful exercise of rights enjoyed in pursuance of these principles cannot be the reason for non-renewal of a residence permit or for expulsion and is not inhibited by the threat of such measures').
- 98 See ILO *Recommendation No 151* (adopted 24 Jun 1975) art 32 ('(1) A migrant worker who has lodged an appeal against the termination of his employment, under such procedures as may be available, should be allowed sufficient time to obtain a final decision thereon; (2) If it is established that the termination of employment was not justified, the migrant worker should be entitled, on the same terms as national workers, to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination, or to access to a new job with a right to indemnification. If he is not reinstated, he should be allowed sufficient time to find alternative employment').
- 99 *Issam Saad v Jau Jin Shang* (Appeal (Tel Aviv District) 36229-06-18, 12 July 2018). See also *Tal Eden Ltd v Ogozhan Sonbar* (Motion to Appeal, National Labor Court 1424/02, 10 October 2002), finding that not collecting immediate evidence from migrant workers who face deportation may frustrate their claim to fundamental rights.
- 100 Interview with Michal Tadjer (n 42).
- 101 Ibid.
- 102 Ibid.
- 103 *Décret n° 2011-1693 du 30 novembre 2011 relatif à la protection des droits sociaux et pécuniaires des étrangers sans titre et à la répression du travail illégal* [Decree No 2011-1693 of 30 November 2011] (France), 30 November 2011 <https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&isn=88833>.
- 104 David Weil, Brandeis University (North America Workshop, 26 March 2021).
- 105 Ibid.
- 106 Amnesty International, *Hong Kong SAR: Submission to the United Nations Committee on the Elimination of Discrimination Against Women* (Report, 2014) 11.
- 107 Ibid; see also *New Condition of Stay* (Hong Kong).
- 108 Amnesty International (n 106) 11.
- 109 *Memorandum of Understanding between the Government of Nepal and the Government of Malaysia on the Recruitment, Employment and Repatriation of Workers*, signed 29 October 2018 art 6 <https://www.ceslam.org/uploads/backup/GoN_2018_MoUNepalAndMalaysia.pdf>. In Malaysia, migrant workers may apply for a 'Special Pass' - a temporary pass issued to a person who wishes to remain in Malaysia 'for any special reason' (according to the relevant regulation), including filing a wage claim against their employer. The permit is valid for one month, and may be extended at the immigration officer's discretion up to a maximum of 3 months. However, these may be of limited utility to migrant workers wishing to recover unpaid wages because the Special Pass is both limited in time and does not authorise employment, while court processing of wage claims may last 6 months or more. This places migrants at risk of having to leave Malaysia before their case has concluded, being held in detention centres, and having to live without a regular income over this period: *Immigration Regulations 1963* (Malaysia) reg 14. Apparently, the phrase 'for any special reason' has been interpreted to include bringing a legal claim against an employer: see Michael Gay and Craig Bosch, *Report on Review of Malaysia's Labour Dispute Resolution System* (Report, March 2020) 73. See also Sabrina Kouba and Nilim Baruah, *Access to the Labour Market for Admitted Migrant Workers in Asia and Related Corridors* (Report, 2019) 32; ILO (n 45).
- 110 'Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual' (Policy Statement, 12 October 2021) <https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf>.
- 111 Department of Justice (Ireland), 'Reactivation Employment Permit Scheme' (Web Page, 29 May 2018) <<http://www.inis.gov.ie/en/INIS/Pages/Reactivation%20Employment%20Permit%20Scheme>>. This scheme provides a pathway for non-EU nationals to begin working legally again. However, given the complexity of such cases, there are long processing times which result in people engaging in irregular employment whilst awaiting the outcome of their application: Samantha Arnold, Susan Whelan and Emma Quinn, *Illegal Employment of Non-EU Nationals in Ireland* (Report, July 2017) 24-25.
- 112 This includes T visas and U visas in the US, and subclass 060 Bridging F visas in Australia.
- 113 Cathleen Caron, 'Portable Justice, Global Workers, and the United States' [2007] 5 *Clearinghouse Review* 549.
- 114 William Gois (Asia Workshop, 22 April 2021).
- 115 Ibid. For discussion on panel lawyers on retainer, see *Legal assistance provided by migrants' countries of origin*.
- 116 ILO, *Consultations with Labour Attachés and Consular Officials in Malaysia on the Protection of Migrant Workers* (Report, March 2015).
- 117 Interview with William Gois (n 4).
- 118 Ibid.
- 119 Ibid.
- 120 Ibid.
- 121 For principles to include in such an agreement, see *Migration for Employment Recommendation (Revised)*, ILO Doc No 86 (adopted 1 July 1949) Recommendation 86, Annex, Model Agreement.
- 122 Interview with William Gois (n 4).
- 123 Robert Anderson, 'Saudi Oger Owes \$800m to Workers, Banks', *GULF BUSINESS* (online, 9 August 2016) <<https://gulfbusiness.com/saudi-oger-owes-800m-workers-banks-reports/>>.
- 124 Interview with William Gois (n 4). See also Holly Ellyatt, 'Saudi Arabia Releases \$1 Billion to Help Migrant Workers Leave', *CNBC* (online, 3 Oct 2016) <<https://www.cnbc.com/2016/10/03/saudi-arabia-releases-1-billion-to-help-migrant-workers-leave-report.html>>.
- 125 Interview with William Gois (n 4).
- 126 US-based NGO Justice in Motion (JIM) also has expertise in transnational litigation, and supports migrants who have suffered labour exploitation or civil rights abuses by connecting US and Canadian lawyers with members of their Defender Network, consisting of more than 40 organisations in Mexico and Central America. Migrant workers pursuing legal cases can access cross-border legal support through JIM, who match lawyers with Defender Network members, train US and Canadian lawyers, and support the Defender Network in pursuing cases for migrants who are victims of foreign worker recruitment fraud and abuse. See Justice in Motion, 'Legal Action', *Our Work* (Web Page, n.d.) <<https://www.justiceinmotion.org/legal-action>>.
- 127 CDM, 'Direct Representation and Litigation Support' (Web Page, n.d.) <<https://cdmigrante.org/direct-representation-and-litigation-support/>>. The following description is based on interview with Rachel Micah-Jones, CDM (Bassina Farbenblum, 26 August 2021).

- 128 CDM, *Money Transfers to Mexico* (Report, April 2016) ii.
- 129 An Indian NGO, the Pravasi Legal Cell, also works transnationally, providing free legal support to migrant Indian workers, especially in the mining industry in GCC countries, including taking cases to the High Court: Akhil C.S., The Centre for Indian Migrant Studies (Asia Workshop, 22 April 2021). See also 'Plea Filed By Returned Expatriates for Providing Free Legal Aid to Initiate Legal Action for Compensation Against a Cargo Company Based in Dubai; High Court of Kerala Issues Notice in the Matter', *Pravasi Legal Cell* (online, April 2021) <<https://pravasilegalcell.in/2021/04/plea-filed-by-returned-expatriates-for-providing-free-legal-aid-to-initiate-legal-action-for-compensation-against-a-cargo-company-based-in-dubai-high-court-of-kerala-issues-notice-in-the-matter/>>.
- 130 JWB, *Building Cross-Border Access to Justice for Hong Kong's Migrant Workers* (Report, May 2020) <<https://forjusticewithoutborders.org/wp-content/uploads/2020/07/Building-Cross-Border-Access-to-Justice-for-Hong-Kongs-Migrant-Workers.pdf>>.
- 131 RADAR is intended to enable ProDESC to notify recruiters, employers, and companies at the top of supply chains about recruitment or employment-related breaches. Putting these entities on notice of potential labour violations may satisfy an element of liability under US laws, and facilitate future litigation against a lead firm: ProDESC, 'RADAR Program' (Web Page, n.d.) <<https://radar.prodesc.org.mx/en/>>. See also Bassina Farbenblum, Laurie Berg and Angela Kintominas, *Transformative Technology for Migrant Workers* (Report, 2018) 22, 24.
- 132 ILO, *Good Practices on the Role of Trade Unions in Protecting and Promoting the Rights of Migrant Workers in Asia* (Report, 2014).
- 133 Interview with Rachel Micah-Jones (n 127).
- 134 *Mallorca Joenalyn Domingo v Ng Mei Shuen* [2018] 3 HKLRD 694; see also JWB (n 130).
- 135 'Justice in Hong Kong Finally Comes to Those Back Home: Labour Tribunal Grants First Video Conferencing in Migrant Worker Case', *Justice Without Borders* (online, 20 March 2019) <<https://forjusticewithoutborders.org/justice-in-hong-kong-finally/>>. The ILO is also piloting a project for Filipino workers to give video testimony in civil cases initiated in Hong Kong. The Five Corridors Project, *Philippines to Taiwan: Fair Recruitment in Review* (Report, July 2021) 83.
- 136 Justice Without Borders (n 135).
- 137 Gibril Faal, 'Tele-Justice: Facilitating Workers' Access to Justice through Digital Tools' (Paper for the Abu Dhabi Dialogue Senior Officials' Meeting, 2021) 48. <http://abudhabidialogue.org.ae/sites/default/files/document-library/ADD%20-%20Research%20Papers_Theme%202.pdf>. In 2018 the UAE launched the ADGM courts as fully-fledged digital courts.
- 138 Ibid.
- 139 *Federal Decree No 10 of 2017* (United Arab Emirates) cited in ibid 48.
- 140 Ibid.
- 141 See Farbenblum, Berg and Kintominas (n 131) 25.
