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Labour Market Realism and the Global Compacts on
Migration and Refugees

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Abstract

The Global Compacts on Migration (GCM) and Refugees (GCR) include policy recommendations that aim to increase opportunities for legal labour migration, improve protections for migrant workers, and provide refugees with ‘complementary pathways’ to enhanced protection via labour mobility. This paper explains why there are large gaps between these policy recommendations and the labour market policies and realities in the countries that host most of the world’s migrant workers. These gaps between ideals and realities are likely to limit the effective implementation of the GCM/GCR recommendations on labour migration. More ‘labour market realism’ is needed to incrementally but effectively improve protections for migrant workers.

Keywords

Global compacts, migrant workers, refugees, complementary pathways.

Introduction*

The *Global Compact for Safe, Orderly and Regular Migration* (GCM), and the separate *Global Compact on Refugees* (GCR), are new UN agreements made in 2018 to promote more effective international cooperation on international migration and the protection of refugees. These compacts are not legally binding, but they lay out goals and policy commitments that governments are urged to embrace to better regulate international migration and refugee flows.

GCM recommendation¹ five calls on governments to develop pathways for regular migration that reflect “demographic and global labour market realities” and to implement labour mobility schemes for “temporary, seasonal, circular, and fast-track programmes in areas of labour shortages.” The compact calls on governments to allow all migrant workers to bring or unify their families abroad and to provide any accompanying family members with “work authorization, and access to social security and services.” GCM recommendation six calls for fair and ethical recruitment and portable visas that allow migrants to change employers and to change the duration of their stay abroad “with minimal administrative burden.” The GCR recommendations include “complementary pathways for admission to third countries” with more “labour mobility opportunities for refugees, including through the identification of refugees with skills that are needed in third countries.”

This paper explains why there are major gaps between these GCM/GCR policy recommendations and the realities of migrant labour markets and labour immigration policies, especially in the high-income countries that host two-thirds of the world’s migrant workers (ILO, 2018). We assess each of the three recommendations in light of the realities of how the governments that host most of the world’s migrant workers currently regulate their admission and rights. The GCM recommendations ignore some of the fundamental concepts underpinning temporary labour migration programmes, such as governmental requirements that employers should try to recruit local workers before receiving permission to hire migrant workers. As a consequence, it is highly unlikely that the core aspects of GCM recommendations five and six will be implemented by the countries that host most migrant workers. Similarly, there may be limited scope for creating labour mobility opportunities for refugees, but practical obstacles suggest that few refugees can be turned into migrant workers. We conclude that the labour recommendations of the new Global Compacts are unlikely to make significant impacts, and urge more ‘labour market realism’ in thinking about international labour migration by focusing on targeted recommendations that yield incremental but effective improvements for migrant workers.

Realities of labour immigration policy-making

The United Nations Population Division (2017) reported 258 million migrants in the world in 2017. The International Labour Organisation (ILO) estimated that 164 million of these migrants, equivalent to 70 percent of all migrants 15 and older, were in the labour force of the countries to which they had moved (ILO 2018). Given an estimated 150 million migrant workers in 2013, this suggests an average increase of 3.5 million in the stock of migrant workers each year between 2013 and 2017. According to the same

* For helpful comments on an earlier draft, the authors are grateful to Bruce Cohen, Marie McAuliffe, and Henry Sherrell. Responsibility for the analysis and arguments expressed in this paper lies with the authors alone. This is work in progress, so comments are very welcome.

¹ It is important to note that the term “recommendation” is not used in GCM or GCR. GCM includes a list of “principles” and 23 “objectives”, each of which is accompanied by a “commitment” to a specific policy goal and a “range of actions considered to be relevant policy instruments and best practices” (para 16.). Similarly, the GCR includes “principles”, “objectives”, and a “programme of action”. Many of these objectives and actions clearly constitute (a menu of) “policy recommendations” (as the term is commonly understood), so we use “policy recommendations” for linguistic convenience in this paper.

ILO estimates, men were 58 percent of migrant workers in 2017. The share of men 15 and older who were in the labour force was 75 percent for both migrant and non-migrant men, but the share of migrant women in the labour force, 64 percent, was higher than for non-migrant women, 48 percent.

