

**JUST GREENING THE GULF:
SUSTAINING JUSTICE FOR MIGRANT WORKERS**

ASMA ATIQUE

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ABSTRACT

This dissertation investigates the relationship between doctrines and rhetoric of sustainable development (SD) and their compatibility with robust notions of migrant justice. I use migrant-workers-built Masdar City, Abu Dhabi's "eco-smart city," as an entry point to examine this relationship. Drawing on Amartya Sen, I rely on a critical capabilities-based environmental justice lens that focuses on the full range of opportunities migrants have at home, in their destination country, and anywhere in between. While this lens offers a means-ends distinction and a pluralistic notion of justice, it must be further specified and supplemented by explicit accounts of structural constraints. The focus, therefore, is on movement and supportive capabilities and this account is further supplemented by Third World Approaches to International Law (TWAIL) and Critical Development Studies that build on post-colonial and post-structural critiques of SD.

This multi-lingual project relies on interviews of Pakistani returning migrant workers and government officials; civil society members based in the Gulf region; and Masdar City's student-residents as well as ethnographic reflection notes taken in the UAE and Pakistan. These data supplement a range of international and domestic laws on labour migration; legal and policy instruments on sustainable development; case law; international organization reports; UAE and Pakistani government documents; and publicly available information published by Masdar.

The multi-scalar analysis that follows reveals how the international migration regime creates multiple statuses, affording insufficient protection to migrants in an irregular situation. This is further compounded by how the Emirati labour migration regime allocates certain workers to sectors based on race, gender, class, etc. Even the ways it is subverted incentivize and reinforce irregularity and precarity for the most vulnerable. Ultimately, I argue that while irregularity and precarity are mentioned in the Sustainable Development Goals that seek to "leave no one behind," sustainable development's eco-modernist logic and unidimensional view of economic-centred growth waters down its social content. In eco-cities such as Masdar, the status quo is sustained while marginalized and racialized migrant workers building eco-cities are erased in post-oil futures. This project's focus on an oil-rich monarchy contributes to the growing literature on environmental justice in the global South and focus on capabilities adds to theoretical debates on the "justice" in environmental justice.

DEDICATION

This dissertation is dedicated to Amira Obad Mubarak (1992-2021), my friend and sister. You lit all the rooms you passed.

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CHAPTER 1: Introduction

“They showed us a moon...that if we go there, our life would be set.”

- Sahil, Pakistani returning migrant who worked in Abu Dhabi, United Arab Emirates

In the scorching summer heat, I sat on a bench next to the iconic wind tower of Masdar City (Masdar), Abu Dhabi’s multi-billion-dollar eco-city that was launched in 2006.¹ This wind tower (*Barjeel* in Arabic) is a traditional passive ventilation system designed to capture the desert’s breezes and cool the air by as much as 20 degrees Celsius. However, like most things in this project that had aimed to be the world’s first “carbon neutral,” “zero-waste city,” it is an experiment in progress that now stands somewhat deserted. Sitting next to the tower and giant yellow letters that read “happiness,” the only other person I could see outside was a worker sweeping the floors. I tried making conversation with him but noticed a few men sitting a bit further by a café, watching our interaction. The moment I took a few steps back, one of them approached the worker and asked him what I had wanted. We exchanged quick apologetic smiles, and I walked back inside to the air-conditioned “Knowledge Centre,” which houses what used to be Masdar Institute’s library.

While I could not speak to this worker, I was reminded of a conversation I had earlier that summer of 2018 in Karachi, Pakistan, where I formally interviewed returning migrant workers. Sahil, a site engineer who had worked in Abu Dhabi for a few months, had not been paid his salary throughout his stay there. Sahil’s employer had also confiscated his passport despite it being illegal to do so.² Without his passport, he described how he always felt afraid to leave the

¹ Federico Cugurullo, “Urban eco-modernisation and the policy context of new eco-city projects: Where Masdar City fails and why” (2016) 53:11 Urban Studies 2417–2433.

² Confiscation and withholding of travel documents are included in the ILO indicators for forced labour

industrial area where he worked and lived or speak to anyone about his working conditions.

When I asked him what had brought him to Abu Dhabi in the first place, he responded, “They showed us a moon...that if we’d go there, our life would be set.”

Throughout my fieldwork in the United Arab Emirates (UAE), I reflected on my conversation with Sahil and the many different ‘moons’ Pakistani returning migrant workers spoke of when I asked them what had led to work in the UAE. Sometimes in blue overalls, orange vests, and hard hats, sometimes climbing make-shift ladders on buildings, catching a water break under a flyover, the only visible people in the UAE outside in the heat were migrant workers like the caretaker in Masdar and Sahil in Karachi. Yet walking through Masdar’s “visitor’s deck,” there was no representation of the predominantly South Asian men who make up more than 50 percent of the UAE’s population and more than 80 percent of its workforce.³

As a Pakistani who grew up in the Gulf region, I was hardly surprised. During my undergraduate studies in the UAE between 2009-2013, I watched the oil-rich monarchy slowly starting to market itself as a hub for renewable energy, aiming to diversify its economy. Meanwhile, migrant workers who helped build UAE’s famous skyline, artificial islands, and “sustainable” development projects continued to toil in appalling conditions. Stories reporting the stark contrast between the “fantasy cities of pleasure”⁴ and exploitation of low-skilled

³ In contrast to other countries in the Gulf region which have population registries like Kuwait and Oman, the United Arab Emirates does not yet publish population figures and demographic characteristics of the resident population in real time. This number is an estimate that is based on demographic data available on Gulf Labour Markets and Migration’s website: BQ Magazine, *UAE: Estimates of population residing in the UAE by country of citizenship (selected countries, 2014)* (Gulf Labour Markets and Migration, 2015) available online: <https://gulfmigration.org/uae-estimates-of-population-residing-in-the-uae-by-country-of-citizenship-selected-countries-2014/>; UAE, *Dubai: Percentage distribution of employed population (aged 15 and above) by nationality group and sex (2017)*, by Dubai Statistics Center (2018) available online: <https://gulfmigration.org/uae-dubai-percentage-distribution-of-employed-population-aged-15-and-above-by-nationality-group-and-sex-2017/>

⁴ Federico Cugurullo, “How to Build a Sandcastle: An Analysis of the Genesis and Development of Masdar City” (2013) 20:1 *Journal of Urban Technology* 23–37.

migrant workers and protests linked to high-profile international projects such as the construction of the New York University Abu Dhabi campus, Guggenheim, and FIFA World Cup stadiums attracted international attention.⁵ Could UAE's aspiration to be a leader in a 'post-oil future' through projects like Masdar City provide an opportunity to reimagine other relationships, tensions, dependencies, and hierarchies such as its reliance on and treatment of migrant workers? Will Masdar City, "spaceship in the desert,"⁶ take migrant workers to the many moons that are promised? Is there space for migrant justice in this post-oil future? These are the questions that inspired this research project.

While anecdotes such as the one above often feature literature on migrant workers in the Gulf and similar observations have animated much of the discussion, they tend to present a homogenous view of migrant workers as victims, leaving out the institutional structures that enable these conditions and present them as unique to the region. The glimpse above, for instance, starts at the workplace (Masdar City) in the receiving state where the worker is unable to speak freely and ends with a returning migrant worker's quote. However, it does not include the "labour camps" where workers live, the journey that brings migrant workers from South Asia to the UAE, or the spaces where migrants can assert a sense of belonging. Nevertheless, it can illustrate the challenges of speaking to migrant workers in Masdar City, my positionality as a researcher, and the juxtaposition that invites us to consider possible futures for the migrant workers building eco-cities.

⁵ See for eg. "UAE: Abuses at NYU, Louvre, Guggenheim Project", *Human Rights Watch* (10 February 2015), online: <<https://www.hrw.org/news/2015/02/10/uae-abuses-nyu-louvre-guggenheim-project>>. ;Ariel Kaminer & Sean O'Driscoll, "Workers at N.Y.U.'s Abu Dhabi Site Faced Harsh Conditions", *The New York Times* (19 May 2014), online: <<https://www.nytimes.com/2014/05/19/nyregion/workers-at-nyus-abu-dhabi-site-face-harsh-conditions.html>>.

⁶ Gökçe Günel, *Spaceship in the Desert: Energy, Climate Change, and Urban Design in Abu Dhabi* (Durham: Duke University Press Books, 2019).

Indeed the “post-Paris enthusiasm”⁷ to build so-called sustainable, green energy development projects is evident not only in places like Masdar City but also in legal and policy circles. While international labour law attempts to incorporate sustainable development, it remains at a crossroads; its regulatory structures remain “out of sync with the vast majority of the workforce of the South.”⁸ Labour migration has become increasingly temporary in nature, and non-traditional, precarious forms of work are proliferating.⁹ Meanwhile, in September 2015, United Nations member states adopted the 2030 Agenda for Sustainable Development. Through its 17 Sustainable Development Goals, it promises to eradicate poverty and achieve sustainable development worldwide by 2030, pledging to “leave no one behind.”¹⁰ Not only do the SDGs explicitly include migrant workers, but the latest international instrument on migrant workers, the United Nations (UN) Global Migration Compact, also endorses SD and is rooted in the SDGs. Accordingly, labour standards are increasingly being framed in terms of SD.

I use Masdar, Abu Dhabi, as an entry point to investigate the relationship between this “post-Paris” enthusiasm towards so-called sustainable development projects¹¹ and the worsening

⁷ Dayna Nadine Scott & Adrian A Smith, “Sacrifice Zones in the Green Energy Economy: The New Climate Refugees” (2016) 26 *Transnat’l L & Contemp Probs* 371–382.

⁸ Adelle Blackett, “Development, the movement of persons, and labour law: trade and aid vs. reasonable labour market access” in Tonia Novitz, David Mangan, & British Academy, *The role of labour standards in development: from theory to sustainable practice?*, British Academy original paperbacks (Oxford: Published for the British Academy by Oxford University Press, 2011). at p 143

⁹ Ibid; Novitz, Tonia. “Supply Chains and Temporary Migrant Labour: The Relevance of Trade and Sustainability Frameworks.” In Diamond Ashiagbor, ed, *Re-Imagining Labour Law for Development: Informal Work in the Global North and South* (Hart Publishing, 2019). At p 191–212.; Judy Fudge, “Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers” (2012) 34 *Comp Lab L & Pol’y J* 95–132.

¹⁰ United Nations General Assembly Resolution adopted by the General Assembly on 25 September 2015 A/RES/70/1 21 October 2015 https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

¹¹ Mike Hodson & Simon Marvin, “Urbanism in the anthropocene: Ecological urbanism or premium ecological enclaves?” (2010) 14:3 *City* 298–313. ;Peter Newman, “Sustainable cities of the future: The behavior change driver” (2010) 11 *Sustain Dev Pol J* 7.; Julie Sze, *Fantasy islands: Chinese dreams and ecological fears in an age of climate crisis* (Oakland, California : University of California Press, 2015).; Cugurullo, “How to Build a Sandcastle”, *supra* note 4. Other approved projects for eco-cities include as

conditions for migrant workers that these projects rely on and perpetuate. Borrowing from environmental justice scholars such as Julie Sze, this project aims to be multi-scalar, i.e., take different spatial and temporal scales into account in building a complete analytical picture.¹² Given the limits of methodological nationalism¹³ and migration scholars' tendency to focus on domestic policies, this project considers both international and domestic regimes¹⁴ that regulate migrant workers.¹⁵ Situating the discussion of migrant workers in the UAE within broader debates in international law and policy allows us to challenge some of the region's stereotypes and the "exceptionalism" that features literature on the oil-rich monarchies of the Gulf.¹⁶ Accordingly, the following research questions frame the rest of the dissertation: (a) how and for whom do the international and Emirati regimes regulating migrants hinder and expand movement and supportive capabilities? (b) what does Masdar's story tell us about whether the SD concept is furthering migrant workers' capabilities?

cited by Federico Cugurullo: Zira Island (Azerbaijan), Logrono Montecorvo eco city (Spain), Tianjin, Xinjin Water City, Caofeidian, Wanzhuang (China), Babcock Ranch (Florida), Greensburg (Kansas), Whitehill-Bordon, Imerys, North West Bicester, Owenstown, Rackheath eco-towns (UK), Incheon, Songdo (South Korea), Rawabi (Palestine), Punggol (Singapore), Blue City (Oman)

¹²Sze, *supra* note 11.

¹³ This can be referred to as the conflation of national interests with the purpose of social sciences wherein migrants are often treated as objects of politics and not political actors and there is a tendency to study how to manage migrants most effectively in state interests. Andreas Wimmer & Nina Glick Schiller, "Methodological nationalism and beyond: nation-state building, migration and the social sciences" (2002) 2:4 *Global Networks* 301–334.; Però, Davide & John Solomos. "Introduction: Migrant Politics and Mobilization: Exclusion, Engagements, Incorporation" (2010) 33:1 *Ethnic and Racial Studies* 1.

¹⁴ When speaking of regime, I am referring to Krasner's definition of them as "principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area" Krasner, Stephen D. (1982) 'Structural Causes and Regime Consequences: Regimes as Intervening Variables', *International Organization*, 36, 185– 205. Some commentators such as T. A. Aleinikoff argue the calling the "global governance of migration" a regime "would overstate the level of legal development." *International Legal Norms on Migration in International Migration Law* at p. 474

¹⁵ Dermot Feenan, ed, *Exploring the "Socio" of Socio-Legal Studies*, Palgrave Socio-Legal Studies (Palgrave Macmillan UK, 2013).

¹⁶ Ayelet Shachar, *Selecting By Merit: The Brave New World of Stratified Mobility* (Oxford University Press).

Broadly, I am interested in how SD and migrant justice “converge and diverge”¹⁷ and how international migration, labour, and environmental law interact.¹⁸ The urgency to cope with issues related to climate change and migration warrant a redrawing of disciplinary boundaries. Indeed it has been argued that a distinct legal field organized around the concept of a ‘just transition’ to a lower carbon economy could bring together some of these different strands.¹⁹ I suggest that by putting migrant workers in the center of the debate, we can better understand how to protect other disadvantaged groups that are often on the losing end of sustainable development – a holistic concept that was designed to address the tensions it now manifests. Theoretically, I am interested in whether a critical capabilities-based environmental justice lens can be formulated and exploring what insights this lens can offer.

This chapter will first start by introducing some of the relevant concepts and terminology. It will then connect sustainable development to migration. This will be followed by a discussion on why a critical capabilities-based environmental justice lens that focuses on migrant workers’ capabilities is useful and how this project employs it. I propose using movement and supportive capabilities as an evaluative lens and supplement this with theoretical insights from environmental justice, critical development scholarship, and a principle that favours worse-off agents. The chapter will conclude with a description of research methods and a few clarifications.

¹⁷ Chantal Thomast, “Convergences and Divergences in International Legal Norms on Migrant Labor” 32 39.

¹⁸ Chantal Thomas, “Convergences and Divergences in International Legal Norms on Migrant Labor Labor Law and Development: Perspectives on Labor Regulation in Africa and the African Diaspora” (2010) 32:2 Comp Lab L & Pol’y J 405–442.; Sara L Seck, “Transnational Labour Law and the Environment: Beyond the Bounded Autonomous Worker” (2018) 33:02 Canadian Journal of Law and Society / Revue Canadienne Droit et Société 137–157.

¹⁹ David J Doorey, “Just Transitions Law: Putting Labour Law to Work on Climate Change” (2017) 30:2 Journal of Environmental Law and Practice; Scarborough 201–239.

1.1 Migrant Workers

This project relies on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families' (Migrant Workers' Convention) definition of migrant workers as a starting point.²⁰ A migrant worker is defined as "a person who is to be engaged or has been engaged in remunerated activity in a State of which he or she is not a national."²¹

The literature on migration has often challenged “categorical fetishism” whereby categories such as “migrant workers” and “refugees” exist “as empty vessels into which people can be placed in some neutral ordering process.”²² Definitions of categories such as migrant workers, refugees, internally displaced persons are sometimes considered “policy related labels”²³ and are challenging to apply to discrete groups of migrants in practice; there are myriad

²⁰ United Nations, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families' (Migrant Workers' Convention), GA Res 45/158, UNHCHR, 45th sess, A/RES.45.158 (18 December 1990)

²¹ Ibid.

²² Heaven Crawley & Dimitris Skleparis, “Refugees, migrants, neither, both: categorical fetishism and the politics of bounding in Europe’s ‘migration crisis’” (2017) 44 Journal of Ethnic and Migration Studies 1–17.; Daiva Stasiulis, Zaheera Jinnah & Blair Rutherford, “Migration, Intersectionality and Social Justice” (2020) 2020:14 Studies in Social Justice 1–21.

²³ G Scalettari, “Refugee Studies and the international refugee regime: a reflection on a desirable separation” (2007) 26:3 Refugee Survey Quarterly 36–50.; Rieko Karatani, “How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins” (2005) 17 Int’l J Refugee L 517–541. Katarani argues that the artificial distinction between ‘migrants’ and ‘refugees’ emerged from conflicts between the way United States and the International Labor Organization (ILO) and United Nations (UN) wanted to deal with Second World War European displacement. While the ILO-UN plan favored a single international organization, the US pushed for an institution with specific functions with the goal to protect national migration and refugee policies from international influence. The latter recommendation was accepted and what emerged was a fragmented international framework; the ILO was forced to concentrate on its traditional role to focus on migrant workers. This in part explains the wide gap between the rights and international protection of the different categories. While refugees are entitled to protection through a consolidated international regime based on the 1951 Geneva Convention and a UN agency specifically mandated to protect their rights, there is no such regime for other categories

of reasons that can motivate one to move, and the same person may fit into different legal categories either simultaneously or consecutively. A migrant in an irregular situation, for example, can be simultaneously categorized as a migrant worker, an asylum seeker, or a victim of trafficking. Indeed, as Zetter warns, the different labels are explicitly constructed to exclude and disempower.²⁴

While acknowledging these challenges, I use the term migrant workers as it is relatively broader than its counterparts. Different categories can have very real impacts on the protection afforded to them by international law. Migrant workers are also sometimes referred to as ‘economic migrants’ who move in search of economic opportunities and are arguably seen most suspiciously by receiving states. I choose to focus on this group because it is assumed that these migrants are moving in search of a better life, deciding with autonomy and political agency as a matter of preference, even if it is due to extreme hardships in their home countries.²⁵ Focusing on migrant workers allows us to foreground the exercise of agency, as limited it may be, rather than the absence of it due to fear of death or bodily harm, which is reductively traditionally attributed to refugees.

of migrants. These groups are left to the discretion of host countries which have focused their attention on better management and control of movement rather than protecting rights.

²⁴ Roger Zetter, “Labelling Refugees: Forming and Transforming a Bureaucratic Identity” (1991) 4:1 J Refug Stud 39–62.

²⁵ E Tendayi Achiume, “Migration as Decolonization” (2019) 71:6 Stan L Rev 1509–1574.

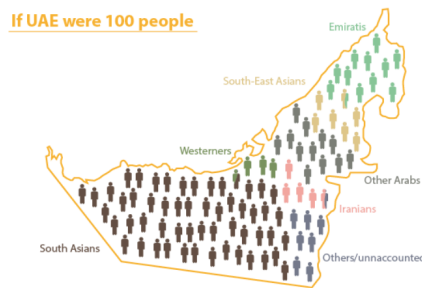


Figure 1.1²⁶

Migrant workers and their families make up for ninety percent of the people who live outside their country of origin. According to the International Labor Organization, in 2017, there were about 164 million migrant workers worldwide, of which around 42% are female.²⁷ The Gulf Cooperation Council (GCC also referred to as the Gulf), a political and economic union of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, is one of the primary destinations for migrant workers where they represent the majority of the labour force.²⁸ The UAE has the highest proportion of migrant workers, accounting for more than 80 percent of its population. The majority work in construction, and a significant proportion are from Pakistan.²⁹ The focus, therefore, of this project is on Pakistani migrant workers involved in

²⁶ BQ Magazine, *UAE: Estimates of population residing in the UAE by country of citizenship (selected countries, 2014)* (Gulf Labour Markets and Migration, 2015) available online: <https://gulfmigration.org/uae-estimates-of-population-residing-in-the-uae-by-country-of-citizenship-selected-countries-2014/>

²⁷ *ILO global estimates on international migrant workers: results and methodology*, by Natalia Popova et al, Open WorldCat (2018).

²⁸ These numbers do not represent for all kinds of movement and do not incorporate repeat, return and circular migration. David Weissbrodt & Justin Rhodes, “United Nations Treaty Body Monitoring of Migrant Workers in the Middle East” (2013) 5:1–2 Middle East Law Gov 71.

²⁹ H A Hassan & J Houdmont, “Health and safety implications of recruitment payments in migrant construction workers” (2014) 64:5 Occupational Medicine 331–336.

construction and other “3-D” jobs that are dirty, dangerous, and difficult.³⁰ These workers are especially vulnerable because their employment sector involves flexible labour, low skills, and low wages.³¹ I chose to focus on Pakistani migrant workers, given Pakistan’s history of partition-related migration³² and that it hosts one of the largest numbers of forcibly displaced persons.³³

1.2 Precarious Work

Labour law scholars have studied migrant workers or temporary labour migration using many different lenses, including precarious work, informal work, forced labour, informal work, vulnerability, decent work, and good jobs. This project uses precarious work as the focus for several reasons. Precarious work is a defining feature of contemporary work in both the Global South and the North to the extent that its growth since the 1970s has been referred to as ‘the precariat.’³⁴ While scholarship on precarious work has dominated high-income countries, it is a concept that has been a focus in both policy and academic circles. Often used in conjunction with some other terms such as contingent, atypical, and non-standard forms of work, precarious work has become “the most prominent label globally.” Rob Lambert and Andrew Herod trace it back

³⁰ Migrant workers concentrate either at the top and at the bottom of the labour ladder. Giovanni Di Lieto, *Migrant labour law: unfolding justice at work in free markets* (Sydney, NSW : The Federation Press, 2016). at p 44.

³¹ Emily Jane Cordeaux, “Contrasting responses to migrant worker precarity in Canada and the United Arab Emirates” (2014), online: <<http://summit.sfu.ca/item/14820>>. at 8.

³² Sarah Ansari, “The Movement of Indian Muslims to West Pakistan after 1947: Partition-Related Migration and its Consequences for the Pakistani Province of Sind” in Judith M Brown & Rosemary Foot, eds, *Migration: The Asian Experience* St Antony’s (London: Palgrave Macmillan UK, 1994) 149.

³³ United Nations High Commissioner for Refugees (2020) Global Trends: Forced Displacement in 2019, online:< <https://www.unhcr.org/5ee200e37.pdf>>; United Nations Human Rights Council (2018) Report of the Special Rapporteur on the Situation of Human Rights Defenders, UN Document A/HRC/37/51.

³⁴ Guy Standing, *The Precariat: The New Dangerous Class*, revised ed. edition ed (London, UK ; New York, NY: Bloomsbury Academic, 2014).

to Dorothy Day's article in 1952.³⁵ Arne L. Kalleberg's early definition of "precarious work" as "employment that is uncertain, unpredictable, and risky from the point of view of the worker" is a good starting point because it emphasizes its main features as 'uncertainty, insecurity, and instability.'³⁶

In comparison, mindful of the role of social location and context, Leah Vosko defines precarious work as:

Precarious forms of work involve those that limit social benefits and statutory entitlements, job insecurity, low wages, and high risk of ill-health. It is shaped by employment status (i.e., self-employment or wage work), form of employment (i.e. temporary or permanent, part-time, or full-time) and dimensions of labour market insecurity as well as social context (such as occupation, industry and geography) and social location (such as gender, race and political economic conditions).³⁷

Rodgers' popular multidimensional model introduces multiple dimensions of insecurity. Adding to Rodgers' approach, Kountaris has further developed a conceptual framework where the five key legal determinants of precarious work are: (1) immigration status precariousness; (2) employment status precariousness; (3) temporal precariousness; (4) income precariousness; and (5) organizational control precariousness.³⁸

Precarious work features "high exposures to working conditions with harmful health consequences."³⁹ Since precarious workers are more likely to be in lower-skilled 'flexible' jobs

³⁵ Rob Lambert & Andrew Herod, eds, *Neoliberal Capitalism and Precarious Work: Ethnographies of Accommodation and Resistance* (Cheltenham, UK: Edward Elgar Pub, 2016).

³⁶ Deirdre McCann & Judy Fudge, "Unacceptable forms of work: A multidimensional model" (2017) 156:2 *International Labour Review* 147–184.

³⁷ Leah F Vosko, "Precarious Employment: Towards an Improved Understanding of Labour Market Insecurity" in Leah F Vosko, *Precarious Employment: Understanding Labour Market Insecurity in Canada* (McGill-Queen's Press - MQUP, 2006).

³⁸ Nicola Kountouris, "The Legal Determinants of Precariousness in Personal Work Relations: A European Perspective" (2012) 34:1 *Comp Lab L & Pol'y J* 21–46. pp. 21 and 27

³⁹ J Benach et al, "Precarious Employment: Understanding an Emerging Social Determinant of Health" (2014) 35:1 *Annual Review of Public Health* 229–253.

where their immigration status may be linked to their employees, they are less able to challenge these conditions through collective bargaining or other protections that labour or employment law can offer. Precarious workers have limited “control over their professional and personal lives, leading to psychosocial stress,” and are also less able to maintain stable families and households.⁴⁰

Another discourse often used in tandem with precarious work is ‘vulnerability.’ Like precarious work, vulnerability also started with narrower definitions that broadened and is understood as a continuum rather than merely low wages, union representation, and short employment contracts. Unlike precarious work, however, vulnerability features a predictive element that attempts to “capture the potential of poor employment outcomes.”⁴¹

The danger of relying too heavily on “modern slavery” and “forced labour” is that while they are undoubtedly grave concerns, the rhetoric and machinery adopted to tackle them often gets linked to migration control which, like human trafficking, moves the policing from the workplace to the borders. As Mark Freedland and Cathryn Costello note in their book *Migrants at Work*, “the concern to single out and stamp out ‘modern slavery’ can mask, or even support, the legitimization of less extreme but still very real forms of exploitation of both migrant and local workers alike.”⁴² Furthermore, trade unions often treat migrant workers primarily as workers and not migrant workers with “particular and overlapping forms of oppression.”⁴³ Precarious work allows us to consider these overlapping forms in a better way than forced

⁴⁰ *Ibid.*

⁴¹ McCann & Fudge, “Unacceptable forms of work”, *supra* note 36.

⁴² Cathryn Costello, M R (Mark Robert) Freedland, & Oxford Scholarship Online - York University, *Migrants at work: immigration and vulnerability in labour law* (Oxford: Oxford University Press, 2014). At p 13

⁴³ Gabriella Alberti, Jane Holgate & Maite Tapia, “Organising migrants as workers or as migrant workers? Intersectionality, trade unions and precarious work” (2013) 24:22 *The International Journal of Human Resource Management* 4132–4148.

labor's focus on "coercion, control and deception" and without falling into the predictive trap of vulnerability.⁴⁴ Lastly, following Guy Standing, there is considerable attention on how the "precariat"⁴⁵ or "transnational precariat"⁴⁶ exists simultaneously in different parts of the world. More recently, the growing literature on precariousness highlights the increasing legal stratification of immigration status that "travel along downward trajectories that – even for permanent residents and certain citizens – can result in legal precarity and loss of status."⁴⁷

1.3 Sustainable Development

Before articulating how migration and sustainable development connect, it may be worthwhile to define and introduce sustainable development briefly. Many critics claim that SD is "an imaginary fantasy, literally a utopia"⁴⁸ that was "deliberately" and "constructively"⁴⁹ left ambiguous.⁵⁰ However, as Dobson argues, the "search for a unitary and precise meaning of sustainable development is misguided." Sustainable development is, like other political terms such as justice and liberty, bound to be 'contestable.'⁵¹ While it has been included in multiple treaties

⁴⁴ McCann & Fudge, "Unacceptable forms of work", *supra* note 71.

⁴⁵ Standing, *supra* note 34.

⁴⁶ Nancy Fraser, "Injustice at Intersecting Scales: On 'Social Exclusion' and the 'Global Poor'" (2010) 13:3 *European Journal of Social Theory* 363–371.

⁴⁷ Antje Ellermann, "Discrimination in migration and citizenship" (2020) 46:12 *Journal of Ethnic and Migration Studies* 2463–2479..

⁴⁸ Erik Swyngedouw & Maria Kaika, "Urban Political Ecology. Great Promises, Deadlock... and New Beginnings?" (2014) 60:3 *dag* 459–481.;

⁴⁹ "Constructive ambiguity" is often attributed to Henry Kissinger. See Geoff R Berridge, Lorna Lloyd, and Alan James, *The Palgrave MacMillan Dictionary of Diplomacy* (3rd ed, Basingstoke: Palgrave MacMillan, 2003), p. 51

⁵⁰ Frances C Moore, "Toppling the Tripod: Sustainable Development, Constructive Ambiguity and the Environmental Challenge" (2011) 5 *141–150.*; "The great race" *The Economist* (6 July 2002), online: <<https://www.economist.com/special-report/2002/07/06/the-great-race>>. (last accessed on 22 March 2021).

⁵¹ Andrew Dobson, *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (Oxford University Press, 1999).

and gained support, it remains a “woolly concept, which lends it to many different interpretations.” In fact, its vagueness and ‘interpretative flexibility’ appeals to a broad range of actors, including international organizations, policymakers, private organizations, and even some social movements.

Most scholars use the World Commission on Environment Development’s (WCED) Brundtland Commission Report (*Our Common Future*) that first popularized the term in 1987 as a starting point to define the concept. Sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"⁵² Reiterated in Principle 3 of Agenda 21 of the Rio Declaration on Environment and Development, this is known as intergenerational justice (also known as intergenerational equity). The dominant approach to this concept is articulated notably by Edith Brown Weiss, who relies on legal trusteeship, viewing “Earth and its resources...as a trust, passed to us by our ancestors, to be enjoyed and passed on to our descendants for their use.”⁵³

Sustainable development also includes *intragenerational* justice concerns,⁵⁴ calling for justice within each generation.⁵⁵ It has evolved into a concept with three pillars (economic, environmental and social) which aims to be a holistic approach that integrates concerns for the

⁵² United Nations, U.N. Conference on environment and Development, Annex I: Rio Declaration on Environment and Development. A/Conf. 151/26 (Vol. I) (1992) (Principle 3), available online: <<http://www.un.org/documents/ga/conf151/aconf15126-lannex1.htm>>; Eileen Gauna, “Environmental Law, Civil Rights and Sustainability: Three Frameworks for Environmental Justice” (2012) 19:1 Journal of Environmental and Sustainability Law 34.

⁵³ Edith Brown Weiss, “In Fairness to Future Generations and Sustainable Development” 8 9. at 20.

⁵⁴ Critics have noted that this approach views generations as “monoliths” linked through a chain of transactions. See for e.g. Jessica Eisen, Roxanne Mykitiuk & Dayna Nadine Scott, ““Constituting Bodies into the Future: Toward a Relational Theory of Intergenerational Justice”” (2018) 51:1 UBC Law Review 1–52.

⁵⁵ *Environmental Justice in the Renewable Energy Transition*, SSRN Scholarly Paper, by Uma Outka, papers.ssrn.com, SSRN Scholarly Paper ID 2153118 (Rochester, NY: Social Science Research Network, 2012).

environment, economy, and human well-being.⁵⁶ Nevertheless, SD's definition is as contentious as its legal nature. Indeed in the oft-quoted Gabčíkovo–Nagymaros case, the International Court of Justice (ICJ) did not endorse former ICJ Judge Weeramantry's separate opinion, which argued SD is 'a principle of international law'.⁵⁷ Although SD's position in international law remains ambiguous, it is the guiding concept for Agenda 2030.⁵⁸

While it has evolved into a concept with three pillars (environmental, economic, and social)⁵⁹ and has gone through countless attempts to be integrated and holistic, SD is criticized for compromising environmental protection and social aspects. In practice, it most often takes the shape of weak or shallow sustainability that puts the least weight on social dimensions.⁶⁰ While these dimensions are generally understood to be compatible and mutually supportive, the social pillar tends to be “missing”⁶¹; there is a whole body of literature dedicated to finding how to better operationalize the social dimension through indicators.⁶² Numerous scholars have made this

⁵⁶ *Ibid.*

⁵⁷ Separate Opinion of Vice-President Weeramantry in Gabčíkovo–Nagymaros project (1998) as cited in Benoît Mayer, “Sustainable development law on environmental migration: the story of an obelisk, a bag of marbles, and a tapestry” (2012) 14:2 *Environmental law review* 111–133. Mayer writes, “For Judge Weeramantry, sustainable development is not just 'soft' law, nor is it just 'aspirational': 'sustainable development is a substantive area of the law in a very real sense. Courts and countries must endeavour to administer and implement sustainable development law, just as is done with other 'hard' and established rules'” at 129.

⁵⁸ Shyami Puvimanasinghe, “From a Divided Heritage to a Common Future? International Investment Law, Human Rights, and Sustainable Development” in Shawkat Alam et al, eds, *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015) 317.

⁵⁹ More recently a fourth pillar called cultural is proposed. See for e.g. Pieraccini Margherita & Novitz Tonia, *Legal Perspectives on Sustainability* (Policy Press, 2020) Google-Books-ID: aRPWDwAAQBAJ.

⁶⁰ Sumudu Atapattu & Carmen G Gonzalez, “The North–South Divide in International Environmental Law: Framing the Issues” in Carmen G Gonzalez et al, eds, *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015) 1.

⁶¹ Magnus Boström, “A missing pillar? Challenges in theorizing and practicing social sustainability: introduction to the special issue” (2017) *Sustainability: Science, Practice and Policy*, online: <<https://www.tandfonline.com/doi/abs/10.1080/15487733.2012.11908080>>.

⁶² See for e.g. Virginie Woest, “Decent Work and the Sustainable Development Goals: A Guidebook on SDG Labour Market Indicators” 92.

argument, centralizing justice instead.⁶³ As will be discussed later, a critical approach as one inspired by environmental justice scholarship that highlights how unequal environmental practices disproportionately affect vulnerable communities like migrant workers can foreground these social dimensions.⁶⁴

1.4 Connecting Sustainable Development and Migration

While SD is criticized for being a ‘woolly’ concept that puts little emphasis on social dimensions, there are several ways the environment (conceived either as SD or environmental protection) and migration are interconnected.

Firstly, debates on the migration-development nexus (the complex interlinkages between the two) have been ongoing from the turn of the last century and coincided with the emergence of “developmentalism.”⁶⁵ The vast scholarship on the migration-development nexus has been revisited and reviewed by many scholars.⁶⁶ There has been a focus on whether there is a “linear” link between the two. While initially migration was seen as a “problem,” it was later seen as a process that could be “managed” and a “tool” to help promote development through remittances,

⁶³ Sharachchandra Lele, “Sustainable Development Goal 6: watering down justice concerns” (2017) 4:4 Wiley Interdisciplinary Reviews: Water e1224.

⁶⁴ **David N Pellow, *Resisting global toxics: transnational movements for environmental justice, Urban and industrial environments* (Cambridge, Mass: MIT Press, 2007). at p. 4; Timothy G Ehresman & Chukwumerije Okereke, “Environmental justice and conceptions of the green economy” (2015) 15:1 Int Environ Agreements 13–27.**

⁶⁵ Adrian A Smith, “Migration, development and security within racialised global capitalism: refusing the balance game” (2016) 37:11 Third World Quarterly 2119–2138.

⁶⁶ See for eg. Nina Glick Schiller, “Migration and Development: Theorising Changing Conditions” in Tanja Bastia & Ronald Skeldon, *Routledge Handbook of Migration and Development* (Routledge, 2020) Google-Books-ID: B3_QDwAAQBAJ..; AKM Ahsan Ullah & Md Shahidul Haque, “Introduction: Migration—Development Debate” in AKM Ahsan Ullah & Md Shahidul Haque, eds, *The Migration Myth in Policy and Practice: Dreams, Development and Despair* (Singapore: Springer, 2020) 1.

skilled migration, and the diaspora.⁶⁷ Since Nyberg–Sørensen’s influential article on the migration-development nexus, there are, as of 2017, “36 migration nexuses, and counting.”⁶⁸ However, as Castles pointed out a decade ago, “socio-economic change and human mobility are constantly interactive processes, so to ask whether migration or development comes first is nonsensical.”⁶⁹ Echoing Ronald Skeldon, Peter Sutherland, Former UN Secretary General’s Special Representative on migration issues, argued migration *is* development.⁷⁰ The debate has been characterized as a ‘pendulum,’⁷¹ swinging back and forth from pessimists to optimists. The migration-development ‘mantra’ and its debates have been criticized for reinforcing methodological nationalism, paying insufficient attention to “historic and current dialectics among global trade, capital accumulation, multiple displacement of people” and failure to explore the “historic and ongoing unequal financial and corporate interconnection that have enriched colonial centers by impoverishing colonies and postcolonial states.”⁷² Migrant agency is promoted as the mechanism for maintaining these interconnections.⁷³

Migration-development debates have also been criticized for using binaries such as developing-developed, periphery-core, north-south. Attempts to unsettle these binaries, either through empirical differences and variations amongst the different migration poles, point to the

⁶⁷ Bastia & Skeldon, *supra* note 66.

⁶⁸ Stephen Castles, “Development and Migration or Migration and Development: What Comes First?” (2009) 18:4 *Asian and Pacific Migration Journal* 441–471..

⁶⁹ *Ibid.*

⁷⁰ Peter D Sutherland, “Migration is development: how migration matters to the post-2015 debate” (2013) 2:2 *Migration and Development* 151–156.; Simon Dalby et al, *Achieving the Sustainable Development Goals: Global Governance Challenges* (Routledge, 2019) Google-Books-ID: EwuWDwAAQBAJ.

⁷¹ Hein de Haas, “The Migration and Development Pendulum: A Critical View on Research and Policy” (2012) 50:3 *International Migration* 8–25. For a critique see Adrian A Smith, “Migration, development and security within racialised global capitalism: refusing the balance game” (2016) 37:11 *Third World Quarterly* 2119–2138.

⁷² Nina Glick Schiller, “Migration and Development: Theorising Changing Conditions” in Bastia & Skeldon, *supra* note 66..

⁷³ *Ibid.*

diversities of development and migration trajectories.⁷⁴ Here, Sandra Mezzadra and Brett Neilson's work, drawing on Marxism, is helpful for thinking beyond these binaries. They argue that European borders exist to include and exclude some migrants selectively. Some transit zones are simultaneously zones of inclusion and exclusion where these processes can produce the category of irregular migrants.⁷⁵ Marianne H Marchand also notes that postcolonial theory and post-development debates have not sufficiently entered migration studies, notwithstanding a few exceptions.⁷⁶ She analyses how migrants have been constructed as potential agents of co-development and experts in the last decade or so in gendered ways that often silence local knowledge and voices. This migrant is seen as the co-developer who is part of what Escobar described as the construction of development as a discursive formation, an "apparatus" that links knowledge production to techniques of power.⁷⁷ Raghuram agrees and writes this has led to processes that make visible certain forms of migration and particular forms of development while others become "invisibilised." She argues that it can produce migrant subjectivities in a way that the "mobile governable subject of migration-development...is both required to move to strategize their human capital but also to act morally for the collective good of a distant place/community."⁷⁸ This version is problematic because it makes the migrant responsible for

⁷⁴ Parvati Raghuram, "Migration and development: theoretical legacies and analytical agendas in the age of rising powers 43 Parvati" in Bastia & Skeldon, *supra* note 66.

⁷⁵ Sandro Mezzadra & Brett Neilson, *Border as Method, or, the Multiplication of Labor* (Duke University Press, 2013).

⁷⁶ Marianne H. Marchand, "Migrants as 'Experts' or 'Agents' of Development? A Postcolonial Feminist Critique" in Professor Tine Davids et al, *Women, Gender, Remittances and Development in the Global South* (Ashgate Publishing, Ltd., 2015) Google-Books-ID: 8mYdCgAAQBAJ.; Marianne H Marchand, "The Future of Gender and Development after 9/11: Insights from Postcolonial Feminism and Transnationalism" (2009) 30:5 Third World Quarterly 921–935.; Rahel Kunz, *The Political Economy of Global Remittances: Gender, Governmentality and Neoliberalism* (Taylor & Francis, 2011).

⁷⁷ Marchand "Migrants as 'Experts' or 'Agents' of Development? A Postcolonial Feminist Critique" *supra* note 76.

⁷⁸ Parvati Raghuram, "Which migration, what development? Unsettling the edifice of migration and development" (2009) 15:2 Population, Space and Place 103–117.

redistribution and making sacrifices to ameliorate years of development failures. Most of the literature adopts developmentalism which universalizes modernity and its teleology; migrants are invited to participate in development if and when they legitimize the development discourse.⁷⁹

Apart from migrant-development debates, there are many ways migration and environment (whether understood more broadly or as SD) are connected. Not only do labour and environmental law connect through occupational safety and hazards⁸⁰, but labour law, itself, can be seen as a component of the ‘social’ and ‘economic’ pillars of SD. Labour standards are, as aforementioned, increasingly being framed in terms of SD and sustainability.⁸¹ Migration, too, can be seen as a component of both social, economic, and environmental pillars. As environmental justice scholars have argued, there is ample evidence that migrant workers in industries as wide-ranging as construction, agriculture, services, and technology are subject to a disproportionate burden of environmental harms and risks. From its inception, the environmental justice movement included migrant worker issues (as will be discussed in further detail in Section 1.10).

Furthermore, climate change adaptation and mitigation measures also impact migrant workers. Eco-cities like Masdar City tend to rely on temporary migrant workers for their construction. Since these projects are usually isolated geographically, and construction tends to be seasonal and mobile, temporary migrant workers are easier to handle and more profitable to developers than long-term, direct employees.⁸² Another example is from the European Union’s

⁷⁹ Ibid.

⁸⁰ Thomas, “Convergences and Divergences in International Legal Norms on Migrant Labor Labor Law and Development”, *supra* note 18.

⁸¹ Novitz Tonia “Social Sustainability, Labour and Trade: Forging Connections” in Margherita, Pieraccini & Novitz Tonia, *Legal Perspectives on Sustainability* (Policy Press, 2020).

⁸² Payel Acharya, Bethany Boggess & Kai Zhang, “Assessing Heat Stress and Health among Construction Workers in a Changing Climate: A Review” (2018) 15:2 International Journal of Environmental Research and Public Health 247.

resource recovery industry, where migrant workers tend to do the “dirty” work.⁸³ Even in the “green economy,” they are more likely to take “3-D” jobs that are dirty, dangerous, and difficult. Furthermore, migrant workers concentrate either at the bottom or at the top of the “labour ladder”; eco-cities in the Gulf region such as Masdar also rely on highly-skilled professionals. As Saskia Sassen notes, these highly-skilled professionals often also rely on low-skilled workers to be able to continue working in global cities like Abu Dhabi and Dubai.⁸⁴

Thirdly, there are a number of empirical connections between migration and the environment, particularly climate change. It is argued that climate change’s threat to traditional livelihoods and other impacts for the ‘climate vulnerable’ in small low-lying islands and other developing countries make migration a necessity, and migrant workers are often among the most severely affected by climate-related risks.⁸⁵ By 2050, climate change is expected to displace as many as one billion people.⁸⁶ The Intergovernmental Panel on Climate Change deemed migration as climate change’s single greatest impact as early as 1990.⁸⁷ Similarly, according to the International Organization of Migration, in the mid-1990s, a range of environmental pressures forced up to 25 million people to leave their homes.⁸⁸ In 2011, the ILO reported, “there is increasing evidence of climate change becoming an additional driver of migration, both internal

⁸³ Nicky Gregson et al, “Doing the ‘dirty work’ of the green economy: Resource recovery and migrant labour in the EU” (2016) 23:4 *European Urban and Regional Studies* 541–555.; Di Lieto, *supra* note 30 at 44.

⁸⁴ Saskia Sassen, *The Global City: New York, London, Tokyo* (Princeton University Press, 2013) Google-Books-ID: Mv10t_pB1nwC.

⁸⁵ *Working on a warmer planet: The effect of heat stress on productivity and decent work*, Report, by Nicolas Maître Tord Kjellstrom, www.ilo.org, Report (2019). p19

⁸⁶ Baher Kamal, “Climate Migrants Might Reach One Billion by 2050 - World”, *IPS News* (21 August 2017), online: <<https://reliefweb.int/report/world/climate-migrants-might-reach-one-billion-2050>>.

⁸⁷ Steve Lonergan, “The Role of Environmental Degradation in Population Displacement” (1998) 4 *Environmental Change and Security Project Report* 11.

⁸⁸ Oli Brown (2008) “Migration and Climate Change” Migration Research series no. 31, International Organization for Migration, online: <<https://olibrown.org/wp-content/uploads/2019/01/2008-Migration-and-Climate-Change-IOM.pdf>>

and across borders.”⁸⁹ Environmental pressures and impacts associated with climate change, such as land degradation, droughts, and natural disasters, particularly a loss of traditional livelihoods, drive this migration.

A 2019 International Labor Organization report further notes that the rising incidence of heat stress also acts as a push factor prompting workers to leave rural areas to cities or other countries.⁹⁰ It noted that the most vulnerable workers in developing and emerging countries, such as migrant workers in the construction sector, are the hardest hit by heat stress.⁹¹ More specific to the UAE context, a recent Guardian investigation found “thousands of migrant construction workers employed on huge infrastructure and building projects ahead of next year’s Expo 2020 exhibition in Dubai are likely to have been exposed to dangerous levels of heat stress.”⁹²

Another survey from 1991-2012 in rural Pakistan showed that there is a statistically significant relationship between heat stress and long-term migration; heat stress forced people to move due to its negative effects on both farm and non-farm incomes, and such migration was more likely in poorer rural areas.⁹³ Another case study in Punjab found that people migrated mainly to improve their level of income and reduce their vulnerabilities with respect to heat stress.⁹⁴ However, it is important to note that this impact of heat-stress on out-migration is not uniform across the Global South and depends on the initial income level of the country and its

⁸⁹ Marek Harsdorff et al, *Towards an ILO approach to climate change adaptation* (Geneva: ILO, 2011).

⁹⁰ Tord Kjellstrom, *supra* note 85.

⁹¹ *Ibid.* at p18

⁹² Annie Kelly & Niamh McIntyre, “Workers at Dubai’s Expo 2020 likely to have suffered dangerous heat stress”, *The Guardian* (3 October 2019), online: <<https://www.theguardian.com/global-development/2019/oct/03/workers-at-dubai-expo-2020-heat-stress>>.

⁹³ V Mueller, C Gray & K Kosec, “Heat stress increases long-term human migration in rural Pakistan” (2014) 4:3 *Nature Clim Change* 182–185. Tord Kjellstrom, *supra* note 85. at p60.

⁹⁴ Umar, M.A.; Saeed, F. 2018. Muhammad Awais Umar & Fahad Saeed, “Role of Heat Stress in Migration Decision: A Case Study of Faisalabad” 30.

dependence on agriculture.⁹⁵ To clarify, the point here is to highlight how migrant workers may be uniquely impacted by climate change without claiming that the potential increase in migration flow is ‘bad’ and contributing to the ‘moral panic’ that is sometimes associated with these studies.

Moreover, both climate change mitigation (be it through the promotion of SD or other means) and migration are issues that require international cooperation. Yet the countries whose agreement matters the most in negotiations to ensure the effectiveness of the agreements (highest emitters in the environmental context and migrant-receiving countries in the migration context) are often least willing to sign agreements and benefit most from fewer legal obligations. This is evident in climate change negotiations where the United States, China, and oil-producing Gulf countries tend to undermine attempts towards more strict legal obligations that would impact their economies and undermine their sovereignty. Similarly, ILO’s Migrant Workers Convention is notorious for only being able to gain support from migrant-sending countries.

These interconnections are crystallized through ILO’s Decent Work Agenda that connected labour issues to sustainable development in 2005.⁹⁶ The ILO’s Decent Work Agenda has four ‘core standards’: freedom from forced labour, freedom from child labour, freedom from discrimination at work, and freedom to form and join a union and to bargain collectively. ILO’s Green Jobs Initiative also brought together the UN Environment Program, International Trade Union Confederation and International Organization of Employers and the ILO to promote “opportunity, equity and a just transition to sustainable economies, and to mobilize governments, employers and

⁹⁵ Tord Kjellstrom, *supra* note 85.

⁹⁶ Peter Poschen & Greenleaf Online Library - York University, *Decent work, green jobs and the sustainable economy: solutions for climate change and sustainable development* (Sheffield: Greenleaf Pub. Ltd., 2015).

workers to engage in dialogue on coherent policies and effective programs leading to a green economy with green jobs and decent work for all.” This led to ILO’s adoption of the Global Jobs Pact in 2008 that called for cooperation on transitioning to a low-carbon economy in the context of the financial crisis. As Sharan Burrow, General Secretary of International Trade Union Confederation, has noted, “Workers will be on the frontlines of the industrial transformation that is a necessity for a zero-carbon future.”⁹⁷

Lastly, in 2015, when the UN adopted the 2030 Agenda for Sustainable Development and voted to formally adopt SDGs as a successor to MDGs, it made an explicit reference to decent work and migrant workers. SDG 8, in particular, calls for promoting “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.” SDG8.8 makes an explicit reference to migrant workers. Of the 17 SDG’s that are to guide policymaking until 2030, there are a number of other goals that are relevant to migration and migrant workers.⁹⁸

Despite these intersections, there are potential tensions between migration and SD. Firstly, environmental law and labour law exist in, what Seck calls, different silos; not only do they have different histories and objectives but also have different purposes that may conflict. Environmental law that has laid the foundation for SD and labour law have existed as distinct fields. While environmental law emerged as a field in the 1970s, labour law dates back to the Second World War. Not only do they each have their respective colonial pasts, but they also have different, often-times conflicting goals.⁹⁹ For instance, labour law is concerned with preserving more and better jobs, while environmental law is concerned with protecting the environment from the impacts of

⁹⁷ Sharon Burrow, *How will climate change affect jobs?* (2015), online:<<https://www.weforum.org/agenda/2015/12/how-will-climate-change-affect-jobs/>>

⁹⁸ Seck, “Transnational Labour Law and the Environment”, *supra* note 18.