- 142 In Australia, for example, a number of states have established specific legal services for migrant workers, as well as ensuring migrant workers are eligible for free services provided by legal assistance centres. For example, in NSW the Migrant Employment Legal Service was established in 2019. Other general legal services are equally available to migrant workers. Similarly, Taiwan provides free legal assistance to all migrant workers, including undocumented workers: *Legal Aid Act 2015* (Taiwan) art 14.
- 143 Interview with James Lynch and Nick McGeehan, Fair/Square (Bassina Farbenblum, 14 October 2021).
- 144 'Notices on Work Rights of Foreign Workers in Taiwan', *Ministry of Labor* (Web Page, 24 August 2016) <<https://english.mol.gov.tw/homeinfo/6458/6556/6567/>>.
- 145 The Five Corridors Project (n 135) 82.
- 146 Lawyers hold money in trusts on behalf of clients or other people in connection with the provision of legal services such as during the purchase of property or when money is received from the proceeds of a court action.
- 147 The interest generated on these trust accounts has been used since the 1960s as a fundraising tool for legal assistance to vulnerable communities. See, eg, New Jersey Bar 'Interest on Lawyers' Trust Accounts' (IOLTA) program in NJ Ct. R. 1:28A; New South Wales (Australia) 'Public Purpose Fund' (NSW PPF) in *Legal Profession Uniform Law Application Act 2014* (NSW) pt 5 div 2.
- 148 In Singapore, for example, the Migrant Workers' Group, launched in 2021, is a coalition facilitated by Law Society Pro Bono Services (LSPBS), a charity organisation established by the Law Society of Singapore) comprising over 20 organisations, including 16 NGOs assisting migrant workers and a number of law firms. NGOs refer migrant workers to LSPBS, which works with volunteer lawyers to provide support: (a) awareness of legal rights among migrant workers through various modes (including webinars and publications), (b) legal advice through free legal clinics, and (c) legal representation in court. LSPBS also partners with organisations (including Justice Without Borders) to assist migrant workers who have left Singapore. Interview with Qian Hui Goh, LSPBS (Angela Smith, 26 August 2021). See also Dominic Low, 'Migrant Workers in S'pore Better Poised to Seek Help With Launch of New Coalition', *The Straits Times* (online, 11 July 2021) <<https://www.straitstimes.com/singapore/community/migrant-workers-in-spore-better-poised-to-seek-help-with-launch-of-new-coalition>>.
- 149 The Malaysian Bar Council has instituted a similar initiative on a smaller scale with migrant NGO Tenaganita. Email from Benjamin Harkins, ILO (Bassina Farbenblum, 9 September 2021).
- 150 CDM (n 128) ii.
- 151 See Justice Without Borders, *A Practitioner's Manual for Migrant Workers: Pursuing Civil Claims in Hong Kong and From Abroad* (Report, 2016) <<https://forjusticewithoutborders.org/research/practitioners-manuals/>>. Academic researchers' analysis of formal and informal mechanisms for claims against recruitment agencies in Indonesia has been used to train new staff at Justice Without Borders, rather than requiring them to learn the systems over an extended period of time. Farbenblum, Taylor-Nicholson and Paoletti (n 5); Interview with Douglas MacLean (n 6).
- 152 *Labor Code 1974* (Philippines) art 111. Forums that award attorney's fees may also create a risk that if the worker loses her case, she could be required to pay the employer's legal costs, as is the case in Hong Kong. See *Labour Tribunal Ordinance* (Hong Kong) cap 28.
- 153 *Fair Labor Standards Act of 1938*, 29 USC § 216(b).
- 154 Henry Rojas, Lawyers Beyond Borders (Asia Workshop, 22 April 2021). Seafarers are entitled to substantially better disability and death benefits through insurance schemes than other land-based Filipino migrant workers: see Commission on Human Rights of the Philippines and Henry S Rojas, *Gaps in Access to Justice: The Overseas Filipino Workers' Experience, An Initial Analysis of Philippine Jurisprudence on Labor Migration* (Report, July 2021) 47-60 <<https://chr-observatories.uwazi.io/en/entity/qvqgmz80lr4g?page=2>>.
- 155 See *Ferman v Sturgis Cleaners, Inc.*, 481 Mass 488 (2019).
- 156 For example, since July 2007 with the support of the ILO, American Center for International Labor Solidarity, International Trade Union Confederation (ITUC) and FNV (the Netherlands' largest trade union), the Malaysian Trades Union Congress (MTUC) has provided practical assistance and legal representation to migrant workers, including domestic workers, claiming unpaid wages at Malaysian labour courts. See MTUC, 'Knowledge Sharing Workshop on Good and Promising Practice and Lesson Learned to Promote Decent Work for Domestic Workers and to Eliminate Child Labour in Domestic Work' (Presentation, East Java, 23-25 January 2018).
- 157 Representatives from the ITUC, BWI, International Domestic Workers Federation and International Transport Workers Federation help workers lodge complaints. Email from ILO staff member (Bassina Farbenblum, 12 September, 2021).
- 158 In 2020, the Central Workers' Union supported the development of a new affiliate union, the Union of Platform Workers, to represent migrant and local food delivery workers. Angelica Palacios (Solidarity Centre in Colombia) (Latin America Workshop, 26 April 2021); Tula Connell, 'Colombia Gig Economy Workers Wage Country-Wide Protest for Rights', *Solidarity Center* (online, 8 October 2020) <<https://www.solidaritycenter.org/colombia-gig-economy-workers-wage-country-wide-protest-for-rights/>>.
- 159 *Fair Work Act 2009* (Cth) s 539.
- 160 Ben Schneiders, 'Exploited Pacific Migrant Farm Workers Settle Significant Case', *Sydney Morning Herald* (online, 1 August 2019) <<https://www.smh.com.au/business/workplace/exploited-pacific-migrant-farm-workers-settle-landmark-case-20190801-p52cvi.html>>.
- 161 UN Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants Following His Mission to Nepal* (Report, April 2018) 9, cited in The Five Corridors Project (n 44) 138. Given the limited capacity of individual diplomatic missions, diplomatic missions could increase the capacity of such rosters if they joined together to fund a single legal service staffed by competent local lawyers that could represent migrant workers across multiple nationality groups on behalf of various diplomatic missions (with interpreting capacity in multiple migrant languages provided by the diplomatic missions).

- 162 Countries such as Thailand, for example, have established a scheme to fund local lawyers in the country of employment to assist their nationals in labour disputes, however this is usually limited to a small number of cases. The Fund for Job-Seekers Working Abroad covers the cost of a local lawyer for an actual case up to THB 100,000 (USD 43,500), including wage claims. See ILO, *Migrant Welfare Funds: Lessons for Myanmar from Nepal, Thailand and the Philippines* (Report, 2021) 19.
- 163 In 2020, POLO assisted a group of at least 59 migrant workers to successfully recover their wages from a large construction company in Qatar. See Raymart Lolo, '59 OFW to Claim Unpaid Benefits', *The Tribune* (online, 12 June 2020) <<https://tribune.net.ph/index.php/2020/06/12/ofws-in-qatar-claim-unpaid-benefits/>>.
- 164 Interview with William Gois (n 4).
- 165 Ibid.
- 166 Email from ILO staff member (Bassina Farbenblum, 12 September, 2021).
- 167 Ministry of External Affairs (India), 'Consular Complaints and Grievances', Consular, Passport and Visa Division (Web Page, 27 December 2019) <<https://www.mea.gov.in/consular-complaints-and-grievances.htm>>. All Indian Missions and Posts abroad and the MEA's Branch Secretariats in Chennai, Guwahati, Hyderabad and Kolkata are associated with this portal.
- 168 It also allows online filing and linking of similar grievances for easier retrieval and reference, automatic escalation and enhancement of priority, colour-coded dash boards for easy assessment and monitoring: Ministry of External Affairs (India), 'Consular Complaints and Grievances', *Consular, Passport and Visa Division* (Web Page, 27 December 2019) <<https://www.mea.gov.in/consular-complaints-and-grievances.htm>>. However, significant backlogs have arisen during COVID-19. See Rejimon Kuttappan, 'Unresolved Labour Cases Pileup at Indian Embassies', *The Leaflet* (online, 8 January 2021) <<https://www.theleaflet.in/unresolved-labour-cases-pileup-at-indian-embassies/>>.
- 169 The Clinic is headed by Professor Mohammed Mattar (formerly Johns Hopkins). Survey response of Ray Jureidini, Hamad Bin Khalifa University, Doha (21 May 2021).
- 170 Interview with William Gois (n 4).
- 171 'Indian Community Benevolent Forum - Qatar' (Web Page, n.d.) <www.icbfqatar.org>.
- 172 *Fair Labor Standards Act of 1938*, 29 USC § 216(b). A collective action may be brought by a group of workers together.
- 173 *Federal Rules of Civil Procedure* r 23(c)(3). A class action may be brought on behalf of all workers in a certified class including those that have not specifically opted in to the action.
- 174 Interview with Catherine Ruckelshaus, NELP (Bassina Farbenblum, 14 September 2021).
- 175 Ibid.
- 176 Terri Gerstein, 'Forced Arbitration: A Losing Proposition for Workers' in Sharon Block and Benjamin H Harris (eds), *Inequality and the Labor Market* (Brookings Institution Press, 2021) 179.
- 177 Interview with Catherine Ruckelshaus (n 174).
- 178 *Fair Work Act 2009* (Cth) s 539.
- 179 'Australian Workplace Class Actions on the Rise', *Insights* (Jones Day, January 2019) <<https://www.jonesday.com/en/insights/2019/01/australian-workplace-class-actions-on-the-rise>>.