In 2017, 111 million migrant workers, 68 percent of the global total, were in the high-income countries that have a sixth of the world's 3.5 billion workers. Migrants constituted almost 20 percent of workers in high-income countries, and less than five percent of workers in low-income countries. By region, 24 percent of migrant workers in 2017 were in Europe, 23 percent were in North America, and 14 percent were in the Arab states. Almost 41 percent of all workers in the Arab states were migrants, followed by 21 percent of all workers in North America and 18 percent of all workers in Europe (ILO, 2018).

Many of the 164 million migrant workers have been admitted to their current host countries under labour immigration programmes, i.e. migration policies specifically designed to facilitate the admission and employment of migrant workers. A considerable number have been admitted under other legal immigration channels, e.g. as family members, students, or refugees, that offer, either immediately or after some time, the legal right to work. In some parts of the world, especially in Europe, large numbers of migrant workers have also moved across borders under "free movement agreements." Some migrant workers are residing and/or working illegally, although they constitute a small minority.

The great majority of labour immigration programmes in high-income countries are temporary migration programmes (TMPs), that is, programmes that grant temporary residence status on arrival (although some allow a transfer to permanent residence status after some time). The countries that in the past prioritised the admission of migrant workers with permanent residence status on arrival, such as Australia and Canada, have expanded their temporary migrant worker programmes over the past two decades. In both Australia and Canada, the number of migrants admitted as temporary workers now exceeds the number of migrant workers admitted with immediate permanent residence status.

Most countries operate a range of temporary labour immigration programmes targeted at migrant workers with different skills. Programmes for high- and lower-skilled workers typically have different admissions criteria and rights for migrant workers. For example, most labour migration programmes that allow the entry of higher-skilled migrant workers place fewer restrictions on admission, and often grant migrants more rights, including access to welfare and rights to family reunion, than programmes that admit lower-skilled migrants. Labour migration programmes in many high-income countries are characterized by trade-offs between openness and some migrant rights, that is, programmes that are more open to admitting migrant workers are also more restrictive with regard to welfare and residence rights. This trade-off can be found across programmes targeting migrants with different skills, but not in programmes that specifically target the most highly skilled workers for whom there is intense international competition (Ruhs 2013; Ruhs and Martin 2008).

The most common policy tools for regulating the admission of labour migrants in high-income countries include: (i) the requirement of a genuine job offer before admission; (ii) 'labour market tests' that require employers to advertise their vacancies in the domestic labour market for a minimum period of time before being certified to recruit and employ a migrant worker to ensure that employers make reasonable efforts to recruit local workers, although "local" is defined differently across countries; (iii) quotas; (iv) restrictions of the work permit holder's employment to specific occupations and/or sectors of the host country; and (v) a self-sufficiency requirement that requires migrant workers to prove before admission that they will not rely on public funds to support themselves and their families in the host country. In addition, almost all TMPs require migrants to work for the employer specified on the work permit only – an issue we discuss in more detail later.

While there are many commonalities in the general principles and fundamental features of labour immigration policies, there are also significant policy variations across political regimes, that is across democracies and autocracies and "varieties of capitalism" such as liberal market economies with liberal welfare states and coordinated market economies with other types of welfare states. For example, Ruhs

(2018) found that, compared with policies in democracies, labour immigration programmes in autocracies are more open to labour immigration, impose more restrictions of migrants' rights, and exhibit stronger trade-offs between openness and rights. With regard to variations across types of capitalism, he found that immigration programs in liberal market economies (LMEs) impose fewer limits on the employment conditions of migrants but place more restrictions on migrants' social rights than policies in coordinated market economies. Policy trade-offs between openness and social rights are more likely to occur in LMEs with liberal welfare states than in countries with other types of welfare states.

What about the determinants of labour immigration programmes? Answering this question requires a conceptual framework for labour immigration policymaking. Research on the determinants and processes of migration policy formation emphasize a range of factors, including 'statist approaches' that focus on the role of the state in pursuing the "national interest" (e.g. Weiner 1995), institutions (e.g. Afonso and Devitt 2016; Menz 2009), interests (e.g. Freeman 1995), ideas (e.g. Balch 2009) and, more generally, socio-economic conditions such as the state of the economy. While public debates and the processes of policy-making on labour immigration vary across countries, they are often framed in highly consequentialist terms, i.e. based on the (perceived and/or real) costs and benefits of particular admission policies, without significant consideration of the interests of new migrants and/or their countries of origin. Humanitarian considerations typically play little role in the labour immigration policies of high-income countries.