⁹⁹ Seck, “Transnational Labour Law and the Environment”, *supra* note 18.

consumerism and economic development. This economic activity may, in fact, be a byproduct of the job creation that labour law is concerned with, while ‘greening’ has been seen as a threat to workers, particularly those employed in extractive industries.

It is no surprise, then, that environmental movements and labour movements are often at opposing sides in policy debates, and scholars from the fields rarely interact.¹⁰⁰ This is further exemplified in the 1992 UN Conference on Environment and Development’s (also known as the Rio Conference) failure to include labour issues in its discussion of the three pillars of sustainable development. Similarly, the UN Framework Convention on Climate Change made no reference to labour issues and only mentioned migrants in its preamble, while the World Summit on Sustainable Development only briefly mentioned it in its declaration.¹⁰¹ However, recently the 2015 Paris Agreement on climate change mentions both decent work and migrants, albeit in its preamble. It remains to be seen whether SDGs’ inclusion of migrant workers and decent work will evolve the relationship between these tensions.

1.5 Theoretical Framework: Core characteristics of the CA

Having discussed the connection and tensions between migration and SD, this section introduces the theoretical framework to evaluate the regimes regulating migrant workers and SD as practiced in Masdar City. The critical capabilities approach¹⁰² used here employs capabilities as the evaluative space but supplements it with other theoretical insights that are discussed in Section

¹⁰⁰ Doorey, “Just Transitions Law”, *supra* note 19. But see e.g. Adrian Smith & Dayna Nadine Scott, “Law, Labour and Landscape in a Just Transition” in Usha Natarajan & Julia Dehm, eds, *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, Forthcoming).

¹⁰¹ Peter Poschen, *Decent Work, Green Jobs and the Sustainable Economy : Solutions for Climate Change and Sustainable Development* (Routledge, 2015).

¹⁰² Amartya Sen, *The Idea of Justice* (Cambridge, Mass: Belknap Press of Harvard University Press, 2009).

1.9, including environmental justice, critical development theory on SD, an account of collective capability agency, and a principle that favours worse-off agents. However, before discussing these specifications in further detail, this section will discuss the core characteristics of capabilities-based approaches in general and why they are useful in the context of migrant workers and eco-cities.

The past few decades have seen increasing popularity and interest in the capabilities approach (CA) as a broad normative evaluative framework for justice, development, and well-being.¹⁰³ While the roots can be traced back to philosophers such as Aristotle, Marx, and Kant, Nobel Laureate Amartya Sen introduced the CA in the 1980s.¹⁰⁴ Since Sen and Martha Nussbaum's foundational work in the 1980s, the literature on CA ballooned and has gained support from not only political philosophers, normative economists, international organizations, but also environmental justice scholars and, more recently, labour lawyers.¹⁰⁵ While CA is an under-specified, open-ended framework that has many applications, its main normative contribution is its focus on an alternative metric of justice: capabilities (what people are able to do and be) and functionings (actual achievements). While capabilities are 'beings' and 'doings,' functionings are the corresponding achievements. Capabilities are understood as real opportunities or option freedoms that have been cleared of any obstacles. They are substantive opportunities to 'do' and 'be,' ranging from simple concepts such as being well-nourished to more complex capabilities such as having a valuable job and being able to connect with nature.

¹⁰³ Ingrid Robeyns, "The Capability Approach" in Edward N Zalta, ed, *Stanf Encycl Philos*, winter 2016 ed (Metaphysics Research Lab, Stanford University, 2016).

¹⁰⁴ *Ibid.*

¹⁰⁵ Thomas Pogge, "A Critique of the Capability Approach" in Harry Brighouse & Ingrid Robeyns, *Measuring justice: primary goods and capabilities* (Cambridge [England]: Cambridge University Press, 2010). at 17.; While Martha Nussbaum has been one of major contributors to CA, this project will focus on Sen.

These capabilities and functionings are the core characteristics of all capability theories and applications. CA argues that the evaluative space or “informational basis” for thinking about how just an arrangement is, a country’s level of development, or the well-being or quality of life should focus on human well-being, which is understood in terms of people’s capabilities and functionings. It is, therefore, grounded in a critique of “resourcism,” which focuses on people’s holdings of external goods (as Rawlsian primary goods approach does), and utilitarianism which focuses on subjective accounts of well-being (as Benthamite focus on utilities does). In other words, for CA scholars, a law, policy, or arrangement should be evaluated according to people’s range of substantive opportunities and actual achievements.¹⁰⁶

Along with capabilities and functionings, prominent CA scholar Ingrid Robeyns presents a modular view of CA that highlights a number of other core characteristics of all CA theories and applications. These include (1) capabilities and functionings which are conceived as value-neutral and form the evaluative space; (2) conversion factors¹⁰⁷ which refer to one’s non-monetary limitations which determine whether people are able to convert resources into capabilities; (3) a means-ends distinction which stresses on starting analysis from the ends rather than means; (4) value pluralism which allows for other elements to be considered of ultimate value (such as procedural fairness, ecological sustainability) and also views human beings to value multiple things; (5) ethical individualism which claims each person counts as a moral equal and is of primary moral importance. The CA, therefore, is not an explanatory theory and better

¹⁰⁶ Ingrid Robeyns, “The Capability Approach: a theoretical survey” (2005) 6:1 *Journal of Human Development* 93–117. 94

¹⁰⁷ Including personal factors such as sex, physical condition, social factors such as power relations related to race or caste, legal regulations, and environmental factors such as level of environmental pollution

seen as a “thin” framework that can rely on ‘thicker’ theories that specify accounts of human diversity, structural constraints, and agency.¹⁰⁸

As prominent CA scholar Ingrid Robeyns clarifies, CA is an under-specified, open-ended framework that ought to be distinguished from its many applications. CA is often erroneously conflated with these applications and specific distinct capabilities theories such as Nussbaum’s contribution or Sen’s theory of development as freedom.¹⁰⁹ CA is also used interchangeably with human development and the popular human development index, which Sen and Mahbub-ul-Haq played a role in developing. However, while CA and human development are historically and theoretically related, they have different purposes and intellectual roots.¹¹⁰ CA’s focus on capabilities as substantive opportunities for people to pursue lives they value is explicitly more demanding than human development’s roots in the basic needs approach.¹¹¹ Sen prefers the CA because the basic needs approach narrowly focuses on commodities and views human beings as passive.¹¹² Nevertheless, the point here is to, from the outset, distinguish CA from its many

¹⁰⁸ Flavio Comim, Mozaffar Qizilbash & Sabina Alkire, eds, *The Capability Approach: Concepts, Measures and Applications* (Cambridge: Cambridge University Press, 2008).; Ingrid Robeyns, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined*, 1st ed (Open Book Publishers, 2017).

¹⁰⁹ Morten Fibieger Byskov, “Beyond ‘having reason to value’: why we should adopt a procedure-independent and value-neutral definition of capabilities” (2020) 27:1 *Journal of Economic Methodology* 18–35.

¹¹⁰ While both CA and human development, as Fakuda-Parr and Cid-Martinez argue, have led to a discourse on “people centered approach” to development and a focus on poverty as an objective of development as reflected in the SDGs, the concept of capabilities has only been partially reflected in these discourses given the conflation of CA with human development and the misrepresentation of human development as an agenda for only meeting basic needs.

Sakiko Fukuda-Parr & Ismael Cid-Martinez, “Capability Approach and Human Development” in Machiko Nissanke & José Antonio Ocampo, eds, *The Palgrave Handbook of Development Economics: Critical Reflections on Globalisation and Development* (Cham: Springer International Publishing, 2019) 441.

¹¹¹ Amartya Sen, *Collective Choice and Social Welfare* (Harvard University Press, 2018) Google-Books-ID: TwOHDwAAQBAJ.; Robeyns, *supra* note 108. At p 177

¹¹² Sen, *supra* note 111. At 25

applications that have gained popularity and stress that this project relies on CA for its evaluative space.

1.7: Is a capabilities-based approach an appropriate evaluative lens in the context of migrant workers and SD?

There are several advantages of using a critical capabilities lens in this context, namely (1) the means-ends distinction's ability to divert attention from a focus on economic growth alone and help justify certain social and labour rights as ends (2) CA's ability to study precarity (3) CA's internal pluralism which allows it to embrace multiple elements of justice (4) CA's ability to go beyond human rights.

Firstly, understanding capabilities as ends, not only a means to well-being, allows us to ask the right questions and can help justify pursuing labour and social rights as ends on their own. This means-ends distinction points us to consider people's actual abilities to convert resources to things they value.¹¹³ In other words, rather than asking how wages or formal rights are distributed, the CA considers how precarious immigration status, for instance, can severely limit migrant workers' ability to use and exercise their resources and rights. A focus on capabilities creates an evaluative space that broadens the informational basis and takes into account human diversity which is particularly relevant in the case of migrant workers considering the different routes and circumstances and their respective abilities to convert resources to a life they value.¹¹⁴¹¹⁵ CA's argument against resourcism, i.e., a focus on resources or 'primary goods,' is also better able to

¹¹³ Robeyns, *supra* note 103.

¹¹⁴ Pardis Mahdavi, *Gridlock: labor, migration, and human trafficking in Dubai* (Stanford, California: Stanford University Press, 2011).

¹¹⁵ Shannon M Roesler, "Addressing environmental injustices: a capability approach to rulemaking" (2011) 114 W Va L Rev 49.

address the dominant approach of viewing migrant workers as economic agents and optimism around the role of remittances for migrant workers and migrant-sending countries.¹¹⁶ Thus, being able to move freely is not important because it is *instrumental* towards one's goals or others' goals (a country's development or progress towards sustainable development, for instance). It has, instead, an "ultimate value" that is seen as a "final end." This distinction between means and ends, therefore, goes beyond viewing migration as a trade-off between rights and development seen as merely economic benefits.¹¹⁷

A number of labour lawyers have found CA's means-distinction helpful. Brian Langille, who has written extensively on CA and labour law, including a recent edited book "The Capability Approach to Labour Law," argues that the CA rejects the usual "sequencing" of economic dimensions before social and political dimensions and presentation of social justice and economic development as a zero-sum game. Human freedom becomes the goal and necessary precondition for just and durable economies and societies. Similarly, Simon Deakin argues that the CA can be used as a methodological approach and a distinct ontological perspective that allows us to escape the narrow constraints of neoclassical economic analysis of labour law.¹¹⁸ Its emphasis on creating conditions for human freedom and insistence on going beyond economic growth to assess human well-being allow it to reinforce the idea that labour law can play a role in sustainable development.

¹¹⁶ For more on migration-development see for example Adrian A Smith, "Migration, development and security within racialised global capitalism: refusing the balance game" (2016) 37:11 Third World Quarterly 2119–2138.; For a criticism on remittances as tool for poverty alleviation see Kerry Preibisch, Warren Dodd & Yvonne Su, "Pursuing the capabilities approach within the migration–development nexus" (2016) 42:13 Journal of Ethnic and Migration Studies 2111–2127.

¹¹⁷ Preibisch, Dodd & Su, *supra* note 116.; For more on trade-off between migrant rights and development see for eg. Martin Ruhs & Philip Martin, "Numbers vs. Rights: Trade-Offs and Guest Worker Programs" (2008) 42:1 International Migration Review 249–265.

¹¹⁸ Simon Deakin, "The Capability Approach and the Economics of Labour Law" in Brian Langille, ed, *The Capability Approach to Labour Law* (Oxford University Press, 2019) container-title: The Capability Approach to Labour Law.

Clair Gammage, too, finds Sen's insistence to look beyond distribution based on welfare and resources helpful because concentrating only on incomes ignores the fact that people have different opportunities to convert incomes into being and doings they may value. She finds CA useful to invert the international trading system's normative foundation in a way that puts a greater focus on human freedoms and capabilities, which are treated as an end.

Judy Fudge, on the other hand, posits that the concept of capabilities allows labour lawyers to debate *which* social and labour rights are fundamental on their own as ends. It responds to concerns that tensions between social rights and the market are inherent by connecting the normative ground of 'social rights (human freedoms)' to 'the welfare goal (market efficiency)' through a metric. While Langille's argument, which goes a step further to propose the CA as the normative basis to justify the whole field of labour law, is more contentious, Fudge is more mindful of its limitations. She supplements Sen's conception of capabilities with Elizabeth Anderson's democratic equality to argue for labour law that can include workers that fall outside the employment relationship model. She concludes that "although the capabilities approach typically is located within a liberal framework, it offers valuable resources for a critique of the liberal conception of justice...it is both possible and desirable to supplement Sen's account in order to appreciate the need for collective capabilities, to address private power within the market and the household, and to adopt a relational understanding of the individual as dependent upon the obligations of others for care." For Fudge, Langille's view of fundamental labour rights and prioritizing of core rights over social and substantive strands is based on a thin CA.

Secondly, CA is better suited to study 'precarity.' CA offers a better criterion of how good one's quality of life is or how just an arrangement because it explicitly criticizes utilitarian

approaches that focus on people's subjective pleasure, happiness, or preference-satisfaction.¹¹⁹ Sen contends this preference-satisfaction is too malleable; people can adapt their perceptions, desires, and expectations according to their circumstances and the laws and institutions under which they live. He argues that people who experience severe deprivation, such as exploited immigrants, often tend not to see a direct way out of their situations.¹²⁰ This explicit reference to the problem of adaptive preferences is particularly relevant to migrant workers who are often in a 'gridlock,' given the burden of recruitment fees, their visa status is tied to their employer, and the difficulties of changing or challenging their employers.¹²¹ Sen uses the example of the "happy slave" to criticize Benthamite utilitarianism and rational choice theory, arguing that instead of malleable "happiness," capabilities should be seen as ends.¹²²

Thirdly, CA's internal pluralism is better able to theorize justice with more sophistication and nuance. A pluralistic understanding of justice in terms of capabilities allows us to consider not only distributive elements of justice but also procedural and 'recognition' issues of justice.¹²³ This internal pluralism, as argued by environmental justice scholar David Schlosberg, is better

¹¹⁹ John M Alexander, *Capabilities and social justice: the political philosophy of Amartya Sen and Martha Nussbaum* (Aldershot, England: Ashgate Pub. Ltd., 2008).

¹²⁰ Sen 1999a 62-63; *Ibid.* At 14.

¹²¹ Mahdavi, *supra* note 114.; Judy Fudge et al, *The precarious migrant status and precarious employment: the paradox of international rights for migrant workers*, Working paper series (Metropolis British Columbia) ; 11-15 (Vancouver, B.C.]: Metropolis British Columbia, 2011).

¹²² While Sen defines capabilities in terms of beings and doings that people have "reason to value" this is distinct from solely focusing on subjective preferences because capability theorists focus on expanding on substantive opportunities. The value pluralism within the CA allows it to prevent it from falling into the trap of paternalism. As Carrie Menkel-Meadow et al. clarify, Sen's capabilities approach is objectively consequentialist i.e. it does not judge state on the basis of whether people feel happy or fulfilled rather it judges a state based on whether it enables people to exercise their agency to realize what they value in their lives. Utilitarianism consequentialism, on the other hand, judges states on the basis of ultimate happiness or desire fulfillment of people. Carrie Menkel-Meadow et al, eds, *Amartya Sen and law, Philosophers and law* (London ; Routledge, Taylor & Francis Group, 2020). at 11.

¹²³ David Schlosberg, "Theorising environmental justice: the expanding sphere of a discourse" (2013) 22:1 Environmental Politics 37-55.; David Schlosberg, *Defining Environmental Justice* (Oxford University Press, 2007).

able to reflect how environmental justice activists articulate their justice claims in practice and makes connections between a range of concerns (such as cultural disrespect and economic inequality) that are integrally linked.¹²⁴ The CA is also better able to incorporate the role of the environment compared to its counterparts and is attentive to how certain environmental impacts are not compensable.¹²⁵ In doing so, it is able to capture the interconnectedness between migration and sustainable development.

Similarly, Supriya Routh finds CA's pluralism and flexibility appealing to address a range of different forms of work. In response to Guy Davidov, who argues that CA does not offer the *only* justification for labour laws, Routh argues that while CA has "normative force," it should be seen as an approach and not a complete theory. Its flexibility allows the approach to be "capacious enough to account for minimum wages and other pluralistic concerns of labour law," and it "helps conceptualize a coherent idea on regulation of work in its societal complexity (i.e., catering to the empirical reality of the increasingly complex world of work) without assuming a now out-dated institutional framework of industrial employment or other behavioural patterns of workers and their collectives."¹²⁶ Routh, draws on Sen, Browne, Deakin, Wilson, and Hepple and like Fudge uses Anderson's democratic equality, to argue for a CA framework that can "formulate the new labour law in informal economic activity settings."¹²⁷ He argues that the normative goal for new labour law must be enhancing equality of capability of all workers.

¹²⁴ Schlosberg, *supra* note 123.; David Schlosberg & David Carruthers, "Indigenous Struggles, Environmental Justice, and Community Capabilities" (2010) 10:4 Global Environmental Politics 12–35.

¹²⁵ Edward A Page, "Intergenerational justice of what: Welfare, resources or capabilities?" (2007) 16:3 Environmental Politics 453–469.

¹²⁶ Supriya Routh, 'A Capability Approach to Labour Law', in *Enhancing Capabilities through Labour Law: Informal Workers in India* (New York: Routledge, 2014), pp. 146-180.

¹²⁷ Supriya Routh, 'A Capability Approach to Labour Law', in *Enhancing Capabilities through Labour Law: Informal Workers in India* (New York: Routledge, 2014), pp. 146-180.

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Moreover, the CA is useful because it can incorporate and, at times, go further than human rights frameworks. The relationship between capabilities and human rights has attracted significant debate between capability scholars. On the one hand, Nussbaum equates capabilities with human rights, while Sen is wary of the law's overreach and views human rights as ethical assertions rather than legally secured moral demands.¹²⁸ While both accounts have been criticized¹²⁹, the concept of capabilities has allowed scholars to justify going beyond formal rights and support a positive account of freedom. Bethany Hastie, for instance, finds Nussbaum's CA useful in the context of migrant workers and access to justice to understand that codified legal rights may not always translate to the "practical ability to substantively realize those rights in practice," arguing that employer-specific work permits produce a power imbalance that restricts the realization of formal rights in the workplace.¹³⁰ Routh argues that in contrast to a rights-based approach that can be too fixed, using CA as a normative goal for labour law allows for new and innovative labour guarantees (or social conditions of freedom) which have to be context-specific.¹³¹

Virginia Mantouvalou, on the other hand, argues that unlike using a normative framework based on human rights alone, a capabilities account that is centred on human flourishing requires meaningful work and not only an end to workers' exploitation. She writes, "this requirement is more demanding than the duties imposed by human rights, which are primarily about identifying

¹²⁸ Carrie Menkel-Meadow et al, "Introduction Sen and Law (Editors' Introduction)" in *Amartya Sen and Law* (London: Routledge, Taylor Francis Group, 2020).

¹²⁹ For critique on Amartya sen see for e.g. Seyla Benhabib, *Dignity in Adversity: Human Rights in Troubled Times* (John Wiley & Sons, 2013) Google-Books-ID: fvTvrio7baEC.at 80-82; for a critique on Nussbaum see Menkel-Meadow et al, *supra* note 128.at page 12

¹³⁰ Bethany Hastie, "The Inaccessibility of Justice for Migrant Workers: A Capabilities-Based Perspective" (2017) 34 Windsor YB Access Just 20–39.

¹³¹ Supriya Routh, 'A Capability Approach to Labour Law', in *Enhancing Capabilities through Labour Law: Informal Workers in India* (New York: Routledge, 2014), pp. 146-180, p259.

and addressing moral wrongs.”¹³² She argues that the right to work understood on the basis of CA is a right to employability, which imposes duties such as those related to educating and training. Furthermore, grounded in CA, the right to work can “support a right for caregivers to care for dependents without risking destitution.” Individuals must have opportunities for meaningful work but also opportunities to work for an employer that respects human rights. Ultimately she argues, “Working terms and conditions that undermine human capabilities are incompatible with the right to work.”¹³³ Similarly, Timothy Weidel has argued for the inclusion of a capability for meaningful labour to Nussbaum’s list of central capabilities.¹³⁴

In summary, the CA may be useful for a number of reasons that environmental justice, law and development, and labour lawyers have found convincing. Its focus on capabilities, means-ends distinction, ability to study precarity, and ability to incorporate human rights make it a viable option to pursue. For the purposes of this project, it is most useful for providing an evaluative space as capabilities, i.e., substantive opportunities to live a life one values. To clarify, it is not being used as the only normative foundation for law and future reforms. Using capabilities as the evaluative space allows my analysis to focus on the range of substantive opportunities migrants have that ought to be looked at comprehensively when evaluating the existing regime regulating migrant workers and SD’s ability to accommodate justice for migrant workers. Therefore, through the analysis of the international regime and UAE’s kafala system, I ask: to what extent do these systems enhance migrants’ capabilities or actual opportunities?

¹³² Virginia Mantouvalou, “Work, Human Rights, and Human Capabilities” in *The Capability Approach to Labour Law* (Oxford University Press, 2019) 202..

¹³³ Virginia Mantouvalou, *Work, Human Rights, and Human Capabilities* (Oxford, 2018). “Work, Human Rights, and Human Capabilities – Virginia Mantouvalou (UCL)”, (18 January 2018), online: *OHRH* <<https://ohrh.law.ox.ac.uk/work-human-rights-and-human-capabilities-virginia-mantouvalou-ucl/>>.

¹³⁴ Timothy Weidel, “Moving Towards a Capability for Meaningful Labor” (2018) 19:1 *Journal of Human Development and Capabilities* 70–88.

1.8 CA's further critiques and clarifications

There are also a number of critiques and clarifications Sen makes that are worth noting here. One of the key critiques Sen makes of Rawlsian “original position” and use of social contract theory is that it limits the involvement to only members of a polity within nation-states. Sen opts for an “open-impartiality” where he considers participation in deciding justice principles to include “citizens of a state and others beyond,” noting that “there are few non-neighbours left in the world today.”¹³⁵ This is connected to Sen’s view of the role of direct participatory democracy as a tool to scrutinize the role of government and markets, expand the informal bases of policies and apply political pressure. This approach, as Menkel-Meadow et al. explain, would “mandate a decentralized process of democratic deliberation” which would take account of both “people’s situated subjective experiences” and those from outside a community “depending on the scope of territoriality.”¹³⁶ This is different from Nussbaum’s sufficientarian proposal of specifying a list of ten basic capabilities that ought to be constitutionally protected.

Sen also criticizes social contract theorists’ use of “transcendental institutionalism,” arguing that diagnosing injustice does not require imagining a perfectly just society. He thinks that most of these theorists (apart from Kant and Rawls) are concerned with just rules and institutions, ignore the actual behaviour of people and their interactions. This critique is helpful since it opts instead for a comparative approach that focuses on actual feasible alternatives and can be traced back to the works of Smith, Wollstonecraft, Mill, Marx, and Condorcet.

¹³⁵ Sen, *supra* note 102. Sen idea of justice find page number He also argues that freedom is not inherently a European concept, using examples of Ashoka.

¹³⁶ Menkel-Meadow et al, *supra* note 128.at p2

Another distinction Sen makes is between *niti* and *nyaya* or the distinction between the arrangement-focused versus realization-focused views of justice. In this view, the reforms are assessed in terms of actual removal of injustices; we cannot only depend on arrangement-focused views of justice that are based on institutions and idealized behavioural norms. Sen is, however, not a no-nonsense consequentialist, arguing instead for a comprehensive outcome where one's agency and process are also described. Sen further differentiates between process and substantive aspects, noting that capabilities only consider the latter. Therefore, for Sen, it is important to go beyond a focus on capabilities and to be able to consider both aspects. The distinction between *niti* and *nyaya* also allows me to emphasize not only institutions but also a comprehensive set of outcomes. This is, as Cesar Arjona et al. contend, is similar to the distinction between law in the books and law in action. The latter is preferred because it leaves room to consider consequences but also takes into account processes, duties and responsibilities. This points to the inclusion of an anthropological element in the theory of justice where it is concerned about what it is like to be a human being.¹³⁷

While Sen is opposed to neoliberalism, human development approaches that have emerged from CA implicitly accept neoliberal views on development without challenging the neoliberal positioning of the global economy.¹³⁸ Preibisch, Dodd, and Su criticize this way of co-opting the discourse of the CA and selectively applying tenets.¹³⁹ They point how even though the aforementioned UNDP report uses the language of capabilities, it reinforces the general optimism around remittances and their ability to contribute to the development of both countries of origin

¹³⁷ Menkel-Meadow et al, *supra* note 122.at p 53

¹³⁸ Amartya Sen & Bernard Williams, eds, *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982).

¹³⁹ Kerry Preibisch, Warren Dodd & Yvonne Su, "Pursuing the capabilities approach within the migration–development nexus" (2016) 42:13 *Journal of Ethnic and Migration Studies* 2111–2127.

and destination. It also views mobility as a freedom fundamental to development, which can be problematic because it may support temporary migration programs that aim to reduce barriers to human mobility and make it easier for migrant-sending countries to cooperate without paying adequate attention to the countries' particular institutional capacities and regulatory gaps.¹⁴⁰

Similarly, migration scholar Hein de Haas has also argued for a capabilities-based understanding of migration, arguing in favour of an “aspirations-capabilities” framework. However, his version not only assumes development will lead to an increase in “life aspirations,” but these aspirations (which are tied to preferences) are also conflated with capabilities.¹⁴¹ Furthermore, he relies on Isaiah Berlin's distinction between positive and negative freedom, which is perfectionist and teleological. Sen has clarified Berlin's distinction does not capture his view. In Sen's view, one's positive freedom is one's “ability to do the things in question, taking everything into account including external and internal restraints. Here a violation of negative freedom must also be one of positive freedom but not vice versa.”¹⁴²

In other words, the dominant way the language of capabilities is being employed by policymakers, particularly in the context of migration-development nexus, is problematic because the approach is only partially applied.¹⁴³ However, it is argued that given the language of capabilities is already popular amongst policymakers, a thicker application of the approach may still be worthwhile to explore. Preibisch, Dodd, and Su conclude that greater attention is needed to apply the approach in a way that does not compromise its integrity and protects migrants'

¹⁴⁰ Preibisch, Dodd & Su, *supra* note 116.

¹⁴¹ Hein de Haas, “Migration Theory: Quo Vadis?” (2014) 100 IMI Working Paper Series, online: <<https://www.migrationinstitute.org/publications/wp-100-14>>; Hein de Haas & Francisco Rodríguez, “Mobility and Human Development: Introduction” (2010) 11:2 Journal of Human Development and Capabilities 177–184.

¹⁴² Robeyns, *supra* note 108. at p 101; Amartya Sen, *Rationality and Freedom* (Harvard University Press, 2004). at 586

¹⁴³ Preibisch, Dodd & Su, *supra* note 116.

intrinsic rights.¹⁴⁴ This project attempts to contribute towards that goal in the context of migrant workers and eco-development in the Gulf.

Furthermore, Sen's idea of justice is cosmopolitan in so far as it argues to go beyond assessing the interests to merely citizens, particularly when we consider challenges such as "global warming" or international economic crises. Sen writes, "Global justice cannot but embrace identities that go well beyond citizenship."¹⁴⁵ When speaking of identities, Sen purports that people are members of different groups (class, gender, race, ethnicity, etc.); focusing on one aspect is limiting and denies individuals' respective loyalties. Sen's critique on the rational choice theory, which views people as making their choice because of their 'commitment' rather than their personal advantage, too, as Adelman and Paliwala note, comes close to relational theory.¹⁴⁶ Sen criticizes the narrow self-interest view of rationality that dominates mainstream economic and urges to give room to other characteristics that may shape behaviour such as sympathy, gratefulness, sacrifice, and camaraderie.¹⁴⁷

1.9 CA and SD

CA has also been used in the context of SD. In an article titled "The Ends and Means of Sustainability," Sen criticizes the 1987 Brundtland Report, which first popularized the term and defined SD as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." Sen argues a focus on merely needs and especially "the essential needs of the world's poor" ignores important aspects of life that people

¹⁴⁴ *Ibid.*

¹⁴⁵ Amartya Sen, "Open and Closed Impartiality" (2002) 99:9 *The Journal of Philosophy* 445–469.

¹⁴⁶ Abdul Paliwala, *The Limits of Law and Development: Neoliberalism, Governance and Social Justice*, 1st ed, Sam Adelman, ed (Abingdon, Oxon; New York, NY: Routledge, 2020). | "A Glasshouse book": Routledge, 2020). at p 24

¹⁴⁷ Sen, *supra* note 142.; Sen, *supra* note 111.

may value. Instead, a freedom-oriented approach to sustainability would be better able to encompass a more rich picture of human life and include both substantive and procedural aspects of how results come about. It would also allow us to focus on what is a better conception of the end of development (freedom) rather than the means to an end (needs).¹⁴⁸ Sen is wary of who may decide these needs and insists that the “value of environment cannot be divorced from the lives of living creatures.”¹⁴⁹ Sen’s view of SD is useful because it views humans (and the poor) as agents and not merely limited to needs. His definition of SD does not prioritize economic growth and limits expanding freedom when possible without compromising future generations’ freedoms.¹⁵⁰ Within Sen’s definition of SD, migrant workers’ movement and supportive capabilities, as well as related labour standards, can be seen as falling within the social dimension of SD that ought to be seen as ends themselves. Unlike the “sequencing” of economic dimensions before social and political counterparts, CA rejects presenting social justice and economic development as a zero-sum game.¹⁵¹ CA’s means-ends distinction, therefore, shifts focus from economic dimensions of SD to an expansion of capabilities and functionings.

Furthermore, CA is better able to incorporate the role of the environment compared to its counterparts and is attentive to how certain environmental impacts are not compensable.¹⁵² This is an argument made by a number of scholars who are using capabilities-based approaches in the

¹⁴⁸ Amartya Sen, “The Ends and Means of Sustainability” (2013) 14:1 *Journal of Human Development and Capabilities* 6–20.

¹⁴⁹ Amartya Kumar Sen, *Development as freedom*, 1st anchor books ed. ed (New York: Anchor books, 1999). at p 252

¹⁵⁰ *Ibid.* p 247-252

¹⁵¹ Brian Langille, “Introduction: The Capability Approach to Labour Law—Why are We Here?” in *The Capability Approach to Labour Law* (Oxford University Press, 2019) 1.; Adrian Smith, “Racism and Regulation of Migrant Labour” in Adelle Blackett, Anne Trebilcock & David J Doorey, *Research handbook on transnational labour law*, Research handbooks in international law (Cheltenham, UK; Edward Elgar Publishing Limited, 2015). At 141.

¹⁵² Page, “Intergenerational justice of what”, *supra* note 125.

context of environmental justice, climate justice, and sustainable development.¹⁵³ Breena Holland, for instance, argues that the CA is better able to account for the role of environment compared to Rawlsian approaches. According to Holland, Rawls' earlier work treats environmental problems as externalities and environmental benefits as indivisible goods, which allows for solutions such as using appropriate taxes and subsidies that reflect the true cost of these goods. Viewing environmental goods as indivisible implies that they are not subject to unequal distribution and hence not a matter of justice; they are not a matter of basic justice in the same sense income and wealth are. This way of viewing environmental goods fails to consider how inequitable distribution of the goods poses obstacles to social justice.¹⁵⁴ Holland, therefore, builds on Nussbaum's CA and adds that the environment ought to be considered as a "meta-capability,"¹⁵⁵ which is able to capture how capabilities depend on the environment and

¹⁵³ Schlosberg, *supra* note 123.;

Ned Hettinger et al, *Ethical Adaptation to Climate Change: Human Virtues of the Future* (Cambridge, Mass: The MIT Press, 2012).; Breena Holland, *Allocating the earth: a distributional framework for protecting capabilities in environmental law and policy*, 1st ed ed (Oxford: Oxford University Press, 2014).; *Sustainable Human Development: Concepts and Priorities*, by Sudhir Anand and Amartya Sen, ideas.repec.org, Human Development Occasional Papers (1992-2007) HDOCPA-1994-03 (Human Development Report Office (HDRO), United Nations Development Programme (UNDP), 1994).; Sudhir Anand & Amartya Sen, "Human Development and Economic Sustainability" (2000) 28:12 World Development 2029–2049.; Andrew Crabtree, ed, "Sustainability, Capabilities and Human Security" (2020) Springer eBooks, online: <<http://myaccess.library.utoronto.ca/login?url=https://link.springer.com/10.1007/978-3-030-38905-5>>.; David Schlosberg & David Carruthers, "Indigenous struggles, environmental justice, and community capabilities" (2010) 10:4 Global Environmental Politics 12–35.; Lieske Voegt-Kleschin, "Employing the Capability Approach in Conceptualizing Sustainable Development" (2013) 14:4 Journal of Human Development and Capabilities 483–502.; Emily Schultz et al, "A Sustainability-Fitting Interpretation of the Capability Approach: Integrating the Natural Dimension by Employing Feedback Loops" (2013) 14:1 Journal of Human Development and Capabilities 115–133.; Felix Rauschmayer, Ines Omann & Johannes Fröhmann, eds, *Sustainable development: capabilities, needs, and well-being* (London ; New York: Routledge, 2011).

¹⁵⁴ Breena Holland, "Justice and the Environment in Nussbaum's 'Capabilities Approach' Why Sustainable Ecological Capacity Is a Meta-Capability" (2008) 61:2 Political research quarterly 319–332. 320

¹⁵⁵ Breena Holland, "Environment as meta-capability: why a dignified human life requires a stable climate system" in Allen Thompson & Jeremy Bendik-Keymer, *Ethical Adaptation to Climate Change: Human Virtues of the Future* (MIT Press, 2012) Google-Books-ID: cLaY09IK1PIC.;

how some environmental harms are not compensable. While this is not the focus of this project, it has been argued that the CA is already “conceived in a protoecological way”¹⁵⁶ and has been extended to non-human and non-sentient beings and used to argue that the non-human world is worthy of recognition as an end in itself.

More recently, capabilities-based environmental justice scholarship notes the importance of differentiating between luxury and subsistence emissions (emissions of those seeking basic needs versus those of the rich), attributed to Henry Shue’s work on climate justice. Schlosberg argues that luxury emissions of some have already inflicted harm on the poor by undermining the basic needs in a “climate-changed world.” Schlosberg notes Holland’s more recent proposal that there should be not only a “floor” for subsistence but also a “ceiling” to limit luxury emissions that may be damaging. This ceiling can “define the extent to which a society ought to limit the harmful effects of capability protections”¹⁵⁷ and is based on the understanding that “there is not unlimited amount of individual opportunity or freedom that earth’s ecological systems can sustain over time.”¹⁵⁸ Schlosberg notes that, in practice, this can mean policies that minimize the harm to the least well-off by, for example, combining a carbon price with welfare and pension payments for those on government assistance.¹⁵⁹ In evaluating eco-city projects such as Masdar City, therefore, we would need to be attentive to whether there is this distinction and if the harm to the least well-off is being minimized.

In summary, a capabilities-based understanding of SD offers a broad normative framework centred on one’s real opportunities to lead lives one values; its main strengths are its

Holland, *supra* note 154.

¹⁵⁶ Thompson & Bendik-Keymer, *supra* note 155.

¹⁵⁷ David Schlosberg, “Further uses for the luxury/subsistence distinction: Impacts, ceilings, and adaptation” (2019) 21:2 *The British Journal of Politics and International Relations* 295–302.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

internal pluralism and ability to re-hierarchyize social and environmental dimensions over economic dimensions of SD with an ability to differentiate between luxury and subsistence emissions.

1.10 Operationalizing the CA for Migration and SD intersection

Most CA theorists agree that the approach is an incomplete theory of justice that must be supplemented with others to provide a fuller account. Robeyns cautions on the limitations of the CA and has recently formulated, as aforementioned, a modular view of the approach that differentiates certain aspects that are core and others that are optional depending on the purpose of the research project (Table 2.5).¹⁶⁰ The purpose of this project is not to provide a tidy theory that can simultaneously address the concerns of migrant workers and tensions between justice for migrant workers and SD but to use capabilities as an evaluative lens and assess what insights are gained from applying it in this context. In doing so, there are a number of specifications that ought to be made, as introduced in Section 1.7. The following discussion will describe these specifications and theoretical insights that the project will rely on that supplement using capabilities as a lens.

Table 2.5 The modular view of the capability approach¹⁶¹

¹⁶⁰ Robeyns, *supra* note 108.

¹⁶¹ *Ibid.*

The A-module: the non-optional core

- A1: Functionings and capabilities as core concepts
- A2: Functionings and capabilities are value-neutral categories
- A3: Conversion factors
- A4: The distinction between means and ends
- A5: Functionings and/or capabilities form the evaluative space
- A6: Other dimensions of ultimate value
- A7: Value pluralism
- A8: Valuing each person as an end

The B-modules: non-optional modules with optional content

- B1: The purpose of the capability theory
- B2: The selection of dimensions
- B3: An account of human diversity
- B4: An account of agency
- B5: An account of structural constraints
- B6: The choice between functionings, capabilities, or both
- B7: Meta-theoretical commitments

The C-modules: contingent modules

- C1: Additional ontological and explanatory theories
- C2: Weighing dimensions
- C3: Methods for empirical analysis
- C4: Additional normative principles and concerns

As Robeyns' modular view of CA suggests, there are several specifications (in the B and C-modules) that ought to be made for each capability theory and application depending on the purpose of the project.¹⁶² Firstly, there needs to be an explicit account of human diversity, which determines the importance one puts on gender, ethnicity, race, social class and influences what options lie open to a person and how their aspirations are shaped. This, I argue, is similar to the role of structural constraints that shape people's capabilities. Structural constraints, according to

¹⁶² Ingrid Robeyns, "Core Ideas and the Framework" in *Wellbeing, Freedom and Social Justice The Capability Approach Re-Examined*, 1st ed (Open Book Publishers, 2017) 21.

Robeyns, differ from conversion factors because they impact capabilities as a whole and can include capabilities that do not require resources directly.¹⁶³

This project's account of human diversity and structural constraints is tied to environmental justice. It builds on environmental justice scholarship that highlights how environmental benefits and burdens adversely impact marginalized communities and challenge the very idea of "environment." Environmental justice is understood as "social praxis" which emerged at "a crossroads of social movements, public policy, and academic research...[integrating] theory and practice in a mutually informing dialogue."¹⁶⁴ While the environmental justice movement originated in the US in the 1960s, its language is also being adopted by grassroots movements in the Global South. It is useful for dispelling the myth that environmental protection is a luxury for the South and its poor. As noted by Carmen Gonzalez in her commentary on international waste trade, environmental protection is, in fact, "far being from being a luxury" and "is necessary to preserve the health, safety, and well-being of the Southern poor."¹⁶⁵ This is an important feature of environmental justice because it challenges the notion that the poor are "too busy surviving" to care about environmental protection.¹⁶⁶

Secondly, since its inception, the movement has highlighted the relationship between environmental justice and workers (including specifically migrant workers') issues. This is

¹⁶³ *Ibid.*

¹⁶⁴ Julie Sze & Jonathan K London, "Environmental Justice at the Crossroads" (2008) 2:4 Sociology Compass 1331–1354. at 1332.

¹⁶⁵ Carmen G Gonzalez, "Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade" (2000) 78 Denv U L Rev 979.; Carmen G Gonzalez, "Food Justice: An Environmental Justice Critique of the Global Food System" in Shawkat Alam et al, eds, *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015) 401.

¹⁶⁶ Dayna Nadine Scott, "What is Environmental Justice?" (2014). ; Patrick Novotny, *Where we live, work, and play: the environmental justice movement and the struggle for a new environmentalism*, Praeger series in transformational politics and political science (Westport, Conn: Praeger, 2000).

reflected in the inclusion of worker rights in the Principles of Environmental Justice¹⁶⁷ (the founding document of the environmental justice movement) and how labour unions and their leaders have made the connections between worker issues and environmental justice.¹⁶⁸

Building on these characteristics of environmental justice literature and numerous other fields such as Critical Race Theory, Political Ecology, and Gender and Feminist Studies, prominent environmental justice scholar David Pellow has more recently proposed Critical Environmental Justice Studies as a framework that goes even further and analyzes the Israel/Palestine conflict, the U.S. prison system, and the Black Lives Matter as environmental justice struggles. Pellow argues these examples depict the state's power over the human and more-than-human world and, therefore, calls for analysis and actions that move beyond the structures such as the state and "bold" transformative change.¹⁶⁹ He is able to do so using a rather radical framework which (1) recognizes that multiple social categories of difference (such as race, religion, gender, class) are intertwined in environmental injustice, i.e., inequalities such as sexism, racism, ableism, heteropatriarchy are in fact intersecting axes of domination that are mutually reinforcing, (2) recognizes that environmental injustice may simultaneously function through multiple spatial and temporal scales (global and local, past and future), (3) calls for antiauthoritarian approaches for analysis and actions that move beyond the human, state and

¹⁶⁷ Produced in 1991 at the First National People of Colour Summit in Washington, D.C, these principles are seen as the "founding vision document" of the environmental justice movement. They highlight how environmental injustice today is produced by the same systems that contributed to slavery, colonization, and other forms of systemic oppression. The Summit, as Robert Bullard notes, "broadened the movement beyond its early focus against toxics to include issues of public health, worker safety, land use, transportation, housing, resource allocation, and community empowerment." x, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* by Bullard, Robert D. Published by Sierra Club Books 1st (first) edition (2005) Paperback, 1st ed (Counterpoint, 2005).

¹⁶⁸ Principles of Environmental Justice

¹⁶⁹ David Naguib Pellow, *What is Critical Environmental Justice?* (Cambridge, UK ; Malden, MA, USA: Polity, 2017). at 14-33

capital, and (4) calls for transformative change that recognizes the inseparability of the human and more-than-human world.¹⁷⁰ In short, critical environmental justice is most useful in bringing attention to how multiple social categories of difference create environmental injustice and are intersecting axes of domination that are mutually reinforcing. Pellow's work is also useful to show how "the harms suffered by ecosystems today are closely linked to and mirror the harms experienced by the most marginalized human beings across the planet."¹⁷¹

Recent scholarship continues to study workers, specifically, migrant workers in the context of environmental justice, ranging from Latino migrant farmworkers still fighting exposure to pesticides¹⁷², largely immigrant Vietnamese female-identifying workers in nail salons¹⁷³ and the plastics industry,¹⁷⁴ to immigrant workers in the Silicon Valley¹⁷⁵ and textile industry¹⁷⁶ who traditionally had no union representation, and rural migrant workers in China's new eco-cities.¹⁷⁷¹⁷⁸

¹⁷⁰ *Ibid.* at 149.

¹⁷¹ *Ibid.* p 2

¹⁷² L A McCauley et al, "Work characteristics and pesticide exposures among migrant agricultural families: a community-based research approach." (2001) 109:5 *Environ Health Perspect* 533–538.; Stephanie Farquhar et al, "Promoting the Occupational Health of Indigenous Farmworkers" (2008) 10:3 *Journal of Immigrant and Minority Health* 269–280.

¹⁷³ "Toxins in Nail Salons: When Environmental and Reproductive Justice Meet", (1 September 2012), online: *NWHN* <<https://nwhn.org/toxins-in-nail-salons-when-environmental-and-reproductive-justice-meet/>>; Laura J Goldin et al, "Indoor Air Quality Survey of Nail Salons in Boston" (2014) 16:3 *J Immigrant Minority Health* 508–514.

¹⁷⁴ Robert Dematteo et al, "Chemical Exposures of Women Workers in the Plastics Industry with Particular Reference to Breast Cancer and Reproductive Hazards" (2013) 22:4 *NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy* 427–448.

¹⁷⁵ David N Pellow & Lisa Sun-Hee Park, *The Silicon Valley of dreams: environmental injustice, immigrant workers, and the high-tech global economy*, Critical America (New York: New York University Press, 2002).; Ted Smith et al, *Challenging the chip: labor rights and environmental justice in the global electronics industry* (Philadelphia: Temple University Press, 2006).

¹⁷⁶ Luke W Cole & Sheila R Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (NYU Press, 2001) Google-Books-ID: R6rj8XMSjx4C.

¹⁷⁷ Federico Caprotti, "Eco-urbanism and the Eco-city, or, Denying the Right to the City?" (2014) 46:5 *Antipode* 1285–1303.

¹⁷⁸ A recent review on migrant worker occupational health and safety by Sally C. Moyce and Marc Schenker summarizes the health disparities for migrant workers. It notes how these disparities are related

For an account of structural constraints that shape people's capabilities, this project also relies on the critiques made by prominent critical development and TWAIL scholars. Critical development scholarship scrutinizes the 'myth' of the post-WWII development project and other 'remedies' such as sustainable development. Relying primarily on post-structuralism and Foucauldian analysis, this scholarship emphasizes how development is a construct of Western hegemony. For Arturo Escobar, one of the most provocative post-development scholars:

"Sustainable development (SD) was riddled with tensions and contradictions from the outset. Many pointed out the impossibility of harmonizing the goals of development with the needs of nature within any known economic framework, as the Brundtland report and Agenda 21 – bravely perhaps but implausibly – purported to do. At present, it is clear that SD amounts to no more than 'reducing unsustainability' (Ehrenfeld, 2008). Flawed from the start, the SD movement can be said to have arrived to its natural end."¹⁷⁹

The SDGs and projects like Masdar are, however, testaments that SD is still a prominent component of the development machinery. TWAIL accounts, on the other hand, are able to historicize the evolution of SD and highlight how a unidimensional view of economic-centred growth and development has been maintained.

While I am using TWAIL and critical development theory's critique of sustainable development as an account of structural constraints, I rely on the capabilities approach for its evaluative space. Although certain strands of critical development scholarship have criticized

environmental and occupational exposures and a result of language/cultural barriers, access to health care, documentation status and the political climate of the host country. In 2015, of the 244 million transnational migrants, approximately half were in jobs that are hazardous to their health. Worldwide, migrant workers have higher rates of adverse occupational exposures and working conditions which lead to poor health outcomes, workplace injuries and occupational fatalities. Of these migrants, Gulf states hosted the highest proportions of migrant workers. Sally C Moyce & Marc Schenker, "Migrant Workers and Their Occupational Health and Safety" (2018) 39:1 Annual Review of Public Health null.; Dayna Nadine Scott, *Our Chemical Selves: Gender, Toxics, and Environmental Health* (UBC Press, 2015) Google-Books-ID: TpxSBgAAQBAJ.; Juan De Lara, "'This Port Is Killing People': Sustainability without Justice in the Neo-Keynesian Green City" (2018) 108:2 Annals of the American Association of Geographers 538–548.

¹⁷⁹ Arturo Escobar, "Sustainability: Design for the pluriverse" (2011) 54:2 Development 137–140.

Sen's contributions (categorizing it as alternative development rather than an alternative *to* development), these accounts often reduce Sen's ideas to merely human development. His contributions towards his "idea of justice," as the discussion above has shown, are broader than the application of capabilities in the context of HDI and the UN's use of human development. In fact, Sen's "idea of justice" is built on plurality and does not have an explicitly prescriptive element or a unifocal idea of equality. Sen does not prescribe a unifocal focus on equality of capabilities, given the fact that they are substantive opportunities but do not reflect the procedural aspects of freedom. Even post-development scholarship on pluriverses that espouse local community-based alternative epistemologies (such as *buen vivir* and *swaraj*) can fit within Sen's capabilities approach that leaves the decision-making of just institutions to communities. Sen, in fact, emphasizes the need to critically scrutinize what post-development scholars call the "world capitalist system." He observes that public good problems such as those dealing with the environment "will almost certainly call for institutions that take us beyond the capitalist market economy."¹⁸⁰ A critical capabilities lens, therefore, can benefit from critiques made by critical development scholarship and still use 'capabilities' as an evaluative metric between feasible alternatives.

Any application of CA, as Robeyns suggests, must also be explicit about its account of agency.¹⁸¹ This project uses Razia Sharif's work on what she calls "collective agency capability" that builds on Sen's instrumental freedoms with insights from critical theorists such as Gramsci and Foucault and a case history of the Shahbag Movement, responding to critics that point to Sen's individualistic focus that does not emphasize the role of structure. She develops each of

¹⁸⁰Sen, *supra* note 149.

¹⁸¹ Robeyns, *supra* note 108.

Sen's instrumental freedoms (italicized in the quote below) from their "normal state" to one with collective agency capability informed by critical theory and her case study. For each instrumental freedom, she writes:

a shift must occur to allow collective agency capability: *political empowerment* needs to occur with a shift from biopower to biopolitics; *economic emancipation* occurs through a shift from capitalism to a just economy; *social network capital* develops from having an alienated society to one that is highly networked with organic solidarity; for *security* there is a shift from an unsafe suspicious environment to one of feeling safe and secure and trusting others; and for *transparency* the shift is from a closed, uninformed public to one where communications are open and transparent and easy to access.¹⁸² (emphasis added)

I suggest that Sharif's work on collective agency capability is able to address the concerns of CA's focus on the individual and an account that may be useful for migrant workers as a group, particularly her inclusion of security and transparency.