- 180 The UAE (which does not permit unionisation) has established a Supreme Arbitration Committee for Collective Labor Disputes which may consider disputes between an employer and a group of its workers, where the subject of the dispute is related to the common interest of all or some of the workers. The UAE government recently announced that it had settled 22 collective labour disputes involving over 18,000 workers in a one year period. UAE Ministry of Human Resources and Emiratisation, 'The Supreme Arbitration Committee for Collective Labor Disputes Settles 22 Disputes Involving 18,000 Workers' (Media Release, 26 July 2021) <<https://www.mohre.gov.ae/en/media-centre/news/26/7/2021/the-supreme-arbitration-committee-for-collective-labor-disputes-settles-22-disputes-involving-18000-workers.aspx>>. Further information about the process and outcomes for workers was unavailable.
- 181 David Weil, 'Creating a Strategic Enforcement Approach to Address Wage Theft: One Academic's Journey in Organizational Change' (2018) 60(3) *Journal of Industrial Relations* 437, 437-8.
- 182 For a discussion of limitations of the Australian labour regulator's work in this area, see Bassina Farbenblum and Laurie Berg, 'Migrant Workers' Access to Remedy for Exploitation in Australia: The Role of the National Fair Work Ombudsman' (2017) 23(3) *Australian Journal of Human Rights* 310. In the US, see Marianne Levine, 'Behind the Minimum Wage Fight, A Sweeping Failure to Enforce the Law', *POLITICO* (online, 18 Feb 2018) <<https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644>>.
- 183 Gerstein (n 15).
- 184 In Australia, the federal labour agency has the power to apply a variety of administrative tools, including infringement notices, compliance notices and enforceable undertakings. Despite a previous reluctance to use these tools, the agency issued more than triple the number of compliance notices in 2019-20 than the previous year, with a 96% compliance rate. Litigation was pursued against a number of noncompliant employers to 'send a clear message to businesses that these notices should be taken seriously'. See Fair Work Ombudsman, *Annual Report 19-20* (Report, September 2020) 2; Tess Hardy, 'From Trivial to Troubling: The Evolution of Enforcement under the Fair Work Act' (2020) 33 *Australian Journal of Labour Law* 87.
- 185 Department of Labor, 'Immigrant Policies and Affairs' (Web Page, n.d.) <<https://dol.ny.gov/immigrant-policies-and-affairs-0>>.
- 186 'Foreign Workers Rights at Work' (Web Page, n.d.) <<https://www.gov.il/he/departments/Units/foreign-workers-rights-at-work>>; see *Foreign Workers Law* 5751-1991 s D3.
- 187 Janice Fine, 'New Approaches to Enforcing Labor Standards: How Co-enforcement Partnerships Between Government and Civil Society Are Showing the Way Forward' [2017] 7 *University of Chicago Legal Forum* 143; Janice Fine and Jennifer Gordon, 'Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations' (2010) 38(4) *Politics & Society* 552.
- 188 NELP, *California Strategic Enforcement Partnership* (Report, 2018).
- 189 Gerstein (n 15).
- 190 These powers include strong investigation powers, including to enter premises, obtain information and documents, seize evidence, require a person to give evidence or answer questions under oath or affirmation, and apply for and execute search warrants: *Wage Theft Act 2020* (Vic) s 21.
- 191 *Wage Theft Act 2020* (Vic) ss 6-8. These offences include criminal offences for Victorian employers and corporate officers to: intentionally underpay their employees; dishonestly withhold employee wages and benefits; or falsify employee records, or intentionally fail to keep employee records, to gain a financial advantage. Such offences are punishable by a fine of up to approximately USD 150,000, or up to 10 years' jail for individuals, and a fine of up to approximately USD 750,000 for companies. In a recent prosecution brought by the Wage Inspectorate, a major supermarket chain was ordered to rectify underpayments, with the court rejecting the supermarket's claim the underpayment was a 'mere error' and finding the underpayment occurred because of a lack of proper auditing processes and systems for checking applicable rates. The impact of the decision was amplified by the Inspectorate's broader investigation which resulted in the supermarket rectifying underpayment of a further 4,000 employees: Robert Hurtle, 'Coles Underpays Over 4,000 Workers Almost \$700k, Fined in Court for "Systemic Failure"' (Media Release, 14 July 2021) <<https://www.vic.gov.au/coles-underpays-over-4000-workers-almost-700k-fined-court-systemic-failure>>.
- 192 Cal Penal Code § 487m. Minnesota and Colorado have also introduced similar laws. See Colo Rev Stat § 8-4-101 and Minn Stat § 16C.285, cited in Gerstein (n 15) 68. California also passed a wage theft law specifically covering garment workers (an industry with a large migrant population): Emily Farra, 'California Just Passed a Landmark Bill to Protect Garment Workers—Here's What It Means for the Entire Fashion Industry', *Vogue* (online, 30 September 2021) <<https://www.vogue.com/article/california-sb-62-garment-worker-protection-act>>.
- 193 Cal Penal Code § 487m.
- 194 Interview with Terri Gerstein, Harvard Law School (Bassina Farbenblum, 13 October 2021).
- 195 Ibid.
- 196 Ibid.
- 197 Interview with Nick McGeehan and James Lynch, Fair/Square (Bassina Farbenblum, 14 October 2021).
- 198 This is contrary to ILO Recommendation 198, article 9 ('the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterised in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties') and article 11 ('Members should, within the framework of the national policy referred to in this Recommendation, consider the possibility of the following: (b) providing for a legal presumption that an

employment relationship exists where one or more relevant indicators is present’).

- 199 For example, the Court of Justice of the European Union has ruled that regardless of whether there is a written contract, a factual determination should be made that employment relationship exists if, for a certain period of time, one person performs services for and under the direction of another person in return for which they receive remuneration: *Debra Allonby v Accrington & Rossendale College* (C-256/01) [2004] CJEU I-00873, 71. The court in this case held: ‘The formal classification of a self-employed person under national law does not exclude the possibility that a person must be classified as a worker within the meaning of Article 141(1) EC if his independence is merely notional, thereby disguising an employment relationship within the meaning of that article’. See also *Aldona Malgorzata Jany v Staatssecretaris van Justitie* (C-268/99) [2001] CJEU I-08615, where the court held that, for independence to be more than just notional, the Court would typically expect the absence of ‘any relationship of subordination concerning the choice of that activity, working conditions and conditions of remuneration’, and for the activity to be performed ‘under that person’s own responsibility [and] in return for remuneration paid to that person directly and in full’.
- 200 PICUM (n 5) 27.
- 201 Nick Clark (Europe Workshop, 20 April 2021).
- 202 Faal (n 137) 54.
- 203 Hukoomi (Qatar e-Government), ‘Digital Authentication System for Multilingual Employment Contract’ (Web Page, 17 March 2021) <<https://hukoomi.gov.qa/en/service/digital-authentication-system-for-multilingual-employment-contract>>.
- 204 Justice Without Borders, ‘A Guide to Evidence Collection’ (April 2017) <<https://forjusticewithoutborders.org/wp-content/uploads/2017/04/Evidence-Collection-as-of-23-March-2017-FINAL.pdf>>.
- 205 Ibid. The relevant legislation is the *Personal Data Protection Act 2012* (Singapore); *Public Information Disclosure Act No 14 of 2008* (Indonesia).
- 206 Correspondence with Leah Vosko, York University (Laurie Berg, 8 September 2021).
- 207 Interview with ILO staff member (Laurie Berg and Bassina Farbenblum, 25 June 2021). See Freedom Fund, *Thailand Hotspot Annual Report* (Report, 2019).
- 208 Chris Van Olmen, *Labour and Employment Compliance in Belgium* (Wolters Kluwer, 2021). See *Act Amending the Law of 12 April 1965 on the Protection of Workers’ Wages with regard to the Payment of Wages* (Belgium, 23 August 2015) <http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2015082323>.
- 209 ILO Policy Advisory Committee on Fair Migration in the Middle East, *Minimum Wages and Wage Protection in the Arab States: Ensuring a Just System for National and Migrant Workers* (Report, January 2019).
- 210 *Fair Work Regulations 2009* (Cth) reg 3.46. For further information on pay slips, see Fair Work Ombudsman, ‘Pay Slips’ (Web Page) <<https://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips>>.
- 211 Fair Work Ombudsman, ‘Pay Slips’ (Web page) <<https://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips>>. See *Fair Work Act 2009* (Cth) s 536.
- 212 The first was introduced by the UAE in 2009, and Bahrain most recently introduced at WPS in 2021. See Faal (n 137) 54.
- 213 Interview with Vani Saraswathi, Migrant-Rights.org (Laurie Berg, 7 October 2021).
- 214 Email from ILO staff member (Bassina Farbenblum, 8 September 2021). In theory, it may expedite resolution of wage claims because it can be accessed by government investigators and court decision-makers. Among cases decided by the Supreme Committees, 80% have been decided in workers’ favour. However, since COVID-19 both have been encountering long delays due to periods of closure and the volume of claims.
- 215 Jill Wells and Maria da Graça Prado, *Protecting the Wages of Migrant Construction Workers, Part Three: What Can be Learned From Systems of Wage Protection in China, EU, US and Latin America* (Report, October 2019) 3.
- 216 ILO, *Employer-Migrant Worker Relationships in the Middle East: Exploring Scope for Internal Labour Market Mobility and Fair Migration* (Report, March 2017) 13; Jill Wells, *Protecting the Wages of Migrant Construction Workers, Part 2* (Report, July 2018) 11; Ray Jureidini, *Wage Protection Systems and Programmes in the GCC Gulf Labour Markets and Migration* (Report, October 2017).