GCM labour migration recommendations

The GCM includes 23 objectives with actionable commitments, including a wide range of goals as such as obtaining better migration data, providing timely and accurate information to migrants, preventing trafficking in persons, and enhancing the portability of social security benefits. To facilitate and promote the implementation of these objectives, the GCM established a "capacity building mechanism" within the UN to support countries in their implementation efforts. The GCM also calls on the UN to review each country's progress toward achieving the GCM's migration goals during an International Migration Review Forum every four years beginning in 2022. The Global Forum on Migration and Development is invited to "provide a space for annual information exchange on the implementation of the Global Compact, and report the findings, best practices and innovative approaches to the International Migration Review Forum".

GCM objectives five and six deal with labour migration and migrant workers. GCM recommendation five calls on governments to "enhance availability and flexibility of pathways for regular migration" by facilitating "labour mobility and decent work reflecting demographic and labour market realities" (para 21), developing model labour mobility agreements by sector, and admitting migrant workers at all skill levels (para 21d). Migrant pathways into countries should take account of "national priorities, local and national labour market needs and skills supply" (e.g. para 21c), and the mechanisms used to determine how many migrants to admit to close skill gaps should involve input from local stakeholders, including employers and unions (para 21e).

Governments are asked to develop labour mobility schemes for "temporary, seasonal, circular, and fast-track programmes in areas of labour shortages (para 21d)." All migrant workers should be able to bring or unify their families abroad, that is, the GCM calls for "reviewing" and "revising" current restrictions on family unification linked to income and language, type of visa, and length of stay. The GCM also calls on governments to provide "work authorization and access to social security and services" (para 21i) for the members of migrant worker families.

GCM recommendation six calls for fair and ethical recruitment, including prohibiting recruiters from charging any fees to migrant workers and ensuring "that the roles and responsibilities within the recruitment and employment process are clearly outlined, thereby enhancing supply chain transparency"

(para 22e). Governments are asked to ratify and implement “relevant international instruments related to international labour migration” (para 22a) and to learn from best practices “to promote the full respect for the human and labour rights of migrant workers at all skill levels” (para 22b) and to monitor recruiters effectively to ensure they do not charge fees to migrant workers.

Governments hosting migrant workers should add labour inspectors to ensure compliance with labour laws, guarantee that migrant workers retain their identity documents, and permit migrants to join unions (para 22i). Recommendation 6h calls on governments to allow migrants to change employers and to change the duration of their stay abroad “with minimal administrative processes” (para 22g).

These recommendations are unlikely to effectuate real improvements in the protection of migrant workers because they are not likely to be implemented. The GCM recommendations are policy aspirations that are not objectionable *per se*, but they do not address the well-known trade-offs and hard policy questions that arise in the regulation of the admission and rights of migrant workers, especially in countries that host large numbers of migrants.

First, the GCM recommendations do not deal with the central policy question of how governments determine whether migrant workers are needed in particular occupations and/or sectors of the domestic labour market. Most TMPs are “employer-led” in the sense that employers ask governments for permission to recruit a certain number of migrant workers with specific skills, often based on the argument that there are “shortages of domestic labour and skills.” Governments must assess and evaluate these employer shortage claims and determine whether labour immigration is the optimal response in light of potential alternatives such as higher wages, mechanization, imports, etc. Assessing the feasibility and desirability of alternatives to migrant workers raises economic and normative questions that are typically highly contested, since governments are deciding whose interests should be prioritized (Ruhs and Anderson 2010).

Many research and policy reports discuss processes to determine if migrant workers are needed and alternatives to migrant workers (Migration Advisory Committee 2010; 2017), but this research and analysis is not addressed explicitly in the GCM. For example, instead of discussing how to oversee employer efforts to recruit local workers and establish minimum wages for migrants employed under TMPs, the GCM talks of “demographic realities” and “labour imbalances” as reasons to admit more migrants.