A critical capability approach must also be one that balances the tensions between migration and emigration. It is, therefore, supplemented with Lea Ypi's contribution towards a global theory of justice in migration.¹⁸³ She argues that such a theory must be able to address the tensions between justice in immigration (incoming freedom of movement) and justice in emigration (outgoing freedom of movement). The former would have to deal with concerns that, for instance, incoming migrants may impact the host state's ability to provide social subsidies to its worse-off citizens. The latter would have to consider the potential impact of 'brain drain' on the welfare of the remaining citizens in sending states. A theory of justice in migration, therefore, ought to consider two things: restrictions on freedom of movement that are allowed and not

¹⁸² Razia Shariff, "Collective Agency Capability: How Capabilities Can Emerge in a Social Moment" in Flavio Comim, P B Anand & Shailaja Fennell, eds, *New Frontiers of the Capability Approach* (Cambridge: Cambridge University Press, 2018) 153. at p167.

¹⁸³ Lea Ypi, "Justice in Migration: A Closed Borders Utopia?*" (2008) 16:4 *Journal of Political Philosophy* 391–418.

allowed, and how to distribute benefits and responsibilities between migrants, citizens of host societies, and citizens of sending societies.¹⁸⁴

Ypi argues that egalitarian principles that are simultaneously and equally trying to accommodate the claims of both justice in immigration and emigration conjure a world where there is no movement of people across borders, ‘a closed borders utopia’ that is unjust to migrants. She explains how the only point of convergence between the two (justice in immigration and justice in emigration) is the case of political refugees, where restrictions on freedom of movement of political refugees are objectionable for both communitarians and individualists. She points that one way forward is to start with the case of political refugees and consider economic migrants as analogous. When the sending state is unable to provide the most ‘basic needs’ to its citizens, and there is little they can do to improve their ‘economic conditions,’ then the bond with political institutions has been undermined in the same way as it is for political refugees.¹⁸⁵ Like Chandran Kukathas, who points that transfers of wealth are not sufficient when suffering is rooted in the breakdown of institutions, Ypi argues since the lack of functioning domestic institutions may undermine any assistance or development aid, there is a ‘clear obligation related to freedom of movement.’ Ypi argues that one way to decide who ought to enjoy unrestricted freedom of movement could be based on the following principle:

the less able worse-off agents are to take responsibility for their economic development, the more they should be favoured. The right principle would therefore attempt to combine urgency and ascription of responsibility: urgent claims for which people cannot take responsibility (past and future) should be favoured over those for which they can.¹⁸⁶

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

In other words, this would translate to invert the preference of “high-skilled” workers, or those considered as “desirable” over “low-skilled,” “undesirable” workers. In line with the CA, I propose to switch “economic development” to capabilities so the focus is on whether or not people are able to lead valuable lives rather than assuming economic development will lead to the former. Ypi’s contribution, thus, is still no less ‘ideal’ than those who argue for open borders and not meant as a fundamental challenge to open borders arguments such as those pursued by Joseph Carens.¹⁸⁷ She clarifies that while open borders may resolve the problem of inter-state migration, they would not resolve the concerns related to freedom of movement because they do not remedy “the spatially-related socio-economic inequalities” that make borders problematic in the first place.¹⁸⁸

Ypi also urges that debates on the political theory of immigration ought not only to be explored along identity lines but also how class boundaries play a role. She argues that borders have always been open for some and closed for others, as well as barriers to integration and civic participation. The super-rich and hypermobile have more access to mobility than their counterparts. When focusing on class, the more appropriate way is to think of the obstacles that both poor migrants and poor citizens have to encounter, focusing on a common source of oppression for both worse-off citizens and immigrants.¹⁸⁹

In sum, a critical capabilities-based approach is one that operates in the space of capabilities, i.e., people’s actual opportunities to live lives they have “reason to value” but is one that is supplemented with insights from EJ scholarship, critical development theory on SD, an

¹⁸⁷ Joseph H Carens, “Aliens and Citizens: The Case for Open Borders” (1987) 49:2 *The Review of Politics* 251–273.

¹⁸⁸ Ypi, “Justice in Migration”, *supra* note 183.

¹⁸⁹ Lea Ypi, “Borders of Class: Migration and Citizenship in the Capitalist State” (2018) 32:2 *Ethics & International Affairs*; New York 141–152.

account of collective capability agency and a principle that favours worse-off agents who are less able to lead valuable lives.

1.11 Methods and Fieldwork: interviews, partial-ranking method, participant observation & ethnographic reflections

Inspired by environmental justice scholars who stress the importance of “telling our own stories,” and Sen’s criticism on paternalistic methods of determining elements of justice, in-depth interviews of returning Pakistani migrant workers, their advocates, Pakistani government officials, and residents of Masdar city have informed this study. These interviews are used not to document reality nor will these representations be simply understood as lived experiences; rather, the narratives will be seen as “creative constructions or interpretations of the past generated in specific contexts of the present.”¹⁹⁰ These interviews aim to supplement the analysis to understand how and the legal regimes, SD, and migrant justice diverge on the ground.

The following is a description of the qualitative research, the bulk of which was conducted during fieldwork in Karachi, Pakistan, as well as Abu Dhabi and Dubai, United Arab Emirates, in the summer of 2018. There were multiple goals that I was hoping to achieve through fieldwork. Most importantly, I was hoping to get first-hand accounts of returning Pakistani migrant workers who have worked in Masdar or Abu Dhabi’s construction industry. I also wanted to understand the claims of migrant worker rights advocates and relevant civil society organizations in the UAE and the Gulf broadly, as well as how government agencies in Pakistan articulated the problems facing migrant workers in the UAE. Lastly, I wanted to visit the site that serves as an entry point, namely, Masdar City, Abu Dhabi.

¹⁹⁰ Chandran Kukathas, “The Mirage of Global Justice” (2006) 23:01 SOY 1.

There were 30 interviewees and all the participants were interviewed voluntarily with no incentives and were reached either directly through personal networks, social media, and contacts made leading up to the fieldwork or the snowballing method. There were three sets of interviews: returning migrant workers, Pakistani government officials, and migrant workers' rights advocates in the Gulf. In addition to these interviews, I conducted multiple more informal interviews and took ethnographic reflection notes throughout my fieldwork in Karachi, Abu Dhabi, and Dubai (See Table 1 and 2 for descriptions of interview types and interviewees).

Table 1: Interviews in Pakistan

Returning Migrant Workers in Pakistan				
Interview Type	Interviewee description	Industry	Occupation/Skill Level	Years lived in UAE
Formal 60-120 minute recorded	Returning Migrant Worker Interviewee 1	Construction	Civil Engineer	1
	Returning Migrant Worker Interviewee 2	Construction	Handyman/Technician/Automechanic	3
	Returning Migrant Worker Interviewee 3	Telecommunication	Installer/ pipe-fitter /fabricator	>20
Migrant Workers Leaving Pakistan to work in the Gulf				
Informal shorter conversations at the briefing	Briefing/Information Session Attendee 1	Private Transportation Services	Personal Driver	
	Briefing/Information Session Attendee 2	Construction	Labourer	
	Briefing/Information Session Attendee 3	Private Transportation Services	Personal Driver	
	Briefing/Information Session Attendee 4	Private Transportation Services	Personal Driver	
	Briefing/Information Session Attendee 5	Private Transportation Services	Personal Driver	
	Returning Migrant Worker on Flight	Livestock/ agriculture	Camel Driver/Farmer	

Pakistani government officials	
Interview Type	Interviewee description
Formal 60-120 minute recorded interviews	Overseas Pakistanis Foundation Employee
	Overseas Pakistanis Foundation Employee - Airport Representative
	Migrant Resource Centre Employee
Migrant Workers' Rights Advocates in the Gulf	
Formal 60-120 minute recorded interviews	Migrant Workers Protection Society Employee
	Anti-human Trafficking Organization Founder
	Migrant-rights.org Employee

Table 2: Interviews conducted in the UAE and Canada

Masdar Residents			
Interview Type	Interviewee description	Nationality	Relationship to Masdar Institute/City
60-120 minute informal interviews – written notes	Resident-worker 1	Jordan(?)	Alumna and ex-resident
	Resident-worker 2	Pakistan	Alum, ex-resident and current employee working in the facilities
	Resident-worker 3	UAE	Alum and ex-resident
	Resident-worker 4	UAE	Current Graduate student and resident
	Resident-worker 5	Montenegro	Current Graduate student and resident
Others			
Interview Type	Interviewee Description	Nationality	
Shorter Informal interviews – written notes	Sustainability City Resident	American	
	Sustainability City Representative	Unknown	
	Sustainability City Representative	Unknown	
	Worker 1 in Masdar	India	
	Worker 2 in Masdar	Bangladesh	
	Worker 1 in Sustainability City	Pakistan	
	Worker 2 in Sustainability City	Bangladesh	
Interviews in Canada			
	Interviewee 1	Pakistan	
	Interviewee 2	Egypt	

Informal recorded group interview (60 minutes)	Interviewee 3	India
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While in Karachi from June to the end of August, I was able to conduct three in-depth 60-120 minute interviews with returning migrant workers who have worked in Abu Dhabi in Urdu and English. While the interviewees were not associated with the construction of Masdar City, their varying skill-level and years lived in Abu Dhabi allowed a more representative group of interviewees. One interviewee held an engineering position in Abu Dhabi and had recently left his job. Another interviewee had worked as a ‘low-skilled’ technician and had been to Abu Dhabi twice for separate jobs. Lastly, I had the opportunity to interview a worker who had retired from working for a national telecommunication company in different roles but primarily as an ‘installer.’ While he was the only interviewee in this group who was not directly related to the construction sector, he had lived in Abu Dhabi for more than 20 years and offered valuable insights.

While in Karachi, I was also able to interview three Pakistani government officials working for organizations that deal with Pakistani migrant workers. This included the Deputy Director of Overseas Pakistanis Foundation (OPF) and another OPF employee who worked at the OPF desk at the Karachi airport. In addition, I interviewed an employee from the Migrant Resource Center, Islamabad. These interviews were helpful in discerning what some Pakistani government officials viewed as issues for migrant workers seeking work in the Gulf and for discerning their attitudes towards prospective migrant workers.

Furthermore, I also conducted Whatsapp/Skype interviews with three migrant workers’ rights advocates. This included an employee from the Migrant Workers Protection Society, which is one of the few NGOs that works on protecting the rights of migrant workers in the

GCC. In addition, I spoke to the founder of an organization that does anti-human trafficking work in Abu Dhabi. Lastly, I also spoke to an employee from Migrant-Rights.org, a GCC-based advocacy organization. They spoke about their experience interviewing in Nepal, India, Ethiopia, Uganda, Indonesia, Sri Lanka, and the Philippines.

In addition to the aforementioned recorded interviews, I also conducted a number of more informal interviews. While in Karachi, I attended the “Pre-departure briefing to Emigrants” given by the Protector of Emigrants office. In addition, to attending these sessions on two separate occasions and taking notes on the briefings, I also interviewed 6 of the attendees. These conversations were helpful in getting a sense of where prospective migrant workers were from, why and where they were going, how they were recruited, and what their expected salaries were.

While in the United Arab Emirates for ten days, I was able to make multiple visits to Masdar City, Abu Dhabi. In addition to taking reflection notes while travelling to the city and observing workers and residents, I was able to speak to 5 current or previous residents who were also graduate students of Masdar Institute. This group of interviewees included three international students and two Emirati students (one of the students was now an employee for Masdar). These student-residents showed me around the campus and city and were eager to tell me about their experience living in Masdar and reflections on why the Masdar Institute and Masdar City failed. The notes I took during these conversations were helpful in getting insights on their conceptions of sustainable development, the aspirations of Masdar, and how workers building these projects fit into their stories.

These conversations led me to another newly built eco-themed development project (that was more populated) in the UAE called Sustainable City, Dubai. I dedicated the last day of my fieldwork trip to visiting this city. There, I was able to get (and record parts of) a guided tour. I

also took notes on conversations I had with a few employees and a resident of the city. This detour was helpful to see how another eco-city in the UAE is framing both SD and its residents.

Lastly, I was also able to conduct an informal recorded group interview of some migrant workers who worked and lived in the United Arab Emirates and had moved to Canada. These were helpful for insights on working in free zones.

1.12 Interviews

The first part of my interviews with returning workers was open-ended, borrowing from Geraldine Pratt's participatory methodology and activist research, which stresses the importance of allowing the following questions to be informed by prior answers.¹⁹¹ These questions were open-ended; they asked migrant workers why they chose the UAE, how they got there, what their daily lives were and are like, how they described the places and conditions where they worked, lived, and played in, why they left, what they liked and disliked about working in the UAE, what they hoped to achieve, and whether they considered going back to the UAE or the Gulf to do similar work.

The second part of the interviews included Sabina Alkire's participatory partial ranking method¹⁹², where interviewees were asked to rank the following capabilities translated in Urdu:

1. Being able to support family¹⁹³
2. Being able to live a healthy life
3. Being well-fed
4. Safety at work
5. Wages
6. Ability to organize

¹⁹¹ Geraldine Pratt, *Families Apart: Migrant Mothers and the Conflicts of Labor and Love* (Minneapolis: Univ Of Minnesota Press, 2012).

¹⁹² Sabina Alkire, *Valuing Freedoms: Sen's Capability Approach and Poverty Reduction* (Oxford University Press, 2005) Google-Books-ID: GO96P5w4fHoC.

¹⁹³ Capabilities was translated to *kaabliyat* in Urdu which also refers to "ability" and "expertise"

7. Ability to scrutinize authorities
8. Accommodation facilities
9. Being able to connect with nature
10. Ability to move freely inside and outside UAE
11. Career development
12. Being able to connect with people

This list was derived with the help of a literature review conducted prior to the fieldwork and inspired by Ingrid Robeyns' method of choosing relevant capabilities.¹⁹⁴ All three times, the interviewees did not seem too eager to do this partial ranking exercise and often ranked two or more capabilities together. It was often difficult to explain the capabilities. In other words, while I intended to incorporate Sabina Alkire's partial ranking method, which would have highlighted the capabilities to focus on, I found this method only helpful when supplemented with first-hand accounts through which I was able to discern qualitatively what migrant workers put most emphasis on when describing their motivations and aspirations.¹⁹⁵ Following, Alkire however,

¹⁹⁴ Ingrid Robeyns, "Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities" (2003) 9:2–3 *Feminist Economics* 61–92. Drawing on Robeyns, this list was generated in four steps: brainstorming; testing draft list by engaging with existing literature; engaging with other lists of capabilities; debating the list.

¹⁹⁵ Alkire's method is described as a "synthesizing" method which has three stages that use an ongoing dialectical dialog between theoretical reflection, empirical investigation and public deliberation. Morten F Byskov, "Selecting Capabilities for Development: An Evaluation of Proposed Methods" in Flavio Comim, P B Anand & Shailaja Fennell, eds, *New Frontiers of the Capability Approach* (Cambridge: Cambridge University Press, 2018) 198. Sabina Alkire's book, *Valuing freedoms Sen's capability approach and poverty reduction*, offers a practical participatory methodology through which development agencies and workers on the field can identify valuable capabilities for a development activity. Drawing on John Finnis and Martha Nussbaum's work, it proposes a framework for identifying valuable capabilities that are still incomplete i.e. leaves enough space for individual and cultural diversity yet can help assess poverty reduction initiatives in the microeconomic level. The methodology systematically asks the beneficiaries of the project about each dimensions of development through two methods. One that started with the facilitators explaining the purpose of the assessment and then asking an open question "what valuable or negative impacts have you noticed?" This would lead to a discussion of the dimensions of development but if at the end no one dimension was mentioned, the facilitator would ask whether any impacts related to that dimension were seen. Once a wide set of impacts is identified, the next stage weighs them through partial ranking. The facilitator and one of the participants ask the other participants to pick the top three impacts. This exercise led to some very useful observations. For instance, Alkire notes "the activities' tangible income, and their associated effects on life, health, and economic security were never regarded as the *most* important impacts by participants. This was the case

the partial-ranking exercise allowed me to engage with the interviewees and reflect on what they valued. This exercise was helpful in pushing the interviewees to reiterate what the top three most important concerns for them were and talk about aspects of their experiences that may have been missed during the interview (particularly being able to connect with nature). The results of this partial-ranking taken together with the first part of the interviews indicated at least a common theme. All three migrant workers ranked “ability to support family” and “ability to freely move inside and outside UAE” in their top three valued capabilities. Therefore, the following analysis focuses on movement and supportive capabilities.

1.13 Clarifications

I decided to focus on returning migrant workers, their advocates, and Pakistani government officials for a number of reasons. Firstly, while interviewing workers working on the sites would be ideal for a case study, given the risk that it would put the workers in, relying on returning migrant workers was more practical and presented fewer ethical challenges. My conversations with Nicholas McGeehan¹⁹⁶ (who has written on migrant workers in the UAE both for Human Right Watch and independently) indicated the difficulties in getting access to labour camps for research. I preferred not to do formal interviews with migrant workers in the labour camps considering the risks involved in speaking about working conditions in UAE’s political climate.

even for an activity that had significant economic returns, namely, goat rearing.” (at p. 248) However, arbitrarily deciding defining basic capabilities such as health, education is insufficient. Alkire’s methodology allows a systematically identifying valued impacts. Alkire’s study is also important given it shows how marginalized informal workers’ working conditions and living standards can be improved through not only access to financial resources but also participation, mobilization and social organization.

¹⁹⁶ Nicholas McGeehan, *Migrant workers’ rights on Saadiyat Island in the United Arab Emirates: 2015 Progress Report* (New York, N.Y.: Human Rights Watch, 2015).

Secondly, returning migrant workers have been subjects for earlier political economic accounts and more recent anthropological work on migrant workers.¹⁹⁷ However, it was also difficult to find returning Pakistani migrant workers associated with the construction of Masdar City; returning migrant workers who had worked in Masdar City were hard to track down in Pakistan not only because of the lack of government records but also because the project was incomplete.

Given the sensitive nature of the topic, I prioritized mitigating the risks that some participants would face. Participants were informed in plain language of the nature and scope of the project so they can make an informed decision on whether they want to participate in the research; they were informed that they are free to withdraw their consent to participate in the research at any time. I used written voluntary consent forms for all key informants whenever feasible. In all other cases, I relied on verbal consent.

These risks were mitigated through strictly regulating conditions of privacy and confidentiality. While I intended to conduct one-on-one interviews, given the social norms in Pakistan, I realized that most of the interviewed men felt more comfortable when there was one other person in the room, often another family member. I conducted interviews in places that are convenient for the participants for 45-90 minutes, depending on the participants' willingness and feasibility. Interviews were recorded and transcribed. All interviews remained anonymous, and original research data is stored securely and destroyed in a timely manner after the study to protect it from third parties. In addition, this dissertation uses pseudonyms for all interviewees, and some details that may help identify interviewees have also been changed to ensure anonymity.

¹⁹⁷ Frank Eelens & J D Speckmann, "Recruitment of Labor Migrants for the Middle East: The Sri Lankan Case" (1990) 24:2 International Migration Review 297.

Lastly, while bulk of the fieldwork was conducted in the summer of 2018, this project also relies on follow-up interviews and ongoing conversations with some interlocutors that were conducted primarily online. It is also important to note that, although not formally included, but my lived experience while growing up as a Pakistani in Saudi Arabia, studying in the United Arab Emirates from 2009-2013, studying in Canada from 2015-2021 (particularly my affiliation with a Canadian institution) and visiting Pakistan every year throughout, has not only shaped my understanding of migration in the Gulf and beyond but also afforded me the network that I could rely on and also sustained engagement with the multiple sites that are the focus.

1.14 Other Data Sources

The aforementioned interviews supplement a number of other primary and secondary data sources. These include a range of international and domestic laws on labour migration as well some relevant case law, bilateral agreements and regional instruments, with a particular emphasis on the most relevant international instruments: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) adopted in 1990,¹⁹⁸ and the ILO Convention concerning Migration for Employment (No. 97) of 1949,¹⁹⁹ and the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) of 1975²⁰⁰ and the Global Compact for

¹⁹⁸ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* UNGAOR 45th Sess., Supp. No. 49A, UN Doc. A/45/49 (1990). [*Migrant Workers' Convention*].

¹⁹⁹ *Convention concerning Migration for Employment (Revised 1949)*, 01 Jul 1949, 32nd ILC session, Normlex (entered into force: 22 Jan 1952) [*ILO Migration Convention No. 97*]

²⁰⁰ *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*, 24 Jun 1975, Normlex (entered into force: 09 Dec 1978) [*ILO Migration Convention No. 143*]

Safe, Orderly, and Regular Migration of 2018.²⁰¹ This project also focuses on the most relevant domestic laws on labour migration and citizenship as well as most recent reforms in the UAE such as the Wage Protection System, changes in family sponsorship, golden visas and free zone regulations.

Furthermore, it includes legal and policy instruments on sustainable development including Agenda 2030 and Sustainable Development Goals indicators and targets. In addition, it also relies on Masdar City's master plans, Employment Regulations, photographs, social media accounts, sustainability reports and other publicly available information published by Masdar. Furthermore, it relied on both local news articles and gray literature on developments in the United Arab Emirates and the Gulf which included government documents such as UAE's development agendas, Plan Abu Dhabi 2030 and Abu Dhabi's Department of Municipalities and Transport documents.

1.15 Movement and Supportive Capabilities

I propose a focus on movement and supportive capabilities as well as their corresponding functionings to evaluate and analyze the international and Emirati regimes regulating migrant workers and SD projects such as Masdar City. These specific capabilities are chosen because all migrant workers interviewed ranked the "ability to move freely inside and outside UAE" and "being able to support your family" as their top 3 valued capabilities from the list that was derived from a literature review. The purpose is not to present these as the only valuable

²⁰¹ *Global Compact for Safe, Orderly and Regular Migration*, 13 July 2018, (signed 19 December 2018) [GCM]; Other instruments that are relevant but not the focus include: the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105).

capabilities or claim them as valuable for all migrant workers but to narrow down the focus of the analysis and to see what insights can be gained from a potential capability application.

Movement capabilities are still able to capture many aspects of mobility, and freedom of movement is broadly defined as “the freedom to traverse space and to make a place for oneself in the world.”²⁰² This would allow us to consider aspects such as migrant workers’ ability to enter the receiving country, move within the receiving country, return to the country of origin but also the receiving country again. Similarly, supportive capabilities are conceived broadly to be able to capture aspects such as wages, remittances, meaningful labour, lifelong learning opportunities, opportunities for vocational training, ability to switch employers, and family reunification. Framing these aspects under supportive capabilities is able to highlight the relational aspects of the CA and move beyond a focus on an income-centric focus on simply wages and remittances. I use the term supportive capabilities to include aspects of supporting oneself but also one’s families (understood broadly), as the latter was stressed as an important motivation for interviewed migrant workers.

While some of the other capabilities in the list presented in the interviews are related to movement and supportive capabilities (for instance, being able to organize can have an impact on one’s ability to pursue meaningful labour), the focus on movement and supportive capabilities allows us to foreground migrant workers’ opportunities to move and support their families. Since capabilities can range widely from “being able to nourish oneself” to “being able to form a conception of the good,” specifying capabilities (albeit broadly) is significant. While movement

²⁰² Genova, Nicholas De & Nathalie Peutz, *The Deportation Regime: Sovereignty, Space, and the Freedom of Movement* (Duke University Press, 2010). At p 3. Nicholas De Genova, Nathalie Peutz

and supportive capabilities are framed capaciously, they do not include a number of other capabilities such as “being able to engage in critical reflection about the planning of one’s life” and “being able to connect with nature.’

Furthermore, movement and supportive capabilities, as well as their corresponding functionings, are seen as important. Recall that all capability applications have both functionings and capabilities as the core concepts that form the evaluative space. While capabilities are understood as substantive opportunities to ‘do’ and ‘be,’ functionings are conceived as actual achievements. In other words, when evaluating regimes and Masdar city, this project asks not only whether migrant workers entered the UAE but also the range of substantive opportunities afforded to migrant workers. While it is more difficult to discern opportunities than actual achievements, since the purpose here is not to make empirical interpersonal comparisons, a focus on a range of opportunities as well as functionings is both feasible and helpful. Focusing on a mixture of both allows us to avoid a paternalist approach that forces people into a particular account of good lives. However, given the importance Sen places on an outcome-oriented view and the fact that capabilities do not capture the process aspect of freedom, functionings cannot be overlooked entirely.²⁰³ Lastly, echoing Robeyns, movement and supportive capabilities, as well as their corresponding functionings, are conceived as value-neutral. This allows for the possibility that some capabilities and functionings can be conceived as positive but can become negative in some circumstances.

²⁰³ Sen, *supra* note 102. At p 111

CHAPTER 2
Locating Migrant Justice in International Migration Law Between Plurality, Differentiation, and Softness

"No problem can be solved outside the boundary of law."

- Briefing Officer, Protectorate of Emigrant Office, Karachi

Walking into the Protectorate of Emigrant Office in Karachi, the first thing I noticed was the line of motorbikes outside the building. There was a continuous flow of men working for recruiting agencies rushing in and out, folders in one hand, bike helmets in the other. I walked by a group of them taking a smoke break through the security and was directed upstairs where I was told I could speak to "Madam," the Briefing Officer. She was the only other woman in the building. Her office was in the same room where the briefings were held. There was a little podium in the front and rows of chairs where about fifteen men sat, each with a paper (likely Foreign Service Agreements) in their hands. As I waited outside Madam's office, watching two stray kittens chasing each other next to the podium, her Secretary walked in, spraying air freshener all around. The spraying silenced the room.

I was finally invited into Madam's office. She was sitting behind piles of paperwork and was finishing up a call with a pharmacy about adult diapers for presumably a parent. It was clear that the office was understaffed, and she was overworked. Recruitment agency workers kept rushing into her office with paperwork for her to sign. Even in these circumstances, she kindly allowed me to sit through the briefing. The hour-long briefing was telling for multiple reasons: it had more information on personal hygiene than the rights that migrant workers are entitled to or organizations that can help. The purpose of these briefing sessions is to, according to the Emigration & Overseas Employment Government of Pakistan website, "[brief on] all necessary aspects regarding health, legal-rights etc. and [guide the emigrant] to get his passport and

documents."²⁰⁴ It is mandatory for Pakistani emigrants with work visas to get their passports stamped by the Protectorate of Emigrants, and this briefing is the last step before they can embark on their journeys.²⁰⁵ Getting the passport stamped allows the Pakistani government to keep a record of emigrants, and the fees paid by emigrants are meant to serve as "life insurance."²⁰⁶

"So what does the Protectorate mean?" the Briefing Officer asked around the room, "It means that they have to protect these six things: your work, your salary, your accommodation, food, medical, transportation, and overtime...2,500 (Pakistani rupees) in 5 years may not even mean that much so make sure you think of that too... 2,000 fees for [Overseas Pakistanis Foundation]...to make sure if there is a road accident, etc....to make sure the dead body can come back home."

The briefing continued, "Lastly, when you go to another country, make sure you take care of your clothes, your hygiene. Us Pakistanis don't take care of that. Take a waistcoat with your *shalwar kameez*."²⁰⁷ We get complaints about how people complaining about body odour. The Pakistani quarters are always easy to spot because of the smell." This emphasis on hygiene continued even when an attendee asked a question about being discriminated by a clerk in another government office. After noting that "every department has a different jurisdiction," the Briefing Officer responded "And lastly what did I say? Clothes must be clean. If your clothes are clean, then you'll automatically get treated differently." Looking around the room full of

²⁰⁴ Bureau of Emigration & Overseas Employment, "How to get Emigrant's Protection - Bureau of Emigration & Overseas Employment", (23 March 2021), online: *Bureau of Emigration & Overseas Employment Government of Pakistan* <<https://beoe.gov.pk/how-to-get-emigrants-protection>>.

²⁰⁵ *The Emigration Ordinance*, Pakistan 1979.

²⁰⁶ Fieldwork Notes Interview Overseas Pakistanis Foundation

²⁰⁷ Urdu for "Trousers and tunic." Also known as "Pakistan's national garment" Shahrzad Hamzeh, "The Shalwar Kameez: Pakistan's Persian-Influenced National Garment" (2020) Theatre and Dance, online: <<https://ir.library.illinoisstate.edu/ursthel/2>>.

confused faces, I noticed there were no posters with information on the migrant workers' rights or organizations that could help. According to the briefing, the only thing that was going to protect migrants apart from practicing good hygiene was this protectorate stamp and their relationship with the *kafeel* or *arbab*.²⁰⁸ The only time rights were mentioned in the briefing were in relation to knowing what the fees associated with this protectorate stamp were. What may explain this absence of rights and international law in the briefing hall? Is the international legal regime governing migrant workers equally silent on migrant workers' rights? What are this regime's main features?

This chapter aims to see whether we can locate protection of movement and supportive capabilities within international migration law and describe the main features of the different regimes that compose international migration law. It lays out a broad overview of the international legal regime that regulates migrant workers with a particular emphasis on Pakistani migrant workers in the United Arab Emirates to distill key features. Given the discussion of selecting relevant capabilities in Chapter 1, the focus will be on movement and supportive capabilities as discussed in Section 1.1. This will allow us to look at the right to leave, the right to enter, and the right to choose where to work yet go beyond a narrow doctrinal analysis. 'Rights' here are seen as ethical assertions. Echoing Sen's reading of Hart, they are "parents of law" such that they may motivate legislation or other activities meant to advance them. For Sen, human rights cannot be discarded simply due to imperfect obligations and lack of feasibility; as such, the focus is not merely on the provision of legal rights but rather to see the content of these assertions and their exclusions.²⁰⁹ An alternative question could ask whether these deliberations

²⁰⁸ Persian word for boss. Most often refers to immediate boss but sometimes used interchangeably with *kafeel* while the latter refers more specifically to the sponsor.

²⁰⁹ Sen, *supra* note 102. at p 355-387

reflect impartial, practical public reasoning? The focus here, though, will be on the content and results of the deliberations. In making these assertions, what kinds of freedoms do international legal instruments deem significant for migrant workers? What kinds of freedoms and opportunities are reserved for only documented, authorized migrants in a regular situation?

A few preliminary notes on international migration law will be followed by a review of the most relevant instruments: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) adopted in 1990,²¹⁰ and the ILO Convention concerning Migration for Employment (No. 97) of 1949,²¹¹ and the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) of 1975²¹² and the Global Compact for Safe, Orderly, and Regular Migration of 2018.²¹³ Can we locate the protection of movement and supportive capabilities within these regimes and instruments? The discussion will highlight three main features that shape the international human rights law and labour law regimes: 1) a plurality of sources (and a resulting fragmentation), 2) an across-the-board differentiation between workers according to their citizenship status, and 3) a trend towards softer normative mechanisms.

²¹⁰ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* UNGAOR 45th Sess., Supp. No. 49A, UN Doc. A/45/49 (1990). [*Migrant Workers' Convention*].

²¹¹ *Convention concerning Migration for Employment (Revised 1949)*, 01 Jul 1949, 32nd ILC session, Normlex (entered into force: 22 Jan 1952) [*ILO Migration Convention No. 97*]

²¹² *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*, 24 Jun 1975, Normlex (entered into force: 09 Dec 1978) [*ILO Migration Convention No. 143*]

²¹³ *Global Compact for Safe, Orderly and Regular Migration*, 13 July 2018, (signed 19 December 2018) [*GCM*]; Other instruments that are relevant but not the focus include: the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105).

2.1 Plurality in International Migration Law: A "giant unassembled juridical jigsaw puzzle."

Both the international and domestic regimes that aim to address migrant worker issues in general and migrant workers in the United Arab Emirates (UAE) are marked by legal pluralism, i.e., a situation where multiple legal systems "coexist in the same field."²¹⁴ International migration law (first coined as a term in 1927 by Louis Varlez) can be understood as including norms across many overlapping fields such as international labour law, human rights law, refugee law, trade law, criminal law, and the law of the sea.²¹⁵ It may be defined as a "set of international rules and principles governing the movement of persons between states and the legal status of migrants within host countries. It gathers all relevant international legal norms that apply to individuals who are leaving their own country, entering another one, and/or staying therein."²¹⁶ In the absence of a multilateral legal framework, the two main international organizations – the International Labor Organization (ILO) and the International Organization for Migration (IOM) — have limited institutional and regulatory capacity that allow states to significantly influence their labour migration rules.²¹⁷ Without any central norms or a multilateral legal framework, the regulatory regime has been criticized for its lack of coherence: international migration law has been compared to a "giant unassembled juridical jigsaw

²¹⁴ Sally Engle Merry, "Legal Pluralism" (1988) 22:5 Law & Soc'y Rev 869–896.

²¹⁵ Vincent Chetail, *International migration law*, first edition ed (Oxford, United Kingdom: Oxford University Press UK, 2019). At p 7

²¹⁶ *Ibid.*

²¹⁷ Lucie Cerna, James Hollifield & William Hynes, "Trade, Migration and the Crisis of Globalization" in Marion Panizzon, Gottfried Zürcher & Elisa Fornalé, eds, *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (London: Palgrave Macmillan UK, 2015) 17.

puzzle"²¹⁸ and labelled as "deconstructivist architecture...of fragmentation based on dissonance and asymmetry."²¹⁹

This complexity is unsurprising due to state sovereignty and the existence of borders and because migration is both a domestic and international concern. There are a number of tools international lawyers can use to address this fragmentation and potential conflicts between different regimes.²²⁰ However, echoing Blackett and Trebilcock, transnational labour law "can ill afford to romanticize plural sources of law or their disruptive power."²²¹ To center migrant justice, all the different sources of law ought to ensure movement and supportive capabilities as both means and ends. As explained in the introductory chapter, capabilities are different from rights because they do not presuppose the role of the state, and they allow us to think of other non-state actors (like trade unions) that can help convert the capabilities to outcomes. Labour rights are not seen as only by-products or means to achieve economic growth but are ends by themselves. A capabilities-based perspective, therefore, is more demanding than merely formally protecting the right to move, right to work, etc. Supportive capabilities then entail not only the right to work but also demand, for example, opportunities for meaningful work, opportunities to be trained and educated, as well as a right to enjoy a private life.²²² Beyond the scope of this

²¹⁸ Richard B Lillich, *The Human Rights of Aliens in Contemporary International Law* (Manchester University Press, 1984). At p 9

²¹⁹ Vincent Chetail, "The Architecture of International Migration Law: A Deconstructivist Design of Complexity and Contradiction" (2017) 111 AJIL Unbound 18–23.

²²⁰ Thomas, "Convergences and Divergences in International Legal Norms on Migrant Labor Labor Law and Development", *supra* note 18. Thomas explains the Convention on the Law of Treaties establishes two techniques: one, that prefers the treaty to which all states are parties to; and, second, that applies earlier treaty only to the extent that it is compatible with later treaty. The International Law Commission highlights further tools that aim to harmonize: one that international law should be read "to give rise to a single set of compatible obligations," and second that prefers the more specific rule.

²²¹ Blackett, Trebilcock & Doorey, *supra* note 151. At p 7.

²²² V Mantouvalou, "Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation" (2013) 13:3 Human Rights Law Review 529–555.

chapter and outside of treaty law, there are also customary law principles²²³ that are binding to all states, such as the principle of non-discrimination²²⁴, the prohibition of slavery, forced labour and child labour, right to a fair trial, principle of non-refoulement, family reunion of children, access to consular protection and so on and so forth. Regardless of their status as customary international law, suffice to say at this point, they are argued to be weak principles.²²⁵²²⁶ The discussion will not specifically deal with these customary norms; rather, it will provide a broad introduction to the international regime that governs migrant workers.

While the focus here is on migrant workers, there are three other categories that this discussion does not explicitly include: refugees, smuggled migrants, and trafficked migrants. While it is acknowledged that categories often overlap, the purpose here is not to give an overview of the rights afforded to all migrants nor to essentialize migrant workers relative to other groups. Migrant workers are used as an example to view how the regime operates in both overlapping yet fractured ways, differentiating rights in a way that further categorizes workers and, in the process, inhibits migrant workers' capabilities.

²²³ Literature on *jus cogens*, *erga omnes* and customary international law is understandably vast but to briefly sketch the differences between the terms, it may be useful to understand customary international law as one of the sources of international law which requires both consistent and widespread state practice and out of a sense of legal obligation (*opinio juris*). Customary international law is binding on all states. Some customary international law can reach the status of a *jus cogens* norm which literally translates to “compelling law.” These peremptory or non-derogable international norms are provided for by Article 53 of the Vienna Convention of the Law of Treaties of 1969 as norms accepted and recognized ‘by the international community of States as a whole’ from which no derogation is permitted. *Jus cogens* norms create *erga omnes* obligations, which are enforceable by any member of the relevant community even if the breach does not injure them.

²²⁴ Difference of treatment does not amount to discrimination if it is “reasonable, objective and proportionate to achieve a legitimate objective.” See *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*; *Merits*, International Court of Justice (ICJ), 27 June 1986, available at: <https://www.refworld.org/cases/ICJ,4023a44d2.html> [accessed 24 March 2021]

²²⁵ Vincent Chetail, *International Migration Law* (Oxford University Press, 2019) Google-Books-ID: giqQDwAAQBAJ.

²²⁶ Beth Stephens, “Litigating customary international human rights norms.” (1995) 25:1 2 Georgia Journal of International and Comparative Law 203.

As critics of focusing merely on human trafficking and modern slavery argue, simply tackling the worst forms of exploitation will not secure decent work conditions for migrant workers, and the rhetoric has often been used to justify states' coercive power.²²⁷ Accordingly, the following analysis will include a brief discussion of international refugee law and Conventions on smuggled and trafficked persons but will focus more broadly on migrant workers. It will look at the differentiated ways substantive opportunities to freely move and to support families are distributed in international migration law's primary instruments that directly pertain to migrant workers: ICRMW, ILO Convention No. 97, ILO Convention No. 143, Global Compact for Safe, Orderly and Regular Migration. The focus, therefore, will be on how migrant workers' movement and supportive capabilities are dealt with in international human rights law and labour law. After highlighting the ways these overlapping yet fractured regimes consistently differentiate migrant workers, the discussion will point to a trend towards softer normative mechanisms that try to fill the gaps. It will conclude by distilling what these features mean for migrant workers' movement and supportive capabilities.

2.2 International Refugee Law and its Missed Opportunities

International law's normative commitment to territorial sovereignty²²⁸ is arguably one of its most significant features, regardless of the many ways it is continuously challenged. For instance, Sarah Dehm has recently argued that the assumption of the "state as the main container

²²⁷ A C L Davies, "Migrant Workers in Agriculture: A Legal Perspective" in M R (Mark Robert) Freedland & Cathryn Costello, eds, *Migrants at Work* (Oxford: Oxford University Press, 2014) container-title: Migrants at Work. at p. 79

²²⁸ M N Shaw, "Territory in International Law" (1982) 13 *Netherlands Yearbook of International Law* 61–91. For Shaw it "[marks] a link between a particular people and a particular territory, so that within that area that people may exercise through the medium of the state its jurisdiction while being distinguished from other peoples exercising jurisdiction over other areas."

for authorizing and regulating human mobility" can be challenged by foregrounding various other actors, sites, and modes of what she calls "transnational migration law-making."²²⁹ Most discussions of migrant workers similarly start with acknowledging the role of sovereignty as international law's basic axiom, built on Westphalian nation-states.²³⁰ International refugee law is often the first example of how exceptions to this sovereign territorial control are made. The Refugee Convention, for example, ensures refugees a right of entry and some political and economic rights that may be applicable in the workplace.²³¹ However, the Convention narrowly defines refugees (granting refugee status based on persecution), and there is a reluctance to broaden its scope to cover other groups such as migrants, environmental refugees, and stateless persons.²³² This reinforces the framing of refugees as "worthy" and other migrants as "unworthy," essentially establishing a refugee and "economic" migrant binary.²³³ Similarly, within refugee law, while the principle preventing states from sending an asylum-seeker to a country where they may face persecution or a serious human rights violation (known as 'non-refoulement') presents the most robust opportunity to ensure movement capabilities; its scope is also limited.²³⁴ States are not obligated to facilitate the arrival of asylum seekers and actively impose restrictions to limit it. The definition and non-refoulement debates aside, as Jaya Ramji-

²²⁹ Sara Dehm, "Transnational Migration Law: Authority, Contestation, Decolonization" (2019) SSRN Journal, online: <<https://www.ssrn.com/abstract=3465335>>. (pre-print version of a forthcoming chapter in Peer Zumbansen (ed), Oxford Handbook on Transnational Law (Oxford University Press, forthcoming 2020).

²³⁰ Sovereignty, is broadly, understood to have three components: internal, external and territorial. Territorial sovereignty is concerned with states' authority over all persons and things within its territory and is different from its authority to determine its own laws, institutions etc. and relationships with other countries.; Chetail, *supra* note 215.

²³¹ *Convention Relating to the Status of Refugees*, 28 July 1951, 2545 UNTS 189 (entered into force 22 April 1976) [CRSR].

²³² CRSR Article 1(A)(2)

²³³ Jaya Ramji-Nogales & Peter J Spiro, "Introduction to Symposium on Framing Global Migration Law" (2017) 111 AJIL Unbound 1–2.

²³⁴ *Ibid.*

Nogales argues, while refugee law provides the right to move, it does not say anything about this transit. She writes, "the obvious irony there is that these migrants must already have moved in order to become eligible for the right to move." Another set of critiques is that refugee law distracts attention from the systemic issues that play a significant role in driving migration, such as income inequality.

2.3 International Human Rights Law: Universal or Differentiated?

Similarly, while international human rights law ensures some aspects of movement and supportive capabilities, these protections are applied with different thresholds, further categorizing migrant workers. In the second half of the century, human rights instruments and the principle of non-discrimination brought new protections to migrant workers. It is generally acknowledged that international human rights law applies to all migrants regardless of nationality and legal status, with few exceptions.²³⁵ In other words, core civil, political, economic, social, or cultural human rights that would have a bearing on supportive capabilities (such as the prohibition of forced labour, child labour, equal remuneration, freedom of association, right to collective bargaining) in principle apply to all persons but with a caveat.²³⁶ It is conventionally argued that lawful restrictions can be made based on nationality or immigration status if they are "reasonable, objective, and proportionate to pursue a legitimate aim."²³⁷ This

²³⁵ Ryszard Cholewinski, "The Human and Labor Rights of Migrants: Visions of Equality" (2007) 22:2 Geo Immigr LJ 177–220. ; David Weissbrodt Special Rapporteur, Final Report on the Rights of Non-Citizens, U.N. Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/23 (May 26, 2003).

²³⁶ T Alexander Aleinikoff & Vincent Chetail, eds, *Migration and International Legal Norms* (T.M.C. Asser Press, 2003).

²³⁷ Chetail, *supra* note 225. at chapter 2

means distinctions based on nationality and status are allowed if the measures are prescribed by law, pursue a legitimate state objective that can be justifiable in a democratic society, and are proportionate. These distinctions depend on each case's circumstances and the specific right(s) in question; therefore, only a case-by-case assessment can distinguish lawful and unlawful restrictions, giving states significant discretion in determining restrictions.

Apart from the general applicability of core human rights, the right to leave and return to one's own country is directly relevant to movement capabilities. This right is restated in a wide range of universal and regional human rights treaties and is understood to be binding as a matter of customary international law.²³⁸ It was first endorsed in the Universal Declaration of Human Rights (UDHR),²³⁹ which is considered the foundation document of human rights and customary international law. The UDHR affirms that "Everyone has the right to freedom of movement and residence within the border of each State. Everyone has the right to leave any country, including his own, and to return to his country."²⁴⁰ The International Covenant on Civil and Political Rights (ICCPR)²⁴¹ and the International Covenant on Economic, Social and Cultural Rights (ICERD),²⁴² which came out of the UDHR - together known as the International Bill of Rights - also reiterates the right to leave any country including one's own.²⁴³

²³⁸ *Ibid.* at chapter 2

²³⁹ *Universal Declaration of Human Rights, GA Res 217A (III)*, UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) [*UDHR*].

²⁴⁰ Brian R Opeskin, Richard Perruchoud & Jillyanne Redpath-Cross, *Foundations of international migration law*, ebrary, Inc (Cambridge, UK: Cambridge University Press, 2012).

²⁴¹ *International Covenant on Civil and Political Rights*, 19 December 1966, UNTS 14668 (entered into force 23 March 1976) [*ICCPR*]

²⁴² *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, UNTS 14531 (entered into force 3 January 1976) [*ICESCR*]

²⁴³ *UDHR*.

However, omitted in all these documents and international law is the symmetric right to enter another country.²⁴⁴ Seyla Benhabib calls this an internal contradiction in universal human rights and territorial sovereignty - a feature that exists across various international law documents. In fact, international human rights instruments even reaffirm the state's authority to determine who can enter and who can stay. For example, the ICCPR, which is referred to as one of the most "far-reaching"²⁴⁵ treaties, explicitly protects the state's prerogative to decide who to admit. The UN Human Rights Committee clarified in General Comment No. 15 that the Covenant "does not recognize the right of aliens to enter or to reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory."²⁴⁶ This strengthens states' authority to decide who to admit and inhibits migrant workers' movement capabilities. While Article 12(4) 'prohibits arbitrary deprivation of the right to enter *his own country*' (emphasis added) casts a broader net than it would have if the provision was based on nationality, the concept of non-arbitrariness requires a case-by-case assessment that is harder to make for temporary migrants.²⁴⁷

Even the ICRMW (also known as Migrant Workers Convention) safeguards this aspect of state sovereignty and limits movement capabilities. In it, Article 35 states that: "Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation."²⁴⁸ However, this does not mean

²⁴⁴ Costello, Freedland, & Oxford Scholarship Online - York University, *supra* note 42.

²⁴⁵ Thomas, "Convergences and Divergences in International Legal Norms on Migrant Labor Labor Law and Development", *supra* note 18.

²⁴⁶ Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004).; <https://www.hrw.org/legacy/campaigns/migrants/docs/comment86.htm>

²⁴⁷ Chetail, *supra* note 215.

²⁴⁸ Thomas, "Convergences and Divergences in International Legal Norms on Migrant Labor Labor Law and Development", *supra* note 18.at p 413

that states' right to deny territorial access to all aliens is absolute. As James Nafziger argues, the proposition that this right is absolute has little historical or jurisprudential foundation, and "a state has a qualified duty to admit aliens when they pose no serious danger to its public safety, security, general welfare, or essential institutions."²⁴⁹ However, as we will see in Chapter 3, states such as the UAE often broadly interpret migrants' potential threat to security.

Even if a non-citizen is lawfully within the territory, human rights instruments reaffirm states' ability to influence non-citizens' movement capabilities. The ICCPR is noteworthy in this regard because it reserves some rights to only non-citizens who are "lawfully present within the territory of a state," namely, the right to liberty of movement and the freedom to choose residence within the territory (Article 12) and due process guarantees on expulsion from the territory to. And even if this is the case, "the combination of these two provisions," Chetail argues, "graphically exhibits the specificities and the limits of the legal status of migrants under contemporary international law: a non-citizen must be lawfully present within the territory of a state to be able to benefit from the right to liberty of movement and the freedom to choose residence; but, even if lawfully within the territory, he/she may still be deported from that territory provided that some basic conditions and procedural guarantees are fulfilled."²⁵⁰ Similarly and as Section 2.4 will detail, the Migrant Workers' Convention also provides differential rights between migrant workers based on whether they are considered in a regular or an irregular situation.

²⁴⁹ James A R Nafziger, "The General Admission of Aliens under International Law" (1983) 77:4 The American Journal of International Law 804–847.

²⁵⁰ Chetail, *supra* note 215. At p 156

In addition to the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination 1969 (ICERD)²⁵¹ and the Convention on Elimination of All Forms of Discrimination Against Women 1979 (CEDAW)²⁵² contain provisions that may be relevant to movement and supportive capabilities. These are potentially significant, especially in relation to this work, considering they are some of the few human rights treaties that the UAE is a member state to. The ICERD, for instance, ensures a wide array of rights ranging from "The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration" to "the right to form and join trade unions" and the "the right to marriage and choice of spouse."²⁵³ It was clarified by the Committee on the Elimination of Racial Discrimination in General Recommendation No 30 on Discrimination that, in principle, states are obligated to guarantee the range of rights in Article 5 (where the aforementioned rights are listed) to all persons without discrimination. It also includes an obligation to provide equal treatment between citizens and non-citizens, with the exception of some political rights such as the right to vote.²⁵⁴

In addition to the aforementioned human rights treaties that deal with migrant workers' rights, the international protection for migrant workers also includes a United Nations Charter-based system. This comprises of a system whereby individuals and organizations can bring complaints to the UN Human Rights Council to address violations, special reporters and human

²⁵¹ *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966 UNTS No. 9464 (entered into force 4 January 1969) [ICERD]

²⁵² *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 20378 UNTS 1249 (entered into force 3 September 1981) [CEDAW]

²⁵³ *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, UNTS 660 (P.1) Art 5 (entered into force 4 January 1969) [ICERD]

²⁵⁴ Shauna Olney & Ryszard Cholewinski, "Migrant Workers and the Right to Non-discrimination and Equality" in Cathryn Costello & Mark Freedland, eds, *Migrants at Work* (Oxford University Press, 2014) 258.

rights independent experts that study human rights, and thirdly quadrennial period review reports by the UN HRC on UN Member state reports which include recommendations by the HRC.²⁵⁵

The significance of the exceptions can be especially grave in countries like the GCC countries, where access to citizenship is strictly protected. The UAE has not accepted the optional obligations for individual complaints.²⁵⁶ Even in the few other states that have accepted these obligations, only a few individuals have used these procedures.²⁵⁷ In 2018, however, Qatar submitted an Application to the International Court of Justice against the UAE concerning its treatment towards Qataris living in the UAE using the ICERD as its legal basis. This was in response to a range of sanctions that the UAE imposed on Qatar, including the expulsion of Qataris from the UAE sparked by rising tensions in Yemen.²⁵⁸ It is interesting to note that this is the only time that such an application was made against the UAE, while the ICERD is ratified by almost all sending countries and the UAE.