- 217 Ibid. Faal has recommended addressing some of these limitations through use of simplified apps and forms to enable enrolment of all workers including domestic workers and using artificial intelligence to monitor broader contractual salary payment including underpayment. Faal (n 137) 54.
- 218 ILO Policy Advisory Committee on Fair Migration in the Middle East (n 209).
- 219 Faal (n 137) 54.
- 220 Wells (n 216) 12.
- 221 Jureidini (n 216) 15. In late 2016, the Qatar National Bank introduced iris-scanning ATMs, while the Commercial Bank of Qatar introduced ‘finger vein-scanning terminals’. Some banks in most Gulf countries have applied or are considering applying biometric access to accounts, including voice recognition, however it is unclear whether this will be applied to low-income worker pay card ATMs.
- 222 Farbenblum, Berg and Kintominas (n 131) 25.
- 223 Ibid.
- 224 ILO, *A Guide to Saver Asia* (Report, November 2020) 11.
- 225 Fair Work Ombudsman, ‘The Pay and Conditions Tool’ (Web Page, n.d.) <<https://calculate.fairwork.gov.au/findyouraward>>.
- 226 Farbenblum, Berg and Kintominas (n 131).
- 227 PICUM (n 5); *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 Providing for Minimum Standards on Sanctions and Measures Against Employers of Illegally Staying Third-Country Nationals* [2009] OJ L 168, art 6(3).
- 228 *Wet Arbeid Vreemdelingen* (the Netherlands) art 23(2). See PICUM (n 5) 27.
- 229 Interview with Michal Tadjer (n 42); see *Wage Protection Law 5718-1958 art 26b(a)*; Burden of Proof (Amendment No 24, 2008) (Amendment No 28, 2014).
- 230 *Labour Code* (Brazil) art 464 <www.planalto.gov.br/ccivil_03/decreto-lei/dele5452.htm>. The employer can discharge this burden either by means of a receipt signed by the worker, or by proof of the deposit of the sum in the employee’s bank account. A receipt that is not signed by the worker does not satisfy the burden of proof: for a recent judicial application of this provision see BRASIL Tribunal Superior do Trabalho. RRAg-1001130-58.2018.5.02.0434, 2ª Turma, Relatora Ministra Delaide Alves Miranda Arantes, DEJT 12/02/2021.
- 231 Email correspondence with Jan Knockaert, FAIRWORK Belgium (Laurie Berg, 14 October 2021).
- 232 See *Wage Protection Law 5718-1958 art 26b(a)*; Burden of Proof (Amendment No 24, 2008) (Amendment No 28, 2014).
- 233 Email correspondence with Jan Knockaert, FAIRWORK Belgium (Laurie Berg, 20 October 2021).
- 234 Labour Court of Appeal of Brussels, No 2018/AB/424 (Belgium). In that case, because the employer lacked an ‘objective, reliable, and accessible system’ for time registration, the Court ordered the employer to pay the alleged overtime without requiring the employee to provide evidence of her overtime hours worked.
- 235 *Fair Work Act 2009* (Cth) s 557C.
- 236 *Anderson v Mt Clemens Pottery Co*, 328 US 680 (1946). This has not yet been codified into statute.
- 237 Susanna Ritchie, ‘Victoria’s New Wage Theft Act – What to Know’, *Workplace Wizards* (Web Page, 17 June 2021) <<https://www.workplacewizards.com.au/wage-theft-act/>>.
- 238 Ismail Sebugwaawo, ‘Abu Dhabi’s “One-Day Labour Court” to Ensure Speedy Justice’, *Khaleej Times* (online, 8 November 2017) <<https://www.khaleejtimes.com/nation/abu-dhabis-one-day>>.

[labour-court-to-ensure-speedy-justice](#)>.

- 239 See, eg, Harkins (n 9).
- 240 Bassina Farbenblum, 'Governance of Migrant Worker Recruitment: A Rights-Based Framework for Countries of Origin' (2017) 7(1) *Asian Journal of International Law* 152.
- 241 Ibid.
- 242 Section 3, Rule V of DOLE Department Order No. 151-16. See also Commission on Human Rights of the Philippines and Henry S Rojas (n 154).
- 243 Henry Rojas, Lawyers Beyond Borders (email correspondence with Laurie Berg, 11 October 2021). See *Lorelei O Illadan vs La Suerte International Manpower Agency Inc, and Debbie Lao*, G. R. No. 203882, 11 January 2016.
- 244 See, eg, *Lei do Trabalho (Law of Work) 23 of 2007* (Mozambique) art 187(4) provides: 'If the respondent fails to appear the mediator shall, of his own motion, refer the case to arbitration [and ...] shall have to pay a fine set by the mediation and arbitration centre'.
- 245 *Small Claims Rules*, BC Reg 126/2020, r 7.3.
- 246 Laurie Berg and Bassina Farbenblum, 'Submission No 102; to the Inquiry into the unlawful underpayment of employees' remuneration, Senate Economic References Committee, Parliament of the Commonwealth of Australia (6 March 2020), 11 <<https://www.aph.gov.au/DocumentStore/ashx?id=6b544409-06cf-4896-9fee-67aafb489d3d&subId=679903>>.
- 247 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016, section 141 provides that 'unjustified failure by the licensed recruitment agencies, principal/employer of an Overseas Filipino Workers of the approved settlement shall warrant suspension from participation in the overseas employment program, until compliance with or satisfaction of the approved settlement', cited in The Five Corridors Project (n 135) 82.
- 248 *Prakas No 249 on Complaint Receiving Mechanism for Migrant Workers* (Cambodia). A complaint may be lodged with a service provider (eg an MRC), or directly to a Provincial Department of Labour and Vocational Training or Ministry of Labour and Vocational Training. After a worker lodges a complaint for nonpayment of wages or other issues, the complainant and respondent are invited to discuss the complaint separately with a government dispute resolution officer at the provincial or Ministry level, and then meet to negotiate the terms of an agreement settlement. The respondent must confirm their availability to attend the meeting within 3 days of receiving this invitation. If the respondent does not attend the meeting and does not provide notice, they will have one further opportunity to meet. If they again fail to attend, the case will be determined in favour of the complainant and they will be responsible for the violations alleged and if requested, must pay the compensation ordered. According to local experts this system of elevating complaints has been somewhat effective in motivating respondents to attend meetings to resolve the dispute, although it is unclear whether judgments against the respondent can be enforced through this mechanism. See Kingdom of Cambodia, *Guidelines on Dispute Resolution for Migrant Worker Grievances* (Report 2019); ILO staff member (Asia Workshop, 22 April 2021); ILO, *Assessment of the Complaints Mechanism for Cambodian Migrant Workers* (Report, 2016) 12.
- 249 This is contrary to ILO Convention 97, Annex I, Article 5(3): 'The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof'. See also, Annex II, Article 6(3).
- 250 *Code du Travail* (France) arts R8252-10, R8252-12. This is also covered by a detailed policy document: Directeur du Travail, *Mode d'emploi pour le contrôle de l'emploi illégal du salaire étranger sans titre de travail* (Report, October 2017) <https://www.herveguichaoua.fr/IMG/pdf/mode_emploi_controle_emploi_illegal_salarie_etrange_sans_titre_1ere_edition.pdf>. See generally PICUM (n 5) 22.
- 251 The following report does mention one case in which a complainant was arrested by the police outside the tribunal due to the employer's evidence that the worker was undocumented. This was criticised by civil society: Gisti, *Groupe d'information et de soutien des immigrées, Les travailleurs sans papiers et les prud'hommes, gisti, les notes pratiques* (Report, 2014) <https://www.gisti.org/IMG/pdf/np_sans-pap-prud-homme_2014.pdf>.
- 252 These include Compliance Notices, and Enforceable Undertakings reflecting an agreement between the employer and regulator. See Fair Work Ombudsman, 'Compliance Notices', *Compliance and Enforcement* (Web Page, n.d.) <<https://www.fairwork.gov.au/about-us/compliance-and-enforcement/compliance-notices>>; Fair Work Ombudsman, 'Enforceable Undertakings', *Compliance and Enforcement* (Web Page, n.d.) <<https://www.fairwork.gov.au/about-us/compliance-and-enforcement/enforceable-undertakings>>.
- 253 In the past year the regulator issued an increased number of Compliance Notices, and commenced numerous legal proceedings against companies that failed to comply, along with media coverage, to send a clear message to businesses that these notices should be taken seriously: Fair Work Ombudsman, *Annual Report 19-20* (Report, September 2020). In the 2019-20 financial year, 54 litigation matters were filed.
- 254 Fair Work Ombudsman (n 253).
- 255 This is an exercise of labour inspectors' discretionary powers and only applied in cases involving undocumented workers: interview with Jan Knockaert (n 91); Email correspondence with Nancy Segers (n 90).
- 256 Where the employer does not cooperate with the labour inspector following up on a complaint, the labour inspector can file a criminal report and refer the case to the labour prosecutor who has discretion to prosecute the employer before a criminal court, at which point it falls to the worker to pursue a civil claim for backpay. In practice, the employer may be asked to formalise the employment situation of the worker for the period he or she was employed to ensure the worker receives their fully social security entitlements including health insurance: Wintermayr and Weatherburn (n 5) 88. However, this regularisation request is rarely made in practice: in 2018, 14% of all complaints produced this outcome, although this fell to 5% in 2019 and 4% in 2020: FAIRWORK Belgium, *Travailleurs Sans Papiers* (Report, 2018); FAIRWORK Belgium, *Travailleurs Sans Papiers* (Report, 2019); FAIRWORK Belgium, *Travailleurs Sans Papiers* (Report, 2020).