There is a striking mismatch between the GCM’s “macro-arguments” for more legal labour migration pathways and the “micro-processes” and considerations that dominate real-world policy decisions. For example, the argument that there are general labour imbalances between high- and lower-income countries does not answer fundamental questions about how to evaluate and respond to employers’ requests for more migrant workers, e.g. how to deal with a farmer’s request for 1,000 migrant workers to harvest fruit. In practice, governments typically look at whether the farmer tried to recruit local workers at prevailing wages and whether it makes sense to admit migrants rather than encourage other responses, from higher wages to attract domestic workers to labour-saving mechanization and/or greater imports (Martin, 2018).

A second example of where GCM ideals clash with labour market realities is the right of migrant workers to change employers. Almost all temporary labour migration programmes exist to fill particular jobs, so they restrict the employment of the admitted migrant to the employer and job specified on the work permit. Some programmes allow migrants to change employers, but only if the new employer obtains the necessary work permit and sometimes after the current employer agrees to the transfer. Migrant workers admitted under TMPs typically acquire the right to change employers freely only after they have acquired permanent residence status in the host country.

Tying the employment of migrants to specific employers can increase the vulnerability of migrants, who may lose the right to be in the country if they lose their jobs. Migrants who face unsatisfactory working conditions have difficulty complaining unless they are willing and financially able to return

home. Some employers retain migrant workers' passports and provide "tied accommodation," making it hard for the migrant to leave without the employer knowing, and forcing the migrant to find alternative housing if fired by the employer. These realities mean that there is a strong case for thinking about how current policy practices that tie migrants to specific employers can be relaxed. For example, could migrant workers earn the right to change employers within a given occupation or sector after a minimum period of time such as two years?

What would happen if migrant workers had the right to change employers upon admission, as the GCM suggests? The result could be a break in the one-to-one link between labour market tests that certify labour shortages and the employment of migrant workers. Jobs are hard to fill for a reason, and migrant workers are just as likely as local workers to prefer some jobs to others. Consequently, giving migrants the unrestricted right to change employers upon admission would make it impossible to use labour migration to fill jobs in particular occupations and/or sectors, and thus undermine employer and host country incentives to recruit and admit migrant workers in the first place. Even if migrant workers are restricted to particular industries and occupations rather than to specific employers, more and more may need to be admitted to ensure that most of the jobs that governments believe should be filled are in fact filled.

A third problem is the insufficient attention given to the incentives and recruitment practices of employers. For example, the GCM's call for no worker-paid recruitment fees ignores the reality that matching workers with jobs over borders has costs (Martin 2017). If employers pay all costs for the migrant workers they recruit, but migrants are then free to change employers immediately or soon after arrival in the host country, do employers lose their investment in migrants who change jobs? Will governments require the migrant's new employer to reimburse the first employer for recruitment costs? Will migrants have to stay with the employer who paid their recruitment costs for a period of time before being eligible to change employers? These are important practical questions that need to be discussed, but the GCM ignores them.

Fourth, the GCM's recommendations on family reunion and the rights of family migrants would allow migrants of all skill levels to arrive with families who can receive work permits and access public services. Current policies in most high-income countries require most temporary migrants to prove self-sufficiency, and most limit family reunion to migrants that satisfy minimum income thresholds. The GCM recommendations thus raise a host of practical questions. Will there be any labour market restrictions on the relatives of migrants? Will employers who recruited particular migrants be responsible for the costs of any public services consumed by migrant families? Questions about the impact of family migration on public finances are often among the central questions in public debates about immigration. Until such questions are answered, the GCM's labour recommendations are likely to add to the widening gap between ideals and realities in labour migration.

The GCM's labour migration recommendations effectively substitute migrant rights principles for labour market realities, making them unlikely to be adopted widely. Collectively, these recommendations ignore some of the core principles underpinning today's temporary labour immigration programmes, aiming to change them into permanent immigration programmes. Under the GCM recommendations, migrant workers could arrive with their families, family members could get work authorization and services such as education and health care, and migrants could decide to change employers and extend their stays. Given policy shifts in many countries over the past few decades, away from permanent and toward temporary migration programmes, such a fundamental change in the nature of labour immigration policies will be difficult to achieve in practice.