2.4 UN Migrant Workers Convention: Comprehensive yet Differentiated

Having discussed some of the core human rights instruments, this section will turn our attention to one of the most relevant instruments that specifically address migrant workers: the

²⁵⁵ Cholewinski, “The Human and Labor Rights of Migrants”, *supra* note 235. ; David Weissbrodt and Justin Rhodes, “United Nations treaty bodies and Migrant Workers”, in Vincent Chetail & Céline Bauhoz, *Research Handbook on International Law and Migration* (Edward Elgar Publishing, 2014).at 303.

²⁵⁶ For more on UN Charter body system see for e.g. Daisuke Shirane, “ICERD and CERD: A Guide for Civil Society Actors,”
online: <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_INF_7827_E.pdf> accessed January 28, 2020.

²⁵⁷ Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law*, reprint edition ed (Cambridge: Cambridge University Press, 2009). at p 21

²⁵⁸ Simon Andra Obrocaru, “Tackling Racial Discrimination: Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. the United Arab Emirates) Studies and Comments on Case Law and Legislation” (2019) 21 Romanian J Int’l L [58]-[67].

Migrant Workers Convention²⁵⁹ which is considered the most comprehensive treaty in the field of migration and human rights and is one of the 'core' human rights agreements.²⁶⁰ The history of this document highlights the contentious nature of migrant worker issues. While the ILO alone was mandated to ensure "protection of interests of workers when employed in countries other than their own,"²⁶¹ the ILO Migrant Workers (Supplementary Provision) Convention, 1975 (no. 143) (which will be discussed more fully in Section 2.3) was met with mixed reactions. Sending countries were skeptical of its emphasis on undocumented migration because it would suppress illegal movement that otherwise reduced unemployment and generated income. Similarly, receiving countries were wary that ILO Convention No. 143's provision on the free choice of employment would undermine their guest worker programs.²⁶²

Morocco and Mexico, therefore, started to campaign for a UN Convention on human rights for migrants and chaired the Open-ended Working Group that was established in 1979. Sending countries were not only dissatisfied by former ILO treaties but were also skeptical of its inclusion of unions and their inability to make reservations in ILO treaties.²⁶³ Mainstream accounts of the ICRMW also note that the UN was preferred over the ILO because developing countries were hoping to promote a new economic order in the aftermath of the 1970s oil crisis and thought the UN forum would more easily help get an "automatic majority."²⁶⁴

²⁵⁹ *Migrant Workers' Convention*

²⁶⁰ Saskia Sassen, *Losing Control?: Sovereignty in the Age of Globalization* (New York: Columbia University Press, 1996). at 94,

²⁶¹ Roger Bohning, "The ILO and the New UN Convention on Migrant Workers: The Past and Future" (1991) 25:4 *The International Migration Review* 698–709.

²⁶² *Ibid.*

²⁶³ Ryszard Cholewinski et al, *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights* (Cambridge University Press, 2009) Google-Books-ID: r7fZjWPuNLoC.

²⁶⁴ Bohning, "The ILO and the New UN Convention on Migrant Workers", *supra* note 261. Roger Bohning & International Labour Office, "The ILO and the New UN Convention on Migrant Workers: The Past and Future" 13.

The drafting, however, was done primarily by a group of European states known as the MESCA group (Finland, Greece, Norway, Portugal, Spain, and Sweden), which later approached the ILO to help with some draft articles.²⁶⁵ While it was expected at least this group would ratify, destination countries were skeptical of the resulting document's level of detail, ambition, and usefulness. Migrant Workers Convention exemplifies how reluctant states are to provide all migrants' rights. It took more than ten years for the Convention to come into force in 2003, and even then, the state parties included mostly sending countries and none of the major receiving countries. The current number of state parties is 55 and includes neither UAE nor Pakistan.²⁶⁶

The literature on ICRMW has long tried to explain why ratification has been difficult to achieve, identifying a number of legal and political issues that may explain the low level of ratifications as well as lack of campaigning of the ICRMW. Canada's objection, for instance, stems from a number of reasons. A UNESCO-commissioned report noted that these include the assertion that migration management lies within each nation-state's sovereignty, fundamental rights of all persons are already guaranteed in Canada and that signing the ICRMW would require Canada to review its temporary migration programmes.²⁶⁷ A similar UNESCO study on obstacles to the ratification of the ICRMW in the European Economic Area noted that the common fear is that the ICRMW would limit the states' sovereign right to decide who can enter their territory and for how long they can remain, and that it provide a robust right of family

²⁶⁵ Juhani Lönnroth, "The International Convention on the Rights of All Migrant Workers and Members of Their Families in the Context of International Migration Policies: An Analysis of Ten Years of Negotiation" (1991) 25:4 International Migration Review 710–736.

²⁶⁶ Migrant Workers' Convention "Chapter IV: Human Rights: 13."

²⁶⁷ *Identification of the Obstacles to the Ratification of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: The Canadian Case*, by Victor Piché, Eugénie Pelletier & Dina Epale, Zotero, UNESCO Series of Country Reports on the Ratification of the UN Convention on Migrants (UNESCO) SHS/2006/MC/9. :online<https://unesdoc.unesco.org/ark:/48223/pf0000147310_eng?posInSet=1&queryId=650e9be8-707b-42e8-bb01-288f4ca4ed71>

reunification to all migrant workers in a regular situation. The political obstacles include the fact that ICRMW prescribes rights the already exist in national laws and that it prescribes too many rights to migrants in an irregular situation which may make tackling irregular migration and "social integration" difficult.²⁶⁸ However, many sending countries, including Pakistan and India, have also refused to ratify this agreement due to a lack of political will and the fact that labour-out migration has only increased in the late 1980s.²⁶⁹ A 2003 UNESCO-study on the Asia Pacific found that in non-ratifier sending countries, such as Indonesia and Bangladesh,²⁷⁰ the obstacles were the costs associated with fulfilling their obligations, such as providing pre-departure sessions and monitoring brokers and recruiters.²⁷¹ However, even the states that ratify the ICRMW do so, as Western, Lockhard, and Money recently argue, "to strengthen their relationships with their emigrants and their citizens at home who advocate for emigrant protections, not to protect the right of immigrants residing in their own country."²⁷²

However, ICRMW is celebrated by several commentators as one of the most significant documents for migrants as it includes a number of rights for authorized migrant workers that

²⁶⁸ *The Migrant workers convention in Europe: obstacles to the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: EU/EEA Perspectives*, by Euan MacDonald & Ryszard Cholewinski, UNESCO Migration Studies (UNESCO, 2007).

online:<<https://unesdoc.unesco.org/ark:/48223/pf0000152537?posInSet=1&queryId=0297f19a-507e-4725-94a2-35f6a9427ce1>>

²⁶⁹ Nicola Piper, "Obstacles to, and opportunities for, ratification of the ICRMW in Asia" in Antoine Pecoud, Paul de Guchteneire & Ryszard Cholewinski, eds, *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights* (Cambridge: Cambridge University Press, 2009) 171.at p 177-178

²⁷⁰ Bangladesh ratified the ICRMW in 2011 and Indonesia ratified the ICRMW in 2012

²⁷¹ *Identification of the obstacles to the signing and ratification of the UN Convention on the Protection of the Rights of All Migrant Workers: the Asia-Pacific perspective; executive summary*, by Robyn Iredale & Nicola Piper, UNESCO Series of Country Reports on the Ratification of the UN Convention on Migrants (UNESCO, 2003) SHS/2003/MC/2.

²⁷² Shaina D Western, Sarah P Lockhart & Jeannette Money, "Does anyone care about migrant rights? An analysis of why countries enter the convention on the rights of migrant workers and their families" (2019) 23:8 The International Journal of Human Rights 1276–1299.

have a bearing on movement and supportive capabilities.²⁷³ It includes the right to enter and remain in one's state of origin²⁷⁴ and rights of liberty of movement²⁷⁵ and freedom of association²⁷⁶, and it reiterates a number of other rights such as the right to life²⁷⁷, freedom from slavery, and torture.²⁷⁸ For the most part, it reaffirms basic human rights norms that are already in existing treaties.²⁷⁹ It does include provisions that are specific to migration, such as Article 17, which makes an explicit reference to immigration detention and trial rights, and Article 21, which prohibits passport confiscation.²⁸⁰ The ICRMW also has provisions that commit states to collaborate to prevent "illegal or clandestine movements and employment of migrant workers in an irregular situation."²⁸¹

The ICRMW has nine parts and defines rights that apply to specific categories of migrant workers and their families in the following sub-categories: frontier workers, seasonal workers, seafarers, workers on an offshore installation, itinerant workers, project-tied workers, specified-employment workers, and self-employed workers.²⁸² It divides its rights according to whether or not migrant workers are in a "regular" or "irregular" situation. Part III applies to all migrant workers, and Part IV applies only to those who are documented or in a regular situation. The omission of migration status in the Convention's non-discrimination provision is also noteworthy.²⁸³ Part III, which applies to all migrant workers and their families, is generally a

²⁷³ Sassen, *supra* note 260. at 94; Chetail, *supra* note 215.

²⁷⁴ *Migrant Workers' Convention* art 8.

²⁷⁵ *Migrant Workers' Convention* art 39.1

²⁷⁶ *Migrant Workers' Convention* art 26

²⁷⁷ *Migrant Workers' Convention* art. 9

²⁷⁸ *Migrant Workers' Convention* art. 11

²⁷⁹ Dauvergne, *supra* note 257.

²⁸⁰ *Migrant Workers' Convention* arts. 17 and 21

²⁸¹ *Migrant Workers' Convention* art. 68

²⁸² *Migrant Workers' Convention*, arts. 57-63

²⁸³ Dauvergne, *supra* note 257. at p 23

reiteration of human rights norms that exist elsewhere. This categorization was a result of a compromise between the delegates who drafted the treaty after years of negotiation. At the time it was drafted, the 35 Articles that apply to all migrant workers and family members were filling a gap and clarifying that these provisions did apply to all non-citizens.²⁸⁴ The list of rights that concern all migrants and their families includes a range, including, for instance, the right not to have identity documents confiscated²⁸⁵, the right to education for migrants' children²⁸⁶, and the right to respect for cultural identity.²⁸⁷

However, the differences between Part III for all migrants and Part IV that applies to only documented migrant workers highlight how migrant workers experience differential treatment, with significant impacts on their movement and supportive capabilities. For instance, like under the Covenant on Civil and Political Rights, only migrant workers and their families who are documented or in a regular situation have the "right to liberty of movement in the territory of the State of employment and freedom to choose their residence there."²⁸⁸ This also includes more substantial rights such as the "right to form associations and trade unions," equality of treatment with nationals,²⁸⁹ transfer of remittances²⁹⁰, expulsion procedures,²⁹¹ and right to family reunification.²⁹² The fact that these rights are only reserved for documented workers undermines movement and supportive capabilities for workers who are undocumented.

²⁸⁴ Stefanie Grant & Beth Lyon, "Indirect Success? The impact and use of the ICRMW in other UN fora" (2018), online: <<https://osf.io/preprints/lawarxiv/chdap/>>.

²⁸⁵ *Migrant Workers' Convention* art. 21

²⁸⁶ *Migrant Workers' Convention* art. 30

²⁸⁷ *Migrant Workers' Convention* art. 31

²⁸⁸ *Migrant Workers' Convention* art. 39.1

²⁸⁹ *Migrant Workers' Convention* art. 43

²⁹⁰ *Migrant Workers' Convention* art. 47

²⁹¹ *Migrant Workers' Convention* art. 56

²⁹² *Migrant Workers' Convention* art. 44

A further exception is made in the ICRMW for "project-tied workers" who are defined as "migrant worker[s] admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer."²⁹³ Article 61 of the ICRMW stipulates that these workers and members of their families "shall be entitled to the rights provided for in part IV except" certain provisions that include "equal treatment" with nationals with regards to vocational guidance and placement services; vocational training and retraining facilities and institutions; social housing schemes.²⁹⁴ More importantly, project-tied migrant workers are also not entitled to "freely to choose their remunerated activity"²⁹⁵ and equality of treatment with nationals in the exercise of the remunerated activity.²⁹⁶ Most construction workers that are hired for specific projects tend to be on fixed-term contracts that may fall within this category. In other words, even within the category of migrant workers and their families who are documented or in a "regular" situation, there are further exceptions that may limit their supportive capabilities. Migrant workers that fall within this category can be denied access to meaningful work and vocational training available to citizen workers. Furthermore, given that the ICRMW was drafted in the 1970s and rooted in the North-South migration, its focus was on the traditional mobility of the industrial worker rather than other groups.²⁹⁷

²⁹³ *Migrant Workers' Convention* art. 2, paragraph 2

²⁹⁴ *Migrant Workers' Convention* art. 61

²⁹⁵ *Migrant Workers' Convention* art. 52.1

²⁹⁶ *Migrant Workers' Convention* art. 54

²⁹⁷ Lönnroth, "The International Convention on the Rights of All Migrant Workers and Members of Their Families in the Context of International Migration Policies", *supra* note 265.

Despite the proliferation of human rights instruments²⁹⁸ and norms, the human rights project has been at the heart of many criticisms of international law.²⁹⁹ Not only are there ways that movement and supportive capabilities are differentiated, but even when this is less so, the law on the books does not reflect the law in practice. Not only have very few states accepted the obligations for individual complaints available in international human rights instruments, but these procedures are underutilized.³⁰⁰ Human rights law has been criticized for only focusing on moral wrongs, formal equality, and negative obligations rather than substantive equality and positive obligations. Furthermore, the predominantly individualized nature of human rights complaints, framing of human rights, and lack of progress towards recognizing group rights is also limiting compared to collective labour law remedies and the more collective framing of labour rights.³⁰¹ Samuel Moyn prominently argues that human rights law ignores distributive equality altogether or at best only offers "a floor of protection against indigence."³⁰² However, as Sen criticizes, borrowing from Kant, the fact that these obligations are imperfect and that the project is not feasible or accomplishable as a whole does not render it insignificant.³⁰³ What is most important is that even within this context of imperfect obligations and international human

²⁹⁸ As David Weissbordt argues non-citizens including migrant workers are entitled with few exception to the same human rights protections as nationals. Exceptions can be made only if they serve a legitimate state objective and are proportional to that objective.

²⁹⁹ See for e.g. Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2012) Google-Books-ID: pIPMFvJW5AgC.; Radha D'Souza, *What's Wrong with Rights?: Social Movements, Law and Liberal Imaginations* (London: Pluto Press, 2017).

³⁰⁰ Dauvergne, *supra* note 257. At p 21

³⁰¹ See for eg. *The Constitutionalization of Labour Rights*, SSRN Scholarly Paper, by Harry W Arthurs, papers.ssrn.com, SSRN Scholarly Paper ID 1531326 (Rochester, NY: Social Science Research Network, 2009).; Cindy L Holder & Jeff J Corntassel, "Indigenous Peoples and Multicultural Citizenship: Bridging Collective and Individual Rights" (2002) 24:1 Human Rights Quarterly 126–151.

³⁰² Moyn, Samuel. "[Human Rights and the Age of Inequality](#)." In *Can Human Rights Bring Social Justice?: Twelve Essays*, edited by Doutje Lettinga and Lars van Troost. Amsterdam: Amnesty International Netherlands, 2015.

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³⁰³ Sen, *supra* note 102.

rights law's normative commitment to individual rights, human rights instruments' differentiation and exceptions show the lack of political will to ensure movement and substantive capabilities universally and equally to nationals and non-nationals irrespective of status.

2.5 The ILO and International Labour Law: A Toothless tiger for "all men irrespective of race, creed or sex"?

Similarly, international labour law, particularly under the ILO's approach, ensures movement and supportive capabilities but applies them differentially while making significant exceptions. Born in 1919 as a "daughter of the war," the ILO, in fact, predates the universal human rights instruments. Although it has been nicknamed the "toothless tiger," its unique tripartite system is significant despite criticisms.³⁰⁴ In other words, unlike other UN organizations that rely on government representatives to make decisions, ILO's governance is marked by "deliberation and the distribution of power in decision-making among three representative bodies – representing the government, the employers and workers."³⁰⁵

Before discussing how specific ILO instruments distribute movement and supportive capabilities, it might be useful to historicize ILO's relationship with migrant workers. Most accounts start with the acknowledgment that the ILO has been concerned with migrant workers since its very foundation in 1919. The Preamble of its Constitution explicitly stated its mandate

³⁰⁴ Laurence R Helfer, "Monitoring Compliance with Unratified Treaties: The ILO Experience The Law and Politics of International Delegation" (2008) 71:1 Law & Contemp Probs 193–218. Marcel van der Linden, "The International Labour Organization, 1919–2019: An Appraisal" (2019) 16:2 Labor (Durham, NC) 11–41.; Francis Maupain, "A Second Century for What?: The ilo at a Regulatory Crossroad" (2019) 1:aop International Organizations Law Review 1–53..

³⁰⁵ Guy Mundlak, "Tri-Plus: Reflections on Opening the ILO's Tripartite Structure" in Georges P Politakis et al, *ILO100: law for social justice* (Geneva: ILO, 2019). at p312; Amartya Sen, "The Global Reach of Human Rights" (2012) 29:2 Journal of Applied Philosophy 91–100. Also for more on how voting is weighed among the three see Janice R. Ballace, "The ILO and Tripartism: The Challenge of Balancing the Three-Legged Stool" in Politakis et al, *supra* note. at p 292.

as one focused on social justice but also specifically referred to the "protection of the interests of workers when employed in countries other than their own." The Treaty of Versailles, which established the 1919 ILO Constitution, sets out nine principles which include the oft-cited principle, labour is not a commodity or article of commerce.³⁰⁶ What becomes apparent through the history of ILO is that given that it was established against the backdrop of post-World War 1 turmoil and the political and social revolution that followed, from the beginning, it aimed to challenge the destructive tendencies of unfettered capitalism; its mandate had always included social objectives. ILO's "constitutional *acquis* [is] rooted in labour history's recognition that law's normative character was indeterminate" and must center on social justice.³⁰⁷ Therefore, the 1944 Philadelphia Declaration applied to "all men irrespective of race, creed or sex," which later influenced the United Nations Charter and UDHR.³⁰⁸ This Declaration became known as the "second coming of the ILO" and served as the blueprint for the welfare state in the post-war years, directly following Polanyi's book on Great Transformation, which deconstructed the myth of self-regulating markets.³⁰⁹

While it was constructed around the idea of social justice as depicted in its Constitution, its "universal" approach is challenged both in terms of the states and the kinds of workers it included; there was a strong European and industrial bias. For instance, when its first Governing Body met, 20 of the 24 members were European nations. The average ratio of European

³⁰⁶ Olney, Shauna & Ryszard Cholewinski. "Migrant Workers and the Right to Non-discrimination and Equality" in Costello, Freedland, & Oxford Scholarship Online - York University, *supra* note 42. at 258.

³⁰⁷ Adelle Blackett & Anne Trebilcock, *Research Handbook on Transnational Labour Law* (Edward Elgar Publishing, 2015) Google-Books-ID: _K6CCgAAQBAJ. At p 4

³⁰⁸ *ILO Declaration of Philadelphia 1944*, online:<
https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO>
 [Philadelphia Declaration]

³⁰⁹ Daniel Maul, *The International Labour Organization: 100 years of global social policy* (Berlin, Germany : Geneva, Switzerland : in association with International Labour Office: DE GRUYTER Oldenbourg, 2019).

compared to non-European employees in ILO's permanent secretariat was 10:1.³¹⁰ Colonial labour (workers working under the colonial domination of European powers) was also never included in the ILO Agenda. In addition, the 1930 Forced Labor Convention No. 29 included exceptions where a transitional period of forced labour performed for "public purposes" and other provisions on military service, court conviction, "minor communal services," and normal "civic obligations of citizens" allowed colonial signatories to be exempted. Although the Philadelphia Declaration is applauded for its universalist approach of protecting all workers regardless of "race, creed, or sex" and its broadening of focus and role, Section 5 of the Declaration was meant solely for colonial populations. It was meant to be applied dependent on "the stage of social and economic development reach by each people," and provisions in colonial territories were a "matter of concern to the whole civilized world." The universality in terms of the application of its human rights claims was only gradually implemented in the colonies.³¹¹ The ILO thought it could ensure social cohesion within open market economies through standard-setting and regulation of the state.³¹² The focus on universally applied standards has been criticized even as the ILO celebrated its 100 years. As TWAIL scholars Obiora Chinedu Okafor, Titilayo Adebola, and Basema Al-Alami write in their contribution for "ILO 100 – Law for Social Justice," these universal standards "in reality, work against the interests of Third World peoples...[and]...same treatment does not always lead to equity."³¹³

³¹⁰ *Ibid.* at p 74

³¹¹ Nikita Lyutov, "The ILO System of International Labour Standards and Monitoring Procedures: Too Complicated to Be Effective" (2014) 64:2 Zbornik PFZ 255–276.

³¹² Maul, *supra* note 309.

³¹³ Obiora Chinedu Okafor, Titilayo Adebola & Basema Al-Alami, "Viewing the International Labour Organization's Social Justice Praxis Through a Third World Approaches to International Law Lens: Some Preliminary Insights" in Georges P Politakis, Tomi Kohiyama & Thomas Lieby, eds, *ILO 100: Law for Social Justice* (2019). at p 120

The ILO is considered the transnational counterpart to the state responses to growing worker discontent, particularly in the European countries – both of which were aiming to divert workers from radical revolutions by including new regimes of labour rights and social justice through constitutions domestically and transnationally (through the UDHR and The Philadelphia Declaration). However, cold war tensions hindered ILO's ambitious goals, forcing the ILO to flee Europe and seek refuge in Canada. The old imperialism and cold war tensions have been replaced by neoliberal globalization, which the ILO has attempted to tackle.³¹⁴

Against this backdrop of the normative foundations and early tensions of the ILO, the following discussion will now consider ILO instruments that are relevant to migrant workers. ILO's first two Recommendations contained provisions concerning migrant workers recommending that "the recruiting of bodies of workers in one country with a view to their employment in another country should be permitted only by mutual agreement between the countries concerned and after consultation with employers and workers in each country." Furthermore, the Reciprocity of Treatment Recommendation, 1919 (No. 2) stated that member states should ensure that foreign workers and their families benefit from worker protection legislation, "as well as to the right of lawful organization as enjoyed by its workers."³¹⁵ These provisions are noteworthy and elucidate that ILO's approach is generally committed to all workers; all ILO Conventions and Recommendations apply to migrant workers.³¹⁶ However, there are pragmatic choices the ILO has had to make that follow the pattern of international refugee and human rights law instruments discussed earlier.

³¹⁴ See for e.g. Adelle Blackett "Beyond a Boundary: On Transnational Labour Law, Discontent, and Emancipatory Social Justice" in Politakis et al, *supra* note 305. at p 479

³¹⁵ Reciprocity of Treatment Recommendation, 1919 (No. 2)

³¹⁶ Olney & Cholewinski, *supra* note 254. at p 265

The Migration for Employment Convention (Revised) (No. 97) was adopted by the International Labour Conference in 1949 to facilitate the movement of labour and ensure equality of treatment for migrant workers. It includes a range of provisions that expand migrant workers' movement and supportive capabilities irrespective of race, sex, religion, or nationality – these provisions are found in similar terms in the ICRMW. They include prohibiting the removal of migrant workers and their family in the event of incapacity to work (Article 8.1) and measures to provide services to prevent misinformation on the process, aid transfer of earnings, and most importantly, ensure equality of treatment. However, the trade-off to the wide array of rights has meant that ILO Convention 97's provisions are limited to only workers who are permanent (or in a regular situation), thus excluding undocumented workers as well as temporary workers.³¹⁷

Following the ILO Convention No. 97, the International Labor Conference adopted the ILO Migrant Workers (Supplementary) Convention (No. 143) in 1975. Together these two are among the first specific instruments aimed to tackle migrant worker issues. Unlike ILO Convention No 97, ILO Convention 143 provides equal treatment to migrants in an irregular situation in relation to rights arising out of past employment with regards to remuneration, social security, and other benefits.³¹⁸ However, its approach makes some exceptions too. The definition of migrant for employment is narrower than in the Migrant Workers Convention's definition of a migrant worker; it excludes undocumented workers, self-employed workers, frontier workers, and members of the liberal arts.³¹⁹

ILO Convention No 143's provisions referring to equality of treatment are applied differently. For instance, Part II includes more liberal provisions such as equality of treatment

³¹⁷ Chetail, *supra* note 215.at p 5 of chapter Part II The Treaty Regimes of International Migration Law

³¹⁸ Costello, Freedland, & Oxford Scholarship Online - York University, *supra* note 42.

³¹⁹ Chetail, *supra* note 215.

with regards to working conditions and facilitating family reunification. This, however, does not apply to all migrant workers and excludes, for instance, those who are exclusively in a state for education or training purposes, as well as those who are there for specific temporary projects.³²⁰ These exceptions are significant especially given how migrant workers are likely to be in work arrangements such as self-employment and temporary contracts tied to specific projects.³²¹

Convention No. 143's provisions refer to equality of treatment between nationals and migrant workers, but each has a different application threshold. Article 8, for instance, protects migrant workers in the case of loss of employment but only applies to migrant workers who have "resided legally." They are not considered in an irregular situation due to loss of employment and are entitled to equality of treatment with nationals with respect to "security of employment, provision of alternative employment, relief work and retraining." Article 14, which would expand supportive capabilities by ensuring free choice of employment to migrant workers who have resided lawfully in the territory for the purpose of employment for a certain period, only applies to workers in a regular situation and those workers whose period of stay has not exceeded two years. This provision was still opposed by many receiving countries for undermining temporary migration.³²² Similarly, Article 10 ensures protection of migrant workers against discrimination, and the rest of Part II, which deals with equality of opportunity and treatment, only applies to migrant workers who are "regularly admitted." The provisions that apply to all migrant workers irrespective of their legal status include the human rights that are already in UN human rights instruments and those set out in the ILO Declaration on Fundamental Principles

³²⁰ Although this last exception does not include all fixed-term workers

³²¹ Costello, Freedland, & Oxford Scholarship Online - York University, *supra* note 42.

³²² Bohning, "The ILO and the New UN Convention on Migrant Workers", *supra* note 261.

and Rights at Work, 1998.³²³ The fundamental labour standards are still significant and can be categorized as follows: freedom of association and right to collective bargaining; elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect to employment and occupation.³²⁴

What is evident from examining these ILO Conventions, therefore, is that even within the category of migrant workers, different rights are afforded to different groups leaving out especially workers in an irregular situation or those who are undocumented. These exceptions and the way more liberal provisions are reserved for migrant workers in a regular situation and those not tied to a specific project show how certain freedoms are only afforded to those workers. Given that states generally have the prerogative to determine status and the absence of the right to enter, this allows states a considerable influence to determine migrant workers' movement and substantive capabilities. As Thomas observes, the differentiation that the ILO makes in both ILO Convention No. 97 and Convention No. 143 show that the ILO has to be both pragmatic to allow states the ability to determine who can enter their countries while also focus on equalizing bargaining power across workers.³²⁵

Furthermore, the Discrimination (Employment and Occupation) Convention 1958 (No 111), which is one of the few Conventions ratified by the UAE, could be argued to protect supportive capabilities by ensuring the right to non-discrimination in employment and occupation.³²⁶ All provisions of the Convention No. 111 apply to all workers. There are at least eight other Recommendations³²⁷ and Protocols that are also to varying degrees relevant to

³²³ Olney & Cholewinski, *supra* note 254.

³²⁴ *Ibid.*

³²⁵ Thomas, "Convergences and Divergences in International Legal Norms on Migrant Labor Law and Development", *supra* note 18.

³²⁶ Olney & Cholewinski, *supra* note 254. at p 270

³²⁷ Recommendations are not legally binding

migrant workers. In addition, all Conventions and Recommendations, with the exception of those specifically relating to other categories of workers, cover *all* workers, including migrant workers.³²⁸ It is important to note that the UAE joined the ILO in 1972 and did not sign the Protocol of 2014 to the Forced Labor Convention 1930 and Protocol of 1995 to the Labour Inspection Convention. As depicted in Table 2 below, there are 66 Conventions and Protocols that it has not ratified, and the only Conventions it signed are from 1982 to 2001. Furthermore, UAE has a poor record of submitting to the ILO supervisory body.³²⁹

Table 2: Human Rights Treaties and ILO Conventions the UAE is a state party to Against Core/Fundamental Treaties

Human Right Treaties the UAE is a state party to:	Nine core Human Rights Treaties	ILO Conventions the UAE is a state party to:	The Eight Fundamental ILO Conventions:
International Convention on the Elimination of All Forms of Racial Discrimination, 1969	International Convention on the Elimination of All Forms of Racial Discrimination 1965	Forced Labour Convention, 1930 (No. 29)	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Convention on the Elimination of All Forms of Discrimination against Women, 1981	International Covenant on Civil and Political Rights 1966	Hours of Work (Industry) Convention, 1919 (No. 1)	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

³²⁸ Cécile Vittin-Balima, “Migrant workers: The ILO standards”, online: <<http://library.fes.de/pdf-files/gurn/00067.pdf>>.

³²⁹ The Committee observations in 2019 marked UAE as “serious failure to submit” and noted that “the Government has once again failed to respond to its previous comments.” Observation on submission to competent authorities (CEACR) - adopted 2019, published 109th ILC session (2020) United Arab Emirates: online<https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4014613,103495,United%20Arab%20Emirates> 2019 last accessed May 1, 2020

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987	International Covenant on Economic, Social and Cultural Rights 1966	Equal Remuneration Convention, 1951 (No. 100)	Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)
Convention on the Rights of the Child, 1990	Convention on the Elimination of All Forms of Discrimination against Women 1979	Abolition of Forced Labour Convention, 1957 (No. 105)	Abolition of Forced Labour Convention, 1957 (No. 105)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Minimum Age Convention, 1973 (No. 138)
Convention on the Rights of Persons with Disabilities, 2008	Convention on the Rights of the Child 1989	Minimum Age Convention, 1973 (No. 138) Minimum age specified: 15 years	Worst Forms of Child Labour Convention, 1999 (No. 182)
	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990	Worst Forms of Child Labour Convention, 1999 (No. 182)	Equal Remuneration Convention, 1951 (N 100)
	International Convention for the Protection of All Persons from Enforced Disappearance 2006	Labour Inspection Convention, 1947 (No. 81)	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
	Convention on the Rights of Persons with Disabilities 2006	Night Work (Women) Convention (Revised), 1948 (No. 89)	

However, the International Labour Conference adopted the ILO Declaration on Fundamental Principles and Rights at Work in 1998, which emphasized the importance of the eight core ILO conventions. It observed that even the states that had not ratified these conventions were required "to respect, to promote and to realize, in good faith"³³⁰ the principles concerning the fundamental rights that were in these Conventions.³³¹

Generally, ILO labour standards are grouped into nine different groups, each with different status: up-to-date, instruments to be revised, instruments with interim status, request for info, shelved conventions, replaced recommendations, outdated instruments, withdrawn instruments, abrogated conventions. The monitoring system that controls the application of these standards is complex, and there is no follow-up procedure in place to ensure recommendations are implemented. The two main procedures are a regular system of supervision and a special procedure for examining representations and complaints relating to the ratified Convention. Both systems are criticized for merely "naming and shaming" and not having binding sanctions. In the former system, ILO member states self-report on their compliance with conventions where an independent body of experts submits observations and direct requests. This report is then published annually.³³²

³³⁰ *ILO Declaration on Fundamental Principles and Rights at Work* 1988

:online<[https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_467653.pdf)

[declaration/documents/publication/wcms_467653.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_467653.pdf) Article 2. > These fundamental rights are as follows: a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation

³³¹ Cholewinski, "The Human and Labor Rights of Migrants", *supra* note 235. At p 186

³³² Lyutov, "The ILO System of International Labour Standards and Monitoring Procedures", *supra* note 311.

The special system of control has a number of different procedures that allow employers and workers to make representations against a state concerning its failure to comply with a convention it is a party to. Even if the member state fails to respond and a special tripartite ad hoc committee examines the representation, the Committee can only make a report to the Governing body or refer it to the ILO Committee on Freedom of Association. While they have had to examine over 3000 cases, the recourse to this procedure has been irregular, and many issues can remain unsettled.³³³

The most extreme of these measures to secure compliance to an international labour standard of a member state is provided in the Art 33 of the ILO constitution. If the state fails to implement the Governing Body's recommendation, then Governing Body may recommend any action it may deem wise to secure compliance. This has only been used once regarding Myanmar in 2000, and the examination took more than 40 years; there is no precedent of a case being referred to the ICJ.³³⁴

2.6 ILO's special procedure: ITUC takes on UAE

At this juncture, it may be worthwhile to detail how ILO's procedure for examining representations and complaints relating to ratified conventions has been applied in the UAE's context. In 2014, the International Trade Union Confederation (ITUCI made a representation under Article 24 of the Constitution alleging the UAE was in violation of its non-observance of the Forced Labor Convention 1930 no. 29. As Table 2.1 illustrates, this is one of the few

³³³ *Ibid.*

³³⁴ *Ibid.*

fundamental ILO Conventions the UAE ratified in 1982.³³⁵ This step was taken after an investigation by Observer on Abu Dhabi's Tourism Development and Investment Company's treatment of migrant workers building Abu Dhabi's New York University's campus, Louvre, and Guggenheim on Saadiyat Island.³³⁶ The ITUC claimed that not only does the UAE's legal framework fail to protect migrant workers from forced labour, but the UAE also fails to implement existing laws that would protect migrants workers from forced labour. It argued that forced labour in the UAE results from factors including high recruitment fees, contract substitution, passport confiscation by employers, the sponsorship system, and ineffective law enforcement system and access to justice. The ITUC called for the following changes: abolishing the sponsorship system; measures to ensure that migrant workers have the right to freely associate in law and practice; measures to adequately enforce the legislation against perpetrators of forced labour; and "rigorous, transparent and independent monitoring and implementation of penalties for non-compliance of contractors."³³⁷

The UAE responded by pointing to a number of changes they had recently made to address the factors that the ITUC noted as well as other measures the government has taken such as signing a number of bilateral Memorandum of Understandings with migrant-sending countries and a two-year technical assistance agreement with the ILO as well as the Abu Dhabi Dialogue. With regards to abolishing the sponsorship system, which is often the focus of civil society

³³⁵ *Report of the Committee set up to examine the representation alleging non-observance by the United Arab Emirates of the Forced Labour Convention, 1930 (No 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC)*, 2017 ILO Governing Body:

³³⁶ David Batty, "Call for UN to investigate plight of migrant workers in the UAE", *The Guardian* (13 September 2014), online: <<http://www.theguardian.com/global-development/2014/sep/13/migrant-workers-uae-gulf-states-un-ituc>>.

³³⁷ *Report of the Committee set up to examine the representation alleging non-observance by the United Arab Emirates of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC)*, *supra* note 335.

organizations' criticisms, the UAE argued that "while the UAE employer is the "sponsor" of the foreign national for the purpose of securing entry and lawful residency, this sponsorship does not define or alter the terms of a relationship between employer and worker as captured in the employment contract and governed by the Labour Code."³³⁸ In other words, the UAE government claimed that it is the contract that determines the obligations of the worker and employer. UAE also claimed that it had taken a number of measures to address some of the concerns, namely, Ministerial Decree No. 1186 of 2010, Ministerial Decree No. 765 of 2015, and Ministerial Decree No. 766 of 2015. These changes, UAE argued, address the inflexibility in the system by, for instance, allowing workers to seek and accept new employment contracts after having worked for their original employer for two years. The government pointed to Ministerial Decrees in 2015 that stipulate conditions under which "fixed-term contracts of no more than two years may be terminated" and conditions under which a worker can obtain a new work permit.³³⁹

The Committee responded that while some of these changes were commendable and that it will "proceed to examine the specific issues raised by the ITUC," more needed to be done, particularly with regards to recruitment fees, contract substitution, access to justice, passport confiscation, wage payment, switching employers, domestic workers, labour inspections and protection of victims.³⁴⁰ The only strongly worded recommendation was with regards to domestic workers, which the UAE's response failed to consider altogether. The Committee's response hinged on providing information on a number of issues to ensure effective

³³⁸ Report of the Committee set up to examine the representation alleging non-observance by the UAE of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the ITUC, *supra* note 335.

³³⁹ *Report of the Committee set up to examine the representation alleging non-observance by the United Arab Emirates of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC)*, *supra* note 335.

³⁴⁰ *Ibid.*

implementation depicts its narrow focus on verification rather than pushing for more substantive changes. For instance, with respect to ITUC's demand to abolish the sponsorship system, the Committee asked the UAE government to provide the number of approvals of sponsorship transfers that had occurred before and after the Ministerial Decrees of 2015. While the case was closed in March 2016, according to the most recent Observation on submission to competent authorities adopted in 2019, "The Committee notes that the Government has once again failed to respond to its previous comments."³⁴¹ UAE government's lack of response further depicts the limitation of ILO's complainant procedure's reliance on naming and shaming.

2.7 ILO's Tripartism: Persisting Issues around Representation

As mentioned earlier, ILO's tripartism is considered one of its most unique features and was part of the proposed structure of the ILO from "day one."³⁴² ILO's tripartism has come under attack from both within the ILO and outside. Most recently, the sharpest conflict occurred in 2012 when Employers' groups criticized the ILO's Supervisory system, particularly the General Survey on freedom of association, arguing that ILO's Convention No 87 on Freedom of Association implicitly protects the right to strike.³⁴³ ILO's experience with tripartism, therefore, has not been one without obstacles. While there have been moments of harmonious cooperation and its advocates, applaud tripartism's role in facilitating social dialogue and garnering

³⁴¹ International Labour Office (2019) Observation on submission to competent authorities (CEACR) - adopted 2019, published 109th ILC session (2021) online from Normlex
<https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4014613>

³⁴² Janice R. Bellace, "The ILO and Tripartism: The Challenge of Balancing the Three-Legged Stool" (2019) in ILO 100": Law for Social Justice edited by George P. Politakis Tomi Kohiyama Thomas Lieby International Labour Organization (2019) at p290

³⁴³ Laurence R Helfer, "Pushback Against Supervisory Systems: Lessons for the ILO from International Human Rights Institutions" in Politakis et al, *supra* note 305.

legitimacy for the ILO, persistent critiques around the representativeness of the structure are significant and undermine its ability to promote supportive and movement capabilities.³⁴⁴ Not only does tripartism excludes informal work, but even within the formal sector, declining members on both labour's and employers' undermines representativeness.³⁴⁵ In addition, as Guy Mundlak points, "race, gender, and other cleavages" as well as class ought to be considered to make social dialogue whether or not done through tripartism.³⁴⁶ Some trade unions have also had uneasy relationships with migrant workers. For instance, in West Germany and the Netherlands, unions tried to ensure the employment of migrant workers was temporary, and in Austria, unions explicitly aimed to "protect native workers."³⁴⁷ It is also important to consider the limitations of tripartism in the absence of formal labour rights, such as the right to strike and form unions, as is the case in the UAE.³⁴⁸

2.8 Bilateral Agreements: An Empty Promise

³⁴⁴ Janice R. Bellace, "The ILO and Tripartism: The Challenge of Balancing the Three-Legged Stool" (2019) in in ILO 100": Law for Social Justice edited by George P. Politakis Tomi Kohiyama Thomas Thomas Lieby "The Interpretation of International Labour Conventions and the Principle of 'Systemic Integration' – The Way Forward for an ILO Tribunal" in "ILO100 – Law for Social Justice" 1034. at p290; Guy Mundlak, "Tri-Plus: Reflections on Opening the ILO's Tripartite Structure" (2019) in Politakis et al, *supra* note 305. at p316

³⁴⁵ van der Linden, "The International Labour Organization, 1919–2019", *supra* note 304.

³⁴⁶ Guy Mundlak, "Tri-Plus: Reflections on Opening the ILO's Tripartite Structure" (2019) in Politakis et al, *supra* note 305. ILO 100": Law for Social Justice edited by George P. Politakis Tomi Kohiyama Thomas Lieby

International Labour Organization (2019) at p316; For more on unions and immigrant workers in precarious employment see for eg. Das Gupta, Tania "Racism/Anti-racism, Precarious employment and Unions" in Vosko, *Precarious Employment: Understanding Labour Market Insecurity in Canada* (McGill-Queen's Press - MQUP, 2005) Google-Books-ID: WK3dLkhw_lsC.) at p 318.

³⁴⁷ Stefania Marino, Judith Roosblad & Rinus Penninx, *Trade Unions and Migrant Workers: New Contexts and Challenges in Europe* (Edward Elgar Publishing, 2017) Google-Books-ID: 0e1BDwAAQBAJ. At p4-5

³⁴⁸ Melani Cammett & Marsha Pripstein Posusney, "Labor Standards and Labor Market Flexibility in the Middle East: Free Trade and Freer Unions?" (2010) 45:2 St Comp Int Dev 250–279.

In addition to the aforementioned multilateral norms, standards, and mechanisms, the ILO also considers bilateral agreements such as the memorandum of understandings as good practice. A number of memorandum of understandings (MoU) have been signed between UAE and migrant-sending countries. UAE, in fact, is one of the most active users of bilateral agreements.³⁴⁹ These MoU's also reflect the stronghold of sovereignty and strengthen the control orientation of domestic immigration policies.³⁵⁰ They are considered good practice and explicitly mentioned in ILO Convention No. 97 and contained as a model in the non-binding ILO Recommendation No. 86. Pakistan signed an MoU in June 2019 with the UAE government and has signed 11 other MoU's with other receiving countries such as Bahrain, Kuwait, Jordan, Qatar, and China.³⁵¹ These bilateral agreements often represent states' willingness to assert their right to expel and admit non-nationals.³⁵² In 2018, the Pakistani Ambassador to the United Arab Emirates announced that a monthly 'minimum wage' of 800 DH (around 200 CAD) was set for Pakistani employees.³⁵³ However, no legislation secures any minimum wage in the UAE. According to a Gulf Today article, the MoU between Pakistan and the UAE stipulates that an "employment job offer" will be signed by the employer and employee that will stipulate their rights and obligations and provide a basis for the contract.³⁵⁴ Zulfikar Bukhari, Special Assistant

³⁴⁹ Graziano Battistella, "Labour Migration in Asia and the Role of Bilateral Migration Agreements" in Marion Panizzon, Gottfried Zürcher & Elisa Fornalé, eds, *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (London: Palgrave Macmillan UK, 2015) 299.

³⁵⁰ Marion Panizzon et al, *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (London, UNITED KINGDOM: Palgrave Macmillan Limited, 2015).

³⁵¹ *Pakistan Migration Report 2020*, by Dr Nasra M Shah et al, Zotero (Centre on International Migration, Remittances and Diaspora). online <<https://www.gids.org.pk/wp-content/uploads/2020/10/Migration-Report-2020-Complete-Grayscale-1.pdf>>. Also interestingly, Saudi Arabia is not on this list and has repeatedly opposed signing bilateral agreements.

³⁵² Battistella, *supra* note 349.

³⁵³ Asma Ali Zain, "Pakistan sets Dh800 base salary for workers", *Khaleej Times* (7 December 2018), online: <<https://www.khaleejtimes.com/nation/dubai/minimum-wage-set-for-pakistani-workers-in-uae-->>.

³⁵⁴ WAM, "Pakistan and UAE MoU to ensure risk-free employment", *Gulf Today* (19 June 2019), online: <<https://www.gulftoday.ae/news/2019/06/19/pak-and-uae-mou-to-ensure-risk-free-employment>>.

to the Prime Minister on Overseas Pakistanis and Human Resource Development, posted on his Twitter account that the MoU will "ease [the] remittances process...[and]...evolve a mechanism for early resolution of disputes with employers/providing legal assistance."

The general consensus amongst advocates is that these MoUs have little to no impact on the protection of workers' rights and migration flows. They rarely refer to the Migrant Workers Convention of the ILO Conventions No. 97 and No. 143, international labour standards, or human rights in general. The power imbalance between receiving and sending countries relegate them to mere expressions of goodwill; this is especially the case for MoUs signed between South Asian countries and GCC countries. Bilateral agreements generally contain only general provisions, and there is little to no publicity or transparency on the MoU's signed. There are no concrete follow-up, enforcement, and monitoring provisions, nor is there a mechanism of dispute settlement or access to justice. MoU's signed by Pakistan, in particular, are not publicly available or made available upon request.³⁵⁵ Much like the Pakistani Ambassador's comments, the MoU's become a political or diplomatic gesture with no serious enforcement.³⁵⁶

While some non-governmental organizations and sending countries' governments focus some of their efforts on establishing MoU's the results have not been promising. MoUs' political value and potential to provide the basis for cooperation between countries cannot be overlooked; scholars and civil society members advocating for MoU's argue they are better than no agreement at all.³⁵⁷ However, MoU's have not been able to fulfill their promises. Even the

³⁵⁵ Piyasiri Wickramasekara, "Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review" (2015) SSRN Journal, online: <<http://www.ssrn.com/abstract=2636289>>.

³⁵⁶ Piyasiri Wickramasekara, "Migration Regimes and Their Linkages for Family Unity, Integrity and Development" *The Palgrave Handbook of International Labour Migration* 35.

³⁵⁷ Piyasiri Wickramasekara, "Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers Through Bilateral Agreements and Memoranda of Understanding" (2012) SSRN Journal, online: <<http://www.ssrn.com/abstract=2032136>>. At p 32

Philippines that has a more comprehensive migration policy than Pakistan, has been unsuccessful in negotiating more robust protection of its emigrants through its MoU with the UAE. A recent paper by migration scholars Rachel Silvey and Rhacel Parrenas note that MoU signed between the Philippines and the UAE features only "minimal standards of employment(e.g., eight hours of work per day, one rest day per week)." And even these standards have "not been consistently recognized by employers in the UAE.." In other words, it does not ensure the full range of supportive capabilities. The MoU signed between the Philippines, and the UAE has been criticized for only reiterating basic rights of migrant workers, such as information on pay and working conditions. It also gives preeminent status to Arabic in dispute resolution, which is overseen by the UAE Ministry of Labour.³⁵⁸ In other words, the MoU does not only reiterate basic rights, but it can further reinforce inadequate access to justice. Furthermore, a report prepared for the ILO's Labour Migration Branch by Piyasiri Wickramasekara reviewed 144 bilateral agreements and noted that agreements on South-South migration are weaker than South-North migration. Gulf Cooperation Council countries' bilateral agreements, in particular, are seen as mere diplomatic tools and less guided by international instruments' provisions. Wickramasekara argues that "these agreements have been superimposed on long-standing migration flows, with seemingly minimum changes to existing practices."³⁵⁹ Another study of MoU's signed by India concluded that "the MoUs have not been successful in addressing the protection and exploitation of low skilled workers from India in the countries concerned." With little reference to international labour and human rights standards and limited implementation

³⁵⁸ Nathan R Blank, "Making Migration Policy: Reflections on the Philippines' Bilateral Labor Agreements: Reflections on the Philippines' Bilateral Labor Agreements" (2011) 3:2 Asian Politics & Policy 185–205.

³⁵⁹ Wickramasekara, "Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers", *supra* note 355. At p 18

and without addressing the power imbalance between receiving and sending countries, bilateral agreements provide limited protection, if any, to movement or supportive capabilities.

2.9 Switching to Softer Normative Mechanisms

The lack of political will to afford rights to migrant workers has led the ILO to change its approach towards a greater reliance on 'soft law' measures. This includes ILO Multilateral Framework on Labour Migration 2006, which stipulates non-binding principles for a rights-based approach, including labour standards and other guidance.³⁶⁰ For the past 20 years, the ILO has also been implementing its "Decent Work" Agenda. Literature and policies on labour migration are replete with accounts on decent work, which was welcomed by Sen.³⁶¹ Sen, who worked with the ILO in the 1970s, applauded the initiative towards decent work for its comprehensive coverage (inclusion of all workers) and goals.³⁶²

The concept of decent work was launched in 1999, when the Director-General of the International Labor Conference articulated it as a new platform for the ILO.³⁶³ Its four pillars were first articulated as fundamental principles and rights at work and international labour standards; employment and income opportunities; social protection and social security; and social dialogue and tripartism.³⁶⁴ Vosko calls it "an effort at mediating tensions inside the ILO

³⁶⁰ Olney & Cholewinski, *supra* note 254. 268

³⁶¹ Amartya Sen, "Work and rights" (2000) 139:2 International Labour Review 119–128.

³⁶² Ibid.