- 257 Sebugwaawo (n 50).
- 258 *Payment and Collection of Wages*, DC Code § 32-1301. See also Michael C Zisa, 'Subcontractor Failure to Pay Employee Wages Could Fall on General Contractors', *Construction Exec* (online, 11 October 2020) <<https://www.constructionexec.com/article/subcontractor-failure-to-pay-employee-wages-could-fall-on-general-contractors>>.
- 259 Huizar (n 65).
- 260 Inspectorate SZW, 'Minimum Wage and Holiday Allowance' (Web Page, n.d.) <<https://www.inspectorateszw.nl/topics/minimum-wage-and-holiday-allowance>>. See also Wintermayr and Weatherburn (n 5) 90.
- 261 *Senate Bill No 134 of 2015* (Brazil) <www25.senado.leg.br/web/atividade/materias/-/materia/120197>.
- 262 Revised POEA Rules and Regulations Governing the Recruitment and Placement of Landbased Overseas Filipino Workers of 2016, Pt III s 101(1).
- 263 The Five Corridors Project (n 135) 82.
- 264 Henry Rojas (Asia Workshop, 22 April 2021).
- 265 Email from ILO staff member (Bassina Farbenblum, 8 September 2021).
- 266 *Foreign Workers Law* 5751-1991 (Israel) arts 1N(1), 1O(1), 2-6.
- 267 Interview with Michal Tadjer (n 42).
- 268 The Five Corridors Project (n 58) 124, citing Interview with Senior Official, Mexican Ministry of Labor and Social Welfare.
- 269 Government of Canada, 'Employers Who Have Been Found Noncompliant', *Work in Canada* (Web Page, 20 August 2021) <<https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/employers-non-compliant.html>>.
- 270 David Weil, Brandeis University (North America Workshop, 26 March 2021). There were concerns within the DOL about the quality of the information received under this program to inform certification and challenges verifying employers' true identities and whether they had prior violations.
- 271 The Gangmasters and Labour Abuse Licensing Scheme UK applies to agriculture, horticulture, shellfish gathering and any associated processing or packaging. See further Nick Clark, 'Unpaid Britain: Challenges of Enforcement and Wage Recovery' in Leah Vosko (ed), *Closing the Enforcement Gap: Improving Employment Standards Protections for People in Precarious Jobs* (University of Toronto Press, 2020) 201.
- 272 Labour provider licensing schemes currently exist in Australia in Queensland, Victoria and South Australia (the South Australian scheme is limited to 'high risk industries'). Under the Queensland

scheme, investigation involves deep engagement with licensees to establish the circumstances around noncompliance and provide education on licensees' obligations under the *Labour Hire Licensing Act 2017* (Qld) (in particular, the legislative requirement that all licensees remain fit and proper to hold a licence). The actions taken by the Queensland authority will escalate as required commensurate with the scale, scope and seriousness of the noncompliance identified.

- 273 Temporary Help Agency Consultation, *Mandatory Licensing for Improved Compliance with the ESA* (Report, January 2021) <https://d3n8a8pro7vhm.cloudfront.net/decentworknow/pages/2146/attachments/original/1611265823/THA_Consultations_-_PCLS_WAC_MWAC_file.pdf?1611265823>. Recommendations are derived from successful practices in other Canadian provinces, including mandatory licensing programs for temporary help agencies (already implemented in Quebec, British Columbia, and Alberta).
- 274 These authorities may bring actions against unlicensed labour providers and those who use the services of unlicensed labour providers seeking civil and in some cases criminal penalties for noncompliance and can publicly name employers found in breach or publicise enforcement activity.
- 275 For example, in a Queensland (Australia) case, workers complained to the Labour Hire Licensing Compliance Unit that they were not being paid for their work picking berries. The labour provider was prosecuted and fined for providing labour without a licence, the labour user was prosecuted and fined for using an unlicensed labour provider and a director of the labour provider was also prosecuted and fined with the director imprisoned in default of payment of the fine: See Labour Hire Qld, *Second Anniversary Report of Queensland Labour Hire Licensing Scheme 2020* (Report, 2020) 11 (Case Study 7).
- 276 Nick Clark, Middlesex University and former member of Gangmasters and Labour Abuse Authority Board (Europe Workshop, 20 April 2021).
- 277 Ibid.
- 278 Ibid.
- 279 Ibid.
- 280 Summary of de-identified examples of wage recovery cases provided to the authors by the Queensland Labour Hire Licensing Compliance Unit.
- 281 Ibid.
- 282 Municipal Code of Chicago ch. 4-4-320.
- 283 Nicole Hallet, 'The Problem of Wage Theft' (2018) 37(1) *Yale Law and Policy Review* 93. See also N.J. Admin. Code § 12:4-1.1; Municipal Code of Osceola County (Florida) ch. 25-9.
- 284 Paul Post, 'Trainer's License Revoked for Violating State Labor Law at Saratoga Race Course', *The Saratogian* (online, 29 July 2010) <https://www.saratogian.com/news/trainers-license-re-voked-for-violating-state-labor-law-at-saratoga-race-course/article_18287c2b-9032-5dad-b1da-a7cb674b6e01.html>.
- 285 Steven Greenhouse, 'Racetrack Workers Aren't Paid Minimum Wage, State Agency Finds', *New York Times* (27 August 2008) <<https://www.nytimes.com/2008/08/28/nyregion/28saratoga.html>>.
- 286 Leah F Vosko, *Closing the Enforcement Gap: Improving Employment Standards Protections for People in Precarious Jobs* (University of Toronto Press, 2020) 119.
- 287 *Wage Theft*, Tex Code Ann §§ 15-5 (2)(c), 15-6(2) (2013).
- 288 Rajiv Bhatia et al, 'Protecting Labor Rights: Roles for Public Health' (2013) 128 *Public Health Reports* 39. Several other US cities and localities including Boston, Columbus and Milpitas have also passed ordinances or similar measures creating potential licensing consequences (such as suspension or revocation) for employers with a history of unremedied wage theft or other violations. See Gerstein (n 15); *Ordinance No 295 of 2018* (City of Milpitas); Mayor's Office, 'Mayor Walsh Announces Additional Steps to Protect Workers from Wage Theft' (Press Release, 23 March 2017) <<https://www.boston.gov/news/mayor-walsh-announces-additional-steps-protect-workers-wage-theft-0>>; *Wage Theft Prevention and Enforcement Ordinance of 2020* (City of Columbus).
- 289 Bhatia et al (n 288). After an investigation conducted in 2006, OLSE ordered the employer to pay wages owed with penalties. Yet, after numerous hearings and appeals, the employer failed to pay the full amount owed. In 2010, OLSE requested that SFDPH suspend the permit until payment was made. Regulatory staff from both agencies jointly prepared and presented evidence to the hearing officer, who ordered the owner to pay wages and penalties. Within four months of the orders, the workers received the money owed to them.
- 290 Office of Labor Standards Enforcement (County of Santa Clara), 'Food Permit Enforcement Program' (Web Page, n.d.) <<https://laborstandards.sccgov.org/enforcement/food-permit-enforcement-program>>. See also Jennifer J Lee and Annie Smith, 'Regulating Wage Theft' (2019) 94 *Washington Law Review* 759.
- 291 Gerstein (n 15).
- 292 Office of Labor Standards Enforcement, 'Food Permit Enforcement Program' (Web Page, 15 May 2020) <<https://www.sccgov.org/sites/olse/enforcement/Pages/Food-Permit-Enforcement-Program.aspx>>.
- 293 See, eg, Government of Alberta, 'Unsatisfied Judgments' (Web Page, n.d.) <<https://extern.labour.alberta.ca/ESJS>> (public database that lists all employers who have outstanding Employment Standards monetary judgments against them, going back up to ten years); Government of Canada, 'Public List of Employers Who Have Been Non-Compliant', Temporary Workers (Web Page, 16 December 2016) <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/eligibility/public-list-employers-who-have-been-non-compliant.html>> (providing overview of when employers will be added to the public list of noncompliance with the Temporary Foreign Worker Program in Canada).
- 294 NY Labor Law § 341-a.
- 295 ACT Government, 'Secure Local Jobs', *Supplying to ACT Government* (Web Page, n.d.) <<https://www.procurement.act.gov.au/supplying-to-act-government/securelocaljobs>>.
- 296 Government Procurement (Secure Local Jobs Complaints and Noncompliance Investigation) Guidelines 2018.
- 297 Down with Wage Theft Campaign, 'Houston City Council Passes Anti-Wage Theft Ordinance' (Web Page, 20 November 2013). See also Shannon Gleeson, Ruth Silver Taube and Charlotte Noss, *Wage Theft Report* (Report, 2017).
- 298 Email from ILO staff member (Bassina Farbenblum, 12 September, 2021).
- 299 This law takes effect on January 1, 2022. *HB 1369* (Washington, Labor & Workplace Standards Committee, 2021) <<http://lawfilesex.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/House/1369%20HBA%20LAWS%2021.pdf?q=20210609111129>>. Labour laws in that state make it unlawful for an employer to deprive employees of their wages. Subsequent complaints can be filed with the Department of Labor and Industries.
- 300 *HB 1369* (Washington, Labor & Workplace Standards Committee, 2021) details the property subject to a wage lien, stating that a 'wage lien may be placed on the following property owned or subsequently acquired by the employer, or by an employer's officer, vice president, or agent, who is personally liable for a wage claim: (1) real property in the state; (2) goods and tangible chattel paper in the state; and (3) accounts and payment intangibles'.