GCR recommendation on labour mobility for refugees

According to the United Nations High Commissioner for Refugees (UNHCR), there are 25 million recognised refugees globally, the highest number on record. The vast majority of the global refugee

population, about 85 percent, is in relatively low-income countries. The ten countries hosting the largest numbers of refugees in 2017 included four of the world's least developed countries (Uganda, Sudan, Ethiopia, and Bangladesh), four middle-income countries (Turkey, the world's largest host with 3.5 million refugees, as well as Pakistan, Lebanon, Iran, and Jordan), and one high-income country (Germany, with a million refugees). Most rich countries have been reluctant to offer "resettlement places" for large numbers of recognised refugees from 'first countries of asylum' in or near conflict regions. The number of resettled refugees is very small compared to the total number of refugees. For example, in 2017 only 102,800 refugees were resettled, an almost 50% reduction from 2016 and equivalent to about 0.5 percent of the global refugee population (UNHCR 2018).

The highly unequal distribution of refugees, and the shrinking of the already limited legal pathways to protection in rich states, have led to calls for "alternative pathways to protection." The 'Global Compact on Refugees' recommends various "complementary pathways for admission to third countries" including "labour mobility opportunities for refugees, including through the identification of refugees with skills that are needed in third countries." This recommendation is meant to contribute to the GCR's overall aim to: "(i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity."

The implementation of labour mobility pathways for refugees faces at least five practical obstacles that make it highly unlikely that labour migration will become a viable "complementary pathway" for significant numbers of refugees who are in first countries of asylum.²

The first fundamental challenge is how to combine the humanitarian objective of protecting refugees with the economic objectives of labour migration policies. Most high-income countries make a strict distinction between 'refugees' and 'labour migrants'. While refugees are typically admitted on humanitarian grounds, labour migrants are usually admitted to benefit the national economy and society. An alternative labour migration pathway for refugees based purely on humanitarian grounds would be akin to expanding humanitarian resettlement. At the same time, treating refugees purely as labour migrants without any recognition of their special status as refugees would not result in large numbers being admitted because refugees would need to "compete" for admission with other migrants from all around the world. Although "mixed-motives" migration programmes are not unprecedented³, combining economic and humanitarian policy objectives in a labour mobility pathway for refugees is very challenging politically and not likely to yield large numbers.

A second key issue is whether refugees who enter high-income countries under labour immigration programmes should be allowed to "switch categories", that is, to claim asylum. Most advocates of alternative pathways for refugees emphasise the importance of refugees retaining the right to seek protection. The GCR makes clear that any complementary pathway to protection should "contain appropriate protection safeguards" (para 94). However, allowing refugees who use alternative labour pathways to enter higher-income countries to also claim asylum would be a major disincentive for high-income countries to admit them. If the policy goal is to provide a legal pathway for refugees to claim asylum in high-income countries, humanitarian visas would be better than a labour immigration pathway. Governments should protect the right of people to claim asylum, but respecting this right will most likely result in fewer admissions, setting up a trade-off between the potential scale and quality/conditions of protection provided.

² For a longer discussion of these and other obstacles and opportunities of labour mobility pathways for refugees, see Ruhs (2019).

³ For example, the so-called "Resident Seasonal Employer Programme" introduced in New Zealand (2007) and Australia (2008) have the explicit dual objectives of helping fill labour shortages in the host countries and promoting development in migrants' countries of origin (for a discussion of these programmes, see e.g. McKenzie and Gibson 2010).

Third, if the goal of the labour migration pathway is to provide strictly temporary admission and protection, how will refugees be returned to countries of citizenship or first asylum? The most realistic option is to negotiate a return and readmission agreement before joining the temporary labour migration programme, that is, with the country of first asylum. In practice, successfully negotiating such readmission agreements would be a major challenge. Most first countries of asylum are low and lower-middle income countries, so they will be under considerable pressure to negotiate opportunities for their own citizens to access higher-income countries. Will these first countries of asylum agree to readmission agreements that involve the return of refugees in exchange for greater opportunities for their own nationals to gain admission to higher-income countries as workers, students or family migrants?

Fourth, most temporary labour migration programmes, especially those for lower skilled workers, restrict the right of migrant workers to have family members accompany them. It is difficult to see how admitting refugee-workers without the right to bring at least some family members would provide the minimum degree of protection that most refugee families seek, making at least some right to family reunion a likely integral part of the policy. However, this would make refugee-workers different from migrant workers, and require host countries to accept such exceptions and policy adjustments to their regular labour migration programmes.