³⁶³ *Decent Work: Report of the Director General of the International Labour Organization International Labour Conference*, ILC 87th Session, (Geneva, International Labour Organization, 1999). Online <<https://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm>>

³⁶⁴ Judy Fudge, "Blurring Legal Boundaries: Regulating for Decent Work" 26.; Dharam Ghai, "Decent work: Concept and indicators" (2003) 142:2 International Labour Review 113–145.

between global capital, member states, trade unions and NGOs"³⁶⁵ During its major organization review, ILO decided to broaden its constituency to include people who were often excluded traditionally for being in the periphery or outside formal systems of labour and social protections. Decent Work's goal is to promote decent and productive work in conditions of freedom, equity, security, and human dignity. These objectives are meant for all workers regardless of whether they are in formal and informal economies.³⁶⁶ The breadth of the decent work agenda, its focus on employment and income opportunities as well social protection and centring of human dignity, therefore, is complimentary to a capabilities-based perspective.

Regionally, the Association of Southeast Asian Nations (ASEAN) adopted the Declaration on the Protection and Promotion of the Rights of Migrant Workers in 1997. Not only is this agreement non-binding, but a Committee was set to oversee the implementation of the Declaration only ten years later. The ASEAN Forum on Migrant Labour, a tripartite platform where governments, workers, employers, and civil society organizations participate in discussing and building consensus on the protection of migrant workers' issues, was established in 2008. In addition, given the importance of the migration corridor between Asia, the Colombo Process (Regional Consultative Process on Overseas Employment and Contractual Labour for Countries of Origin in Asia) and the Abu Dhabi Dialogue were set as two intergovernmental consultative processes to address the labour migration between Asia and the GCC in 2003 and 2008.³⁶⁷ The

³⁶⁵ Leah F Vosko, "Decent Work': The Shifting Role of the ILO and the Struggle for Global Social Justice" (2002) 2:1 Global Social Policy 19–46.

³⁶⁶ *Decent work and the informal economy*, Working Paper, by Anne Trebilcock, www.econstor.eu, Working Paper 2005/04 (WIDER Discussion Paper, 2005).

³⁶⁷ The Colombo Process has 12 Member States: Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand and Vietnam. The eight Observer States include Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia, United Arab Emirates. The IOM acts as its Secretariat and offers an non-binding environment countries of origin engage in collective bargaining. For more see International Organization for Migration, "Regional Consultative Process on Overseas Employment and Contractual Labour for Countries of Origin in Asia (Colombo Process)", (2

ILO has also established a tripartite process which started with a tripartite interregional experts' meeting in Nepal in 2014.³⁶⁸ In December 2016, the Bali Declaration was also adopted by ILO member States from Asia and the Middle East, which emphasizes the need to "[redress] employer-worker relationships that impede workers' freedom of movement, their right to terminate employment or change employers, taking into account any contractual obligations that may apply, and their right to return freely to their countries of origin."³⁶⁹

Another non-binding, state-led process that is relevant is the Global Forum on Migration and Development (GFMD), which was established in 2007. It is an informal, non-binding, voluntary, government-led process that was proposed during the first High-Level Dialogue on International Migration and Development (HLD) held on 14-15 September 2006. It includes stakeholders such as civil society organizations, trade unions, the private sector, migrants and diaspora representatives, and local government authorities. Its objectives are to informally discuss the migration-development nexus, share good practices, identity information, policy and institution gaps, establish partnerships and cooperation, and structure the international priorities and agenda.

February 2015), online: *International Organization for Migration* <<https://www.iom.int/regional-consultative-process-overseas-employment-and-contractual-labour-countries-origin-asia>>. The Abu Dhabi Dialogue has the 12 member states of the Colombo Process; and six countries of destination: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, as well as Malaysia. Like Colombo Process it serves as a platform for state-led non-binding voluntary regional consultative process. Both are known as “inter-State Consultation Mechanisms” that are “state-led, restricted, ongoing information-sharing and policy dialogue forums” For more see Abu Dhabi Dialogue, “About Abu Dhabi Dialogue”, online: *Abu Dhabi Dialogue* <<http://abudhabidialogue.org.ae/about-abu-dhabi-dialogue>>.

³⁶⁸ International labour conference 2016 general survey concerning migrant workers at page 25 ILO: Realizing a fair migration agenda: Labour flows between Asia and the Arab States, op. cit., 2014.

³⁶⁹ The Bali Declaration Adopted at the 16th Asia and the Pacific Regional Meeting in Bali, Indonesia, on 9 December 2016 INTERNATIONAL LABOUR ORGANIZATION 16th Asia and the Pacific Regional Meeting Bali, Indonesia, 6–9 December 2016 APRM.16/D.6 Available online at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_537445.pdf

The current Office-in-Chair of the GDMD is the UAE which hosted the global summit in January 2021 under the theme, "The Future of Human Mobility: Innovative Partnerships for Sustainable Development."³⁷⁰ Nasser Bin Thani Al Hamli, Minister of Human Resources and Emiratization, stated that "We are a tolerant, open nation, and we are proud of our role providing opportunities to millions of people from around the world. Human mobility is deeply entwined with our success as a nation, with foreign-born residents contributing to our development in every area, from infrastructure to business, and from sports to art and culture." Both media coverage from the UAE and The Ministry of Human Resources and Emiratization framed the hosting as an opportunity to "[cement] the UAE's reputation as a global leader in promoting sound migration governance."³⁷¹ "Our agenda as Chair" Nasser Bin Thani Al Hamli informs "will feature topics that are new to the GFMD, including the impact of the future of work on migration, and the programme will include six regional events over the course of this year."³⁷² While there was expected to be significant cross-over between this and the Expo 2020. Due to Covid-19, the GFMD was held online and the EXPO2020 was delayed to October 2021-March 2022.³⁷³

2.10 Global Compact for Safe, Orderly, and Regular Migration

³⁷⁰ "Global Forum on Migration and Development United Arab Emirates Summit", online: *The International Catholic Migration Commission (ICMC)* <<https://www.icmc.net/calendar/global-forum-on-migration-and-development-dubai-summit/>>.

³⁷¹ WAM, "UAE leading in sound migration governance", *Gulf Today* (25 January 2020), online: <<https://www.gulftoday.ae/news/2020/01/25/uae-leader-in-sound-migration-governance>>.

³⁷² Ibid.

³⁷³ "What is Expo 2020 Dubai?", online: *Expo 2020* <<https://www.expo2020dubai.com/en/discover/about>>.

This switch to a more soft law approach has been instrumental in building confidence among states and creating a routine of intergovernmental dialogue within the UN. This culminated with the adoption of the New York Declaration for Refugees and Migrants⁴⁸ in 2016, which highlighted the need for a comprehensive approach to migration. Not only did the IOM become a specialized UN agency in 2016 as "the global lead agency on migration,"³⁷⁴ but the 2016 NY Declaration also laid the foundation for the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees in 2018.³⁷⁵

As Compacts – a new form of UN agreement that is non-binding – these agreements are in the domain of soft law. They lay out goals and policy recommendations to promote more effective cooperation on migrations and the protection of refugees, aiming to promote governments to create more pathways towards legal labour migration and provide refugees "complimentary pathways" to protection through labour mobility.³⁷⁶

Rooted in the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda, the GCM was considered a landmark document by its proponents for trying to fill a gap by putting forward international institutional norms that would deal with migration holistically and comprehensively. While the GCM does not formally add any new obligations and reiterates pre-existing international human rights obligations, it can be seen as an instrument that seeks to consolidate and clarify these obligations.³⁷⁷ The GCM is considered significant for being the

³⁷⁴ Cooperation between the United Nations and the International Organization for Migration Agreement concerning the Relationship between the United Nations and the International Organization for Migration, UNGA, 70th Sess, A/70/976 (2016) Art 2.1

³⁷⁵ Chetail, *supra* note 215.

³⁷⁶ Philip Martin & Martin Ruhs, "Labour Market Realism and the Global Compacts on Migration and Refugees" (2019) 57:6 *International Migration* 80–90.

³⁷⁷ Michele Klein Solomon & Suzanne Sheldon, "The Global Compact for Migration: From the Sustainable Development Goals to a Comprehensive Agreement on Safe, Orderly and Regular Migration" (2019) 30:4 *International Journal of Refugee Law* 584–590.

first internationally negotiated agreement to cover such a wide range of migration issues, offering what it calls a "360-degree vision of international migration".³⁷⁸ GCM lays out 23 objectives and a list of best practices that states can draw from.

Proponents argue that the GCM's text shows broad agreement on the need to respect the human rights of all migrants regardless of their status. Debates on regular and irregular status distinctions were heated in the negotiations; the resulting document affirms the importance of fulfilling the human rights of all migrants regardless of their migration status and "across all stages of the migration cycle."³⁷⁹ It includes migrants regardless of their status explicitly in a number of actions: providing newly arrived migrants with information and legal guidance (19.d) and establishing policies to provide migrants in a situation of vulnerability with necessary support (23.b). Arguably most explicitly, migrants, regardless of their status, are included in the objective regarding access to basic services. Here the best practice to promote education to migrant children and youth and facilitate lifelong learning opportunities is significant with regards to supportive capabilities (31.f). The GCM includes other best practices that would prevent migrants from falling into an irregular status (23.h) and facilitate access to individual assessments that would lead to a regular status (23.i). Such a preventative approach is significant to ensuring migrant workers' movement capabilities. More recently, Kapiskewski points that GCM's Objective 6, which promotes developing recruitment processes that "allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden," could help loosen the employee-*kafeel* relationship (which is further detailed in chapter

³⁷⁸ GCM paragraph 11.

³⁷⁹ GCM paragraph 4; Klein Solomon & Sheldon, "The Global Compact for Migration", *supra* note 377.

3). Furthermore, its provisions on basic services such as healthcare and education, regardless of status, are particularly relevant in the covid-19 pandemic context.³⁸⁰

Therefore, for many proponents, GCM's objectives and best practices may suggest that there is a broader coverage of a range of movement and supportive capabilities through more demanding objectives to include, for instance, "*full* inclusion and social cohesion"³⁸¹ and "*dignified* return and readmission."³⁸² However, the level of detail that is used to describe objective 20 on promoting the transfer of remittances is contrasted by objectives that are vaguely worded, such as objective six on facilitating fair and ethical recruitment and decent work.³⁸³ Unsurprisingly, rather than favouring worse off agents, the GCM's considerations on facilitating labour mobility are couched within "national priorities, local market needs, and skills supply."

Furthermore, the GCM has been criticized on other fronts. Firstly, although most MENA countries, including UAE, signed the GCM, critics argue that since it exists in the domain of soft law, its potential to address the challenges it seeks to do is curtailed by the existing legal framework. It does not formally add to existing human rights obligations and mostly appeals to the goodwill of states.³⁸⁴ While it has the potential to lead to norm development, its role is limited to providing context for interpreting other legally binding instruments. Secondly, GCM's recommendations ignore the fact that most government regimes require employers to try recruiting local workers before being able to hire migrant workers.³⁸⁵ Further, while it has

³⁸⁰ Ryszard Cholewinski, "The ILO and the Global Compact for Safe, Orderly and Regular Migration: labour migration, decent work and implementation of the Compact with specific reference to the Arab states region" (2020) 16:3 International Journal of Law in Context 304–320.

³⁸¹ GCM Objective 16

³⁸² GCM Objective 21

³⁸³ GCM Objective 20; GCM Objective 6

³⁸⁴ Samuel Berhanu Woldemariam, Amy Maguire & Jason von Meding, "Forced Human Displacement, the Third World and International Law: A Twail Perspective" (2019) 20:1 Melb J Int'l L 248–276.

³⁸⁵ Binod Khadria et al, "The UN Global Compact for Safe, Orderly and Regular Migration: Its Impact on Asia" (2019) 57:6 International Migration 286–302.

provisions on social-security rights, these are less relevant in UAE and GCC's context where social-security administrations covering both nationals and migrants are insufficient.³⁸⁶

Thirdly, GCM's implementation is dependent on partnerships with non-state actors and monitoring against human rights standards. Lastly, although 194 states voted in favour of the GCM, it has had to submit to political will and tolerate some conditions of vulnerability like the previously mentioned binding instruments. For instance, it does not recommend ending the practice of tying workers to one employer, nor does it rule out using migration detention centers. These have significant implications on migrants workers' opportunities to switch employers and move freely. It can be argued, therefore, that even when softer mechanisms are opted, receiving states lack the political will to go beyond pre-existing obligations, which insufficiently protect movement and supportive capabilities.³⁸⁷

2.10 Conventions on Trafficked and Smuggled Migrants: Increased Criminalization and Securitization of Migration

Compared to international agreements and norms on migrant workers, Conventions regarding human smuggling and human trafficking are neither soft nor were they difficult to ratify. They reflect a trend towards increased criminalization and securitization of migration and states' reluctance to protect smuggled and trafficked migrants' movement and supportive capabilities. The Palermo Protocols³⁸⁸ came into force, as Dauvergne remarks, "at lightning

³⁸⁶ Cholewinski, "The ILO and the Global Compact for Safe, Orderly and Regular Migration", *supra* note 380.

³⁸⁷ Elspeth Guild, Tugba Basaran & Kathryn Allinson, "From Zero to Hero? An analysis of the human rights protections within the Global Compact for Safe, Orderly and Regular Migration (GCM)" (2019) 57:6 International Migration 43–59.

³⁸⁸ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 2 Dec 2000, UNTS 2237 (entered into force 25 December 2003) [*Trafficking Protocol*]; *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*,

speed" between 2003-2005. These instruments of criminal law supplement the Convention against Transnational Organized Crime and are widely ratified by states, including the United Arab Emirates.³⁸⁹

The Palermo Protocols have a control-oriented approach that assumes the smuggling and trafficking of migrants can be prevented by tighter border controls. Critics such as Anne Gallagher observe that restrictive immigration laws are, in fact, "more likely to fuel organized, irregular migration," which can include smuggling and trafficking.³⁹⁰ Instead of including provisions that would promote safe, legal pathways to migrate, the Palermo Protocols require States Parties to criminalize trafficking and smuggling of migrants according to the Protocols' definitions. These definitions are criticized for being too vague, making it difficult to discern the Protocols' scope and distinguish between smuggling and trafficking. This vagueness affords states considerable discretion in determining how to apply these rules in their domestic contexts.³⁹¹

For instance, while the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), provides a definition of "trafficking in persons," none of the key terms are defined. The fact that the Trafficking

supplementing the United Nations Convention against Transnational Organized Crime, 31 May 2001, 39574 UNTS 2326 (p.208), (entered into force 3 July 2005) [*Firearms Protocol*]; *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, 39574 UNTS 2241 (p.480) (entered into force) [*Smuggling Protocol*]

³⁸⁹ Dauvergne, *supra* note 257.

³⁹⁰ Anne Gallagher "Trafficking, smuggling and human rights: tricks and treaties" *Forced Migration Review* 25 at p 28

³⁹¹ While the *Trafficking Protocol* defines "trafficking in persons", none of the key terms are defined which makes it difficult to discern the scope. The fact that the Trafficking Protocol's definition refers to some forms of exploitation "at a minimum" allows states to add other forms of exploitation in their domestic laws. Similarly, the *Smuggling Protocol* defines "smuggling of migrants" vaguely, leaving "procurement" undefined.

Protocol's definition refers to some forms of exploitation "at a minimum" allows states to add other forms of exploitation in their domestic laws. Similarly, the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines "smuggling of migrants" vaguely, leaving the notion of "procurement" undefined.³⁹² While smuggling and trafficking are separate legal offences, the Palermo Protocols' vagueness around the distinction while simultaneously asserting differentiation between smuggled and trafficked migrants has significant implications. Not only does the distinction require an inquiry of the perpetrators' intentions, but this blurring has been criticized for being unhelpful and even dangerous. Given trafficked persons are conceived as victims while smuggled migrants are seen as complicit, the latter is considered less deserving of protection. Pardis Mahdavi and Christine Sargent further note how both international and domestic rhetoric around human trafficking focuses on sex trafficking in "specifically gendered, raced, and classed ways," often rarely viewing men as vulnerable to trafficking.³⁹³

In addition, while the Palermo Protocols provisions on criminalizing trafficking and smuggling are strong, its framework of protection of smuggled and trafficked migrants is weak. Article 16 that pertains to these protection uses vague and permissive language, which does not go beyond the protection that already exists in human rights law. It does not, in other words, stipulate specific provisions that could protect smuggled and trafficked migrants' supportive capabilities.

³⁹² Chetail, *supra* note 215.

³⁹³ Pardis Mahdavi & Christine Sargent, "Questioning the Discursive Construction of Trafficking and Forced Labor in the United Arab Emirates" (2011) 7:3 Journal of Middle East Women's Studies 6–35.

Moreover, while trafficked persons are non-criminalized, the Protocols refrain from explicitly referring to immigration-related offences. This further elucidates how the criminalization of smuggling and trafficking and the tightening of immigration controls are seen as complimentary. This strengthens states' prerogative to determine who can enter their territories and limiting migrants' movement capabilities.³⁹⁴

2.11 What can this Fragmentation, Differentiation, and Softness mean?

"So everything depends on what category you entered through. So, for instance (points to other returning migrant worker interviewee) the category that he was in, he couldn't apply to another job."

"Another job? I couldn't even apply for a driving license."
Pakistani Returning Migrant Workers, Karachi

As shown above, the international legal regime that regulates migrant workers has three significant features: 1) a plurality of sources, with a resulting fragmentation, 2) an across-the-board differentiation between workers according to their citizenship status, and 3) a trend towards softer normative mechanisms.

International human rights law deals mostly with movement capabilities where the right to enter, the corollary to the right to leave, is not protected. The ILO has a complex web of machinery that deals most significantly with protecting migrant workers' supportive capabilities through labour standards, the Decent Work Agenda, as well as other soft law instruments. ILO's limiting of certain rights to workers in a regular situation³⁹⁵ shows that it is willing to allow states to determine the right to enter. In other words, it does not fully endorse movement capabilities. In contrast to conventions on human smuggling and human trafficking, the trend has

³⁹⁴ Chetail, *supra* note 215.

³⁹⁵ With only the exception of terms and conditions of work "arising out of past employment",

been to adopt softer mechanisms such as the ICRMW. Although these have potential, they still reflect receiving states lack the political will to meaningfully go beyond pre-existing obligations, which insufficiently protect movement and supportive capabilities.³⁹⁶

The plurality in sources of norms results in some overlapping; for instance, the ICRMW reiterates a number of provisions in international human rights instruments which are also reflected in a number of ILO Conventions. This overlapping may serve as further reinforcement and may help solidify some migrant workers' justice claims. However, the reservation of almost all specialized regimes' most liberal provisions to migrant workers in regularized situations creates a hierarchy of statuses. This has a significant impact on migrant workers' movement and supportive capabilities. The overlapping also reinforces the differentiation that multiple regimes create, reinforcing the exclusion of migrants in an irregular situation or who are not authorized. The multiple sources of law (be it the different regimes within international law or transnational, regional, bilateral, soft, and hard law mechanisms) assist states in furthering their prerogative to determine rules on labour migration, even in an allegedly post-Westphalian community.³⁹⁷

Echoing Freedland and Costello, the discussion above shows how this reinforced differentiation and fragmentation creates multiple statuses. A precarious, 'ultra-flexible' workforce is created, which fractures the application of domestic labour law. Freedland and Costello further note that this fragmentation confines migrants' choices in a way that leads to clustering in certain jobs and statuses such as self-employment and temporary employment. This increases the employers' control of labour supply and offloads the responsibility of monitoring migrant workers' status from states to the employer. This kind of "sectoral divisions and

³⁹⁶ Guild, Basaran & Allinson, "From Zero to Hero?", *supra* note 387.

³⁹⁷ Ayelet Shachar et al, *The shifting border: Legal cartographies of migration and mobility: Ayelet Shachar in dialogue*, 1st ed (Manchester University Press, 2020).

segmentation" restricts migrant workers' supportive and movement capabilities by limiting them to their sector and lower-status segments. The literature has traditionally called this unfree labour³⁹⁸ and pointed out that these state-driven activities "aim to sustain the alienage of migrants, supervise their stay, and fulfil market demands."³⁹⁹

For Marxists, unfree labour is a useful analytic tool that refers to relations of production where direct or legal compulsions are used to exploit labour power, while feminist political economists prefer a continuum of unfreedom with differing degrees and modalities.⁴⁰⁰ The concept originates from Marx's idea that the working class was a result of peasants being dispossessed from the land. Free of the land and free of the demands by their superiors, they could sell their labour power to different employers. However, as Marx emphasized, the tension in capitalist social relations is that these workers are only free to the extent they can sell their labour as a commodity and unfree to the extent that they are forced to do so to sustain themselves.⁴⁰¹ The international legal regime is one such modality that differentiates freedom afforded to workers and widens the continuum. International migration law's creation of multiple statuses is further solidified in domestic contexts contributing to this continuum. States, in fact, play a significant role in producing unfreedom.⁴⁰² The multiples statuses, more importantly, undermine solidarity and institutions like trade unions. Borrowing from Razia Sharif's work on

³⁹⁸ Robert Miles, *Capitalism and Unfree Labour: Anomaly or Necessity?* (London ; New York : New York, NY: Tavistock Books, 1989).

³⁹⁹ Einat Albin "The Sectoral Regulatory Regime: When Work Migration Controls and the Sectorally Differentiated Labour Market Meet" in Costello, Freedland, & Oxford Scholarship Online - York University, *supra* note 42.

⁴⁰⁰ Adrian A Smith, "Temporary Labour Migration and the 'Ceremony of Innocence' of Postwar Labour Law: Confronting 'the South of the North'" (2018) 33:2 Canadian Journal of Law & Society / La Revue Canadienne Droit et Société 261–277.

⁴⁰¹ Judy Fudge, "Slavery and Unfree Labour: The Politics of Naming, Framing, and Blaming" (2018) 82:1 Labour / Le Travail 227–244.

⁴⁰² **Aziz Choudry & Adrian A Smith, *Unfree Labour?: Struggles of Migrant and Immigrant Workers in Canada* (PM Press, 2016) Google-Books-ID: O9enDAAAQBAJ.**

what she calls "collective agency capability,"⁴⁰³ this segmentation breaks the links that could condense and undermines resistance from crystallizing around a shared identity. This is exemplified by the uneasy relationship trade unions have had historically with migrant workers.

The fact that some of these protections often hinge on lawful residence within the territories also highlights the deportability of migrant workers. The growing literature on deportability shows that this deportation is, as Nathalie Peutz and Nicholas De Genova write, "the expression of a complex sociopolitical regime that manifests and engenders dominant notions of sovereignty, citizenship, public health, national identity, cultural homogeneity, racial purity, and class privilege."⁴⁰⁴ This practice, they add, must be seen as a unified global response to a mobile world where states compete with this perceived freedom of movement by reasserting "spectral sovereignty vis-a-vis a volatile world of restless bodies whose human impulses, needs, desires, and capabilities seem to ever-increasingly surpass and defy the capacities of the nation-state to define their subjectivities, command their loyalties, and contain their energies."⁴⁰⁵ Therefore, painting human mobility as illegal is one way that states can regulate both movement and supportive capabilities.⁴⁰⁶ The trend towards fusing criminal law with immigration law in domestic contexts is a case in point as reflected in states' readiness to ratify Conventions on smuggling and trafficking.

The fact that both the human rights and labour law regimes reserve the more liberal provisions, particularly those related to social protection (and that would impact supportive

⁴⁰³ Flavio Comim, Shailaja Fennell & P B Anand, *New frontiers of the capability approach* (Cambridge, United Kingdom: Cambridge University Press, 2018).at p167.

⁴⁰⁴ Nicholas De Genova & Nathalie Mae Peutz, *The deportation regime: sovereignty, space, and the freedom of movement* (Durham [N.C.]: Duke University Press, 2010). at p 2

⁴⁰⁵ *Ibid.*at p. 2

⁴⁰⁶ Nicholas De Genova & Nathalie Mae Peutz, *The deportation regime: sovereignty, space, and the freedom of movement* (Durham, NC: Duke University Press, 2010). at p 2-3

capabilities) to only migrant workers in a "regular situation" is significant in the context of the GCC where employers tend to accept more workers without securing jobs. The protection of movement capabilities is limited by differentiation according to status and without the right to enter. The fact that the more liberal provisions that would enhance supportive capabilities are consistently reserved only to authorized workers limits the overall protection of supportive capabilities.

Indeed, as Dauvregne forcefully argues, migration law has transformed into the "last bastion of sovereignty." This means that in many ways, there is considerable deference given to states and how they share responsibilities with employers on regulating migrant workers. The following chapter will, therefore, outline how UAE's *kafala* system further restricts migrant workers' movement and supportive capabilities.

CHAPTER 3
Beyond Kafala and towards capabilities?:
Labor Migration Regime in the UAE

*“They fight death and all its elements
While smiling*

*O how I suffer from the long nights
Witnessing those motherless divers
Every time a month passes by, another follows
Until the eyes grow old.”⁴⁰⁷*

- Murshild bin Sa'd al-Bitali

“...these divers number some thousands of ruffians and semi-savages from a dozen different countries without any-families present to restrain them; the danger of leniency is at once apparent...”

- Political Agent Bahrain to Political Resident Bushire⁴⁰⁸

The pearling and slaving industries in what is today the United Arab Emirates (UAE) were connected; the strenuous nature of pearl-diving created a demand for slaves.⁴⁰⁹ Pearl-diving, as Ong writes, “was one of the most harrowing occupations ever practiced. The men dived without protection and with the most primitive gear.” While she cautions against drawing an exact comparison between the pearling industry’s use of indentured labour and the contemporary *kafala* system, she notes the similarities. Both systems tie worker to the employer through what, in theory, is a mutual understanding: the employer is to appropriate the employee’s labour in exchange for providing for their needs.

⁴⁰⁷ Nasser Al-Tae'e's translation of Murshild bin Sa'd al-Bitali's *fijiri* poetry. Fijiri refers to musical and vocal practices that emerged from the pearl divers in the Gulf. Andrei Zailer, “Fijiri: Collective Work Songs of the Gulf Pearl Divers”, online: *East East, Cultural Creative Agency* <https://easteast.world/en/posts/69?fbclid=IwAR3oVbJIQj6O1_H95RRbOCM36OB9ctdZn21OXr5ZyOsMf4KiYtLz-UaCmIM>.

⁴⁰⁸ Ian J Seccombe, “Labour migration to the Arabian Gulf: evolution and characteristics 1920–1950” (1983) 10:1 British Society for Middle Eastern Studies Bulletin 3–20.

⁴⁰⁹ *Ibid.*

The pearling industry peaked between the 1870s and 1920s, reconstructed by the British colonials who relied on Banyan merchants, set the price of the pearls and sold them within the Indian Ocean's commercial system.⁴¹⁰ In the late 1920s, however, pearling began to decline due to various factors, including a competing industry in Japan and overfishing of pearl banks. Tensions were particularly high when a riot in May 1932 killed two divers and wounded five divers in Manama, Bahrain.⁴¹¹ One thousand five hundred divers attacked a local police station in response, demanding to free the pearl divers who led the strike. However, before the “danger of leniency”⁴¹² could become a greater threat, a decline in the price of pearls due to the Great Depression led to the industry's eventual demise. The introductory quotes reflect the hardships faced by the pearl-divers in contrast to how the British perceived them – the persistent anxieties of the ruling elite over labour and natural resources. This chapter takes a closer look at similar features that have shaped the UAE's labour migration regime today. It aims to answer how and for whom UAE's labour migration regime enhances or inhibits movement and supportive capabilities?

The previous Chapter argued that the international legal regime regulating migrant workers is characterized by plurality, an across-the-board differentiation⁴¹³ based on citizenship status and a shift to softer norms that particularly constrain migrants in an irregular situation. Given that states try to hold on to their prerogative to determine status and the absence of the right to enter in international law, states have significant discretion to determine migrant workers' movement and substantive capabilities. This chapter seeks to discern how the UAE

⁴¹⁰ Aqil Kazim, “Pearl industry in the UAE region in 1869-1938: Its construction, reproduction, and decline” (2018) 18 RUDN Journal of Sociology 452–469.

⁴¹¹ Seccombe, “Labour migration to the Arabian Gulf”, *supra* note 408.

⁴¹² *Ibid.*

⁴¹³ Costello, Freedland, & Oxford Scholarship Online - York University, *supra* note 42.

uses this prerogative to govern labour migration and distributes movement and supportive capabilities to migrant workers.

The discussion begins with a summary of the historical context that the *kafala* system is situated in, highlighting the role of the British influence on how certain migrant groups were excluded while others were preferred primarily influenced by changing notions of threats to national security. Against this backdrop, the Chapter will analyze the labour migration regime that regulates migrant workers: the *kafala* or sponsorship system, complemented by stringent citizenship rules, Emiratization and informal hierarchies. These formal and informal rules give significant discretion to the *kafeel* and other non-state actors, significantly inhibiting migrant workers' movement and supportive capabilities, particularly "low-skilled" South Asian migrant workers in the construction sector. This analysis will be followed by a discussion of how recent reforms have been unable to address this dynamic. The latter part of the Chapter will analyze the ways migrant workers have been able to circumvent the *kafala* system. However, here, too, access to movement and supportive capabilities is variegated among migrant communities where more formal legal routes are reserved for a narrow group of migrant workers while the majority are left to consider routes that put them at risk of irregularity. It is argued, therefore, that the *kafala* system has a propensity to create irregularity and precarity.

3.1 Preliminary Notes: variegated ways that movement and supportive capabilities are protected or undermined

The literature on migrant workers in the Gulf has grown in the last 15-20 years across disciplines ranging from Anthropology, Middle East Studies, International Studies, Urban Studies, Sociology, Public Policy, Political Science, Economics and Architecture. Research in the 1990s focused on urban development, ethnic diversity, globalization, identity and belonging,

citizenship and the impact of migration in the Gulf (often in terms of remittances).⁴¹⁴ More recent research has featured more in-depth historical and ethnographic work that challenges the exceptionalism of its predecessor. Following Neha Vora, Natalie Koch and Noora Lori, this discussion seeks to tackle this exceptionalism and challenges binaries such as citizen/non-citizen, inclusive/exclusive and democratic/autocratic.⁴¹⁵ Vora and Koch also observe that the *kafala* has become “black boxed” in a way that reinforces Gulf exceptionalism.⁴¹⁶ This fixation on the *kafala* system reifies the citizen/non-citizen binary in a way “presumes exclusion and economically-motivated migration as the centre of non-citizen lives in the Gulf, fixing in place a prototypical Gulf migrant (the South Asian construction worker) and his always-already condition of exploitation.”⁴¹⁷ In other words, it limits scholars from critically examining the varied ways the *kafala* system is practiced and shapes migrant workers’ lived experiences. It presumes exclusion which comes to define migrants and furthers Gulf exceptionalism in a way that does not allow scholars to ask critical questions.⁴¹⁸

By focusing on both how the migration governance in the UAE excludes certain migrant workers and includes others, we are able to see the variegated ways that movement and supportive capabilities are protected or undermined. Accordingly, the following discussion will analyze the components of the *kafala* system and other norms that regulate migrant workers in the UAE. Rather than treating regimes as either inclusive or exclusive, following Lori, this

⁴¹⁴ Madawi Al-Rasheed, *Transnational Connections and the Arab Gulf* (Routledge, 2004).

⁴¹⁵ Neha Vora & Natalie Koch, “Everyday Inclusions: Rethinking Ethnocracy, *Kafala*, and Belonging in the Arabian Peninsula: Everyday Inclusions” (2015) 15:3 *Stud Ethn Nation* 540–552.; Noora Lori, *Offshore Citizens* (Cambridge University Press, 2019) Google-Books-ID: 0SmhDwAAQBAJ.

⁴¹⁶ Neha Vora & Natalie Koch, “Everyday Inclusions: Rethinking Ethnocracy, *Kafala*, and Belonging in the Arabian Peninsula” (2015) 15:3 *Studies in Ethnicity and Nationalism* 540–552.

⁴¹⁷ Vora Neha & Koch Natalie, “Everyday Inclusions: Rethinking Ethnocracy, *Kafala*, and Belonging in the Arabian Peninsula” (2015) 15:3 *Studies in Ethnicity and Nationalism* 540–552.

⁴¹⁸ Vora & Koch, “Everyday Inclusions”, *supra* note 415.

discussion will consider regimes as existing on an inclusive/exclusive spectrum whereby policies can change over time for different groups according to shifting political prerogatives, views of national security and which groups are more likely to contribute to the country's economy.⁴¹⁹

As migration scholars have highlighted, contemporary migration has historical antecedents.⁴²⁰ Mainstream accounts depict UAE's story as a "rag to riches" tale with three main characters: Arab "tribes," the British colonists, and the discovery of oil. These accounts tend to link all migration and the accompanying demographic changes to the oil boom in the 1970s.⁴²¹ However, recent scholarship tells a more complex story of migration that dispels the myth that an ethnically homogenous, primordial Arab community existed before the British defeated the tribal chiefs (*shayukh*) in the early nineteenth century and the discovery of oil.⁴²² Some historical background will help contextualize the current labour migration regime in the UAE by showing how South Asian migration to the UAE predates the discovery of oil and the British influence on rules governing migrants.

3.2 Geographical and Historical background: the role of British Presence, pluralism, migration trends and oil companies

⁴¹⁹ Lori, *supra* note 415.; Manal A Jamal, "The 'Tiering' of Citizenship and Residency and the 'Hierarchization' of Migrant Communities: The United Arab Emirates in Historical Context" (2015) 49:3 International Migration Review 601–632.; Omar Hesham AlShehabi, "Policing labour in empire: the modern origins of the Kafala sponsorship system in the Gulf Arab States" (2019) 0:0 British Journal of Middle Eastern Studies 1–20.; Noora Lori, "National Security and the Management of Migrant Labor: A Case Study of the United Arab Emirates" (2011) 20:3–4 Asian and Pacific Migration Journal 315–337.

⁴²⁰ Karen Fog Olwig & Ninna Nyberg Sørensen, "Mobile livelihoods" 20.; *Ibid*.

⁴²¹ Lori, *supra* note 415.

⁴²² See for e.g. Ahmad, Attiya. 2012. "Beyond Labor: Foreign Residents in the Persian Gulf" in Mehran Kamrava & Zahra Babar, eds, *Migrant labour in the Persian Gulf* (London: Hurst, 2012).; Ashin Das Gupta et al, *India and the Indian Ocean world : trade and politics* (New Delhi, India : Oxford University Press, 2004).

The UAE is a constitutional federation located in the Southeast of the Arabian Peninsula, bordering Oman, Saudi Arabia and Qatar. Formed in 1971, it consists of seven Emirates: Abu Dhabi (the capital), Dubai, Sharjah, Ajman, Fujairah, Um Al Quwain and Ras Al Khaimah (which joined a year later).⁴²³ Until the eighteenth century, Oman extended from Qatar to the Indian Ocean, including what is today the UAE. Given its location and coasts, it was seen as a way to secure sea routes and aid trade between Europe and Asia; in the early sixteenth century, Portuguese colonists secured access through military forts, torn down by the British the seventeenth century. The British, especially after the East India Company in 1600, dominated the region despite attempts by two major tribal coalitions: the Qawasim and the Bani Yas federation.⁴²⁴ The British succeeded in crushing their rebellion and forced the *shayukh* to adopt the General Treaty of Peace in 1821. A series of other treaties culminated in a truce in 1853, giving the name the Trucial States. Until their withdrawal in 1971, the British controlled the UAE's foreign relations and granted the *shayukh* autonomy regarding their populations.⁴²⁵

The British presence in the region significantly determined the way migrants or “foreigners” were differentiated from their counterparts. The Foreign Jurisdiction Act of 1890 provided the basis for the British to exercise extra-territorial jurisdiction in lower Asia minor in territories that were in treaty relations with the British. This included the Trucial States, which were considered British Protectorates. The Act restricted local courts' jurisdiction to native inhabitants, while foreigners involved in disputes would be tried in special British independent

⁴²³ Ali Al-Muhairi, “The Development of the UAE Legal System and Unification with the Judicial System” (1996) 11:2 Arab LQ 116–160.

⁴²⁴ Lori, *supra* note 415.

⁴²⁵ Frauke Heard-Bey, *From trucial states to United Arab Emirates: a society in transition* (London: Longman, 1982).

tribunals.⁴²⁶ By creating this separation and drawing boundaries of who would be considered a foreigner, the Act is often considered one of the first instances where an explicit distinction between a citizen and a migrant was made.⁴²⁷

The Trucial States Order in Council of 1946 (The Order) further formalized division of authority between the British and the tribal *shayukh*. The Order permitted the *shayukh* to allow foreigners and grant oil concessions only with British approval and consent. The British, in other words, had control over who could enter or invest in the Trucial States. The Order divided jurisdiction based on political categories and codified British jurisdiction over all “foreigners” who were defined as “any person, or corporation, who is not a British or Trucial States subject.” Individuals could claim to belong within British or local rulers’ jurisdictions strategically.⁴²⁸ Those claiming to fall within British jurisdiction could refuse to appear or accept local rulers’ courts’ judgments. While British subjects could choose to appear in local rulers’ courts on civil matters, they were prohibited from doing so on criminal matters. However, while technically all foreigners fell within the British jurisdiction, little could be done if the rulers of the Trucial states authorized entries and employment through letters of invitation that the immigration officials could not refuse. The legislation applied in British courts was mostly based on Indian codes without much modification. However, as Al-Muhairi observes, there were only a few cases tried by British jurisdiction despite this. Regardless, this legal pluralism or “the coexistence of

⁴²⁶ P A Howell, *The Judicial Committee of the Privy Council 1833-1876: Its Origins, Structure and Development* (Cambridge University Press, 2009). At p 78.

⁴²⁷ Noora Anwar Lori, *Unsettling State: Non-citizens, State Power and Citizenship in the United Arab Emirates* Johns Hopkins University, 2013) [unpublished].

⁴²⁸ Butti Sultan Butti Ali Al-Muhairi, “The Development of the Uae Legal System and Unification With the Judicial System*” (1996) 11:2 Arab Law Quarterly 116–160.

different legal forms”⁴²⁹ contributed to the differential treatment between migrant communities and the indigenous population.

Not only were there British and local rulers’ courts, but the latter at the end of the nineteenth century were also marked by legal pluralism. Before 1960, the Emirati legal system relied on tribal customary law combined with Sharia. Due to the inflow of migrant workers in the territories, each local ruler established their Shari’a courts to settle disputes. While the jurisdiction was based on Shari’a, these courts varied because the judges (who were appointed by rulers) applied procedural rules as they deemed fit. The courts would focus on penal, family, financial and property-related matters. Both Sunni Islamic jurisprudence *fiqh* and Shia jurisprudence were relied on. More importantly, if the parties to the dispute found the decision to not have met their interests, the ruler could refer the case to another Shari’a court in another Emirate. The second judgment would be referred back to the Emirate ruler, but if the parties also rejected this second judgment, the disputes could be referred to other jurisdictions such as Egypt, Mecca, or Qatar.⁴³⁰

Apart from contributing to the pluralism that already featured in UAE’s early legal system, British influence in the UAE also shaped South Asian migration trends in the region. As aforementioned, while early scholarship on the Gulf links migration to the oil boom in the 1970s, recent historians and anthropologists trace networks between the Gulf, South Asia and East Africa that predate the discovery of oil.⁴³¹ As a pearling hub and transshipment point, the UAE

⁴²⁹ Peer Zumbansen, “Can transnational law be critical? Reflections on a contested idea, field and method” in *Research Handbook on Critical Legal Theory* (Edward Elgar Publishing, 2019) 473.

⁴³⁰ Al-Muhairi, *supra* note 423.

⁴³¹ Ahmad, Attiya. 2012. “Beyond Labor: Foreign Residents in the Persian Gulf.” In *Migrant Labor in the Persian Gulf*, edited by Mehran Kamrava and Zahra Babar, 21–40. New York: Columbia University Press.; Engseng Ho, “Empire through diasporic eyes: a view from the other boat” (2004) 46:2 *Comparative studies in society and history* 210–246.; James Onley, *The Arabian Frontier of the British*

attracted migrants from these regions, making the UAE ethnically heterogeneous for centuries.⁴³² Describing the different “conglomerations of colour, race, language and religion,” George Curzon remarked, “surely a more curious study in polyglot or polychrome could not well be conceived.”⁴³³ In the pre-oil period, most South Asians were merchants from Sindh, Kutch, Gujarat that are between present-day Pakistan and India.⁴³⁴ This group included the Banyan traders from South Asia mentioned in the introduction. These merchants, including those from Sindh who migrated to India after the partition in 1947⁴³⁵, established a strong economic position through trading and served as bankers and advisors to indigenous families. Britain’s relations in the region were related to British India, which led to an administrative colonial population including South Asian accountants. An entrepreneurial class of South Asians later joined these clerks. Pakistanis were amongst the largest minorities that were present before the post-independence migration boom in 1971, including Persians, East Africans and Indians and the Baloch.⁴³⁶

The British also shaped the differential treatment of migrants through the way oil companies managed their employees and the use of contractual “nationality clauses.”⁴³⁷ During the development of the oil industry, the way oil companies managed their employees through the

Raj: Merchants, Rulers, and the British in the Nineteenth-Century Gulf (OUP Oxford, 2007) Google-Books-ID: 1vUckJbC8JIC. ; Das Gupta et al, *supra* note 422.

⁴³² George Crzon, Persian and the Persian Question 1892 quoted in James Onley “Transnational merchants in the nineteenth-century Gulf: The case of the Safar family” in Madawi Al-Rasheed & Professor Madawi Al-Rasheed, *Transnational Connections and the Arab Gulf* (Psychology Press, 2005) Google-Books-ID: Ri25UamYY1UC.

⁴³³ George Crzon, Persian and the Persian Question 1892 quoted in James Onley “Transnational merchants in the nineteenth-century Gulf: The case of the Safar family” in *Ibid*.

⁴³⁴ James Onley, “Indian Communities in the Persian Gulf, c. 1500–1947” in Lawrence G Potter, ed, *The Persian Gulf in Modern Times* (New York: Palgrave Macmillan US, 2014) 231.

⁴³⁵ *Ibid*.

⁴³⁶ Lori, *supra* note 415.

⁴³⁷ Gennaro Errichiello, “Foreign Workforce in the Arab Gulf States (1930–1950): Migration Patterns and Nationality Clause” (2012) 46:2 International Migration Review 389–413.

“containerization of labour” influenced the differential treatment of migrants. Since the discovery of oil in the 1950s and during the post-World War II era, the UAE was transformed from a small underdeveloped economy based on pearling to the center of an emerging oil-based economy. This phase coincided with the growth of anti-colonial leftist struggles in the Middle East and, hence, was also marked by labour strikes and protests against British and American oil companies such as British Petroleum and Standard Oil.⁴³⁸ As Adam Hanieh argues, many of the structures of “exclusion” that determine the state’s relationship with migrant workers today originate from the way these oil companies managed their employees – an important feature of which has been the “containerization of labour”⁴³⁹ where migrant workers were placed in “labour camps” often far from local residential communities to ensure the two groups remained separate.⁴⁴⁰ In addition, both British and American oil companies linked wages to national origin. Robert Vitalis calls this the “racial wage,” which was first established in the early 20th century in the oil industry and had, since then, spread to other industries across the region.⁴⁴¹

Furthermore, the British government used contractual nationality clauses to shape migration patterns in a way that would minimize threats to security and their stronghold in the region. First established in 1937, nationality clauses required oil companies to prefer British and natives first, then British subjects (including South Asians). Meanwhile, “other Arabs” were seen

⁴³⁸ Ibid.

⁴³⁹ Abdulhadi Khalaf, Omar AlShehabi & Adam Hanieh, *Transit States: Labour, Migration and Citizenship in the Gulf* (Pluto Press, 2015).

⁴⁴⁰ Adam Hanieh, “States of Exclusion: Migrant Work in the Gulf Arab States” in Aziz Choudry and Mondli Hlatshwayo, eds. *Just work?: Migrant workers struggles today* A A Choudry, *Just work?: migrant workers’ struggles today*, Mondli Hlatshwayo, ed., Wildcat: workers’ movements and global capitalism (London : Pluto Press, 2016). 43.

⁴⁴¹ Robert Vitalis, *America’s Kingdom: Mythmaking on the Saudi Oil Frontier* (Stanford University Press, 2007). s

as threats at various points, particularly as the Arab nationalist movements began to grow.⁴⁴² The British referred to Arabs from outside the Gulf as “undesirables,” particularly Palestinians and Yemenis who were seen as culturally similar to the local Arabs and more likely to organize strikes and mobilize against the ruling elite.⁴⁴³ The first labour strike in the UAE in May 1963 highlights the tension between Arab and South Asian workers instigated by the “racial wage” and British suspicion towards Arab migrants. Workers in the oil fields of Abu Dhabi demanded higher wages and equal wages for equal work; they protested that Indians and Northern Arabs were paid higher wages and that Emirati men were not allowed to do certain jobs. The British linked these strikes to a larger threat by connecting them to Arab nationalist movements.⁴⁴⁴ While initially, Arab workers such as Yemenis, Egyptians, Sudanese, Jordanians, Palestinians and Syrians were welcomed due to their linguistic, cultural and religious similarities, the ruling forces in the Gulf Cooperation Council (GCC) started seeing this and their participation in various leftist organizations as a threat to security.⁴⁴⁵

The most recent wave of migration is linked to the development of the oil industry, which expanded in the 1970s and continues today. By the mid-1980s, a massive flow of South Asian labour began to fill labour gaps, especially in infrastructural development. South Asian workers were preferred because they were relatively inexpensive, educated and many of them spoke English and often unaccompanied by families; they were regarded as manageable, docile and

⁴⁴² Lori, *supra* note 415.; Errichiello, “Foreign Workforce in the Arab Gulf States (1930–1950)”, *supra* note 437.

⁴⁴³ Lori, *supra* note 415. At p 99

⁴⁴⁴ *Ibid.*

⁴⁴⁵ Steven D Roper & Lilian A Barria, “Understanding Variations in Gulf Migration and Labor Practices” (2014) 6:1 Middle E L & Governance 32–52.; for more on migration restrictions due to threat of labour radicalism in the North American context see for eg. Donald Avery, *Reluctant Host: Canada’s Response to Immigrant Workers, 1896-1994* (McClelland & Stewart, 1995) Google-Books-ID: he6xAAAAIAAJ.

pliable or willing to be exploited.⁴⁴⁶ Given language barriers, unlike their Arab counterparts, South Asian workers were less likely to be a political threat and “could be segregated from the local population and “rotated” every few years.”⁴⁴⁷ During the first Gulf War in the 1990s, therefore, around two million Arab workers were deported from the region and replaced by South and East Asians. During this time, the UAE population doubled between 1986 and 2005 due to the flux of migrant workers. These workers played a vital role in the region’s urban development boom in the 2000s, which has continued to be the international community’s focus.⁴⁴⁸ Unlike the previous phases, while some of the contemporary migrant workers from South Asia and Southeast Asia have been hired in middle-level management positions in financial and tourism industries,⁴⁴⁹ most contemporary South Asian migrants are “unskilled” workers.⁴⁵⁰

In summary, the historical context clarifies that South Asian labour migration to the United Arab Emirates predates the discovery of oil. The historical antecedents to the contemporary labour migration regime during both the rise of the pearling industry and the development of the oil industry were shaped by the British presence in the region which influenced the differentiation between migrant communities through contributing to pluralism which already featured UAE’s early legal system and their relationship with the emerging oil companies. In addition to the “racial wage,” migrant communities were either excluded or

⁴⁴⁶ Andrew M. Gardner “Chapter 6: Engulfed: Indian Guest Workers, Bahraini Citizens, and the Structural Violence of the Kafala System” in De Genova & Peutz, *supra* note 404. p 202

⁴⁴⁷ Elizabeth Frantz (2017) “The Legal Production of Illegality: Obstacles and Opportunities to Protect Undocumented Migrants” in *Skilful Survivals: Irregular Migration to the Gulf*, by Philippe Fargues & Nasra M Shah (Gulf Research Center (GRC), 2017). at p 61

⁴⁴⁸ Hanieh, *supra* note 30, at 46.

⁴⁴⁹ Roper & Barria, *supra* note 445.

⁴⁵⁰ Ginu Zacharia Oommen, “South Asian migration to the GCC countries: Emerging trends and challenges” in Prakash C Jain & Ginu Zacharia Oommen, *South Asian Migration to Gulf Countries: History, Policies, Development* (Routledge, 2017) Google-Books-ID: YznbCgAAQBAJ.

preferred based on shifting notions of national security. Against this backdrop, the following section will describe the basic features of the *kafala* system today.

3.3 Kafala's basic features: "*Jis ka visa, us ka kaam*" (Your visa-provider/sponsor is your employer)

Difficulties? *All* the difficulties are for people like us, for the outsiders. All the conditions are for people like us who come from outside for work. This is only in Arab countries...whenever visa you have, you can only work for them. You can't work outside; otherwise, you will be deported.