- 301 See Texas Workforce Commission, 'Labor Law Administrative Liens' (Web Page, 7 January 2019) <www.twc.texas.gov/labor-law/labor-law-liens.html>.
- 302 Vosko (n 286) 118.
- 303 One study determined that, in the 10 years to 2015, 80 percent of the 98 cases in which the department sued to enforce the lien resulted in full or partial payment. The study's authors suggest that the mere possibility of a wage lien serves to deter labour violations among employers: EH Cho, T Koone and A Mischel, *Hollow Victories: The Crisis in Collecting Unpaid Wages for California Claimants* (Report, 2013).
- 304 The SWEAT Bill passed the NYS legislature in 2019 but was vetoed by Governor Cuomo on January 1st, 2020. The Bill has been reintroduced as bill number A766/S2762 and at time of publication was in committee.
- 305 The bill broadly defines what constitutes a 'wage claim' for purposes of obtaining a lien, and encompasses, among other claims, any alleged violation of New York Labor Law §§ 652 or 673 (minimum wage), § 193 (improper deductions), and § 196-d (gratuities), as well as claims under §§ 206 and 207 of the *Fair Labor Standards Act of 1938*, 29 USC (minimum wage and overtime) and claims for breach of an employment contract where wages were allegedly unpaid under the contract.
- 306 N.Y. City Admin. Code § 20-541 (2015). For requirements, see NYC Consumer and Worker Protection, 'Car Wash License Application Checklist' (Web Page, n.d.) <<https://www1.nyc.gov/site/dca/businesses/license-checklist-car-wash.page>>. The bonding requirement had a two-tier system (depending on whether a car wash was unionised or under a government settlement or not), cited in Gerstein (n 15) 73.

- 307 N.Y. Codes, Rules and Regulations ch. 19-160.9.
- 308 Tex R Civ P § 506.1(b). See, eg, *Cox v Simmonds* (Tex App, 5 February 2015); *Texas Payday Law*, Tex Code Ann 61. The TWC sets the bond amount. It must guarantee the payment of any sum recovered against the employer under Texas Payday Law and that the employer will pay the employees in accordance with the Texas Payday Law for up to three years. Texas labour law provides that the court can require a defendant found guilty of wage law violations to file a surety bond equal to double the amount of the judgment. The bond holds the employer and any person acting as a surety jointly and severally liable for the amount of the bond.
- 309 *Temporary Foreign Worker Protection Act*, SBC 2018, c 45 pt 8. Officials may also seize assets to cover recruitment fees deducted from wages.
- 310 For example, in the US, Tariff Act of 1930, 19 USC § 307 (as amended by the Trade Facilitation and Trade Enforcement Act of 2015) prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured labour. For Canada, see Customs Tariff (S.C. 1997, c 36) s. 132(1) (m) (i.1), s 136, and Schedule at Tariff Item No. 9897.00.00. See also Canada Border Services Agency, 'Memorandum D9-1-6' (7 May 2021). However, as of June 2021, Canadian authorities have faced criticism due to lack of enforcement: see Above Ground, *Creating Consequences: Canada's Moment to Act on Slavery in Global Supply Chains* (Report, June 2021). Mexico is required to pass similar legislation by the US-Mexico-Canada Agreement. A Bill is being considered in the Mexican Senate: see Anti-Slavery International, *Anti-Slavery International and European Center for Constitutional and Human Rights' Position on Import Controls to Address Forced Labour in Supply Chains* (Report, June 2021).
- 311 See, eg, Pete Pattison, 'US Bars Rubber Gloves From Malaysian Firm Due to "Evidence of Forced Labour"', *The Guardian* (online, 31 March 2021) <<https://www.theguardian.com/global-development/2021/mar/30/us-bars-rubber-gloves-malaysian-firm-top-glove-evidence-forced-labour>>.
- 312 After one manufacturer's exports to the US had been banned under the US Tariff Act following charges that its gloves were produced, in whole or in part, using forced labour, DOL monitored wage payments by the newly-liquidated company: Jason Santos, 'Labour Dept Monitoring Wage Payments to Workers of Liquidated Glove Maker', *Free Malaysia Today* (online, 7 January 2020) <https://www.freemalaysiatoday.com/category/nation/2020/01/07/labour-dept-monitoring-wage-payments-to-workers-of-liquidated-glove-maker/?_cf_chl_jschl_tk=__pmd_S5IH.vRaWtyPIORF7kr18FpTi6Y9KcwcwOdo5KgcWo-1633864790-0-ggNtZGzNArucnBszOii>.
- 313 *Fair Labor Standards Act of 1938*, 29 USC § 215.
- 314 Catherine (Cathy) Ruckelshaus, NELP (North America Workshop, 26 March 2021).
- 315 Ibid.
- 316 Stephanie A Koltookian, 'Some (Don't) Like It Hot: The Use of the "Hot Goods" Injunction in Perishable Agriculture' (2015) 100(4) *Iowa Law Review* 1841.
- 317 Catherine (Cathy) Ruckelshaus, NELP (North America Workshop, 26 March 2021).
- 318 New York Labor Law § 345(10)(c).
- 319 California Labor Code § 2680.
- 320 Catherine (Cathy) Ruckelshaus, NELP (North America Workshop, 26 March 2021). See, eg, NY Labor Law (McKinney) § 345(10)(c) (2011).
- 321 Mass Gen Laws § 25C. See also Conn Gen Stat § 31-76; Cal Labor Code § 3710.
- 322 Weil (n 181) 442-43.
- 323 Catherine (Cathy) Ruckelshaus, NELP (North America Workshop, 26 March 2021).
- 324 Cal Labor Code § 2810.3. Laws in other states similarly impose obligations on businesses that engage workers through labour providers, but California's law remains the strongest. Interview with Catherine Ruckelshaus (n 174).
- 325 Cal Labor Code § 2810.3. This applies to businesses with at least 25 workers, including those hired directly and those supplied by a contractor.
- 326 Ibid.
- 327 Ibid.
- 328 Wells (n 216) 28. See also the *Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the Enforcement of Directive 96/71/EC Concerning the Posting of Workers in the Framework of the Provision of Services and Amending Regulation (EU) No 1024/2012 on Administrative Cooperation Through the Internal Market Information System* [2014] OJ L 159/11 which establishes in Article 12 a liability scheme in subcontracting chains for the construction industry. See also Wintermayr and Weatherburn (n 5) 82.
- 329 Jill Wells, *Exploratory Study of Good Policies in the Protection of Construction Workers in the Middle East* (Report, February 2018) 22, citing Y Jorens, S Peters and M Houwerzijl, *Study on the Protection of Workers' Rights in Subcontracting Processes in the European Union* (Report, 2012); Frederic Gillion et al, 'Construction and Projects in France: Overview' (Country Q&A, Thomas Reuters Practical Law, 1 December 2016).
- 330 Wells (n 329); Gillion et al (n 329).
- 331 Marc Lemprière, 'France Strengthens its Already Strict Laws Concerning Subcontracting', *Eversheds Sutherland* (Blog Post, 18 April 2012) <[shorturl.at/gFOTU](https://www.eversheds-sutherland.com/en/france-strengthens-its-already-strict-laws-concerning-subcontracting)>.
- 332 Wells (n 329), citing Mijke Houwerzijl and Saskia Peters, *Liability in Subcontracting Processes in the European Construction Sector* (Report, November 2008).
- 333 The Belgian legislation enshrines several regimes of joint and several liability for wages in subcontracting chains. They include a general regime, a specific one for the construction sector (that excludes migrant workers in an irregular situation) and one applying to third-country nationals staying and working irregularly in the country: *Law on the Protection of Workers' Remuneration 1965* (Belgium). For application to an undocumented worker, see Brussels Employment Tribunal (17/2879/A, 23 July 2018).
- 334 *Law No 1846/1951* (Greece) Article 8 provides that the owner of the house or the building as well as the client of a technical project are liable for social security contributions of their and of subcontractors' workers. See Jorens et al (n 329).
- 335 *Labour Code* (Brazil) art 455; Tribunal Superior do Trabalho. Orientação Jurisprudencial 191 da SDI-I. 191. CONTRATO DE EMPREITADA. DONO DA OBRA DE CONSTRUÇÃO CIVIL. RESPONSABILIDADE. (nova redação) - Res. 175/2011, DEJT divulgado em 27, 30 e 31.05.2011. Chain liability extends to project owners which are a construction or property development company. This principle was applied in a Brazilian Superior Labour Court case in 2019 to hold a contractor responsible for wages that were not paid by the subcontractor (although the judgment has not been enforced because the main contractor was under administration at the time of the judgment). See Brazilian Superior Labour Court (TST-AIRR-360-10.2015.5.09.0041, April 2019).
- 336 Wells and da Graça Prado (n 215) 26-27. There has, however, been ambiguity as to whether a worker can pursue the owner or main contractor directly for the wages that have not been paid by the subcontractor, or whether the worker must first pursue the subcontractor and only seek to recover wages from the main contractor or project owner if the subcontractor cannot fulfil the debt, see *Labour Code* (Brazil) art 455. A more recent law, *New Outsourcing Law No 13.429/2017* (Brazil), includes a provision establishing that the liability of the main contracting party is secondary. Experts note that although it could be claimed that *Law No. 13.429/2017* is a law of general scope that does not replace the specific provisions applicable to the construction sector, which remain regulated by Article 455, it is likely that main contractors will now claim subcontractors must be called to fulfil payments first. Court rulings rendered in 2019, after the enactment of *Law No. 13.429/2017*, continued to recognise the primary obligation of the main contractor, however the Superior Court has considered in a recent ruling that the liability of the project owner is secondary. Conscious of this ambiguity, trade unions have adopted the strategy of including specific wording in Collective Labour Agreements signed with employers in order to clarify the primary responsibility of main contractors.