Finally, there are important questions about the governance of any new labour mobility pathways for refugees. High-income countries are likely to have different selection criteria with regard to skills, occupations and/or nationality that could be facilitated by the bilateral agreements commonly used in labour migration policies. But who will negotiate and implement such an agreement on behalf of the refugee-workers? The refugees' countries of origin cannot play this role, and first countries of asylum are also unlikely to be effective "advocates" and "negotiators" for refugees in their countries who wish to join labour immigration programmes in high-income countries.

These are formidable obstacles to assertions that refugees could be admitted and protected as workers in high-income countries. Some high-income countries may agree to admit and provide some job opportunities for some refugees currently residing in first countries of asylum. A number of initiatives have placed small numbers of refugees from first countries of asylum in jobs in high-income countries. However, given the obstacles, it is difficult to see how such initiatives could be scaled up significantly, and how international labour migration could become a major option for large numbers of refugees.

Conclusion

Two years of discussions, consultations, and negotiations culminated in the Global Compacts on Migration and Refugees in summer 2018. Almost all countries, with the notable exception of the United States, signed the compact on refugees, and 152 countries signed the compact on migration. Five countries refused to sign – the United States, Hungary, the Czech Republic, Poland and Israel – and twelve abstained – including EU countries Austria, Bulgaria, Italy, Latvia and Romania. Slovakia did not vote. Switzerland delayed its decision.

In some of the countries that refused to sign the compact on migration, populist political parties misrepresented the GCM, arguing that it represented supra-national interference in national government regulation of migration and migrants. Defenders of the GCM emphasize its non-binding nature, noting that it does not limit national sovereignty over migration issues. However, it may be hard to call a non-binding agreement a major "break-through" to improve the global governance of international migration if it offers only a "menu of policy options" from which countries can pick and choose.

There is no doubt that the GCM fell victim to politicization in many countries, and some of the reasons cited by non-signers reflected domestic political concerns rather than the substance of the recommendations. However, this politicization and misrepresentation of the GCM should not obscure or minimize discussions of the major gaps between the GCM ideals and labour market realities that we have highlighted.

GCM recommendations five and six would effectively convert temporary migration programmes into permanent immigration programs, with newcomers selected by employers who paid all of their costs. Migrants would arrive with their families and be free to change employers and prolong their stays. These GCM recommendations seem to reject the need for labour market tests that require employers to prove local workers are not available. The GCM does not deal with the consequences of more expensive migrant workers for employer demand for migrants, as when higher costs reduce the demand for migrants. Similarly, the GCR recommendation to create labour migration pathways for refugees does not acknowledge the realities of how employers recruit migrant workers.

The GCM can effectuate positive changes in some areas of global governance, such as a reformed institutional architecture within the UN system to deal with migration issues in a more systematic and coordinated way. However, the core recommendations that relate to labour migration, and the idea of bringing refugees into labour mobility programmes, have very limited chances of success due to large gaps between ideals and realities.

What comes next? The GCM implementation process *can* improve protections for migrant workers, but only if implementation begins from labour market realities rather than abstract ideals. For example, perhaps employers should pay worker recruitment costs, but exactly which costs? Are the costs that workers incur before they obtain a contract to work for a particular employer abroad reimbursable? What about required or optional pre-departure training? Even a cursory glance at the research on recruitment costs shows that these are important but complex issues (Martin, 2017). If employers pay migrant worker costs, can they effectively deduct such costs from migrant workers' wages by paying them less?

The GCM needs to consider protection priorities. What specific restrictions of migrant rights are most harmful for migrant workers? How can host countries be persuaded to lift these restrictions, or at least address their adverse consequences? Is there a list of 'core welfare rights' that migrant workers should be granted under all temporary migration programmes (e.g. Ruhs 2017)? Debating and responding to these questions with practical answers would do more to improve protections for migrant workers than general calls to sign the relevant international conventions, some of which stipulate a comprehensive set of rights without any sense of protection priorities.

More 'labour market realism' in debates about global labour migration and labour mobility pathways for refugees could do more to protect workers than ideals and aspirations that simply widen gaps between goals and realities. An incremental and bottom-up approach to improving protections for migrant workers is long overdue, and we hope that the next step will be moving from grand visions to practical realities.

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