- Returning Migrant Worker

The word *kafala* has two meanings: to guarantee and to take care of.⁴⁵¹ The latter comes from the original Arabic word 'k-f-l,' which can mean to provide for, be responsible for, or be the legal guardian.⁴⁵² In Islamic jurisprudence, *kafala* is defined as a guarantee in a way that the *kafeel* (sponsor) and the worker are tied.⁴⁵³ While some accounts trace *kafala* back to cultural and legal traditions related to hospitality towards visitors⁴⁵⁴, others link it to the system that regulated indentured labour in the Gulf till the 1950s.⁴⁵⁵ Pearling divers' families, as the introduction mentioned, were given loans by boat captains; however, unable to pay their debt at

⁴⁵¹ Jamila Bargach, *Orphans of Islam: Family, Abandonment, and Secret Adoption in Morocco* (Rowman & Littlefield, 2002) Google-Books-ID: a1kewcuLS2AC. At p 29

⁴⁵² Nicholas Foster, "Guarantees in the UAE: A Comparative Analysis in the Light of English Law, French Law and the Shari'a" (1998) 5 YB Islamic & Middle E L 42–87. For Foster who writes on the law of guarantees in Shariah law "It is a guarantee, or an accessory obligation, compared to English guarantee or French cautionnement. Other meanings include other meanings to feed, to support, to vouch, to go bail, to be guaranty, to sponsor, to be a legal guardian" Foster references Art. 612 Majalla which defines it as "the addition of an obligation to an obligation in respect to a demand for a particular thing." Anh Nga Longva, *Walls built on sand: migration, exclusion, and society in Kuwait* (Boulder, Colo: Westview Press, 1997). At p 78.

⁴⁵³ Asma Azhari, "The Kafala 'Sponsorship' System in Saudi Arabia" A Critical Analysis from the Perspective of International Human Rights and Islamic Law" (2017) Volume 10 (2016-17) SOAS Journal of Postgraduate Research 61–80.

⁴⁵⁴ Azfar Khan & Hélène Harroff-Tavel, "Reforming the Kafala: Challenges and Opportunities in Moving Forward" (2011) 20:3–4 Asian and Pacific Migration Journal 293–313.

⁴⁵⁵ Longva, *supra* note 452.

the end of the season, divers would have to return to work for the same captain.⁴⁵⁶ Others also connect some aspects of the *kafala* system to recruitment practices of the British protectorate and oil companies that were established.⁴⁵⁷ The *kafala* system that we see today emerged in 1950, while some accounts point to the 1960s and 1970s.⁴⁵⁸

Debates on the origins of *kafala* aside, this sponsorship program continues to regulate most migrant workers in the GCC, Lebanon, Jordan, Iraq, Palestine and the Syrian Arab Republic.⁴⁵⁹ While it is applied differently in each country and more strictly enforced in the GCC (particularly Gulf countries that have the highest proportion of migrant populations such as the UAE), at its most basic level, *kafala* legally ties each worker with a sponsor (*kafeel*) who is either a citizen or a company that is owned by citizen(s) during a contractually-fixed period typically for one to three years. These companies can range from building and facility management companies to recruitment and travel agencies.⁴⁶⁰ In free zones such as Masdar City (which Section 3.12 will elaborate on), the free zone authority is the sponsor. Other migrant workers who earn salaries set by respective governments can also sponsor family members or domestic workers. Although the contracts tend to be short, as an ILO survey on the UAE and Kuwait revealed, about a quarter of migrant workers are repeat migrants.⁴⁶¹ Indeed the majority of the interviewed migrant workers were either repeat migrants or planning to find employment again either in the Gulf or elsewhere.

⁴⁵⁶ *Ibid.* p 105-106

⁴⁵⁷ I J Seecombe & R I Lawless, "Foreign Worker Dependence in the Gulf, and the International Oil Companies: 1910-50" (1986) 20:3 *The International Migration Review* 548-574.

⁴⁵⁸ Roper & Barria, *supra* note 445.

⁴⁵⁹ Khan & Harroff-Tavel, "Reforming the Kafala", *supra* note 454.

⁴⁶⁰ Sabine Damir-Geilsdorf & Michaela Pelican, "Between regular and irregular employment: subverting the *kafala* system in the GCC countries" (2019) 8:2 *Migration and Development* 155-175.

⁴⁶¹ *Circular Migration: A Triple Win or a Dead End*, by Piyasiri Wickramasekara, DOI.org (Crossref), Global Union Research Network Discussion paper no. 15 (International Labour Organization, 2011).

While some workers can enter the country through tourist visas and extensions, the *kafala* system is the primary way to get entry visas and residence permits.⁴⁶² This is the only legal provision through which migrants can stay and work in the Gulf. Migrant workers' immigration and legal residency status are connected to the *kafeel*. Residence in the country is presumed to be based on individual contractual rights rather than a general right. Therefore, the *kafala* system is heterogeneous and, like the international regime discussed in the previous Chapter, better understood as a “diffuse set of *transnational* practices that are in the hands of many different actors, including citizens and companies, but also non-citizen managers and employers, middlemen in home countries” (emphasis added).⁴⁶³

While some aspects of the system are codified in labour law⁴⁶⁴, residency laws, and contracts, there are also customs and other more informal rules that lay out the norms and expectations governing the relationship between employees, employers (sponsors).⁴⁶⁵ The aim of this system, like other guest worker programs, is to meet the demand for labour to build infrastructure development projects while ensuring that workers remain temporary residents. This allows the UAE government to insist that migrant workers in the country are temporary contractual labourers rather than migrant workers, which has been the government's traditional response to human rights abuse claims.⁴⁶⁶

⁴⁶² Roper & Barria, *supra* note 445.

⁴⁶³ Vora Neha & Koch Natalie, “Everyday Inclusions”, *supra* note 417. At p 545

⁴⁶⁴ While there are no domestic legal provisions protecting specific the right of workers to organize, to bargain collectively or to freedom of association, Ministry Of Human Resources and Emirittization uses “labour law” rather than employment law

⁴⁶⁵ Andrew Gardner, “Reflections on the Role of Law in the Gulf Migration System” (2018) 47:S1 The Journal of Legal Studies S129–S147. at p 132

⁴⁶⁶ *Temporary Workers or Permanent Migrants?: The Kafala System and Contestations over Residency in the Arab Gulf States*, by Noora Lori (Institut français des relations internationales, 2012). For instance, in response to human rights abuse claims in 2006, “These workers” said Nasser Al-Shamsi, the Permanent Representative of the United Arab Emirates to the United Nations, “work on a temporary basis and according to fixed-term employment contracts. Upon expirations of these contracts, they return to

Apart from temporariness, the result of this system is that the state is able to offload its responsibility to protect migrant worker rights and capabilities to the *kafeel*. The legal burden is shifted directly to the *kafeel*. Government authorities, therefore, monitor migrant workers through the *kafeel*, who assumes the legal and economic responsibility for the worker during the period of the contract. A number of these responsibilities are laid out in Federal Law No. 8 of 1980 Concerning the Regulation of Labour Relations. These include not only covering the visa costs, responsibility for the expiry, renewal or cancelling of the contract but also providing “means of medical care,”⁴⁶⁷ “complete cleanliness and ventilation,” as well as “proper light, drinking water and toilets.”⁴⁶⁸

Furthermore, in remote areas, employers are required to provide workers with the following: “appropriate means of transportation, proper residence, drinking water, adequate food, first aid means, recreational and sports means.”⁴⁶⁹ Except for food, all these services are to be paid for by the employer. Employers are also required to bear the costs of repatriating workers unless the termination is attributable to the worker.⁴⁷⁰ In other words, the state privatizes some of the costs associated with migration while offloading a wide range of responsibilities that could help ensure some, albeit a narrow list of, movement and supportive capabilities of workers to individual sponsors. The state, thus, attempts to insulate itself from being held accountable for violations because the onus is on the sponsor, who generally is also the employer.⁴⁷¹ For this

their home countries.” This illustrates how the UAE’s government has treated migrant workers as temporary contractual labourers and the *kafala* system has served as a way of maintaining that temporariness.

⁴⁶⁷ Art 96 Federal Labour Law No. 8 on Regulation of Labour Relations. (United Arab Emirates) [Federal Labour Law No. 8]

⁴⁶⁸ Art 96 Federal Labour Law No. 8 (United Arab Emirates)

⁴⁶⁹ Art 101 Federal Labour Law No. 8 (United Arab Emirates)

⁴⁷⁰ Art 131 Federal Labour Law No. 8 (United Arab Emirates)

⁴⁷¹ Khan & Harroff-Tavel, “Reforming the Kafala”, *supra* note 454.

reason, as Anh Longva notes about Kuwait, sponsors tend to view the *kafala* system as “burdensome” rather than a means to control the migrant majority.⁴⁷²

However, a closer look at the list of *kafeel*’s responsibilities mentioned above reveals that they mainly pertain to what can be described as basic minimum requirements of human life, such as drinking water and sanitation. The list includes limited movement capabilities; appropriate means of transportation are only required for workers in remote areas, and the cost of repatriating workers is limited to workers whose termination is not attributed to them. While the inclusion of “complete cleanliness and ventilation” and “recreation and sports means” allude to a wider range of capabilities, including those relating to the environment, the list does not represent supportive capabilities to the same degree⁴⁷³. Absent in these obligations is any discussion of remuneration, transfer of remittances and family reunification. More significantly, the fact that these entitlements are to be provided by the sponsor limits the migrant workers’ ability to choose working and living conditions such as where to live and freedom of movement within the country.

Even these limited responsibilities are, as has been recounted in numerous accounts, often unfulfilled by sponsors. Migrant workers’ grievances continue to include *inter alia* restrictions on free movement, wage theft, delayed payment of salaries, long working hours, insufficient medical care, inadequate accommodation facilities (often crowded without access to clean water, electricity) and unsafe working conditions.⁴⁷⁴ In other words, the offloading of responsibility to

⁴⁷² Longva, *supra* note 452. p 102

⁴⁷³ Federal Labour Law No. 8 (United Arab Emirates)

⁴⁷⁴ Steven D Roper & Lilian A Barria, “Understanding Variations in Gulf Migration and Labor Practices” (2014) 6:1 Middle East Law Gov 32–52.

individual sponsors, in practice, seriously undermines migrant workers' movement and supportive capabilities.

This may be partially due to the individualization of the *kafala* system, which makes it highly discretionary and difficult to regulate. The state's minimal role gives sponsors and a host of other actors who operate in between (such as recruitment agencies, subcontractors, etc.) an inordinate amount of control over migrant workers' stay in the UAE. As Andrew Gardner and other ethnographers have shown, there is extreme variability in workers' experiences which depends on the sponsor.⁴⁷⁵ Some sponsors operate more passively through arrangements with other non-citizen business persons, merely facilitating the paperwork for migrant workers.⁴⁷⁶ The *kafeel* can also be a labour supply company which means there can be two employers. Such circumstances make it difficult to discern who is responsible for fulfilling obligations offloaded to the *kafeel*; each actor simply passes the buck.

More broadly, inherent in *kafala* is a power imbalance between the employer and employee that leaves the terms and conditions in the hands of the *kafeel* to decide. The *kafeel* is authorized to exert tremendous control over migrant workers' lives, given that the *kafeel* owns the permit. Because immigration status depends on the contractual relationship between the *kafeel* and migrant worker, migrant workers are more likely to accept conditions that differ from what they were promised before departure. Indeed," as Mahdavi argues, "collapsing employer and sponsor into a single category may be the root of the problem."⁴⁷⁷

⁴⁷⁵ Andrew Gardner, *City of strangers: Gulf migration and the Indian community in Bahrain* (Ithaca: ILR Press, 2010).; Andrew Gardner, "Engulfed: Indian Guest Workers, Bahraini Citizens, and the Structural Violence of the *Kafala* System" in De Genova & Peutz, *supra* note 406.; Andrew Gardner et al, "A Portrait of Low-Income Migrants in Contemporary Qatar" (2013) 3:1 *Journal of Arabian Studies* 1–17.

⁴⁷⁶ Khan & Harroff-Tavel, "Reforming the *Kafala*", *supra* note 454..

⁴⁷⁷ Pardis Mahdavi (2017) "Living and Labouring under Laws in the United Arab Emirates" in Fargues & Shah, *supra* note 447. at p 191.

The role of recruitment agencies and the many “middlemen” in home countries adds a further layer of challenges. As numerous accounts have shown, it is not simply the *kafeel* but various actors, including recruitment agencies, other migrant workers, local branches of multinational corporations, and subcontractors who are also responsible for the conditions faced by migrant workers.⁴⁷⁸ While licensed recruitment agencies are prohibited from soliciting or collecting recruitment fees⁴⁷⁹, migrant workers in the UAE reportedly pay 2,358 AED in recruitment costs. This amount becomes difficult to pay back with salaries that are around 1,000 AED per year.⁴⁸⁰ Recruitment agents and various “middlemen” often provide misinformation to prospective migrants about their contract, nature of work, and salary expectations etc. Some of these recruitment agents even exercise control over migrant workers through threats to their status or their families back home.⁴⁸¹ With high recruitment costs and loans used to cover them looming over their heads, migrant workers end up staying in the country even if they have to endure harsh working and living conditions. As one of the interviewed CSO advocates reported, some of these “organizations have more resources. They’re at the same level of sophistication. High-rank and high-ranged....they come with alternatives and are always one step ahead of law....”⁴⁸²

⁴⁷⁸ *Asymmetric Information under the Kafala Sponsorship System: Impacts on Foreign Domestic Workers’ Income and Employment Status in the GCC Countries*, IZA Discussion Paper, by Malit T & George Naufal, RePEc - Econpapers, IZA Discussion Paper 9941 (Institute for the Study of Labor (IZA), 2016).

⁴⁷⁹ Ministerial Decree No. 52 of 1989 (United Arab Emirates), Ministerial Decree No. 1283 of 2010 (United Arab Emirates); Cabinet Decision No. 40 of 2014 (United Arab Emirates); Clause 8, 2015 Standard Employment Contract in Ministerial Decree No. 764 of 2015 (United Arab Emirates)

⁴⁸⁰ Government of Pakistan, Provincial Departments of Labour, Employers Federation of Pakistan, and Pakistan Workers Federation (2016) “The Islamic Republic of Pakistan Decent Work Programmed 2016-2020” online:<https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-islamabad/documents/publication/wcms_532847.pdf>

⁴⁸¹ T. & Naufal, *supra* note 478.

⁴⁸² Civil Society Organization Interview # 3

The *kafala* system shares some features with other guest-worker schemes in the EU, North America, as a number of comparative studies have shown.⁴⁸³ However, UAE's demographics make it distinct. Ninety-nine percent of the employees in the private sector are migrant workers.⁴⁸⁴ As Gardner proposes, "Simply imagine, for a moment, that nine of every ten people you encounter outside your door are resident foreigners with no purchase on belonging to the national collectivity. Essentially, the Arab Gulf states present a social demography at the frontier of an unprecedented era of global mobility."⁴⁸⁵ This scale may partially be explained by another distinguishing feature of the *kafala* system, which will be elaborated on in the following section: the near impossibility of becoming a naturalized citizen for migrants.⁴⁸⁶ Together these features lead to "an extremely large migrant population in the country, but one which is forced to be in a state of permanent temporariness."⁴⁸⁷

In summary, at its most basic level, the *kafala* system legally ties each worker with a sponsor (*kafeel*) during a contractually-fixed period of time. This *kafeel* is both the sponsor and the employer who assumes legal and economic responsibility for the worker for the duration of the contract. The legal and economic responsibilities that would help ensure migrant workers' movement and supportive capabilities, albeit to a limited degree, are offloaded to the *kafeel*. This results in a heterogeneous and discretionary system whereby sponsors and other non-state actors

⁴⁸³ See for e.g. Cordeaux, *supra* note 31.; Marko Valenta, "A comparative analysis of migration systems and migration policies in the European Union and in the Gulf Cooperation Council Countries" (2017) 6:3 Migration and Development 428–447.

⁴⁸⁴ Marko Valenta et al, "Labour Migrations to Resource-rich Countries: Comparative Perspectives on Migrants' Rights in Canada, Norway and the United Arab Emirates" (2017) 24:2 International Journal on Minority and Group Rights 150–173.

⁴⁸⁵ De Genova & Peutz, *supra* note 404.

⁴⁸⁶ Onn Winckler (2009) "Labor and Liberalization: The Decline of the GCC Rentier System" in Joshua Teitelbaum, ed, *Political liberalization in the Persian Gulf* (New York: Columbia University Press, 2009).

⁴⁸⁷ Valenta et al, "Labour Migrations to Resource-rich Countries", *supra* note 473. at p 163

(the many “middlemen”) have inordinate control over migrant workers’ stay, placing migrant workers at the whim of these actors while carving a minimal role for the state.

3.4 Stringent citizenship rules and Nationalization of Employment

“For nationality, I tried a lot in Abu Dhabi. The media and British were pressurizing them to grant nationality who had lived there for 30 years. So I took my kids and wife. I also took this Arabic course. I tried very hard, but they didn’t even call us. Three times, I applied. It took almost two thousand rupees for one person as fees.”

- Returning Migrant Worker Interview

The *kafala* system also consists of stringent citizenship rules, which complemented by a policy to indigenize the workforce, further limit migrant workers’ movement capabilities, particularly the ability to stay. The UAE’s citizenship rules do not allow *jus soli* and typically use *jus sanguinis* as the primary mode of granting citizenship that is primarily patrilineal.⁴⁸⁸ In other words, nationality or citizenship in the UAE cannot be acquired at birth by being born in the territory of the State (*jus soli*), but can if one or both of the parents are nationals of that State (*jus sanguinis*).⁴⁸⁹ Only in 2011, women who married non-Emirati nationals could transfer citizenship to their children; there are still no provisions to allow them to transfer citizenship to their non-Emirati partners. Furthermore, according to the UAE’s Constitution, naturalization is possible essentially only for those “of Arab culture.”⁴⁹⁰ Federal Law No. 17 for 1972

⁴⁸⁸ Pardis Mahdavi (2017) “Living and Labouring under Laws in the United Arab Emirates” in Skilful Survivals: Irregular Migration to the Gulf edited by Philippe Fargues and Nasra M. Shah at p 191

⁴⁸⁹ While there are many factors that may determine how nationality is acquired, most States emphasize the place of birth (*jus soli*), descent (*jus sanguinis*) or use a hybrid of the two principles. See for eg. Tendayi Bloom, Katherine Tonkiss & Phillip Cole, eds, *Understanding statelessness: lives in limbo*, Routledge studies in human rights 4 (Abingdon, Oxon ; New York, NY: Routledge, 2017).

⁴⁹⁰ Art 2a Federal Law No. 17 Concerning Nationality and Passports and Amendments, 18 November 1972, (United Arab Emirates) [Federal Law No. 17 (United Arab Emirates)]; Constitution of the United Arab Emirates 2 December 1971 (United Arab Emirates)

Concerning Nationality, Passports, and Amendments grants nationality to “any Arab individual who enjoys full legal capacity, if he has continuously and lawfully resided in the member Emirates for at least seven years directly before the date of submitting naturalization application, provided that he has lawful source of income, is of good reputation and good conduct, and not convicted for any offence involving moral turpitude or dishonesty.”⁴⁹¹ This seven years requirement for Arab migrants is contrasted by more stringent provisions for non-Arab migrants.

Non-Arab migrants may be granted citizenship provided they “enjoy full legal capacity” and have continuously and legally lived in the UAE since or before 1940⁴⁹², or for at least 30 years, of which 20 have been after 1972. Furthermore, they must have a “lawful source of income,” and be “of a good reputation and good conduct, and not convicted for an offence involving moral turpitude and dishonesty, and is proficient in Arab language.”⁴⁹³ Therefore, Arab and non-Arab migrants' requirements are similarly tied to “lawful source of income” and further limited by vaguely worded provisions that may be liberally interpreted. However, unlike Arab migrants who may be granted nationality after seven years of residence, non-Arab migrants must have lived in the UAE either before 1940 or for 30 years. Taken together, these provisions make it nearly impossible for migrant workers to acquire citizenship. One of my interlocutors, who had worked in various roles, including in construction for 31 years in the UAE between 1977 and 2006, recalled applying for Emirati nationality three times but was never called back.

The literature on citizenship in the UAE has noted how recent policies have made the rules even more stringent. Even within the Emirati population, as Manal Jamal observes, there is

⁴⁹¹ Art 6 Federal Law No. 17 (United Arab Emirates)

⁴⁹² Art 6 Federal Law No. 17 (United Arab Emirates)

⁴⁹³ Federal Law No. 17 (United Arab Emirates)

a “tiered system” of economic, political and social rights.”⁴⁹⁴ In 2004, the UAE introduced Emirates Identification Cards, which connect individuals to their biological lifetime data. An Emirati passport is no longer enough to indicate you possess *khulsat al-qaid*, the “family book” which traces nationals’ lineage in the UAE to at least 1925 or that the state granted citizenship. Only those who possess *khulsat al-qaid* are entitled to full citizenship rights, while those with only passports and the *bidouns* without passports are not guaranteed these rights.⁴⁹⁵ These rights include not only the right to free public education and healthcare but also a list of state services such as land, subsidized utilities.⁴⁹⁶ The rights, citizenship and permanent residency status that citizens without the *khulsat al-qaid* are left for individual Emirates to decide and are by no means guaranteed. Similarly, Noora Lori shows how outsourcing of passports from the Union of Comoros has allowed the UAE to reclassify certain minorities into foreigners.

The resulting system is one where citizenship, permanent residency status and its associated movement and supportive capabilities are tightly guarded. There are no real opportunities to secure citizenship for migrant workers whose stay is entirely dependent on short-term residency permits being renewed, making them “permanently deportable.” In fact, both citizens whose nationality may be stripped for various reasons and are waiting for decisions from government authorities and the aforementioned migrant workers are, in Lori’s words, “suspended in a limbo.”⁴⁹⁷

⁴⁹⁴ Jamal, “The ‘Tiering’ of Citizenship and Residency and the ‘Hierarchization’ of Migrant Communities”, *supra* note 419.

⁴⁹⁵ *Ibid.* at P 603

⁴⁹⁶ Emirati men are allowed to claim free land and interest-free loans of up to \$540,000 (of which 25 percent non-repayment can be waived) to build a house while the marriage fund provides a \$19,000 payment towards wedding costs. In total, the average Emirate male receives around \$55,000 a year in total transfers, according to Bloomberg citing a study conducted by Zayed University in Dubai. Hugo Toledo, “The political economy of emiratization in the UAE” (2013) 40:1 Journal of Economic Studies 39–53. at p 41

⁴⁹⁷ Lori, *supra* note 415.

This guarding of citizenship is particularly relevant considering UAE's concerted efforts to nationalize or indigenize its workforce. Emiratization is a government policy that originated in the 1990s and was designed to increase Emirati citizens' participation in the workforce and tackle the private sector's reliance on migrant workers and high unemployment among Emiratis. This was done in a decade characterized by low oil prices and in all GCC countries that initiated their respective labour nationalization policies that focused on the private sector.⁴⁹⁸ There are officially three pillars of this policy: (1) to diversity from over-reliance on the hydrocarbon sector, (2) to overhaul the education system to align skills taught with needs of the market and (3) to implement direct labour market intervention, measures quotas and allocation of certain positions to be staffed by Emiratis.⁴⁹⁹ This policy is formalized in Federal Labour Law No. 8, which explicitly grants the right to work to only UAE nationals and gives preference to Arab workers who are nationals of an Arab country over workers of other nationalities.⁵⁰⁰

Emiratization policies require private companies to hire UAE citizens in a number of positions, such as human resource and personnel managers. It requires certain industries such as banking to achieve a citizen-to-migrant ratio of at least 50 percent. In addition, as Toledo notes, a recent law has also banned the firing of Emirati workers except under very specific conditions.⁵⁰¹ Although this policy has not been effective in tackling unemployment amongst Emiratis, it explains what is at stake when the citizenship rules are made. Emiratization's limits on migrant workers' employment opportunities are significant given that their stay is dependent on being able to find employment. Coupled with stringent citizenship rules, these policies limit migrant

⁴⁹⁸ Ingo Forstenlechner et al, "Emiratisation: determining the factors that influence the recruitment decisions of employers in the UAE" (2012) 23:2 The International Journal of Human Resource Management 406–421.

⁴⁹⁹ *Ibid.*

⁵⁰⁰ Art 10 Federal Labour Law No. 8 (United Arab Emirates)

⁵⁰¹ Toledo, *supra* note 496.

workers' opportunities to prolong their stay in the country, which has implications for both movement and supportive capabilities.

3.5 Informal rules that complement the kafala system: hierarchization of migrant communities

These rules are further complemented by several informal rules which place “low-skilled” South Asian and Southeast Asian migrant workers at the bottom and significantly limit their movement and supportive capabilities. These informal rules have become institutions through repetition rather than codification. Distinct from mere cultural practices, such informal institutions can be defined as “socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels.”⁵⁰² These include an informal hierarchy of workers determined by various markers and vectors of social location such as race, gender, nationality, ethnicity, class, skill or education. As Gardner explains:

“There are also gender, national, regional, linguistic, and religious patterns to the migratory conduits between South Asia and the Gulf: ...various national and ethnic groups that migrate find their into particular types of work. Pakistanis, Indians and Bangladeshis are in construction while Filipinos are in the service sector while Sri Lanka women work in domestic work, this can be explained by chain migration where or the fact that most recruiters brokers serving one sector use their connections with workers and workers use their network and knowledge to pave the way for other migrants.”

This phenomenon was corroborated in my fieldwork, where most migrant workers relied on friends and family networks for work contracts and, at times, even visas. Furthermore, employers and citizen-sponsors also rely on perceptions of certain nationalities to fit whatever role they deem fit; the result is a racialized system. In addition to chain migration, this informal

⁵⁰² Gretchen Helmke & Steven Levitsky, “Informal Institutions and Comparative Politics: A Research Agenda” (2004) 2:4 Perspectives on Politics 725–740.at 727

hierarchy is further solidified by both state and non-state actors that share understandings about the value of labour according to race, nationality, gender, level of skill, etc.

In her recent book *Offshore Citizens*, Noora Lori outlines how these informal rules provide bureaucracies to fill gaps and a script for how to deal with the diverse group of incoming migrant workers. She notes how higher wages, for instance, are paid to European and American migrant workers (who are colloquially referred to as “expatriates” rather than “labourers”) over even nationals in the private sector. While there are no formal ways certain sectors are grouped with certain nationalities, migrant workers are grouped by skill level and sectors. Informal rules fill the gaps by associating certain skill levels with certain nationalities. As one of the returning migrant workers interviewed who has moved from UAE to Canada remarked, “You have...at the top, your locals and white people. Then working the middle-income jobs are other Arabs. And even within that, there are differences. Then below that, you have your Indians, Pakistanis, Filipinos, Bangladeshis.”⁵⁰³ Feeling “stuck” in his position, he decided to move out of the UAE.⁵⁰⁴

Similarly, Manal Jamal observes that there are “the affluent Westerners on one end, Arabs ranging in the middle (with the Lebanese, Palestinian. And Syrians sometimes at the top of the employment and pay hierarchy of the Arab population) and the marginalized South Asian and East Asian labourers at the opposite end of the continuum with virtually no rights.”⁵⁰⁵ Furthermore, Lori noted the difference in wages for domestic workers in the UAE according to nationality. A domestic worker from the Philippines is paid a minimum of 1,500 AED, from

⁵⁰³ Returning migrant worker interviewee number

⁵⁰⁴ Egyptian migrant worker in Canada

⁵⁰⁵ Jamal, “The ‘Tiering’ of Citizenship and Residency and the ‘Hierarchization’ of Migrant Communities”, *supra* note 419.

India is paid 1,100, and from Nepal is paid 900 AED.⁵⁰⁶ Apart from resulting in different salaries, these hierarchies' associated discourses become a part of naturalized order in migrant workers and citizens' everyday lives, reducing people to their work. These discourses are even reproduced by certain migrant workers and taken “back home,” where the informal rules reinforce class divisions.⁵⁰⁷ The informal hierarchization and the resulting racialized system leave certain migrant workers with fewer opportunities to change sectors and positions. Low-skilled migrant workers from South Asia and Southeast Asia are put at a great disadvantage with lower wages which undermines their supportive capabilities.

In summary, alongside stringent citizenship rules, the kafala system, Emiratization, and informal hierarchies among migrant communities, significantly undermine migrant workers' movement and supportive capabilities, particularly “low-skilled” racialized South Asian and Southeast Asian workers working in the construction sector and other 3-d jobs.

3.6 Kafala: recent changes and persistent challenges

Having discussed the *kafala* system, it is worth exploring how recent reforms have attempted to tackle some of its criticisms yet cannot comprehensively transform the system. The *kafala* has been unanimously criticized by academics, international media, sending countries, international and civil society organizations. Human Rights Watch, for instance, has published several investigative reports on human rights abuses on Abu Dhabi's New York University campus and Guggenheim Museum. More recently, it has criticized the *kafala* system for giving employers an “inordinate control over migrant workers” which severely limiting workers ability

⁵⁰⁶ Lori, *supra* note 415. at p 153

⁵⁰⁷ *Ibid.* at p 154-155

to challenge poor working conditions.⁵⁰⁸ Similarly, as mentioned in Chapter 2, the International Trade Union Confederation has criticized the *kafala* system for creating a structural dependence between the employer and migrant workers and the resulting violations of fundamental human rights.⁵⁰⁹ According to the International Labour Organization's independent Committee of Experts on the Application of Conventions and Recommendations' (CEACR) observations with regard to the Forced Labour Convention, 1930 (No. 29), some GCC countries' *kafala* system "may be conducive to the exaction of forced labour."⁵¹⁰ The *kafala* system is criticized for its lack of flexibility in switching employers, constricting migrant workers' choices, and making them vulnerable to lower wages and harsh working and living conditions and physical abuse and deportation.⁵¹¹ The discussion below will consider the following changes that claim to address some of these criticisms: (a) Wage Protection System; (b) Ministerial Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment Relations; (c) Ministerial Decree No. 766 of 2015 on Rules and Conditions for Granting a New Work Permit to a Worker whose Labour Relations with an Employer has Ended; (d) Ministerial Decree No. 764 of 2015 on Ministry of Labour-Approved Standard of Employment Contracts.

⁵⁰⁸ Rothna Begum et al, *"I already bought you": abuse and exploitation of female migrant domestic workers in the United Arab Emirates* (New York: Human Rights Watch, 2014).

⁵⁰⁹ Khan & Harroff-Tavel, "Reforming the Kafala", *supra* note 454.

⁵¹⁰ Indeed the UAE Constitution, itself, while prohibiting forced labour, makes an exception for "exceptional circumstances provided for by the law and in return for compensations." Article 34 UAE federal labour law no. 8⁵¹⁰

⁵¹¹ Anh Nga Longva, "Keeping Migrant Workers in Check: The Kafala System in the Gulf" (1999) 211 Middle East Report 20.; MD Mizanur Rahman, "Bangladeshi Migrant Workers in the UAE: Gender-Differentiated Patterns of Migration Experiences" (2011) 47:2 Middle Eastern Studies 395–411.; Ray Jureidini, "Wage Protection Systems and Programmes in the GCC" in *Migration to the Gulf: Policies in Sending and Receiving Countries* edited by Philippe Fargues and Nasra M Shah Gulf Labour Markets, Migration, and Population (GLMM) Programme (European University Institute and Gulf Research Center, 2018) 31.; Sam Lubell, "Blood, sand, and tears: Worker abuse alleged in the U.A.E" (2007) 195:8 Architectural Record 33–34. Nicholas McGeehan, *Migrant workers' rights on Saadiyat Island in the United Arab Emirates: 2015 Progress Report* (New York, N.Y.: Human Rights Watch, 2015).

Although the UAE has periodically introduced series of reforms that it claims to address some of these issues, the degree of employee-sponsor power imbalance remains untouched. In 2009, the UAE became the first country in the GCC to implement a wage protection system (WPS) to tackle wage theft and delays in payment of wages in construction, retail and small businesses.⁵¹² Designed to target low-wage migrant workers, the WPS requires wage payments through bank transfers so that there is an official record that can be monitored. Despite hundreds of employers being penalized, the penalties are criticized for being insufficient.⁵¹³ In 2016, the Ministry of Human Resource and Emiratization introduced new penalties. Employers who fail to comply are denied the right to have new work permits.⁵¹⁴ Companies with over 100 workers that have a monthly payment delay will be notified for punitive action, including a “complete strike against other companies owned by employer,” as well as “enabling workers to move to another company.” After a two-month delay in payment, the companies will be fined Dh5,000 (\$1,362) per worker to a maximum of Dh50,000 (\$13,612).⁵¹⁵

While the WPS has been well-received by the ILO and Abu Dhabi Dialogue, a state-led regional consultative process, the new penalties have also been criticized for being mostly administrative and the fines for being too low. The mechanism does not verify whether the basic salary and allowances match the workers’ signed labour contract, which is significant considering the prevalence of contract substitution. Not only is it inapplicable to companies in the free zones such as Masdar City Free Zone, but it also fails to address miscalculation of

⁵¹² Ministerial Decree 788 of 2009 on Protection of Wages (United Arab Emirates) [Ministerial Decree 788]

⁵¹³ Jureidini, *supra* note 511.

⁵¹⁴ Art 4 Ministerial Decree No.788

⁵¹⁵ Ministerial Decree (No. 739) OF 2016 on Wages Protection which replaced Ministerial Decree No.(788) of 2009 (United Arab Emirates)

overtime, end of service gratuity and other sources of wage manipulation. Employers can withdraw from the Automatic Teller Machines and pay fewer amounts in cash to the worker.⁵¹⁶ More importantly, it does not address businesses that have closed down, which has been increasingly a problem due to the financial crisis in 2009 and is expected to worsen due to covid-19.⁵¹⁷

This is particularly relevant in the construction sector, which is sensitive to economic changes, relies on flexible arrangements and often involves principal contractors and subcontractors. Principal contractors may choose to withhold money to shift the burden to subcontractors. In fact, withholding payment can be used strategically to go bankrupt, at which point the companies do not have to pay and can default on their payments to workers; the procedures to retrieve wages are often long, arduous and expensive. Although workers may be able to switch employers, this becomes especially difficult during financial crises. While companies in the UAE must have bank guarantees to cover wages for the life of a project, these guarantees are still not enough to protect workers against employers' inability to pay wages as a result of bankruptcy (as Suleiman's story in Chapter 1 and detailed further in this Section 3.7 indicates).

Not only is there a lack of enforcement in cases of a breach, but more broadly, the WPS mechanism does not address the lack of standardizations of wage levels and the minimum wage

⁵¹⁶ 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” May 2018

⁵¹⁷ A recent survey done by survey by the Dubai Chamber of Commerce in May 2020 reported that 70% of Dubai companies expect to go out of business within six months due to coronavirus pandemic. Natasha Turak, “70% of Dubai companies expect to go out of business within six months due to coronavirus pandemic, survey says”, *CNBC* (21 May 2020), online: <<https://www.cnbc.com/2020/05/21/coronavirus-dubai-70percent-of-companies-expect-to-close-in-six-months.html>>.

in the UAE's private sector.⁵¹⁸ WPS's inability to tackle wage-related issues such as wage theft undermines its ability to ensure migrant workers' supportive capabilities. Indeed when asked what has surprised her while working in a civil society organization in the Gulf, one of the interviewed advocates responded, "the amount of people who are not paid their salaries will floor you."⁵¹⁹ Whether or not further reforms to the WPS can address these shortcomings is yet to be determined, but it is clear that this change does not untie migrant workers from their sponsors.

In addition to the WPS, the UAE enacted a number of laws in 2015, which entered into force on 1 January 2016 to address particularly the inflexibility of the *kafala* with regards to changing employers.⁵²⁰ This includes (b) Ministerial Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment Relations and (c) Ministerial Decree No. 766 of 2015 on Rules and Conditions for Granting a New Work Permit to a Worker whose Labour Relations with an Employer has Ended. These two Decrees allow workers to terminate employment unilaterally and be considered for a new work permit with a notice period of up to three months or if payment is made in lieu of notice being given. This means that, on paper, transferring to a new employer is permitted without the explicit permission of current employers in a number of circumstances (which was traditionally done through no-objection certificates that previous employers would have to provide). Such transfers can be made when the current employer has failed to meet their legal or contractual obligations, or when the business closes

⁵¹⁸ Jureidini, *supra* note 511.; LO 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* (2018).

⁵¹⁹ Civil Society Organization Interview 2

⁵²⁰ Ministerial Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment Relations, (replacing the Ministerial Decree No. 1186 of 2010) (United Arab Emirates); Ministerial Decree No. 766 of 2015 on Rules and Conditions for Granting a New Work Permit to a Worker whose Labour Relations with an Employer has Ended (United Arab Emirates); Ministerial Decree No. 764 of 2015 on Ministry of Labour-approved Standard Employment Contracts (United Arab Emirates)

down, or when a worker has made a successful labour complaint against the current employer, or when the worker settles indemnities with the first employer in line with contractual obligations. Any worker who has completed their first two-year contract can also transfer to a new employer without conditions and explicit approval from the current employer.⁵²¹

However, as Human Rights Watch commented, given that Ministry of Human Resources and Emiratization (UAE's Labour Ministry) grants the new work permit and Executive Regulations of Federal Law No. 6 of 1973 on the Entry and Residence of Foreigners, art. 68(d) requires the former employer's approval. It is still unclear how the Ministerial Decrees will be implemented.⁵²² As mentioned in Chapter 2, the UAE failed to report the number of new approvals made after the Decrees were implemented to the ILO's Committee of Experts on the Application of Conventions and Recommendations.

Furthermore, due to high recruitment costs and the fact that most migrant workers finance their migration through loans, the risks associated with terminating a contract might not be an option for migrant workers. Migrant workers who are new to the country may also have fewer opportunities to secure a new contract, as one of the interviewed migrant workers noted. This ability to terminate the contract, Halabi argues, "is merely a ruse" because workers have to cover the cost of their return tickets or may be fined by recruitment agencies, which—given low wages, wage theft and payment delays—may be impossible to cover.⁵²³ A capabilities-based lens that distinguished between means and ends can further reveal that the flexibility that the Decree

⁵²¹ Ministerial Decree 766

⁵²² Human Rights Watch (2017) "Working Like a Robot: Abuse of Tanzanian Domestic Workers in Oman and the United Arab Emirates," retrieved online https://www.hrw.org/report/2017/11/14/working-robot/abuse-tanzanian-domestic-workers-oman-and-united-arab-emirates#_ftn94

⁵²³ Romina Halabi, "Contract Enslavement of Female Migrant Domestic Workers in Saudi Arabia and the United Arab Emirates" HUMAN RIGHTS 16.

promises and could potentially enhance migrant workers' supportive capabilities is not a substantive opportunity.

Similarly, the Ministerial Decree No. 764 of 2015 on Ministry of Labour-Approved Standard of Employment Contracts aimed to tackle contract substitution and falls short. The new legislation requires employers to provide evidence that an offer letter was issued and signed by the employee in their country of origin. It requires the Standard Employment Contract to be in three languages: Arabic, English and the native language of the employee. The labour contract and the offer letter are required to have the same terms. Changes to the Standard Employment Contract are prohibited unless for the employee's benefit and approved by the employee and the Ministry of Labor. No additional clauses can be included unless "compliant with the Ministry of Labor's legal requirements."⁵²⁴ This provision in Article 5, therefore, still leaves potential room for the Ministry of Labor to add new clauses depending on how it interprets "its legal requirements."⁵²⁵ Given its duties include drafting an Emiratization policy and one of its two divisions is dedicated to Emiratization, this exception may be significant.

Furthermore, even if contracts are not substituted, this legislation does not directly tackle low wages and wage theft which are the very issues arising from contract substitution. More importantly, like the previously mentioned reforms, it fails to comprehensively transform the *kafala* system by untying workers to sponsors. Lastly, these reforms are focused on removing unjust practices and not necessarily an expansion of movement and supportive capabilities.

⁵²⁴ Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO), 106th ILC session (2017),
online:<https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3292702,103495,United%20Arab%20Emirates,2016>

⁵²⁵ Ministerial Decree No. 764 of 2015 on Ministry of Labour-Approved Standard of Employment Contracts

3.7 Persistent challenges: lack of enforcement and access to justice

Lack of enforcement and inadequate access to justice (conversion factors) remain a problem that renders all recent reforms and even existing legislation that could protect some migrant workers' movement and supportive capabilities almost meaningless.⁵²⁶ David Mednicoff explains that enforcement of such labour reforms remains inconsistent partially because the UAE is a relatively young federal system with multiple actors and courts that are only beginning to gain legitimacy. Lack of transparency not only undermines collective capability agency but, given migrant workers' perceived connection to national security issues, makes it difficult to resolve issues.⁵²⁷

Access to justice is significantly limited by passport confiscation, which significantly inhibits migrants workers from challenging their employers. Although passport confiscation is prohibited by the Ministry of Interior's Circular No. 267 2002, this practice is still common. Access to justice is also undermined because there are no legal provisions that protect the right to strike⁵²⁸, freedom of association or to join a union.⁵²⁹ The *kafeel* has the authority to unilaterally cancel workers' visas before a worker can even pursue a claim. An employer can dismiss the worker without notice in a range of circumstances, including being absent "without lawful excuse for more than twenty intermittent days or more than seven successive days during one

⁵²⁶ Pardis Mahdavi (2017) "Living and Labouring under Laws in the United Arab Emirates" in Fargues & Shah, *supra* note 447. at p 191

⁵²⁷ David M Mednicoff & Joanna E Springer, "The Rule of Law and Political Liberalization in the Arab Gulf" in *Gulf Politics and Economics in a Changing World* (WORLD SCIENTIFIC, 2013) 79. at p 105

⁵²⁸ Art 112 Federal Labour Law No. 8 allows employers to temporarily suspend employees upon charging them of "a deliberate crime against life, property, honor, honesty or of carrying out a strike" Workers are not entitled to wages during this suspension period.

⁵²⁹ With the exception of Bahrain and Oman, across the GCC migrant workers are excluded from trade union representation by law.

year,” or “if during work hours he is found drunk or under the influence of a drug,” and “if he divulges any secrets of the establishment where is employment.”⁵³⁰ In comparison, the list of cases where workers are allowed to leave work without notice only includes: if the employer fails to fulfill their contractual and legal obligations; and if they have committed an act of assault against the employee.⁵³¹

Furthermore, grievances brought by workers are to be resolved by the Ministry of Labour before going to courts.⁵³² In Masdar City's free zone, labour disputes are to be referred first to the free zone authority before they go to the Ministry of Labour and Social Affairs. It is the free zone authority that will issue a letter to the Ministry of Labour and Social Affairs, which may, in turn, refer the dispute to the Abu Dhabi Courts. The fact that labour disputes cannot directly go to even the Ministry of Labour, let alone the courts, undermines access to justice.⁵³³

Once labour cases go to labour courts where private-sector employees or employers can bring disputes, there are further limitations. Even if migrant workers file a complaint, they risk losing their residency status because they can no longer work for the same employer while the trial is pending. Since dispute settlement procedures tend to be lengthy, workers are often unable to stay in the country for long enough. Furthermore, there are few compensation mechanisms for migrant workers to aid them while their wages are unpaid.⁵³⁴ Also, the sponsor may preemptively accuse the worker of behaviour that may put them at risk for deportation, detention etc.⁵³⁵ Information on employers being penalized for labour regulation violations is scarce and

⁵³⁰ Art 120 Federal Labour Law No. 8 1980

⁵³¹ Art 121 Federal Labour Law No. 8 1980

⁵³² Mednicoff & Springer, *supra* note 527. at p 105

⁵³³ Masdar City Employment Regulations

⁵³⁴ Roper & Barria, *supra* note 445.

⁵³⁵ Anh Nga Longva, “Keeping Migrant Workers in Check: The Kafala System in the Gulf” (1999) 211 Middle East Report 20. at p 22

only available for extreme cases of physical assault. While it is more likely to see recruitment agencies be held accountable, individual sponsors and employers generally face little to no consequences.⁵³⁶ In addition, cases can only be appealed if the case's value is more than 20,000 AED. Therefore, as one of the interviewed advocates noted, most migrant workers settle out of court and go home because going through courts may take two years or more, during which they cannot officially work. She noted that although her civil society organization has lawyers who work pro-bono, the organization mostly advises people not to go through courts.⁵³⁷

This is further compounded by the fact that, like in the rest of the region, *kafala* is administered and regulated through the UAE's Ministry of Interior (MOI). This institution decides on residency and work permits as well as naturalization decisions. It also enforces those decisions without any intervention. While work permits are applied through the Ministry of Labor, the approval must still come from MOI, which is in charge of issuing these permits and clearances. MOI must also be informed of any changes in the contract or workers' status. Given that MOI also controls the security forces, it does not require cooperation from any other government body. This results in a highly centralized system that is controlled by the state security apparatus, which is significant considering migration is tied to perceptions of national security.⁵³⁸

It is no surprise that scholarship on migrant workers in the Gulf is replete with first-hand accounts of the human rights abuses that migrant workers experience on a daily basis that reflect how, in practice, these reforms have had little to no impact, and even the legislation that may help protect migrant workers is not enforced. Almost all the returning workers interviewed

⁵³⁶ Damir-Geilsdorf & Pelican, "Between regular and irregular employment", *supra* note 460.

⁵³⁷ Civil Society Organization interview 2

⁵³⁸ Lori, *supra* note 415. at p 145

complained about late, deducted, or no payments. It is worth exploring Suleiman and Muzzammil's stories in further detail to illustrate how issues around wages, inflexibility, passport confiscation, access to justice and poor living conditions persist:

Suleiman went to Abu Dhabi on a two-year contract to work as a site engineer for a residential project in Bida Zayd. He found this job through a friend and explained that he was hired because Pakistani engineers are “cheaper” than those in the UAE. He only signed the contract when he reached the UAE, where upon arrival, his employer confiscated his passport and other original academic records to, in his words, “give to the government.” Suleiman did not see the contract before leaving Pakistan and was only sent his visa; he had to cover the cost of his ticket.

His contract was terminated because the contractor had “no funds to continue the construction.” Suleiman had his salary withheld for three months (his entire stay in the UAE); he was only paid months after he returned to Pakistan. He realized this salary, too, was only half of what is usually paid to site engineers and the experience offered no training to make up for the low wages. Suleiman still considered himself to be luckier than some of his colleagues. He told me about a “labourer” from Bangladesh who had been working on-site for seven years but had not gotten paid enough to afford to go back home even once. According to Suleiman, there were at least 25 other workers in a similar situation. Living in accommodation facilities segregated based on nationality, around eight construction workers would be sharing a room. Because he did not speak Arabic or Bengali, he felt isolated as the only Pakistani on the site.

When Suleiman did try speaking to other colleagues and friends working in the UAE about not getting paid, there was a sense that this is the norm to expect in the UAE, and there was no option but to “patiently” wait.⁵³⁹ His *kafeel*, an Egyptian contractor, would tell his employees to go back home or work for another employer. However, with no passports, loans to cover recruitment costs their passports, and few opportunities to work elsewhere, most workers were left with no choice but to stay. Suleiman did not even leave the industrial area where his accommodation was and never got a chance to see Abu Dhabi. “Because I didn’t have the passport,” Suleiman recalled, “it was in my mind that if I left [the industrial area], the cops would catch us.” Without his passport and original academic records, he could not consider challenging his employer. He was not informed of the WPS nor the fact that passport confiscation is illegal. When I asked him what he did in his free time, he laughed and said, “I would cry.” The only recreation around him was a mosque and a little park nearby. The most he would do would be to get groceries at Sonaya, another industrial area. Suleiman had gone to the UAE for the “salary and the charm.” While he still considered himself in a better situation than some of his colleagues who had been working for longer, he attributed his experience to “bad luck” with a *kafeel*.

Similarly, Muzammil, who had worked in the UAE for four years as a mechanic and in construction in Abu Dhabi, recounted, “We were just machines and not able to do anything. We were just machines. There was no social life. There was no time to do anything else but work. We would get up in *fajr* (dawn)...it is pure labour, no stealing.

⁵³⁹ Returning Migrant Worker Interview 1

Obviously, after a whole day of manual labour, we would just fall asleep...the routine was like a grinding machine” Earning 1400 AED per month, Muzammil recalled how strenuous it was to work outdoors in extreme heat. Even when the cars were overheating, and the water would reach boiling temperatures, he and his colleagues would still have to work outside with little to no breaks. He worked 11 hours a day, despite the legal standards for a typical work week, which are set to eight hours per day⁵⁴⁰ and the prohibition of outdoor work when the temperature exceeds 45 degrees Celsius in the hottest months from 12:00 pm until 4:00 pm. There were no recreational facilities in or around his accommodation where around 16 people would share a room. On the Friday’s off, he would spend the day doing laundry, cleaning and getting ready for the week. Sometimes he would use public transportation to go to the corniche to meet his sister. But he avoided doing this often because his employer had confiscated his passport, and he only had a card that detailed where he worked. While he was paid on time, work visa fees of around 200 AED were deducted from his salary per month. Any medical fees would have also been deducted from this salary.

Suleiman and Muzammil’s stories illustrate that even existing legislation at the time was not enforced, specifically the prohibition of passport confiscation and the WPS. Similarly, a recent survey by Global Gulf Labour Markets, Migration and Population Programme of 94 migrant workers from hospitality and construction sectors found several persisting issues. Delayed wage payments and salary deductions are frequent as the Wage Protection System is not completely

⁵⁴⁰ Except it is nine hours for those who work in cafeterias, hotels and some other jobs according to Federal Labour Law No. 8

implemented. Passport confiscation, contract substitution and inability to change employers are still common.⁵⁴¹ As Andrew Gardner, who has conducted a series of rich ethnographic studies in the Gulf, remarked, “the problems that migrants encounter today are, essentially, the very same problems that migrants detailed to me in Saudi Arabia in 1999, in Bahrain in 2002-3, and Qatar from 2008 to the present.” Despite the many reforms and ambitious claims that they seek to abolish the *kafala* system, there is an “experiential stasis that characterizes transnational migrants’ experience in the Arab Gulf states.”⁵⁴² While I am cautious of over-generalizing, it is worth noting that the recent reforms’ inability to untie migrant workers from their sponsors and lack of enforcement and access to justice remain significant challenges for changes to be meaningful.