- 337 Zisa (n 258). The New York State Assembly and Senate have passed a Bill making general contractors jointly and severally liable for wage theft violations committed by subcontractors on their construction site. The Bill was signed into law in September 2021 and will come into force January 4, 2022: N.Y. Labor Law § 198-e.
- 338 Md Code Ann Lab & Empl § 3-507.2(c)(1); Zisa (n 258). Similarly, in the District of Columbia, a general contractor is jointly and severally liable for wages that have not been paid to workers of subcontractors, as well as for liquidated damages imposed for each day that employee wages remain unpaid: *Payment and Collection of Wages*, D.C. Code § 32-1301.
- 339 Va Code Ann §§ 40.1-29 and 11-4-6 (2020); Zisa (n 258).
- 340 Zisa (n 258).

- 341 Cal Labor Code § 218.7 (2018); Cal Civ Code § 8018.
- 342 *Fair Work Act 2009* (Cth) s 558B.
- 343 Asia Floor Wage, *Joint Employer Liability Legal Strategy* (Report, July 2021) 3.
- 344 They argue that the contract for manufacturing between the buyer and the supplier is linked to the employment contracts between the supplier and workers because the manufacturing contract shapes, conditions and controls the employment contracts. For a discussion of the legal arguments being advanced, see *ibid*.
- 345 See, eg, Jennifer Gordon, *Global Labour Recruitment in a Supply Chain Context* (Report, 2015).
- In British Columbia (Canada), for example, a foreign worker recruiter is liable for any breach of the *Temporary Foreign Worker Protection Act*, SBC 2018, c 45 by its partners, affiliates or agents who in partnership with or on behalf of the foreign worker recruiter provide recruitment services to a foreign worker. See Temporary Help Agency Consultation, *Mandatory Licensing for Improved Compliance with the ESA* (Report, January 2021) <https://d3n8a8pro7vhm.cloudfront.net/decentworknow/pages/2146/attachments/original/1611265823/THA_Consultations_-_PCLS_WAC_MWAC_file.pdf?1611265823>.
- 346 *Migrant Workers and Overseas Filipinos Act of 1995* (Philippines) s 10.
- 347 Farbenblum (n 240) 168.
- 348 Migrant Forum in Asia, 'Joint and Several Liability of Recruitment/Placement Agencies with the Principal/Employer Under Philippine Laws' (Policy Brief No 11, Winter 2014) 5-6; Mauro Testaverde et al, *Migrating to Opportunity: Overcoming Barriers to Labor Mobility in Southeast Asia* (Work Bank Publications, 2017).
- 349 *Fair Labor Standards Act of 1938*, 29 USC § 201.
- 350 *Donovan v Agnew*, 712 F.2d 1509, 1511 (1st Cir. 1983): 'The overwhelming weight of authority is that a corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages.'
- 351 For example, in a class action where employees settled with a New York grocery chain employer and the employer then defaulted on paying the agreed settlement, the employees brought suit and the CEO was found personally liable for the unpaid wages: *Irizary v Catsimatidis* (2nd 2013, 722 F.3d 99). The court found that although the CEO may not have been responsible for the violations, as an employer he could be held personally liable for claims of this type.
- 352 Similar provisions exist in New York: N.Y. Lab. Law §§ 190(3), 651(6) and California: Cal. Lab. Code, § 558. See, eg, *Atempa v Pedrazzani*, 27 Cal. App. 5th 809 (2018); *Illinois Wage Payment and Collection Act*, 820 Ill. Comp. Stat. 115/2 (2002); *Andrews v Kowa Printing Corp.*, 217 Ill. 2d 101 (2005); Wash. Rev. Code § 49.52.070; *Morgan v Kingen*, 166 Wn.2d 526 (2009). While these states have specific state labour provisions that allow for liability to be attached to corporate officers, the federal Fair Labor Standards Act allows for employers under its definition to be held personally liable as well. Therefore, even employees in states that do not have personal liability provisions may be able to attach liability to 'employers' under the Fair Labor Standards Act.
- 353 NY CLS Bus Corp § 630; NY CLS LLC § 609.
- 354 NY CLS Bus Corp § 630, pursuant to a 2016 amendment to the provision.
- 355 *Wing Wong v King Sun Yee*, 262 A.D.2d 254 (1999) suggests that if the employees who were owed unpaid wages had brought their claim in a timely manner, the provisions of NY CLS Bus Corp § 630 would have attached liability (in this case of \$1.35 million) to the individual shareholders of the corporation.
- 356 See HB 1369 (Washington, Labor & Workplace Standards Committee, 2021).
- 357 This accords with Article 11 of the *Protection of Wages Convention 1949* (ILO Convention No 95) which provides that in the event of an employer's bankruptcy or insolvency, workers shall be treated as privileged creditors in relation to wages due to them for service rendered, for a period or up to an amount that may be determined by national laws or regulations. These wages shall be paid in full before ordinary creditors may establish any claim to a share of the assets. See further ILO, *Protection of Workers' Wage Claims in Enterprise Insolvency* (Report, May 2020).
- 358 Success depends on the private insolvency practitioner being able to trace the workers, and on the quality of the payroll records. Claimable weekly wages are capped at a certain amount.
- 359 *Wage Earner Protection Program Act*, SC 2005, c 47, s 1; *Wage Earner Protection Program Regulations* (SOR/2008-222). See also Employment and Social Development Canada, *Five-Year Statutory Review of the Wage Earner Protection Program Act* (Report, Spring 2015).
- 360 In Belgium, where a worker is entitled to receive outstanding wages but the employer has become insolvent, the worker can apply to access payment from an insolvency fund: see Article 2244 Civil Code (Belgium). For its application to undocumented workers in practice, see Brussels Employment Tribunal, 23 July 2018 (17/2879/A) (a summary of the case is contained in: Wintermayr and Weatherburn (n 5) 288).
- 361 Or Rev Stat § 652.409.
- 362 *Tümer v Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen* (C-311/13) [2014] CJEU 2337 extended these insolvency provisions to undocumented workers, cited in PICUM (n 5) 13. See also Steve Peers, 'Irregular Migrants and EU Employment Law' (Blog Post, 5 November 2014) <<http://eulawanalysis.blogspot.com/2014/11/irregular-migrants-and-eu-employment-law.html>>.
- 363 Undocumented workers are entitled to access insolvency benefits from the Employee Insurance Schemes Implementing Body, if they have a pay claim against an employer who has been declared insolvent or if the worker is liable to suffer financial loss because that employer has failed to pay third parties amounts owed in respect of the employment relationship with the employee: *Werkloosheidswet [Unemployment Insurance Act]* (the Netherlands) art 61, cited in PICUM (n 5) 31; Wintermayr and Weatherburn (n 5) 97.
- 364 *Law No. 17 of 2018 Establishing the Workers' Support and Insurance Fund* (Qatar) art 5. See also The Five Corridors Project (n 44). The fund became operational in 2020.
- 365 Amnesty International, *Reality Check 2020: Countdown to the 2022 World Cup – Migrant Workers' Rights in Qatar* (Report, 2020); Mustafa Qadri and Nikhil Eapen, *Recommendations on the Establishment of the Workers' Support and Insurance Fund in Qatar: Drawing from International Experience* (Report, 2019). Though recognising the potential benefit of the Fund, human rights NGOs note that in practice many workers who win their cases at the Labour Disputes Settlement Committees do not receive their dues from the fund. Moreover, the fund requires a court award, meaning that workers must wait to resolve wage disputes before they can make a claim to the fund which can take many months (Wells (n 329)), and a worker may only access the fund after the labour court has first pursued the award from the employer directly through the Ruling Enforcement Office and the employer refuses or is unable to pay. See 'Wage Abuse Action Shortchanges Workers: Workers Still Owed Wages for Months After Informing Government of Abuse', *Human Rights Watch* (online, 22 December 2020) <<https://www.hrw.org/news/2020/12/22/qatar-wage-abuse-action-shortchanges-workers>>.
- 366 *Workers Welfare Standards* (Qatar) cl 20.2(b). See Hassan Al Thawadi, *Supreme Committee for Delivery & Legacy's Workers' Charter* (Report, 2017) <<https://www.qatar2022.qa/sites/default/files/docs/Workers%27-Welfare-Standards.pdf>>.
- 367 Rosey Hurst et al, *Annual External Compliance Report of the Supreme Committee for Delivery & Legacy's Workers' Welfare Standards* (Report, 2020) 33 <<https://www.qatar2022.qa/sites/default/files/documents/Impact-Ltd-Compliance-Report-February-2020.pdf>>.
- 368 Varun Godinho, 'UAE to Raise Employee Insurance Premium for Companies Failing to Pay Salaries on Time', *Gulf Business* (online, 13 April 2021) <<https://gulfbusiness.com/uae-to-raise-employee-insurance-premium-for-companies-failing-to-pay-salaries-on-time/>>.
- 369 UAE Ministry of Human Resources and Emiratisation, 'Value of the Insurance Product Increased to AED 250 for Establishments Not Committed to Paying Workers' Wages' (Media Release, 12 April 2021) <<https://www.mohre.gov.ae/en/media-centre/news/12/4/2021/value-of-the-insurance-product-increased-to-aed-250-for-establishments-not-committed-to-paying-workers-wages.aspx>>.