3.8 Subverting the *kafala*: formal routes versus informal routes

The preceding analysis does not mean that there are no exceptions whatsoever. Some migrant workers have been able to take advantage of the heterogeneous nature of the system and become, what Neha Vora calls, UAE’s “impossible citizens.”⁵⁴³ The fact that there is a significant number of non-citizens who have lived in the UAE for longer than 30 years has been the result of migrant workers actively finding ways to circumvent the *kafala*.⁵⁴⁴ Apart from multiple renewals of the same contract through the same sponsor, this is done through a myriad

⁵⁴¹ *Working and Living conditions of Low-Income Migrant Workers in the hospitality and construction Sectors in the United Arab emirates*, by Philippe Fargues, Nasra M Shah & Imco Brouwer, GLMM-RR-No. 2/2019 (2019).

⁵⁴² Gardner, *supra* note 465.

⁵⁴³ Neha Vora, *Impossible citizens: Dubai’s Indian diaspora* (Durham [N.C.]: Duke University Press, 2013).

⁵⁴⁴ Damir-Geilsdorf & Pelican, “Between regular and irregular employment”, *supra* note 460.

of both formal and informal ways that will be discussed in the following section that reveal how movement and supportive capabilities are distributed among migrant workers.

The following discussion will focus on four ways that the kafala system is subverted: free visas, family sponsorship, golden visas, and long-term residence through investments in free zones such as Masdar City. It will illustrate how more formal ways of circumventing the kafala system are opportunities that only migrant workers who can show their potential to contribute to the country's economy can pursue. Workers who are considered "low-skilled" without high incomes and investment potential are left to consider more risky, illegal routes to prolong their stay. The fact that the more liberal provisions and opportunities are reserved for certain migrant workers depicts the variegated ways capabilities are distributed among migrant workers.

3.9 *Khalli walli*⁵⁴⁵: "Free" Visas?

Migrant workers are able to prolong their stay through free visas, also known as *azad*⁵⁴⁶ visas and *khalli walli* visas. This multi-billion dollar industry allows workers to make unofficial agreements with sponsors to operate businesses and maintain work permit and residency statuses in return for rent money.⁵⁴⁷ While these visas are illegal on paper, a recent study by the International Organization of Migration reported that there are "at least 180,00 UAE-registered companies engage in the trading of free visas for as many as 600,000 migrants". In 2011, these visas could cost around 2,500 AED (680 USD), varying according to nationality.⁵⁴⁸ Through free visas, sponsors sell visas to migrants, charging them a significant fee that they often keep to

⁵⁴⁵ Arabic colloquial phrase that roughly translates to "let it be"

⁵⁴⁶ Urdu word for free

⁵⁴⁷ Roper & Barria, *supra* note 445.

⁵⁴⁸ Damir-Geilsdorf & Pelican, "Between regular and irregular employment", *supra* note 460.

themselves and also potentially an additional yearly fee.⁵⁴⁹ Unlike the *kafala* system, whereby the sponsor is both the guarantor and employer, this informal practice allows a separation of the two roles. The sponsor, in these cases, usually has no intention of employing the migrant worker and can benefit from the fees charged to the migrant worker. The employer, on the other hand, is able to employ a migrant worker without administrative and legal responsibilities. The migrant worker, in turn, is ‘free’ to choose where to work.⁵⁵⁰

These free visas are common practice and operate in various ways: companies who are entitled to issue visas and sell visas before going bankrupt – once out of business, both the companies and the migrant workers know that no sponsor will be responsible if the workers ‘abscond’⁵⁵¹ or overstay. Companies operating in free zones may also issue free visas without the intention of hiring them. Migrant workers entering through visas issued by businesses in free zones are able to enter the country, but like other workers on free visas, they have to find employment elsewhere to be able to stay. Some free visas are paid by migrant workers themselves who fund their work visas and other costs while working in freelance positions. While these are illegal, as noted by Mahdavi, they are still considered better options for workers given the flexibility and chances for more lucrative remuneration. Although “free visa” workers are not tied to specific employers, they are considered to have broken the law if they are working for someone other than the *kafeel*.⁵⁵² While some migrant workers may actively seek out free

⁵⁴⁹ Elizabeth Frantz (2017) The Legal Production of Illegality: Obstacles and Opportunities to Protect Undocumented Migrants in the Gulf States in Fargues & Shah, *supra* note 447. at p 62-63

⁵⁵⁰ Damir-Geilsdorf & Pelican, “Between regular and irregular employment”, *supra* note 460.

⁵⁵¹ Absconding or “running away” is a violation of immigration residency and rules

⁵⁵² Elizabeth Frantz (2017) The Legal Production of Illegality: Obstacles and Opportunities to Protect Undocumented Migrants in the Gulf States in Fargues & Shah, *supra* note 447. at p 62-63

visas as a better alternative, in some instances, migrant workers on free visas do not know they are entering through the “free visa” system until they arrive in the destination country.⁵⁵³

Free visas are one of the most significant ways migrants can acquire an irregular status. The risks associated with free visas, therefore, include detention and deportation of both workers and the visa providers. Furthermore, these workers also risk losing the support of the few civil society organizations that operate in the region that are reluctant to get involved in such cases. “As much as it is a sad situation...but if they are knowingly illegally purchasing a visa to work someone to then just work somewhere else – I can’t get involved in that,” informed one of the advocates I interviewed, “I can give you good advice, but I can’t take you to an office anywhere.”⁵⁵⁴ Her comments mirror the international migration legal regime’s tropes that differentiate some migrants as deserving and as undeserving. As discussed in Chapter 2, compared to refugees, economic migrants who are seen as voluntarily making the choice to move are seen as less deserving of help, just as more liberal provisions are reserved for migrant workers who are in a regular situation as opposed to workers in an irregular situation. Advocates on the ground are unable to challenge these tropes and are less able to directly help migrant workers who are assumed to have “knowingly” bought “free visas.” There is an overwhelming fear of potentially helping someone who is “breaking the law.”⁵⁵⁵ These assumptions can be particularly problematic considering some free-visa workers are unaware they are entering the country through this system,

⁵⁵³ Elizabeth Frantz (2017) The Legal Production of Illegality: Obstacles and Opportunities to Protect Undocumented Migrants in the Gulf States in *Skillful Survivals: Irregular Migration to the Gulf*, by Philippe Fargues & Nasra M Shah (Gulf Research Center (GRC), 2017). 6/28/21 3:06:00 PM at p 62-63

⁵⁵⁴ Civil Society Organization Official Interview 2

⁵⁵⁵ Civil Society Organization Interview 2

Exceptions such as free-visas are often the result of migrant workers and sponsors subverting or circumventing the *kafala* system, rather than a feature it permits. A capabilities-based lens that differentiates means from ends and relies on a positive account of freedom is able to differentiate that although these workers are able to prolong their stay through such informal practices, this is not an opportunity that is positively provided by the arrangement. These opportunities are, as the discussion below will show, are reserved for a narrow group of migrant workers.

3.10 Family sponsorship and restrictions on family reunification

Another way migrant workers can prolong their stay is through family sponsorships. However, this and the associated supportive capabilities are reserved for a narrow category of migrant workers despite recent changes. In 2019, the UAE Cabinet changed the residential rules that changed the criteria to be able to sponsor families.⁵⁵⁶ While migrant workers no longer have to be in “managerial” roles, there are restrictions around salaries. For a man, the minimum is a monthly salary is 3,000 AED if accommodation is provided by the employer or a monthly salary of 4,000 AED, and for a woman to sponsor her children, she must earn 10,000 AED.⁵⁵⁷ Only “unmarried female children” and “male children below the age of eighteen” can be included. The gendered nature of this rule aside, since the median salary is around 8,400 AED for a “skilled” worker and only 1,135 AED for an “unskilled” worker (other estimates show that these salaries

⁵⁵⁶ Ministerial Decree No. (658) of 2019 Amending Ministerial Resolution No. (1188) of 2010 (United Arab Emirates), online:< <https://www.mohre.gov.ae/en/laws-legislation/announcements.aspx>>

⁵⁵⁷ Article 9, Law No. 11 of 2013].Nick Webster, “UAE Cabinet to remove job title demand when sponsoring relatives”, *The National* (31 March 2019), online:<<https://www.thenationalnews.com/uae/government/uae-cabinet-to-remove-job-title-demand-when-sponsoring-relatives-1.843660>>.

can be as low as 400 AED⁵⁵⁸), this change does not necessarily relax the rules for most migrant workers.⁵⁵⁹ It is important to note, however, such restrictions on family reunification are not unique to migration policies in the Gulf.⁵⁶⁰

Even if migrant workers in the UAE are able to bring family members, low wages earned by “low-skilled” workers make it difficult to support these families, particularly given the increasing costs of living in the UAE. The cost of living and administrative costs associated with renewing visas for family members make family sponsorship an expensive option that migrant workers may not be able to consider. Furthermore, the lack of family reunification options can have other consequences. For instance, in a case study of Bahrain, Sharon Nagy remarked that workers without families are “referred to as “bachelors” – whether or not they are single or married.⁵⁶¹” She observes how the distinction between family and bachelor status provides an axis of differentiation that reinforces economic distinctions, marginalizing and stigmatizing the “bachelors.” In addition, the lack of family reunification options impacts the family members who are left behind in home countries. An in-depth study of families conducted in Pakistan revealed that of a sample of 3000 migrant households, about 70 percent of wives experienced severe loneliness, and 40 percent had children dropping out of schools or college. Other complaints included drug addiction of children and difficulties in arranging marriages for the

⁵⁵⁸ James Reagan McLaurin, “Labor Law in the United Arab Emirates: A Review and Recommendations” (2008) 12:2 Allied Academies International Conference Academy of Legal, Ethical and Regulatory Issues Proceedings; Arden 15–19.

⁵⁵⁹ Mouawiya Al Awad, “The cost of foreign labor in the United Arab Emirates” (2010) 3 Institute for Social & Economic Research (ISER), Working Paper. (This work has been supported technically and financially by the UAE Ministry of Labor)

⁵⁶⁰ See for eg. Pratt, *supra* note 191.

⁵⁶¹ Sharon Nagy, “Making room for migrants, making sense of difference: Spatial and ideological expressions of social diversity in urban Qatar” (2006) 43:1 Urban Studies 119–137.

children.⁵⁶² When I asked a Pakistani government official what he thought were the biggest concerns facing migrant workers, he responded, “the family gets ruined back home... You might have the money but not a family.”⁵⁶³ Since being able to support their families was consistently one of the top three priorities for interviewed migrant workers, the lack of family reunification options is significant.

3.11 Golden visas: longer stays for sale

Another decision in 2019 introduced “5 and 10-year golden visas,” which allow a narrow category of migrant workers to live, work and study without a sponsor and with 100 percent ownership of their business on the UAE’s mainland.⁵⁶⁴ This is an exception to the general requirement that all businesses must be at minimum 51% owned by a citizen with the exception of free economic zones. However, this change is only a means to attract investors and has no relevance for the average migrant worker in the UAE, and even though the categories are highly selective, a valid work contract is still required for all categories. To be eligible for the ten-year renewable visa, one has to have made public investments of at least 10 million AED or have “specialized talents.” The latter includes scientists, inventors, specialists, doctors and creative individuals accredited by the Ministry of Culture and Knowledge Development.⁵⁶⁵

⁵⁶² Azhar in Marion Panizzon et al, *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (London, UNITED KINGDOM: Palgrave Macmillan Limited, 2015). See also Andrew M Gardner, “Gulf Migration and the Family” (2011) 1:1 *Journal of Arabian Studies* 3–25.

⁵⁶³ Pakistani government official interview 1

⁵⁶⁴ Cabinet Resolution No. 56 of 2018 Regarding the Organization of Residence Permits for Investors, Entrepreneurs and Professional Talent (United Arab Emirates); “Golden visa - Long-term residence visas in the UAE - The Official Portal of the UAE Government”, online: *The United Arab Emirates Government Portal* <<https://u.ae/en/information-and-services/visa-and-emirates-id/residence-visa/long-term-residence-visas-in-the-uae>>.

⁵⁶⁵ *Ibid.*

The 5-year visas are for another group that further indicates the narrowness of the categories this exception is reserved for. This includes Investors who have invested in a property in the UAE of a gross value of not less than 5 million AED, entrepreneurs with a minimum capital of 500,000 AED, or “outstanding students” who have achieved at least 95 percent in secondary schools or a 3.75 Grade Point Average in university. While these selective changes pertain only to residency and not citizenship, they are similar to the point-based admission policy that was initiated in Canada and has spread in other migrant-receiving countries such as the United Kingdom and Australia, where immigrants with higher skills, more money, and ability to adapt to receiving countries’ environment are preferred in terms of admission and integration over others who are deemed less so particularly those who are less wealthy.⁵⁶⁶ A recent article notes that similar Immigrant Investor Programs that exchange residency or citizenship rights for financial capital are proliferating, with 60 different programs operating in 57 countries.⁵⁶⁷

Like recent rules on family sponsorship, golden visas only enhance movement and supportive capabilities for a certain group of migrant workers. By using markers such as income and capital, these formal routes afford more opportunities to migrant workers who are deemed more likely to contribute to the country’s economic growth.

3.12 Free zones: enclaves for a select few

Similarly, free zones present a limited opportunity for migrant workers to prolong their stay and employ other migrant workers. Free zones, more formally known as free trade zones,

⁵⁶⁶ Ypi, “Borders of Class”, *supra* note 189.

⁵⁶⁷ Alan Gamlen, Chris Kutarna & Ashby Monk, “Citizenship as Sovereign Wealth: Re-thinking Investor Immigration” (2019) 10:4 Global Policy 527–541.

are a type of Special Economic Zone that aims to stimulate trade, accelerate regional development. While the literature on free zones is vast, suffice to say these zones are considered mechanisms to help promote “economic liberalization” that are often tied to neoliberal policies.⁵⁶⁸ These demarcated geographic areas “are enclaves of truly free markets where entrepreneurs are liberated from restrictive commercial, labour, and manufacturing regimes.”⁵⁶⁹ In other words, rules governing commerce, tax and employment are different from those that exist elsewhere in the country. While employment contracts in the free zones must respect UAE’s labour laws, it is the respective free zone authority that sets employment laws and regulations governing those working in the free zone. As a result, some free zones can become avenues through which free visas are sold.

Masdar City free zone is one of the over 30 free trade zones in the UAE.⁵⁷⁰ A small group of migrant workers with capital can prolong their own stay in the country through such free zones and, hence, enhance their movement and supportive capabilities. Migrant workers who are able to afford to operate a business can do so with 100% foreign ownership (as opposed to elsewhere in the country where 51% of the business is required to be owned by an Emirati national), with no import duties and no personal income or corporate taxes.⁵⁷¹ License fees in Masdar City range from 2,500 AED to 31,000 AED. To be able to sponsor a visa, one would have to pay at least 12,500 AED as license fees. The most expensive “package” of 31,000 AED allows for four visas. Most migrant workers cannot afford these fees with wages that average

⁵⁶⁸ Arang Keshavarzian, “Geopolitics and the Genealogy of Free Trade Zones in the Persian Gulf” (2010) 15:2 *Geopolitics* 263–289.

⁵⁶⁹ *Ibid.*

⁵⁷⁰ Al Tamimi and Company, An Overview of the Abu Dhabi Free Zones (2020), Lexology online:< <https://www.lexology.com/library/detail.aspx?g=2ff210dd-50c0-45ff-bd25-60f8630ec232>>

⁵⁷¹ Masdar City Employment Regulations

around 1,135 AED or as low as 400 AED⁵⁷², even if we assume recruitment costs are low and issues such as wage theft are not concerns. This illustrates how even when formal exceptions to the *kafala* system are made, they prioritize migrant workers who are more likely to contribute to the economic growth of the country through their investment potential.

While these businesses technically operate outside the *kafala* system, employment regulations in Masdar City reflect an equally discretionary system and share a number of other features with the *kafala* system. Firstly, through free zones, the state is still able to offload a number of responsibilities to individuals or corporations. In fact, another layer of complexity is added to the sponsorship system in free zones. While the free zone authority is officially the sponsor or *kafeel*, it is the licensee that is required to fulfill the responsibilities and pay the costs of migration that would normally be offloaded to the sponsor. Furthermore, the Masdar City Employment Regulations 2009 (Employment Regulations), which stipulates these rules explicitly defers to “UAE Labour Law” when discussing, for instance, the terms and conditions of employment and working conditions such as hours of work and termination of employment.

Furthermore, similar to the *kafala* system, Masdar City’s Employment Regulations give significant discretion to the free zone authority to determine where workers work and their ability to switch employers, limiting supportive and movement capabilities. Masdar City’s Employment Regulations require employees to work “from Masdar City.” Workers can only be permitted to work outside the city to perform tasks on behalf of their licensee. This is a decision that Masdar City may make “in its absolute discretion.” Furthermore, while there are no specific provisions about transferring to an employer outside the city, workers can only switch employers if both licensees and the employee give consent in writing. Here, too, the free zone authority can

⁵⁷² McLaurin, “Labor Law in the United Arab Emirates”, *supra* note 558.

“in its absolute discretion” approve a transfer without the written consent.⁵⁷³ If the free zone authority does not approve switching employers, the employee’s sponsorship is cancelled. To be able to work for another employer, the worker has to obtain a new entry permit and residence visa. In other words, while technically free zones operate outside the *kafala* system, the exceptions around commerce and tax are not translated to employment regulations which, in turn, give the free zone authority significant discretion in determining where workers work and their ability to switch employers.

The free zone authority has a number of other areas where it can exercise “absolute discretion,” which also limits the capabilities of migrant workers who can afford licenses in the free zone. The free zone authority can, for instance, “limit the number of employees which the zone will be willing to sponsor for a licensee,”⁵⁷⁴ waive the requirement of a bank guarantee that is required for the licensee for each anticipated foreign employee. It is the zone’s Government Services Entity that approves licensees to be able to recruit employees who are not sponsored by the free zone authority.⁵⁷⁵ In these ways, even the small group of migrant workers who are able to afford to operate businesses in free zones are limited by the free zone authority, which can exercise its “absolute discretion” in a number of areas.

In summary, there are many ways that the *kafala* system can be circumvented to prolong migrant workers’ stay. More formal routes such as family sponsorship, golden visas and operating businesses in free zones are reserved for migrant workers who can demonstrate a potential to contribute to the country’s economy through investments and income, while the rest

⁵⁷³ Masdar City Employment Regulations 4.9

⁵⁷⁴ Masdar City Employment Regulations 4.11

⁵⁷⁵ A further layer of complexity is added by the fact that not all workers working for businesses in the Masdar City’s free zone have to be sponsored by its free zone authority (6.1.2 Masdar Employment Regulations)

often have to resort to more informal routes such as free visas. Through changes in rules around family sponsorship, golden visas and free zones, it is clear that the legal framework that governs migrant workers is undergoing a substantial change. These changes are driven by forces facilitating stable markets and foreign investment, property transactions for transnational capital. While David Mednicoff and Joanna Springer argue some of these “legal reforms might be associated with more open politics,” the reforms’ more liberal provisions are still reserved for a narrow category of workers.⁵⁷⁶ In other words, movement and supportive capabilities’ distribution is articulated selectively, primarily, and increasingly based on capital’s demands.

3.13 Propensity to create irregularity: What does this mean for the majority of migrant workers?

The resulting system is one where migrant workers who cannot demonstrate potential to contribute to the economy are left with fewer formal routes to prolong their stay and enjoy movement and supportive capabilities. With fewer opportunities for long-term visas and family reunification, informal routes such as free visas (as well as visa trading and overstaying) seem better options for migrant workers. Migrant workers who are caught with free visas are considered to be in an irregular situation. Therefore, the *kafala* system has a great propensity to create irregularity for such migrant workers.

While it is notoriously difficult to obtain numbers of migrant workers in an irregular situation, one estimate showed there were 224,548 migrant workers in an irregular situation, 2.7% of the non-citizen population.⁵⁷⁷ Another estimate by Ghulam Mohammad Arif and Tahira

⁵⁷⁶ Mednicoff & Springer, *supra* note 527. at p 100

⁵⁷⁷ This estimate is from 2014. Philippe Fargues (2017) “The Normal and the Exceptional in Irregular Migration in the Gulf” in Fargues & Shah, *supra* note 447. at p 13

Ishaq recorded that “over 250,000 illegal Pakistani immigrants have been deported back between 2009 and 2014, according to reports in the media...Three-quarters of these illegal migrants were deported from the GCC countries, with the highest numbers coming from Saudi Arabia, followed by UAE and Oman.”⁵⁷⁸ Yet another estimate suggests that there are currently 2.2 million to 3 million migrant workers in an irregular situation in the country. As Valenta et al. remark in their recent article, “That the number is high, both in absolute terms and relative to the overall migrant population in the UAE, is nevertheless beyond doubt.”⁵⁷⁹

These high numbers can be explained by the many ways migrant workers can acquire an irregular status. Not only can migrant workers “choose” to take the risk of staying in the country on an irregular status through routes such as free visas, but some can find themselves in an irregular situation without any fault of their own.⁵⁸⁰ When the employment relationship is ended, and contract⁵⁸¹ is not renewed or extended, the worker can no longer stay legally in the country given the lack of permanent residency status or citizenship routes. A contract can expire, and the employer may refuse to return their passport, renew their visa or pay for return airfare. An employer may report workers as “absconded” when they have not. Indeed the numerous news stories of “absconded” workers that Anh Longva recounts in her book, *Walls Built On Sand: Migration, Exclusion, And Society In Kuwait*, are telling. Furthermore, even if a new work

⁵⁷⁸ Ghulam Mohammad Arif and Tahira Ishaq (2017) “Irregular Migration to the Gulf: An Analysis of the Status of Pakistani Migrant Workers” in *Ibid.* at p 304

⁵⁷⁹ Marko Valenta et al, “Temporary Labour–Migration System and Long–term Residence Strategies in the United Arab Emirates” (2020) 58:1 International Migration 182–197..

⁵⁸⁰ Nasra M Shah identifies five different types of irregular migration to the Gulf: “(i) entering unlawfully into a country; (ii) overstaying a valid residency permit; (iii) being employed by someone who is not the sponsor; (iv) running away from an employer, or absconding; and (v) being born in the Gulf to parents with an irregular status.” Nasra M Shah (2017) “Introduction: Skillful Survivors: Irregular Migration to the Gulf” in Fargues & Shah, *supra* note 447. At p 4

⁵⁸¹ Art 120 Federal Labour Law No. 8

permit has been agreed to, the employers may fail to follow the procedure, which would put the worker in breach of their visa requirements.

There are also a number of provisions that allow employers to terminate contracts without prior notice that can be interpreted liberally. For instance, contracts can be terminated if the worker “divulges any secret of the establishment where he works” or “convicted by the court in a crime of honour, honesty or public ethics” or found in a state of “drunkenness or under the influence of a narcotic during work hours” or be absent without a valid cause for more than seven consecutive days. While writing about Kuwait, Longva recalls the vagueness of such norms makes deportability a constant threat for migrants. In addition, as aforementioned, workers waiting for an outcome of a legal case or who are in shelters can also be considered to be in an irregular situation.⁵⁸² These migrant workers in an irregular situation are subject to arrest, detention, and deportation.⁵⁸³ While in detention centers, these workers accumulate overstay fines, and with insufficient funds, they can also be prohibited from leaving the country.⁵⁸⁴ Therefore the threat of irregularity is ever-present, as a number of my interlocutors revealed, further preventing migrant workers from challenging their employers.

In summary, the ways that the kafala system is circumvented by migrant workers reveals that while the more formal routes are reserved for a small group of elite migrant workers with high incomes and investment potential, the kafala system leaves the majority of the migrant workers to resort to more informal illegal routes that put them at the risk of irregularity. This propensity to create irregularity for precarious workers is particularly significant considering the

⁵⁸² Longva, *supra* note 452.; Longva, “Keeping Migrant Workers in Check”, *supra* note 535.

⁵⁸³ Nicholas De Genova, “Detention, Deportation, and Waiting: Toward a Theory of Migrant Detainability” (2019) 2:1 GaV 92–104.

⁵⁸⁴ Roper & Barria, *supra* note 445.

international regime's tendency to guard more liberal provisions and rights from migrant workers in an irregular situation.

3.14 Conclusion

The *kafala* system often becomes “black-boxed,”⁵⁸⁵ and most of the mainstream discussion relies on binaries such as citizen/non-citizen, inclusive/exclusive, democratic/autocratic. The discussion above sought to complicate some of these categories and show how the *kafala* system is variegated and heterogeneous, allowing the state to offload a number of responsibilities to individual sponsors. Some historical context, namely the role of British influence in contributing to pluralism, differentiation between migrants and migration trends in the region, helped contextualize the *kafala* system today. *Kafala* system's highly discretionary, heterogeneous nature gives non-state actors an expansive role, which coupled with stringent citizenship rules, Emiratization, and informal hierarchies significantly inhibit migrant workers' movement and supportive capabilities, particularly those of “low-skilled” South Asian migrant workers in 3-d jobs. It is argued that despite reforms and the many ways the *kafala* system is circumvented, the system has a propensity to create irregularity and precarity for a majority of the migrant workers, particularly those who are considered “low-skilled” and incapable of contributing to the country's economy. Recent reforms have been unable to tackle the heterogeneous discretionary nature of the *kafala* system and lack of enforcement and inadequate access to justice. Taken together *kafala* system's basic features, along with other formal and informal rules as well as various routes that can be circumvented, reflect a propensity

⁵⁸⁵ Vora & Koch, “Everyday Inclusions”, *supra* note 415.

to create precarity.⁵⁸⁶ The more formal routes and the associated movement and supportive capabilities are opportunities only a narrow group of migrant workers can enjoy, while the majority of migrant workers are left to consider informal routes, which put them at risk of irregularity, and therefore, deportability.

In other words, the very ways (such as using visa-trading, free visas etc.) that the *kafala* system is circumvented for greater flexibility become the source of irregularity. Whether it is a choice that is preferred or imposed with no fault of their own, this irregularity is a feature of the *kafala* system. This is particularly grave given the fact that there are few international law protections for migrant workers in an irregular situation. The fact that the only time the UAE Constitution makes reference to “foreigners” it grants “them rights and freedom stipulated in international charters which are in force or in treaties and agreements to which the Union is party”⁵⁸⁷ makes the lack of protection in international law even more significant.

Furthermore, as Mohanty writes, neoliberal states facilitate movement for some economically privileged communities, at the expense of inhibiting movement and mobility through “conditionality, criminalization and incarceration”⁵⁸⁸ of migrants with irregular statuses.”⁵⁸⁹ The threat of irregularity places the migrant workers who have lived for generations by subverting the *kafala* system in a “permanently deportable” situation. As Nicholas de Genova forcefully argues, deportation has achieved an unprecedented prominence. While it was seen as “barbarous and cruel,” at the beginning of the twentieth century, by the end of the century, it has

⁵⁸⁶ Arne L Kalleberg et al, eds, “Probing Precarious Work: Theory, Research, and Politics” in *Precarious Work* Research in the Sociology of Work (Emerald Publishing Limited, 2017) 1.

⁵⁸⁷ Art 40 Constitution of the United Arab Emirates (United Arab Emirates)

⁵⁸⁸ Stasiulis, Jinnah & Rutherford, *supra* note 22.

⁵⁸⁹ Chandra Talpade Mohanty, “Transnational Feminist Crossings: On Neoliberalism and Radical Critique” (2013) 38:4 *Signs: Journal of Women in Culture and Society* 967–991.

“become utterly banal.”⁵⁹⁰ This constant state of deportability shapes the everyday lives of not only “undocumented” “illegal” workers who are in an irregular situation, but also migrant workers who have been able to subvert the kafala system and even certain local minorities in the UAE.⁵⁹¹ Having evaluated the international and Emirati regimes regulating migrant workers in the UAE, the following chapter will discuss whether UAE’s efforts towards SD through eco-city projects such as Masdar City can serve as a useful site to seek migrant justice.

⁵⁹⁰ De Genova & Peutz, *supra* note 406. at p34 2010

⁵⁹¹ *Ibid.* at p 438

Chapter 4: The Story of Masdar: **“Sustainable Development” for Migrant Justice?**

“The UAE Government wants to ensure *sustainable development* while preserving the environment, and to achieve a perfect balance between economic and social development.”

- UAE Vision 2021 website⁵⁹²

“Masdar was launched in April 2006, rooted in the principles of resource conservation and *sustainable development* practiced by the UAE’s first President and Founding Father, Sheikh Zayed bin Sultan Al Nahyan.”

- Sultan al Jaber, Former CEO of Masdar 2010

The United Arab Emirates (UAE), too, is enchanted by post-Paris enthusiasm⁵⁹³ towards sustainable development (SD). Indeed Sheikh Zayed bin Sultan Al Nahyan, former ruler of Abu Dhabi known as the “Green Sheikh, “is still remembered as a strong advocate for environmental protection; his vision is said to have “[become] a legacy ensuring the long-term SD of the UAE.”⁵⁹⁴ As Majid Al Mansouri, former Secretary-General of the Environment Agency in Abu Dhabi, stated, “For five decades, Sheikh Zayed advocated and adopted the concept of what is known today as sustainable development.”⁵⁹⁵ Building on this “Sheikh Zayed legacy,” the UAE Vision 2021 set UAE’s ambition towards “an environmentally sustainable world” as “a leader of the green revolution.”⁵⁹⁶

⁵⁹² “Sustainable Environment and Infrastructure”, (2018), online: *UAE Vision 2021* <<https://www.vision2021.ae/en/national-agenda-2021/list/environment-circle>>.

⁵⁹³ Dayna Nadine Scott & Adrian A Smith, “Sacrifice Zones in the Green Energy Economy: The New Climate Refugees” (2016) 26 *Transnat’l L & Contemp Probs* 371..

⁵⁹⁴ “Legacy of Sheikh Zayed”, (2021), online: *Zayed Sustainability Prize* <<https://zayedustainabilityprize.com/en/about/legacy-of-sheikh-zayed>>.

⁵⁹⁵ Fatma Al Rahma, “Sheikh Zayed and a Sustainable Legacy” *The Gazelle* (December 2018), online: <<https://www.thegazelle.org/issue/148/features/sheikh-zayed-and-a-sustainable-legacy>>. y

⁵⁹⁶ *UAE Vision 2021: United in Ambition and Determination* (2014), online: <https://www.vision2021.ae/docs/default-source/default-document-library/uae_vision-arabic.pdf?sfvrsn=b09a06a6_6>.

Similarly, UAE's capital, Abu Dhabi, announced Economic Vision 2030, a long-term development agenda that aims to diversify its economy and incorporate sustainability.⁵⁹⁷ Since then, Abu Dhabi has established several renewable energy and sustainable development initiatives under Crown Prince Sheikh Mohammed bin Zayed Al Nahyan⁵⁹⁸ and Foreign Minister Sheikh Abdullah, including winning a bid to host the International Renewable Energy Agency, establishing a nuclear energy program and Masdar City. While its ecological footprint⁵⁹⁹ is one of the world's largest, the UAE seeks to position itself as a leader of the "post-oil" future. Whether or not UAE's efforts to jump on the sustainable development bandwagon have been effective so far or merely reflect an "eco-desire,"⁶⁰⁰ does UAE's aspiration to be a leader in a 'post-oil future' provide an opportunity to reimagine other relationships, tensions and dependencies?

The preceding chapters have shown how movement and supportive capabilities are distributed in ways that confine certain migrant workers into sectors, statuses, and routes that may put them at greater risk of precarity and irregularity. Given these criticisms, do UAE's commitments towards SD provide an opportunity to expand migrant workers' capabilities? What does Masdar's story tell us about SD's ability to accommodate migrant justice? In particular, should we expect that in building an eco-city, a state would begin to question its reliance on and poor treatment of migrant workers?

⁵⁹⁷ *Abu Dhabi Economic Vision 2030* (Abu Dhabi Government, 2006).

⁵⁹⁸ Mari Luomi, *The Gulf monarchies and climate change: Abu Dhabi and Qatar in an era of natural unsustainability*, Power and politics in the Gulf (London: Hurst [u.a.], 2012).

⁵⁹⁹ The goods and services used by an average person exceeds its biocapacity

⁶⁰⁰ Sze, *supra* note 11.

SD is notoriously difficult to define and can mean “different things to different people.”⁶⁰¹ While scholars and policymakers continue to debate the precise definition of SD, it is most often defined according to the 1987 Brundtland Report, which defines SD as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁶⁰² SD is understood as consisting of three pillars (economic, environmental and social) that it claims to balance in a holistic, integrated way. Migrant workers’ concerns can be addressed arguably most directly within the social pillar, which remains most under-theorized.⁶⁰³

While its latest iteration as SDGs⁶⁰⁴ has received high-level political support and is endorsed by the Global Migration Compact, SD remains a contested topic. Literature on the subject exploded since it was first introduced as a term in 1987, ranging across different disciplines, including Development Studies, Environmental Law, Ecological Economics, Environmental Science, Environmental Sociology, Environmental Ethics, Climatology, Geology, Policy and Planning, and Urban Studies.⁶⁰⁵ The following account, however, focuses on three critical strands of literature on SD: capabilities approach, which defines SD in terms of capabilities and can explicitly re-hierarchize social and environmental dimensions over economic, Third World Approaches to International Law (TWAIL) which can historicize SD and

⁶⁰¹ Virginie Barral, “Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm” (2012) 23:2 Eur J Int Law 377–400.

⁶⁰² Brundtland, G.H, *Our Common Future: Report of the World Commission on Environment and Development*, WCED, 1987 UN-Dokument A/42/427 [Brundtland Report 1987]

⁶⁰³ Boström, “A missing pillar?”, *supra* note 61.; *The Role of Labour Standards in Development: From theory to sustainable practice*, OUP Catalogue, by Tonia Novitz & David Mangan, RePEc - Econpapers, OUP Catalogue (Oxford University Press, 2011).

⁶⁰⁴ *Transforming our world: the 2030 Agenda for Sustainable Development*, UN General Assembly, Sess 70th, A/RES/70/1 (21 October 2015) [Agenda 2030]

⁶⁰⁵ Keith Pezzoli, “Sustainable Development Literature: A Transdisciplinary Bibliography” (1997) 40:5 Journal of Environmental Planning and Management 575–602.

Critical Development Scholarship which is useful for its post-colonial and post-structural critiques on SD. While CA, TWAIL, and CD accounts on SD vary in their foci, the common theme is a critique on the development project's (including its most recent iteration as SD) relentless commitment to economic growth and the need for plural conceptions of justice and paths to development.

This chapter will explore whether SD can further migrant workers' movement and supportive capabilities in three parts. Part 1 will start with a brief discussion of the instruments that led to SD and show the potential link between them and migrant workers' movement and supportive capabilities. It will then see how SD is practiced in the UAE through Masdar City, arguing how reliance on ecological modernization discourses hollows SD out of its social content, allowing Masdar City to expand movement and supportive capabilities for a select few while retaining the status quo for the majority of migrant workers who are treated as uninterested, uninformed and unimportant. This dilution of SD's social aspects and co-option in practice undermines SD's ability to accommodate migrant justice. Part 2 proposes one reason why SD is likely to get co-opted lies within how the concept evolved where economic concerns consistently eclipsed social and environmental aspects. Part 3 analyzes Agenda 2030 and argues that while it takes precarity and irregularity into account, persistent tensions and hierarchies undermine its ability to expand migrant workers' supportive and movement capabilities. Ultimately, I argue that as reflected by SD in practice, SD's evolution and persistent tensions in the Sustainable Development Goals (SDGs), sustainable development's eco-modernist logic and unidimensional view of economic-centered growth, waters down its social content and undermines its compatibility with migrant justice.

4.1 SD's connection to migrant workers' concerns

A glance at how SD has evolved can highlight the way migrant workers' concerns and capabilities have been included, albeit partially, in some key documents that have defined and elaborated on SD. While these instruments are non-binding and have primarily reiterated existing human rights norms, the link between SD and migrant workers' concerns is strongest in SDGs.

SD's evolution in international environmental law is conventionally narrated as inspired by "limits to growth" debates of the 1970s and the 1972 Stockholm Conference.⁶⁰⁶ The Stockholm Declaration set the foundation for both contemporary international environmental law and SD.⁶⁰⁷ In articulating the relationship between environment and development, it linked environmental protection to human rights norms. This is seen most clearly through Principle 1, which states that "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."⁶⁰⁸ This was connected to eliminating "policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination."⁶⁰⁹ Principle 1, therefore, may entail expanding some aspects of movement and supportive capabilities.

In contrast, while the World Commission on Environment and Development's Brundtland Report takes migration and informal labour into account, it does not mention improving working conditions or removing policies promoting forms of oppression.⁶¹⁰ The UN

⁶⁰⁶ See for e.g. Bâc Dorin Paul, "A History of the Concept of Sustainable Development: Literature Review" 5.

⁶⁰⁷ Michael Redclift, "Sustainable development (1987–2005): an oxymoron comes of age" (2005) 13:4 Sustainable Development 212–227.

⁶⁰⁸ *Stockholm Declaration on the Human Environment*, in Report of the United Nations Conference on the Human Environment, UNGA, UN Doc. A/CONF. 48/14, at 2 and Corr. 1 (1972) Principle 1 [Stockholm Declaration].

⁶⁰⁹ Stockholm Declaration Principle 1

⁶¹⁰ Brundtland Report 1987

General Assembly established the World Commission on Environment and Development in 1983 to reconcile tensions between economic development with environmental protection. The WCED published the Brundtland Report (titled “Our common future”) in 1987, which remains a primary reference point for SD.⁶¹¹ It defined SD as “development that meets the needs of the present without compromising the ability of future generations to meet their needs.” In the Brundtland Report, SD is defined therefore as “fair allocation of resources” between the “developed” and “developing” countries (intragenerational justice) and between the present and future generations (intergenerational justice).⁶¹² As Section 4.9 will elaborate, the Brundtland Report has been criticized for *inter alia* its focus on poverty eradication.

The language of rights in the Stockholm Declaration, as Novitz and Pieraccini note, is replaced by “needs” in the Brundtland Report. Furthermore, in its section on “Changes in Mobility,” migration is primarily dealt with as a potential impact on population distribution. It is posed as one of the “risks and potential disputes” to be monitored alongside environmental impacts such as soil erosion.⁶¹³ More significantly, while the Brundtland Report noted that “informal sector builders represent an important source of urban employment, in particular for low and unskilled labour,”⁶¹⁴ This labour is described as flexible, not “capital-intensive, technology-intensive, or energy-intensive” and, therefore, able to contribute to development objectives. In short, while the Brundtland Report explicitly takes migration and labour into account, this is done only in relation to population distribution or “Self-Reliance and Citizen Involvement.” Since labour is projected to increase and the “option of migration to new lands is

⁶¹¹ Terence Onang Egute, Eike Albrecht & Kelvin Awanaya Egute, “From Stockholm to Paris: Four Decades of Sustainability in International Law” in Michael Schmidt et al, eds, *Sustainable Global Value Chains Natural Resource Management in Transition* (Cham: Springer International Publishing, 2019) 63.

⁶¹² *Brundtland Report*

⁶¹³ *Brundtland Report* 3.43 at p 149

⁶¹⁴ *Brundtland Report* 42.

virtually closed,”⁶¹⁵ increased economic growth becomes integral to increasing job opportunities, lowering fertility rates, and “managing” population growth.⁶¹⁶

In 1992, the Rio Declaration and Agenda 21⁶¹⁷ were signed at the UN Conference on Environment and Development, further connecting the development and environmental agendas. They elaborated on SD’s components, tools and institutional structure, namely the Commission on Sustainable Development. SD is composed of substantive components such as “the principle of integration, inter- and intra-generational equity principle, sustainable use of natural resources and the right to development.”⁶¹⁸ SD’s procedural components include obligations between states to inform, cooperate, notify, assist during emergencies and negotiate in good faith.⁶¹⁹ States also have procedural obligations towards their citizens, including informing, public participation and access to remedies. In the context of migrant workers building eco-cities, the procedural obligations states have to their citizens, such as providing information, public participation and access to remedies, are relevant. It is interesting to note, however, that these obligations are not towards non-citizen residents. While the Rio Declaration’s list of vulnerable groups does not include migrants, the action plan in Agenda 21 not only identified migrants as one of the vulnerable groups but also called for strengthening the role of trade unions and workers.⁶²⁰ It also called to “promote the use of labour-intensive construction and maintenance technologies which

⁶¹⁵ *Brundtland Report* 10, 13

⁶¹⁶ *Brundtland Report*

⁶¹⁷ After the UN Declaration on the Right to Development 1986

⁶¹⁸ *Rio Declaration on Environment and Development*, UNGA, UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992) [*Rio Declaration*]; Sumudu Atapattu & Shyami Puvimanasinghe, “Guidance from the Ground up: Lessons from South Asia for Realizing the Sustainable Development Goals” (2019) *The Right to Development* 141–167.

⁶¹⁹ Sumudu Atapattu, “From Our Common Future to Sustainable Development Goals: Evolution of Sustainable Development under International Law” (2018) 36:2 *Wis Int’l LJ* 215–246.

⁶²⁰ *Agenda 21*, United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992, 29.1- 29.14, 5.21 [*Agenda 21*].

generate employment in the construction sector for the underemployed labour force found in most large cities, while at the same time promoting the development of skills in the construction sector.”⁶²¹

In 1995, the Copenhagen Declaration adopted at the World Summit for Social Development added social development as the third pillar of SD.⁶²² Here, not only did human rights reappear, but the Copenhagen Declaration also promoted “full employment and enabling men and women to attain sustainable livelihoods” while explicitly calling for the “protection of all human rights and non-discrimination” as well as “full respect of human dignity and to achieving equality and equity between men and women.”⁶²³

It also explicitly included migrant workers in two of its commitments. Internationally, the Declaration’s signatories including the UAE committed to “ensure that migrant workers benefit from the protections provided by relevant national and international instruments, take concrete and effective measures against the exploitation of migrant workers, and encourage all countries to consider the ratification and full implementation of the relevant international instruments on migrant workers”.⁶²⁴ It also includes a commitment on the national level to “formulate or strengthen measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in sectors of many societies, and to promote greater harmony and tolerance in all societies”⁶²⁵ In other words, while it primarily reinforces existing human rights norms it also commits

⁶²¹ *Agenda 21* 7.69e

⁶²² *Copenhagen Declaration on Social Development*, World Summit for Social Development, A/CONF.166/9 Chapter I, Annex I - UN Documents (15 March 1995) Online:<
https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.166_9_Declaration.pdf >[*Copenhagen Declaration*].

⁶²³ *Copenhagen Declaration*

⁶²⁴ *Copenhagen Declaration* Commitment 3.a

⁶²⁵ *Copenhagen Declaration* Commitment 4

signatories to “take concrete and effective measures against the exploitation of migrant workers.” The inclusion of full employment (as opposed to income-generating employment)⁶²⁶ as well as full respect of human dignity is also promising from a capabilities-based perspective.

In 2002, Johannesburg Declaration formally embraced social development as an integral component of SD and continued the focus on poverty eradication. The Johannesburg Declaration calls to provide assistance to increase “income-generating” employment opportunities, “taking into account the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization.”⁶²⁷ The Johannesburg Plan of Implementation, which is argued to “place social concerns on an equal footing with more familiar environmental and economic aims.”⁶²⁸ also mentions supporting the ILO’s work on the social dimension of globalization as well as reducing occupational hazards and protecting workers’ health.

In 2012, Rio+20 and its outcome document titled “The Future We Want” devoted an entire section to “promoting full and productive employment, decent work for all, and social protections.”⁶²⁹ Rio+20 underscored the need to include participation from migrants and called to “promote and protect effectively the human rights and fundamental freedom of all migrants regardless of migration status, especially those of women and children”⁶³⁰ the inclusion of “all migrants regardless of migration status”⁶³¹ is contrasted by the Copenhagen Declaration’s reference to “migrants, migrant workers and their families.”⁶³² However, as Section 4.8 will discuss in greater detail, this was done through the theme of green economy which narrowed SD

⁶²⁶ *Copenhagen Declaration*

⁶²⁷ *Johannesburg Declaration* 28

⁶²⁸ Margherita & Tonia, *supra* note 59. 20

⁶²⁹ *Resolution adopted by the General Assembly on 27 July 2012*, UNGA Sess 66th, A/RES/66/288 (2012) [*The Future We Want*]

⁶³⁰ Rio+20 paragraph 157

⁶³¹ *The Future We Want*

⁶³² *Copenhagen Declaration*

to the economy-environment nexus and risked a return to a more narrow economic-centric view of SD while diluting other pillars. Rio+20 also introduced the High-Level Political Forum, which replaced the Commission on Sustainable Development in 2012, which seeks to enhance the integration of the three dimensions of SD in a holistic way.⁶³³

This brings us to the SDGs, which replaced the Millennium Development Goals in 2015 and have reinvigorated efforts to frame labour standards and migrant workers' rights in terms of SD.⁶³⁴ As several studies on the linkages between SDGs and migration highlight,⁶³⁵ there are many connections between migration and SDG's goals, targets and indicators. While SDG 8, which calls for 'full and productive employment and decent work for all' by 2030, is most directly related to migrant workers, SDG 5, SDG 4, SDG 10, SDG 11, SD12 and SDG 16 are also relevant to our discussion. Targets under SDG 8 on decent work and economic growth, in particular, refer to ILO's fundamental labour standards on non-discrimination, forced labour, human trafficking and child labour.⁶³⁶ Not only does SDG 8 stress job creation for the marginalized, but Target 8.7 emphasizes measures to eradicate forced labour and end modern slavery and human trafficking, and target 8.8 refers to the vulnerability of migrant workers, especially women and those in precarious employment. Through target 10.7, states commit to '[f]acilitate orderly, safe, regular and responsible migration and mobility of people, including

⁶³³ Margherita & Tonia, *supra* note 59.

⁶³⁴ *Ibid.*

⁶³⁵ See for e.g. Richard Mallett, "Decent work, migration and the 2030 Agenda for Sustainable Development" 20.; Tonia Novitz, "Engagement with sustainability at the International Labour Organization and wider implications for collective worker voice" (2020) 159:4 International Labour Review 463–482.; "GFMD Working Group on Sustainable Development and International Migration | Global Forum on Migration and Development", online: <<https://www.gfmd.org/gfmd-working-group-sustainable-development-and-international-migration>>.

⁶³⁶ Final list of proposed Sustainable Development Goal indicators, Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (E/CN.3/2016/2/Rev.1), online:<<https://sustainabledevelopment.un.org/content/documents/11803Official-List-of-Proposed-SDG-Indicators.pdf>> 8.1-8.10, at p10-11 [*SDG Targets*]

through the implementation of planned and well-managed migration policies.’ In other words, the SDG’s take both precarious employment and irregular migration into account.

Nicola Piper argues that in contrast to migration-development debates that sideline migrant rights, the SDGs have the potential to address migration from a rights perspective because their realization goes beyond providing ‘safe and orderly migration’ and they address the lack of ‘decent work’ and participatory decision making.⁶³⁷ Novitz goes as far as to contend that SD is already “taken as embracing and incorporating the protection of labour standards.”⁶³⁸ This might encourage a broader a decent work agenda rather than only focusing on “core” human rights. Similarly, the International Organization on Migration Director General William Lacy Swing also contends that “with the SDGs, migration is now seen as an issue to act upon to enhance sustainable development.”⁶³⁹ However, as Section 4.10 will elaborate, there are significant concerns that may caution celebrating SDG’s embrace of decent work and partial inclusion of precarious employment and irregular migration. Nevertheless, in summary, while the link between migration and SD has always been there to a certain extent throughout its development and this inclusion has not necessarily followed a linear path, it has become more explicit in SDGs.

4.2 SD’s legal obligations and nature

⁶³⁷ Nicola Piper, “Migration and the SDGs” (2017) 17:2 Global Social Policy 231–238.

⁶³⁸ Novitz, *supra* note 635.

⁶³⁹ William Lacy, “Foreword” in *Migration in the 2030 Agenda* (International Organization for Migration, 2017).; Simon Dalby et al, *Achieving the Sustainable Development Goals: Global Governance Challenges* (Routledge, 2019) Google-Books-ID: EwuWDwAAQBAJ.

Having introduced some of the main instruments contributing to SD's role as the "new lingua franca in international policy-making," it is worthwhile to summarize debates on SD's obligations and its legal nature. Despite SD's vague nature, proponents of SD argue that it "for the first time it makes state's management of its domestic environment a matter of international concern in a systematic way."⁶⁴⁰ Atapattu and Puvimanagasinghe, for instance, show how public-interest litigation in South Asia after the Bhopal disaster of 1984 is using SD and insist that there are certain concrete obligations it gives rise to.⁶⁴¹ They point to the 1992 Rio Declaration, which elaborated on SD's components and tools. The Rio Declaration consists of the following principles: "the principle of integration, inter- and intra-generational equity principle, sustainable use of natural resources and the right to development." While the right to development's status is unsettled, other procedural components include obligations between states to inform, cooperate, notify, assist during emergencies and negotiate in good faith. States also have procedural obligations towards their citizens, including informing, public participation and access to remedies.