- 370 *Policy Procurement Note 2/2010 of October 2010* (UK); *Making Fair Payment in Construction a Requirement in Central Government Contracts Information Note 2/2010* (UK). See also Wells (n 216) 25 and Wells (n 329) 19.
- 371 Seoul Metropolitan Government, 'Fast and Transparent Construction Payment System: Seoul Payment Monitoring System' (Web Page, 25 June 2015) <<https://www.seoulsolution.kr/en/content/fast-and-transparent-construction-payment-system-seoul-payment-monitoring-system>>. See also Wells (n 216) 25.
- 372 The subcontractors make a request to the general contractor for a payment to meet labour costs, which is then forwarded to the Seoul government (as client). Regulations require the Seoul government to make a payment, if approved, into the contractor's sPMS account within seven working days from receipt of the invoice. Subcontractors should receive payment two days later and workers should be paid within a further two days. See *Construction Labour Wage Separate Payment Confirmation* (South Korea), cited in Jill Wells, *Construction Workers in the Middle East* (Report, February 2018) 21.

- 373 *Housing Grants, Construction and Regeneration Act 1996* (UK) s 108.
- 374 Wells (n 329).
- 375 The legislation also establishes that contractors have a right to progress payments regardless of what is stated in the contract, and regardless of whether a contract is written, verbal or absent. Fair Trading NSW, 'Security of Payment', *Construction and Trade Essentials* (Web Page, n.d.) <<https://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment>>.
- 376 The decision can only be overturned if the adjudicator did not have the jurisdiction to make the determination. *Building and Construction Industry Security of Payment Act 1999* (NSW); 'Adjudicators' Determinations under the Building and Construction Industry Security of Payments Act 1999 (NSW): High Court Decision in *Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd, Surry Partners* (online, n.d.) <<https://www.surrypartners.com.au/2259-2/>>.
- 377 Experts also recommend inclusion of a requirement that all contractors pay subcontractors within 30 days in the case of small contractors and labour suppliers: Wells (n 216) 23.
- 378 *Migrant Workers and Overseas Filipinos Act of 1995* (Philippines) s 10.
- 379 In Nepal, recruitment agency's security deposits provide a fund which can be used as compensation in cases where the recruit is proven to have been exploited: The *Foreign Employment Act of 2007* (Nepal) and subsequent *Foreign Employment Policy of 2012* (Nepal). See also ILO, *The Migrant Recruitment Industry: Profitability and Unethical Business Practices in Nepal, Paraguay and Kenya* (Report, September 2017).
- 380 *Sub-Decree 57 on sending Khmer Migrants Abroad 1995* (Cambodia) art 7. See also Chan Sophal, *Review of Labour Migration Management, Policies and Legal Framework in Cambodia* (Report, May 2009). Recruitment agencies that wish to obtain a license to send Cambodian workers abroad are required by Article 7 to deposit a guarantee of USD 100,000 with the Cambodian Ministry of Labour and Vocational Training (MOLVT). The MOLVT has the right to use this deposit to compensate workers if recruitment agencies are found not to comply with any conditions as stated in the employment contract. Workers who find their rights violated can, therefore, in theory, receive monetary compensation from the MOLVT: See ILO, *The Mekong Challenge: An Honest Broker - Improving Cross-Border Recruitment Practices for the Benefit of Government, Workers and Employers* (Report, 2008).
- 381 Nepal's Department of Foreign Employment only exercises its right to use the deposit to recover money owed to a worker in isolated cases. See Chandan Kumar Mandal, 'Nepali Workers Who Had Returned Empty-Handed From Qatar Three Years Ago Are Set to Get Their Due Salaries', *The Kathmandu Post* (online, 3 February 2020) <<https://kathmandupost.com/national/2020/02/03/nepali-workers-who-had-retained-empty-handed-from-qatar-three-years-ago-are-set-to-get-their-due-salaries>>. ILO staff have observed that use of the deposit to pay wages in Cambodia is 'unfortunately, most often a theory rather than necessarily the practice. I think we've seen deductions from that licensing fee in only one case': ILO staff member (Asia Workshop, 22 April 2021). One of the challenges is obtaining fees that are more than, or much less than, the US \$100,000 deposit that Private Recruitment Agencies in Cambodia are required to pay. The MOLVT has stated that it is difficult to withdraw deposits much smaller than this amount, and has expressed similar difficulties in cases where the amount owing is greater than this amount. In each instance, the MOLVT has referred the case to court: see ILO (n 248) 15.
- 382 The Five Corridors Project (n 135) 87, noting that in such cases the POEA can suspend or cancel the offending agencies' licenses, but this sanction leaves the workers without remedy. See also Commission on Audit (Philippines), *Audit of Philippine Overseas Employment Administration* (Report, 2016) vii, finding deposits were inadequate to cover claims.
- 383 *Regulation Respecting Personnel Placement Agencies and Recruitment Agencies for Temporary Foreign Workers*, RRC 2019, r 37.
- 384 Canadian Council for Refugees, *Evaluating Migrant Worker Rights in Canada 2018* (Report, May 2018).
- 385 Petra Herzfeld Olsson, 'Towards Protection of Vulnerable Labour Migrants in Sweden: The Case of the Thai Berry Pickers' in Conny Rijken and Tesselde de Lange (eds), *Towards a Decent Labour Market for Low Waged Migrant Workers* (Amsterdam University Press, 2018) 149, 157.
- 386 Ismail Sebugwaawo, '23,000 Abu Dhabi Workers Get Dh261 Million Unpaid Salaries at Doorstep, Thanks to Mobile Court', *Khaleej Times* (online, 21 August 2020) <<https://www.khaleejtimes.com/news/crime-and-courts/23000-uae-workers-get-dh261-million-unpaid-salaries-at-doorstep-thanks-to-mobile-court>>.
- 387 CMD, 'Direct Representation and Litigation Support' (Web Page, n.d.) <<https://cdmigrante.org/direct-representation-and-litigation-support/>>.
- 388 Ibid.
- 389 US DOL, 'Workers Owed Wages', *Wage and Hour Division* (Web Page, n.d.) <<https://webapps.dol.gov/wow/>>.
- 390 Meri Åhlberg, FLEX (Europe Workshop, 20 April 2021).
- 391 Interview with Michal Tadjer (n 42).
- 392 Survey response of Tom Fritzsche, Milk with Dignity Standards Council (22 April 2021). For more information on WSR programs see wsr-network.org, fairfoodprogram.org, migrantjustice.net, milkwithdignity.org, and ciw-online.org. For information on the impact of these programs, see Milk With Dignity, *Program Impact* (Report, October 2020); Fair Food Standards Council, *Fair Food 2018 Update* (Report, October 2019).
- 393 Survey response of Tom Fritzsche (n 392). According to Fritzsche, buyers have greater leverage to enforce requirements than government agencies, but these programs only work if they are worker-led from the outset, rather than developed by business.
- 394 They also involve legally binding commitments that prevent buyers from walking away if they are uncomfortable with the outcomes of the program: *ibid*.
- 395 The NGOs are independent from the buyers and suppliers and also undertake detailed objective monitoring. Employers that supply participating buyers must agree to provide NGO monitors with access to payroll, time records and other evidence in order to assess workers' claims objectively: *ibid*.
- 396 Interview with Lisa Rende Taylor, Issara Institute (21 April 2021).
- 397 Laurie Berg and Bassina Farbenblum, 'Remedies for Migrant Worker Exploitation in Australia: Lessons from the 7-Eleven Wage Repayment Program' (2018) 41(3) *Melbourne University Law Review* 1035.
- 398 Interview with Terri Gerstein (n 194).
- 399 See, eg, Australian Department of Home Affairs, *Context Paper for Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill 2021* (proposing law reform measures to address exploitation of migrant workers based on the assumption that a small number of employers engage in exploitative behaviours).
- 400 Leah F Vosko et al, 'The Compliance Model of Employment Standards Enforcement: An Evidence-based Assessment of its Efficacy in Instances of Wage Theft' (2017) 48(3) *Industrial Relations Journal* 256, 270; Eric Tucker et al, 'Carrying Little Sticks: Is there a 'Deterrence Gap' in Employment Standards Enforcement in Ontario, Canada?' (2019) 35(1) *International Journal of Comparative Labour Law and Industrial Relations* 1.
- 401 Bassina Farbenblum and Laurie Berg, *Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia* (Report, 2018).
- 402 See, eg, *ibid*; Sarah Paoletti et al, *Migrant Workers' Access to Justice at Home: Nepal* (Open Society Foundations, 2014); Farbenblum, Taylor-Nicholson and Paoletti (n 5).
- 403 David Weil, 'Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division' (Research Paper, Boston University); David Weil, 'A Strategic Approach to Labour Inspection' (2012) 47(4) *International Labour Review* 349.
- 404 Bassina Farbenblum, 'Governance of Migrant Worker Recruitment: A Rights-Based Framework for Countries of Origin' (2017) 7(1) *Asian Journal of International Law* 152.
- 405 Interview with ILO staff member (Laurie Berg and Bassina Farbenblum, 25 June 2021); ILO, *Country of Origin Complaints Mechanisms for Overseas Migrants From Myanmar* (Report, December 2016).
- 406 This data did not include private cases as it relied on information provided by the agencies: Michael Tayag et al, *Wage Theft in Silicon Valley: Building Worker Power* (Report, 2021) 6, endnotes 21 and 22.
- 407 Response to Project Survey, on file with authors.
- 408 Douglas MacLean, Justice Without Borders (Asia Workshop, 22 April 2021).
- 409 NELP (n 5); Huizar (n 65).



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