Atapattu notes that The *New Delhi Declaration of Principles of International Law Relating to Sustainable Development* adopted by the International Law Association in 2002 is also significant in this regard. It further identified principles that formed sustainable development as: "(a) the duty of states to ensure sustainable use of natural resources; (b) the principle of equity and the eradication of poverty; (c) the principle of common but differentiated responsibilities; (d) the principle of the precautionary approach to human health, natural resources and ecosystems; (e) the principle of public participation and access to information and

⁶⁴⁰ Patricia Birnie, Alan Boyle & Catherine Redgwell, *International Law and the Environment*, 3rd edition ed (Oxford ; New York: Oxford University Press, 2009). 124.

⁶⁴¹ Atapattu & Puvimanasinghe, "Guidance from the Ground up", *supra* note 618.

justice; (f) the principle of good governance; and (g) the principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives.”⁶⁴² Not only did it endorse SD as a common concern for both developed and developing countries but, in doing so, it recognized SD as an *erga omnes* obligation.⁶⁴³ *New Delhi Declaration*’s principle of integration and interrelationship is particularly relevant given migrant workers’ rights, and related capabilities are seen to fall within SD’s social pillar. While the social pillar remains most under-theorized, it does seem to consist of the “basic needs” of people, expressed in terms of human rights.⁶⁴⁴

However, despite arguments that SD gives rise to certain concrete substantive and procedural obligations, sustainable development’s legal nature is contentious at best. The seminal case which dealt with SD is the *Gabcikovo-Nagymaros Case* in 1997, where the International Court of Justice rejected endorsing Judge Weeramantry’s separate opinion recognizing SD as a customary principle of international law. Therefore, as Barral argues, it has not been granted formal customary legal status by the courts even though it is used as an interpretive tool and an objective that can serve as a basis to measure legal provisions.

Proponents such as Atapattu argue that most of the components of SD impose binding obligations on states such as the principle of integration, inter and intragenerational equity and procedural components, which have all been incorporated in a number of international treaties and declarations on not only the environment, human rights but also trade and investment. Also, the ICJ in the *Pulp Mills Case* between Argentina and Uruguay held that conducting

⁶⁴² Atapattu, “From Our Common Future to Sustainable Development Goals”, *supra* note 619.. at p 230-231

⁶⁴³ Atapattu & Puvimanasinghe, “Guidance from the Ground up”, *supra* note 618.

⁶⁴⁴ Sumudu Atapattu, “The Paris Agreement and human rights: is sustainable development the ‘new human right’?” (2018) 9:1 *Journal of Human Rights and the Environment* 68–88.

transboundary Environmental Impact Assessment (EIA) - a tool that allows states to achieve integration and incorporates public participation - is part of customary international law.⁶⁴⁵

On the other hand, Lowe argues that SD is not a primary rule but instead an “interstitial norm” or modifying norm, which is better used as an interpretative tool to serve a hermeneutical function for judges.⁶⁴⁶ For Lowe, it is “a meta-principle, acting upon other legal rules and principles – a legal concept exercising a kind of interstitial normativity, pushing and pulling the boundaries of true primary norms when they threaten to overlap or conflict with each other.”⁶⁴⁷ While some scholars argue that it is merely a political or philosophical objective, others argue that regardless of its legal nature its various principles culminate in a “conceptual matrix.”⁶⁴⁸ More recently, Margherita Pieraccini and Tonia Novitz who rely on critical legal theory argue that “sustainability [is] a ‘directing’ principle of post-modern law” which is useful for its flexibility to be able to encompass multiple perspectives and be further refined.⁶⁴⁹

In summary, while SD’s legal nature is contested, there are some concrete obligations it gives rise to, and that may have an impact on migrant workers’ capabilities. Both SD’s strengths and weaknesses are attributed to its flexibility. While it remains a concept difficult to define, its flexibility has allowed it to serve as an anchor for environmental measures and the international

⁶⁴⁵ Sumudu Atapattu, “From Our Common Future to Sustainable Development Goals: Evolution of Sustainable Development under International Law” (2018) 36:2 Wis Int’l LJ 215–246.

⁶⁴⁶ Virginie Barral, “Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm” (2012) 23:2 Eur J Int Law 377–400.

⁶⁴⁷ Vaughan Lowe, *Sustainable Development and Unsustainable Arguments* (Oxford University Press). Lowe, ‘Sustainable Development and Unsustainable Arguments’, in A. Boyle and D. Freestone (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges* (1999), at p 31.

⁶⁴⁸ Barral, “Sustainable Development in International Law”, *supra* note 646. Dupuy in ‘Où en est le droit international de l’environnement à la fin du siècle?’, 101 RGDIP (1997) 873, at 886. as quoted in Barral. For more on the principles essential to sustainable development see Philippe Sands, “International Law in the Field of Sustainable Development” (1995) 65:1 British Yearbook of International Law 303–381.

⁶⁴⁹ Margherita & Tonia, *supra* note 59.

development agenda. However, whether it has the potential to address the fragmentation that features the international regime on migrant workers and tendency to create precarity and irregularity is to be determined in the following sections.

4.3 Abu Dhabi's ambitions and anxieties: Masdar City's Context

An SD-rhetoric is also emerging in the Gulf. In the past two decades, Abu Dhabi has taken a number of steps that depict at least a perceived ambition towards sustainable development due to a number of environmental, economic and political pressures. Firstly, the UAE has been classified as one of the most vulnerable countries to climate change in the Middle East North Africa region. Climate change impacts such as rising temperatures and sea-levels in an already hot, water-scarce, low-lying, highly populated coastal zone place the UAE in a unique position. Accordingly, UAE was the first country in the region to develop a green growth strategy plan in 2012 (approved by the cabinet in early 2015) and to release a climate action plan in 2017.⁶⁵⁰ It also prepared its INDC in line with its Vision 2021, which commits UAE to make clean energy 24% of its total energy mix by 2021. Between 2007 and 2010, locally based experts have noted a perceived increase in government interest in climate-change related issues.

Secondly, anxieties around political legitimacy sparked by the Arab Spring, fluctuating oil prices, a gas shortage in Abu Dhabi have also contributed to the recent shift towards a "post-oil future."⁶⁵¹ While Abu Dhabi owns 95 percent of the UAE's fossil fuel reserves and the

⁶⁵⁰ Aisha Al-Sarihi, "Integrating Climate Change Policies with Economic Diversification Strategies: Challenges and Opportunities in Oman and the UAE" (2018) 07.16.18 Issue Brief, online: <<https://scholarship.rice.edu/handle/1911/102780>> Accepted: 2018-10-03T17:39:29Z.

⁶⁵¹ Federico Cugurillo, "Speed kills: fast urbanism and endangering sustainability in the Masdar City project" in Ayona Datta & Abdul Shaban, eds, *Mega-urbanization in the global South: fast cities and new urban utopias of the postcolonial state*, Routledge studies in urbanism and the city (London ; New York, NY: Routledge/Taylor & Francis Group, 2017).

world's sixth largest proven oil reserves, other emirates are less energy secure and depend on Abu Dhabi for both natural resources and infrastructure development.⁶⁵² In 2011, chronic power shortages continued to plague the northern emirates (Ajman, Ras al-Khaimah, Fujairah and Umm al-Quwain), who were growing tired of the unreliability of Abu Dhabi's supplies. Meanwhile, due to fear of losing political legitimacy during the Arab Spring, as noted by Mari Luomi, Abu Dhabi made a series of promises to address these shortages. Inter-emirate politics, therefore, play a significant role in Abu Dhabi's ambition towards a post-oil future. Given that energy demand is expected to increase, this dynamic will continue to play a role. Lastly, since Abu Dhabi is one of the few emirates today that has been able to secure financial resources, it is placed in a better position to be able to diversify its economy.

These environmental, political and economic pressures have allowed the UAE to make more ambitious goals towards a "knowledge-based" diversified economy. While former ruler⁶⁵³ Sheikh Zayed bin Sultan Al Nahyan was more conservative with his approach to development,⁶⁵⁴ under Sheikh Khalifa bin Zayed Al Nahyan, Abu Dhabi has marketed itself as a "global city." It has done this through multi-billion dollar iconic projects such as a new Louvre, Guggenheim Museum, Yas Island, which features a Ferrari theme park and Saadiyat Island, which features New York University Abu Dhabi campus.

⁶⁵² Danyel Reiche, "Renewable Energy Policies in the Gulf countries: A case study of the carbon-neutral 'Masdar City' in Abu Dhabi" (2010) 38:1 Energy Policy 378–382.; Federico Cugurullo, "How to Build a Sandcastle: An Analysis of the Genesis and Development of Masdar City" (2013) 20:1 Journal of Urban Technology 23–37. at p27

⁶⁵³ Since the founding of UAE, Abu Dhabi and Dubai have dominated the country's central government with their rulers taking the position of President and Prime Minister and veto power over decision of the Supreme Council which is the highest authority in the federal state.

⁶⁵⁴ Yasser Elshetawy quoted in Gökçe Günel, *Spaceship in the Desert: Energy, Climate Change, and Urban Design in Abu Dhabi*, illustrated edition ed (Durham: Duke University Press Books, 2019). at p 17

These institutions are part of the knowledge-based economy that Abu Dhabi has laid out in a number of plans such as Abu Dhabi Vision 2030, Plan Abu Dhabi 2030, Abu Dhabi Economic Vision 2030, and Abu Dhabi Education Reform: The Road to 2030. Abu Dhabi's Economic Vision 2030, in particular, sets to achieve a level of "non-oil GDP growth at a higher rate than that of the oil sector," aiming to "reach equilibrium in non-oil trade by 2028."⁶⁵⁵ It states, "economic growth is currently coupled too closely with oil prices and the key to more sustainable development lies in simulating non-oil sectors, diversifying the range and depth of economic activity taking place in the Emirate, and increasing productivity through a focused approach on Abu Dhabi's competitive advantages."

Accordingly, Abu Dhabi has launched a number of initiatives, including partnering with the International Renewable Energy Agency, investing in a nuclear energy program, and Estidama, Abu Dhabi's sustainable development program focusing on sustainable urban development and the built environment through regulatory building codes.⁶⁵⁶ Also, in 2006, Abu Dhabi established Masdar Initiative, a subsidiary of government-owned Mubadala Development Company. Masdar Initiative currently has two branches: Masdar Energy and Masdar City. Under Masdar Energy, it has a number of funded, partially funded renewable energy projects in over 20 countries. Masdar City, however, remains its most visible project in the UAE.

It is important to note, however, despite the many pressures discussed above, ambitious goals and initiatives established, some commentators argue Abu Dhabi has fewer incentives to

⁶⁵⁵ Ian R Simpson, "Contradictions of citizenship and environmental politics in the Arabian littoral" (2020) 16:1 *Journal of the Indian Ocean Region* 79–99.

⁶⁵⁶ Federico Cugurullo. "Speed kills: fast urbanism and endangerer sustainability in the Masdar City project" in Datta & Shaban, *supra* note 651. At p 71; Mari Luomi, *The Gulf monarchies and climate change: Abu Dhabi and Qatar in an era of natural unsustainability* (Oxford: Oxford University Press, 2014).; Federico Cugurullo, "The Business of Utopia: Estidama and the Road to the Sustainable City" 24.

put its words into action.⁶⁵⁷ Compared to Dubai, which has only 6 percent of its GDP growth tied to oil and has depleted most of its share of natural resources, Abu Dhabi still continues to use its natural oil and gas resources for roughly one-third of its GDP growth, with mining and quarrying as major contributors to their GDP-share. Some estimations predict that Abu Dhabi could rely on oil for close to a century at current production rates.⁶⁵⁸

Similarly, the proliferation of sustainable development rhetoric in the region and in Abu Dhabi has been met with skepticism by a number of Urban Studies and Energy Studies scholars who argue the lack of democratic practices in “neo-patrimonial autocracies” such as UAE make it difficult for any sustainable development mega-projects to be meaningful. Ponzini, for instance, shows how the Urban Planning Council (currently Department of Municipalities and Transport)⁶⁵⁹ in Abu Dhabi has limited influence in the absence of legally binding planning tools and given the major real-estate operators’ connections to the ruling elite.⁶⁶⁰

Regardless of whether Abu Dhabi’s ambitions are substantiated by action and the likelihood of meeting its lofty goals, sustainable development and green rhetoric are proliferating in the region and the emirate. We will now turn our attention to Masdar City, which was conceived in this context and has had varying degrees of political support from the UAE’s ruling family since its inception.

⁶⁵⁷ Martin De Jong, Thomas Hoppe & Negar Noori, “City Branding, Sustainable Urban Development and the Rentier State. How Do Qatar, Abu Dhabi and Dubai Present Themselves in the Age of Post Oil and Global Warming?” (2019) 12:9 *Energies* 1657.

⁶⁵⁸ Luomi, *supra* note 656. p82

⁶⁵⁹ In 2017 Urban Planning Council (UPC) merged with the Department of Municipal Affairs (DMA) to become the Department of Urban Planning and Municipalities (DPM). In 2019, DPM merged with DoT to form the Department of Municipalities and Transport (DMT)

⁶⁶⁰ Davide Ponzini, “Large scale development projects and star architecture in the absence of democratic politics: The case of Abu Dhabi, UAE” (2011) 28:3 *Cities* 251–259.

4.4 Masdar City

Masdar⁶⁶¹ City is a staple in discussions on sustainable development and has attracted attention from international media, policymakers, government officials and academics alike.⁶⁶² Celebrated by some as the “city of possibilities,”⁶⁶³ “city of dreams,”⁶⁶⁴ it has also been referred to by some as a “sandcastle”⁶⁶⁵ or “a spaceship in the desert.”⁶⁶⁶ While its own ambition, labels⁶⁶⁷, and expected completion dates have continuously evolved,⁶⁶⁸ Masdar City still claims to be setting Abu Dhabi towards a post-oil future. It joins the growing number of eco-cities being built in the region and elsewhere, collectively known as the eco-city phenomenon.⁶⁶⁹

It was launched in 2006 by Masdar Initiative, state-owned renewable energy and clean technology company.⁶⁷⁰ The \$22-billion project was funded by Crown Prince Muhammad bin Zayed Al Nahyan’s⁶⁷¹ Abu Dhabi-owned Mubadala, an investment company that seeks to diversify the emirate’s economy. Originally designed by London-based architecture firm Foster and Partners, this “eco-smart city” is still under construction in a 6 square km area neighbouring the Abu Dhabi international airport, around 15 km from downtown Abu Dhabi.

⁶⁶¹ The Arabic word for “source,”

⁶⁶² Datta & Shaban, *supra* note 651. At 2.

⁶⁶³ Steven Griffiths & Benjamin K Sovacool, “Rethinking the future low-carbon city: Carbon neutrality, green design, and sustainability tensions in the making of Masdar City” (2020) 62 Energy Research & Social Science 101368.]

⁶⁶⁴ Siân Crampsie, “City of dreams - [power masdar city]” (2008) 3:15 Engineering Technology 50–55.

⁶⁶⁵ Cugurullo, “How to Build a Sandcastle”, *supra* note 652.

⁶⁶⁶ Jennifer Taylor, “Shiny, slick and sustainable: Abu Dhabi’s Masdar City is an experiment in sustainability built on oil money. But will it work?” (2009) 35:5 Alternatives Journal 18–19..

⁶⁶⁷ Federico Cugurullo, Davide Ponzini & Politecnico di Milano, “The transnational smart city as urban eco-modernisation: the case of Masdar City in Abu Dhabi” 23. page 2

⁶⁶⁸ Is better described as an emerging global renewable energy and clean technology cluster.

⁶⁶⁹ Federico Cugurullo. “Speed kills: fast urbanism and endangered sustainability in the Masdar City project” in Datta & Shaban, *supra* note 651. At p 66

⁶⁷⁰ Company’s other operations include Masdar Power, Masdar Carbon, and Masdar Capital

⁶⁷¹ De Jong, Hoppe & Noori, *supra* note 657.

Masdar City had promised to become the world's first zero-carbon, zero-waste city that would serve as a testbed for clean technology, renewable energy and smart technologies. Masdar City's original award-winning master plan by Foster and Partners used traditional "Islamic architecture"⁶⁷² and urban planning to create a pedestrian, car-less city. Narrow streets would channel the wind in a way that would reduce perceived temperature, and an underground system using automated electric vehicles would be the only mode of transportation.

However, Masdar City's master plans have gone through many iterations since then. The economic crisis in 2008 significantly undermined its development, reducing the original \$22-billion investment to \$18-billion, forcing its developers to consider a more pragmatic approach. The personal rapid transit system, for instance, never developed beyond the test stage, limited to only 10 percent of the total area and only some of the buildings are covered with solar panels. The 2016 deadline was eventually pushed to 2030.⁶⁷³ During my fieldwork in 2016, Masdar City's entrance was lined with taxis and featured buildings that Masdar Institute of Science Technology was using as the institute merged with King Abdullah University of Science and Technology. It also housed several clean-tech businesses, the International Renewable Energy Agency and two residential buildings, and a 10MW Solar Photovoltaic Plant. Currently, the city's population is 1300 and, once completed, it plans to have 50,000 residents and be able to run on a number of clean technologies built on-site such as solar power and geothermal stations.⁶⁷⁴

⁶⁷² Janet L Abu-Lughod, "The Islamic City--Historic Myth, Islamic Essence, and Contemporary Relevance" (1987) 19:2 *International Journal of Middle East Studies* 155–176.

⁶⁷³ 2030 date in Cugurullo, "How to Build a Sandcastle", *supra* note 652. at p29; De Jong, Hoppe & Noori, *supra* note 657.

⁶⁷⁴ Masdar, "FAQ", (2021), online: *Masdar* <[http://masdar.ae/en/About Us/Useful Links/FAQ](http://masdar.ae/en/About%20Us/Useful%20Links/FAQ)>.

In the following section, I show how Masdar City's construction, articulation of SD and evolution reflect "eco-desire." Its reliance on ecological modernization discourses and hierarchization of economic aspects, while consistently bypassing social aspects of SD, reflect an inability of SD to accommodate migrant justice in practice. This allows Masdar City to afford movement and supportive capabilities to a select few, namely "high-skilled" "expats" and Emiratis who are seen as contributing to Abu Dhabi's knowledge-based economy, while retaining the status quo for racialized, poor "low-skilled" migrant workers whose access to the city is limited and are represented as uninformed and uninterested in its "post-oil future."

4.5 Masdar City's Construction and Exclusion

"Man with a brush could perform a feat that extensive technological innovations could not so far handle, and therefore was fundamental to the emergent renewable energy and clean technology sector of Abu Dhabi...Masdar City attempted to help humanity fight climate change...but its understanding of humanity was particular and selective. It did not include the man with a brush."⁶⁷⁵

Gökçe Günel

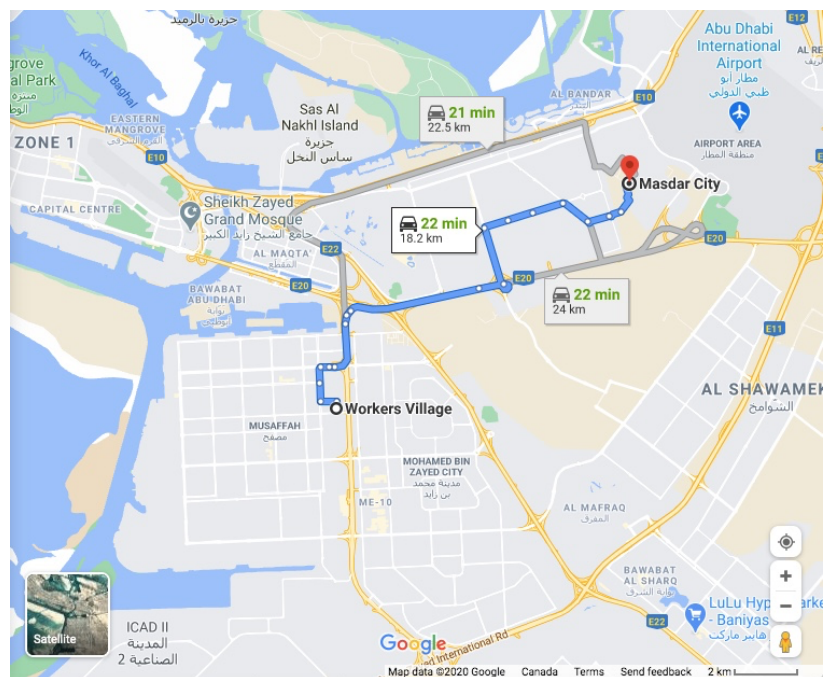
Masdar City's construction reflects its reluctance to introduce commitments towards labour standards that could have expanded migrant workers' movement and supportive capabilities. Firstly, Masdar City decided to outsource construction to third-party developers that allowed Masdar to distance itself from the construction process. This decision was made to diffuse financial risk and avoid having to implement sustainability principles in the construction process as was initially targeted.⁶⁷⁶

⁶⁷⁵ Günel, *supra* note 654.

⁶⁷⁶ Simpson, *supra* note 655.

Secondly, Abu Dhabi initially presented Masdar City as having been conceived according to the principles advocated by ‘One planet living,’ a sustainable planning scheme launched by the World Wild Foundation (WWF) and Bioregional an environmental consultancy.⁶⁷⁷ In 2008, WWF announced that Masdar City planned to exceed the scheme’s ten principles' requirements. These principles included not only environmental dimensions but also issues such as fair working conditions. Principle number 9, in particular, called for fair wages and working conditions for all workers (including construction) as defined by international labour standards.

However, as Crot informs, Masdar’s framework included in 2010 was different from WWF’s initial version; it changed any reference to labour standards. Principle 9 had been changed to “Masdar must ensure that the community’s impact on other communities is positive: Masdar City is



committed to helping the broader Abu Dhabi community, the UAE, the region and the world (ADFEC, 2010).” Masdar city’s adaptation of the original principles and exclusion of labour standards reflects its reluctance to challenge the status quo and its limited utopic vision of a post-oil future.⁶⁷⁸

⁶⁷⁷Laurence Crot, “Planning for Sustainability in Non-democratic Polities: The Case of Masdar City” (2013) 50:13 Urban Studies 2809–2825.

⁶⁷⁸ *Ibid.*

In addition, Masdar City's physical location close to Abu Dhabi International Airport also allows it to distance itself from the majority of the migrant workers who live in Musaffah, an industrial neighbourhood in the city's outskirts that remains disconnected to the public transportation system. Even though it had planned to be a car-less city, its connection to Abu Dhabi's public transportation system, even to Abu Dhabi's downtown, is limited at best.



MASDAR CITY PHASE II MASTER PLAN

Figure 4.2: Masdar City Masterplans 2015

In addition, while initially, Masdar City had planned to implement a “20 percent policy” which would reserve a small area of the city for “low-income workers,” this has not yet been implemented.⁶⁷⁹ Instead, the newest developments in Masdar City have featured My City Centre

⁶⁷⁹ Federico Cugurullo, “Urban eco-modernisation and the policy context of new eco-city projects: Where Masdar City fails and why” (2016) 53:11 Urban Studies 2417–2433.

Masdar, Abu Dhabi's "most sustainable retail destination" that opened in April 2019 and Mohammed bin Zayed University of Artificial Intelligence, "the world's first university for artificial intelligence" where classes are scheduled to begin in September 2020.⁶⁸⁰

The images that adorn both the walls inside Masdar City's buildings and feature in its master plans and promotional materials represent its residents as either "expatriates" or "local," while excluding migrant workers from South Asia who account for the majority of the UAE's population. Masdar City fits in what Yasser Elshtaway calls a "fractured urbanity," which shapes urban development in the Gulf region where "people are confined to certain sections within the city based on nationality, ethnic background and socio-economic criteria."⁶⁸¹ As one of the interviewed returning migrant workers reported, he never left the industrial area where he worked and lived during his entire stay in the UAE. Like the sites Elshtaway observes, Masdar City was planned based on binaries such as expatriate/worker and local/non-local. Zoning codes and regulations attribute residency based on ethnicities. The Urban Planning Council (currently Department of Municipalities and Transport), which is Abu Dhabi's strategic *planning* agency and the expert authority on Plan Abu Dhabi 2030 Urban Structure Framework Plan, has allocated specific neighbourhoods to Emiratis, while codes related to "orderly appearance of public spaces" are used to remove certain migrant workers from public spaces.⁶⁸²

As Luomi writes, "originally the city was...designed to attract wealthy expatriates interested in [its] unique niche of the high-end real estate market." Given the cheaper apartments

⁶⁸⁰ Masdar Staff, "Masdar City welcomes world's first AI university", (17 October 2019), online: </en/news/2019/10/23/09/46/masdar-city-welcomes-worlds-first-ai-university>.

⁶⁸¹ Yasser Elsheshtawy, "Sultans of Green: Arab Gulf Cities and the New Urban Agenda", (10 August 2018), online: *Dubaization* <<https://dubaization.com/post/176821563973/the-sultans-of-green-arab-gulf-cities-and-the-new>>.

⁶⁸² Yasser Elsheshtawy, "Urban enclaves and transient cosmopolitanism: Scenes from Abu Dhabi and Dubai" (2020) City 1–13.

are around 500,000 AED to buy and 40,000/ year to rent, the prices exclude “low-skilled,” “low-income” migrant workers. Of the 750 initial homes, 500 initial homes were leased to corporations and educational institutions affiliated with Masdar. Similarly, as Jensen and Yigitcanlar show, most of the city’s residents in 2016 were MIST faculty members, students and researchers associated with Masdar-affiliated projects.⁶⁸³ During my fieldwork in 2018, 80 percent of the residential units were assigned to MIST students, faculty, researchers and professionals working in Masdar-affiliated projects.

One of the only times construction workers are explicitly featured in Masdar city’s materials is in the context of awareness campaigns. Masdar Initiative voluntarily published Sustainability Reports through 2012-2019 using the Global Reporting Initiative Sustainability Standards, which include reporting on labour practices and decent work performance. The Global Reporting Initiative is a partner in the Global Partnership for Sustainable Development Data, which is one of the coordination mechanisms included in the operation of SDGs (which will be discussed later on).⁶⁸⁴ According to Masdar Initiative’s 2012 sustainability report, Masdar City participated in a heat stress preventive campaign to “Educate construction workers about heat stress and how to avoid it” and issued “safety bulleting outlining mandatory requirements such as providing [water] and supplements to workers before they arrive on site” and posting educational posters in different languages. Similar “heat safety awareness campaigns” were

⁶⁸³ Jensen, B, (2016) “Masdar City: A Critical Retrospection” in Steffen Wippel et al, *Under Construction: Logics of Urbanism in the Gulf Region* (Routledge, 2016). pp.45-54.; Tan Yigitcanlar, *Technology and the City: Systems, applications and implications* (Routledge, 2016) Google-Books-ID: XNwRDAAAQBAJ.

⁶⁸⁴ “The Global Reporting Initiative (GRI) - United Nations Partnerships for SDGs platform”, online: <<https://sustainabledevelopment.un.org/partnership/partners/?id=96>>.

launched in 2013, 2014⁶⁸⁵ and 2015.⁶⁸⁶ These campaigns were designed to provide “advice and awareness” to contractors and the construction workers employed on Masdar City’s projects. They were given training on how to avoid heat-related health problems, including heat exhaustion, heatstroke. The fact that this intervention is an awareness campaign⁶⁸⁷ paints these workers as uninformed and makes preventing heat-related health problems their responsibility.

This presentation of workers as uninformed or uninterested in SD was also reproduced by one of my interlocutors, Mohammad, a Pakistani Research Engineer working for a Masdar project and a former student-resident of the city. “Do you think they know where they are working? I’ve asked a few times...they don’t really know...” said Mohammad pointing to a worker cleaning in a brightly-lit air-conditioned room in one of Masdar Institute’s academic buildings. This perception is contrasted by accounts shared by interviewed returning migrant workers that reflect not only an awareness of the various projects they were working for but also how environmental factors’ impacted their working and living conditions. Muzammil’s account is particularly relevant in this regard:

“I liked the UAE...in terms of cleanliness and things like that....but the climate there is *very* tough...and for our job, it is very tough. Now imagine walking a few kilometres in 48 degrees Celsius...this I am sure you know too...I mean I got used to it...but in our job you know there a lot of small tasks that require going back and forth...like when we have to maintain the car’s temperature because the customer has to leave...the water would be at boiling temperature, but we would keep working...”

In comparison, when I asked one of the interviewed student-residents Mohammed to elaborate on why he thought the migrant workers did not know where they were working, he went on

⁶⁸⁵ Masdar Staff, “Masdar Advises Workers How to Stay Safe in the Summer Heat”, (2 June 2015), online: *Masdar* <<https://news.masdar.ae/en/news/2018/11/28/09/55/masdar-advises-workers-how-to-stay-safe-in-the-summer-heat>>.

⁶⁸⁶ *Ibid.*

⁶⁸⁷ Similarly, Masdar City’s mention of community engagement is usually only understood as awareness and events to raise awareness.

further to explain that this lack of interest was because “if you want to be sustainable, you have to be rich.” He noted how sustainability was a concept “for rich people like those who own Tesla” and described the dorms in Masdar City as “5-star hotels.”⁶⁸⁸

Masdar City was failing, for Mohamed and other interviewed student-residents, because it was constructed and planned in a “top-down” way, without considering the majority of Abu Dhabi’s population’s needs. For Mohammad, it would have been a better decision to invest in Abu Dhabi’s existing transportation system. Mohammed and Layla, both former student-residents, lamented how the city and MIST failed because the development was “too fast” and “a lot of money was spent on a small group of people.” Layla recounted how the Masdar hosted many “lavish dinners” for “Western” professors and academics. Masdar City’s website continues to reflect this by its self-description “a living, working community where residents, academics and business professionals live, learn, work and play in an environment that pushes the boundaries of sustainable design, construction and operation.”⁶⁸⁹ Through actively attracting and limiting its access to this “small group” of people in contrast to its representation of migrant workers constructing and maintaining it, Masdar city is able to only expand movement and supportive capabilities to a select few.

4.6 Masdar City’s Articulation of SD

“Whoever runs this [Masdar] doesn’t care about sustainability.”
Masdar City resident

⁶⁸⁸ Masdar city student-resident

⁶⁸⁹ “Live - Masdar City”, (2021), online: <<https://masdarcity.ae/en/live/overview#Sustainability>>.



MASDAR CITY PHASE II MASTER PLAN

Masdar City's articulation of SD reflects an eco-modernist approach and has been progressively watered down to a narrow focus on the built environment and commercial viability. In its earlier days, Masdar City aimed to be a "pioneer in sustainable development," and the way it articulated SD included three pillars: economic, environmental and social. More recent articulations have, however, replaced sustainable development with sustainability or sustainable urban development. The latter is also allegedly based on the three pillars of economic, social and environmental sustainability.⁶⁹⁰

As Cugurullo argues, however, Masdar's sustainable development's social aspect can more accurately be defined as "socially acceptable." The aforementioned One Planet Living Principles were ultimately replaced by nine Key Performance indicators that are also used to measure the city's social aspects. Indicators such as occupancy, post-occupancy, and turnover are used to discern the city's attractiveness and customer satisfaction.⁶⁹¹ Social aspects of sustainable development, in other words, were reduced to customer satisfaction, reflecting Masdar City's reliance on ecological modernization.

⁶⁹⁰ Ibid.

⁶⁹¹ Cugurullo, "How to Build a Sandcastle", *supra* note 652.

Masdar City's most updated master plan articulates its aims to be "a commercially viable city offering the highest quality of life within the lowest environmental footprint." Its goals to be "commercially viable" lends itself to promoting the city as a business first. Indeed the oft-cited quote by one of Masdar's developers is telling: "We want Masdar city to be profitable, not just sunk cost. If it is not profitable as a real-estate development, it is not sustainable".⁶⁹² This way, sustainability or sustainable development becomes synonymous with commercial viability or profitability.

Similarly, Masdar Initiative, the company that established Masdar City uses sustainable development in a way that reflects an eco-modernist approach. It states its vision as, "To make Abu Dhabi the world's reference for knowledge and collaboration in the advancement of renewable energy, clean technologies *and sustainable development*." The coupling of sustainable development with the advancement of renewable energy and clean technologies depicts its reliance on an eco-modernist approach where the prevailing logic equates environmental protection with technological fixes. This, along with Masdar City's aims to be "commercially viable," reflects a broader trend that is apparent in eco-cities that consistently prioritize economic concerns over environmental and social ones.⁶⁹³

Furthermore, Masdar City's master plan articulates sustainable development as one that does not compromise on "quality of life." In other words, it does not tackle consumption patterns, nor does it differentiate luxury emissions from subsistence emissions.⁶⁹⁴ All the

⁶⁹² As quoted in Kevin Bullis, "A Zero-Emissions City in the Desert | MIT Technology Review", *MIT Technology Review* (24 February 2009), online: <<https://www.technologyreview.com/2009/02/24/95291/a-zero-emissions-city-in-the-desert-2/>>; Hodson & Marvin, "Urbanism in the anthropocene", *supra* note 11.

⁶⁹³ Elizabeth Rapoport, "Utopian Visions and Real Estate Dreams: The Eco-city Past, Present and Future" (2014) 8:2 *Geography Compass* 137–149.

⁶⁹⁴ One of the interviewed Masdar student-residents shared an anecdote that noticed another student-residents using one washer to wash one pair of socks.

interviewed Masdar residents noted how electricity and water subsidies in the UAE “make energy so cheap that people start using more and more” and how the “rich” Emiratis who have “bigger houses” use these subsidies more. This is particularly relevant given the UAE ranks among the world’s top three per capita consumers of energy, and the residential sector makes up 40 percent of all electricity consumption in Abu Dhabi.⁶⁹⁵ In 2010, Emiratis paid 3-5 fils/kWh, and non-Emiratis paid 15 fils/kWh (the US\$4.0), while it cost Abu Dhabi on average 27.6 fils (US\$7.5) to produce a kWh of electricity.⁶⁹⁶ While since 2017, the rates for both Emirati and non-Emiratis have changed to include a quota, the Arab Spring has had a significant impact on subsidy reform. Emiratis continue to pay around a quarter of the price compared non-Emiratis.⁶⁹⁷

Masdar City’s master plan states its focus on sustainable development is through “the reduction of demand for energy and water, and recycling and reuse of waste material particularly during the construction activities.” When further articulating this reduction of demand Masdar City’s master plan claims to be doing so through a focus on the built environment through sustainable buildings that rely on Abu Dhabi’s Estidama Pearl Building Rating System (which also focuses on the built environment) and projects such as a prototype for “Eco-villas” and the “Saint-Gobain Multi-Comfort home.” In other words, Masdar City’s sustainable buildings do not tackle consumption patterns, and the focus is on how the buildings are built in terms of design and use of materials.

Absent in both the Estidama Pearl Building Rating System, which is in accordance with the Leadership in Energy and Environmental Design (LEED) (an international green building rating system) and Masdar City’s master plan is any mention of social aspects of sustainable

⁶⁹⁵ Luomi, *supra* note 598. at p 90

⁶⁹⁶ *Ibid.* at p90

⁶⁹⁷ “Home - Residential Rates and Tariffs 2020”, (2020), online: *Abu Dhabi Distribution Co* <<https://www.addc.ae/en-US/residential/Pages/RatesAndTariffs2020.aspx>>.

development for either its residents or those involved in the construction of its sustainable buildings. As Omair Awadh argues, the weighting of social-related credits in both Estidama and LEED does not exceed 10%.⁶⁹⁸ Writing for the Journal of Building Engineering and himself a consultant in Dubai, Awadh recommends that more attention be given to the social aspect.⁶⁹⁹ Therefore, Masdar City's understanding of sustainable development is tied to the built environment and increasingly more overtly on commercial viability. This dilution of SD allows Masdar City to engage with SD in a way that does not challenge the status quo for the "man with a brush" or the "low-skilled" migrant workers building and maintaining it; questions of environmental and migrant justice are tactfully excluded. While due to ethical and security reasons involving interviewing migrant workers in the UAE, I was unable to formally interview migrant workers, one of the interviewed returning migrant workers who lived in the Gulf for more than 30 years recalled this dynamic that resonates with Yasser Elshtaway's notion of fractured urbanity:

"When I first left Pakistan...the *goray* (white people) selected me from here as a supervisor...so when I went there the accommodation I got was in tents....the heat there is so extreme...at that time when I was in Muscat...at the time when the palace for Sultan Qaboos was being built...the name of that place was Beit Al-Baraka...the special thing about that place was that you could go directly from water and from the helipad... That palace...was my first project as a foreman... The company was called Drak and Skull, which was in charge of pipe-fitting and steam-fitting and putting in a chiller water plant... I was working in this palace, and my accommodation was in a tent because it was all a desert back then...there was nothing around us...so we lived in the tents...everyone did...only the *goray* (white people) lived in the city."

This account highlights how the environment is urgently experienced by migrant workers, countering the notion that migrant workers are uninterested in environmental issues, including

⁶⁹⁸ Omair Awadh, "Sustainability and green building rating systems: LEED, BREEAM, GSAS and Estidama critical analysis" (2017) 11 Journal of Building Engineering 25–29.

⁶⁹⁹ *Ibid.*

SD projects such as Masdar City. It also emphasizes how even after decades, “labour containerization” and spatial segregation according to race and ethnicity have been maintained.

4.7 Masdar City: Its evolution and fixation on economic growth

“It’s all about who you know here. If you are like a low-income worker, you walk into the bottom of the building...”

Civil Society Organization advocate

Masdar City is characterized as a demand-responsive development that evolves based on its business partners’ demands. Masdar Initiative intended Masdar City to be flexible to attract businesses and accommodate future business partners' interests. Masdar City does this through its function as a “living urban laboratory” where businesses can test their clean technologies before introducing them to the market. Masdar Initiative collaborates with the company upon its project proposal. When the project is designed and manufactured, it is tested in Masdar City, where it becomes a permanent feature of the city. Thus, the city offers both expertise, collaboration, infrastructure, and a place to showcase businesses’ products and the opportunity to collect data.⁷⁰⁰ Once sold, the government-owned Masdar Initiative gets revenue that can be up to 60%.⁷⁰¹ In other words, capital circulates through green technology developed in the city and eventually flows back into the government. This type of public-private partnership is not unique to Masdar City. Like other eco-cities, Masdar’s intention is to establish a model of development where developers can extract value from being an infrastructure provider through internalizing

⁷⁰⁰ Cugurullo, “Urban eco-modernisation and the policy context of new eco-city projects”, *supra* note 1..at p 2427

⁷⁰¹ Cugurullo, Ponzini & di Milano, *supra* note 667. ; Cugurullo, “How to Build a Sandcastle”, *supra* note 4.

costs and commodifying resource flow. The ultimate objective is to turn the whole process into a replicable financial product.⁷⁰² Masdar City is thus conceived as a commodity that could be exported and replicated around the world. This kind of trial-and-error approach is similar to, as Orit Halpern shows in her work, the construction of Songdo, a smart city in South Korea.⁷⁰³

As mentioned in Chapter 3, Masdar City is one of seven free economic zones in Abu Dhabi that seek to attract foreign direct investments through favourable business conditions. Unlike the rest of the UAE, where at least 51 percent UAE national ownership is required⁷⁰⁴, Masdar City free zone allows 100 percent foreign ownership. It also advertises 0% import tariffs and corporate and personal income tax exemptions.⁷⁰⁵ The Limited Liability Company share capital requirements at Masdar City are also comparably lower than other free zones in the emirate.⁷⁰⁶ Free zones such as Masdar City are part of a more significant trend that has emerged since 2005 in Abu Dhabi, where long-term leases are used to extend land ownership rights to non-nationals to attract foreign capital.⁷⁰⁷ Taken together, while interest from foreign businesses has slowly deteriorated, these features have attracted multinational corporations such as Siemens, Mitsubishi and Schneider to forge partnerships with Masdar Initiative.

However, while free economic zones can make their own civil and commercial laws and regulations, as Chapter 3 argued, the Masdar City free zone's employment regulations mirror the

⁷⁰² Hodson & Marvin, "Urbanism in the anthropocene", *supra* note 11.

⁷⁰³ Orit Halpern, *Beautiful Data: A History of Vision and Reason since 1945* (Duke University Press, 2015) Google-Books-ID: mPqvBgAAQBAJ. Orit Halpern et al, "Test-Bed Urbanism" (2013) 25:2 70 Public Culture 272–306.

⁷⁰⁴ UAE Federal No. 2 of 2015 Concerning Commercial Companies ('Commercial Companies Law')

⁷⁰⁵ Masdar city website

⁷⁰⁶ According to Lexology AED 50,000; Martin De Jong, Thomas Hoppe & Negar Noori, "City Branding, Sustainable Urban Development and the Rentier State. How Do Qatar, Abu Dhabi and Dubai Present Themselves in the Age of Post Oil and Global Warming?" (2019) 12:9 *Energies* 1657..at p 11 of 26

⁷⁰⁷ Luomi, *supra* note 598. p 83-84

kafala system in many ways. The employer-sponsor relationship, discretionary nature and restrictions on switching employers, are kept intact. This dynamic reflects how even when exceptions are made, they are done so selectively and can serve to exclude migrant workers. While free zones are potential avenues for migrant workers to prolong their stay, this is reserved for only those who can afford to use them. However, for even those who can afford to use this avenue, the licensing authority may have significant discretion, as discussed in Section 3.2.

Nevertheless, Masdar City's function to help build Abu Dhabi's knowledge-based economy in line with UAE's Emiratization policy has allowed it to expand supportive capabilities to a select few. In particular, Masdar City was expected to create over 70,000 jobs.⁷⁰⁸ Not only are 45% of Masdar Initiative's employees are Emirati, but its training and leadership program target Emirati employees.⁷⁰⁹ For instance, between 2012 and 2015, the average training hours for Emiratis were consistently higher than "expats," and internship salaries were reserved for Emirati employees. Here the use of "expats" further highlights the kinds of workers that Masdar City caters.

Furthermore, according to one of the interviewed residents, while Emirati Ph.D. students in Masdar Institute were paid 42,000 AED/month, their non-Emirati counterparts were paid 7,000 AED. Layla, an Egyptian engineer, noted how Emirati students also had exceptions for Graduate Record Examinations, Test of English as a Foreign Language and Grade requirements. Instead of fulfilling specific requirements to be admitted in the program, a foundation program

⁷⁰⁸ *Ibid.*.

⁷⁰⁹ Prianjali Mascarenhas, *The transfer and mobilisation of sustainability concepts to Abu Dhabi: the case of Masdar and the Urban Planning Council* (phd, The London School of Economics and Political Science (LSE), 2018) [unpublished].

allowed Emirati students to enroll in the programs. These benefits and scholarships, however, make it difficult for student-residents to criticize the project openly.⁷¹⁰ As another interviewed Emirati student-resident noted, this was detrimental because “what’s missing here is the advocacy push.”⁷¹¹

Furthermore, as Günel writes in her ethnography on Abu Dhabi, the way imagery is deployed in framing Masdar city allows it to prolong the socio-political conditions within it is situated. This imagery consistently presents the city as located in a distant future while the present is a “vacated category.” She writes about how the description of a Masdar Institute building as a “spaceship in the middle of the desert” that came from a blog post by an American student living in the city at the time captured the attention of media and officials alike. Similar images that invoke ideas of utopia and science fiction are still used to frame the city. Their focus on the future presents the status-quo as already the “best-case scenario,” which allows the city to “prolong the existing social and political conditions through technical adjustments.”⁷¹²

In summary, Masdar City’s construction, articulation of SD and evolution reflect “eco-desire”; its reliance on ecological modernization discourses and hierarchization of economic aspects, while consistently bypassing social aspects of SD reflect an inability of SD to accommodate migrant justice in practice. This dilution of social aspects of SD allows Masdar City to expand movement and supportive capabilities for a select few, albeit partially, while foreclosing itself from changing the status quo for the majority of migrant workers.

Many reasons may help explain Masdar City’s reliance on ecological modernization discourses that allow it to consistently hierarchize economic dimensions over the social and

⁷¹⁰ Interviewee Masdar Emirati student-resident

⁷¹¹ Interviewee Masdar Emirati student-resident

⁷¹² Günel, *supra* note 6.

environment of SD. Drawing on Third World Approaches to International and Critical Development Scholarship, I propose a partial explanation is how SD evolved, which demonstrates consistent prioritizing of economic dimensions while glossing over social and, therefore, migrant justice dimensions.

4.8 Historicizing SD: TWAIL accounts of SD

TWAIL offers a critical account of how SD evolved while recognizing some of its substantive and procedural obligations. This section briefly introduces TWAIL, then describes TWAIL's historical accounts of SD. TWAIL emerged in the 1990s as one of the most significant discourses that have challenged mainstream international law. While it offers both theories and methodologies, it can be better understood more broadly as “a school of thought”⁷¹³ that signifies an intellectual community grounded in common ideas or as a “banner”⁷¹⁴ that brings together scholars who share a political orientation and engagement towards challenging international law's purported neutrality and universality. It seeks to both resist and reform international law.⁷¹⁵ Within this scholarship, the “Third World” does not only refer to the traditional “less-developed” countries or even the “global South,” but it is more broadly understood as a “counter-hegemonic term”⁷¹⁶ that rejects simplistic characterizations and challenges the perceived stability and fixed

⁷¹³ Obiora Chinedu Okafor, “Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?” (2008) 10:4 International Community Law Review 371–378.

⁷¹⁴ Luis Eslava & Sundhya Pahuja, “Between Resistance and Reform: TWAIL and the Universality of International Law” (2011) 3 Trade L & Dev 103.

⁷¹⁵ *Ibid.*

⁷¹⁶ Balakrishnan Rajagopal, “Locating the Third World in Cultural Geography” (2000) 15:1 Third World Legal Studies, online: <<https://scholar.valpo.edu/twls/vol15/iss1/2>>; usha natarnjan at p 181

nature of boundaries between binaries such as the North/South, Third World/First World, colonized/colonizers, victim/victor, developed/developing, modern/primitive.⁷¹⁷

Borrowing from post-colonial approaches, it bridges, as Eve Darian-Smith writes, “historical colonial injustices to contemporary global asymmetries of economic, political and social power between a Global North and Global South.”⁷¹⁸ Not only does TWAIL challenge international law’s claims towards neutrality and universality through decentering coloniality, hegemony and Eurocentricity, but it also seeks to “promote and inject an ethical dimension into international law that will ensure a fair playing field for all actors.”⁷¹⁹ TWAIL, like other critical legal scholarship, sees international law as not only a site of struggle but also seeks to unpack how international law can be complicit in reproducing the unequal power dynamics that it purports to counter.⁷²⁰

While mainstream accounts present the South as begrudging participants in international negotiations on the environment, TWAIL literature shows how the Third World states and peoples have contributed to international environmental law principles such as the common heritage of humankind, the principle of common but differentiated responsibilities, the right to development and sustainable development. It presents counternarratives that disprove the very myth that environmental protection is a luxury for the South and challenges the notion that the

⁷¹⁷ For more on the term “third world” see Karin Mickelson, “Rhetoric and Rage: Third World Voices in International Legal Discourse” (1997) 16:2 *Wis Int’l LJ* 353–420.

⁷¹⁸ Eve Darian-Smith, “Postcolonial Theories of Law” Reza Banakar & Max Travers, *Law and Social Theory* (A&C Black, 2014) Google-Books-ID: yInqAwAAQBAJ. at 252

⁷¹⁹ Kwadwo Appiagyei-Atua, “Ethical Dimensions of Third-World Approaches to International Law (twail): A Critical Review” (2015) 8:3–4 *African Journal of Legal Studies* 209–235..

⁷²⁰ Julia Dehm, “Reflections on Paris: Thoughts Towards a Critical Approach to Climate Law” (2018) *Revue québécoise de droit international* 61.

poor are “too busy surviving”⁷²¹ to care about environmental protection and the South often referred to as “emerging emitters” prioritizes development over environmental protection.

One such narrative is on SD, which TWAIL’s historical account of SD challenges. Section 4.1 presented SD’s evolution in international environmental law as conventionally narrated as a compromise between global North and global South, where the former is seen as advocating for environmental protection and the latter development. This dynamic often referred to as the North-South divide, remains a prominent feature in international negotiations on climate change and the environment. TWAIL’s historical accounts of SD complicate this story and argue that this North-South dynamic is overemphasized. The following section will discuss SD’s journey from Stockholm Conference to SDGs, emphasizing selected points where SD was negotiated to illustrate how uni-dimensional view of development as economic growth eclipsed broader understandings of development and social and environmental concerns.

The road to SD started before the Stockholm Conference. Karin Mickelson’s account of the negotiations preceding and following the Stockholm Conference is particularly significant. She illustrates how the negotiations before the Stockholm Conference reflect a focus not simply on environmental protection versus development but rather alternative views of development and its relationship to the environment. These processes included what is known as the Founex meeting, more formally the Meeting of Expert on Environment and Development, which was held in 1971 and attended by mainly developing country’s officials such as Mahbub ul Haq from Pakistan, Gamani Corea from Sri Lanka. Haq, a Pakistani economist who acted as a rapporteur for the meeting. Haq was a well-known critic of the traditional development paradigm and

⁷²¹ Carmen Gonzalez, “Racial Capitalism, Climate Justice, and Climate Displacement” (2020) OSLS, online: <<https://onafirstonline.wordpress.com/2020/06/11/racial-capitalism-climate-justice-and-climate-displacement-carmen-g-gonzalez/>>.

worked closely with Amartya Sen, and was a proponent of capabilities-inspired human development approaches. His participation and other developing country officials' participation in the Founex meeting and the resulting Founex report illustrate that the North-South debates were around different *kinds* of environmental problems.⁷²² The report's fundamental premise could be summarized as articulating developing countries' environmental problems as primarily related to poverty. While development was, therefore, seen as an imperative for the South, the report also criticized development's narrow focus on economic growth as measured by growth in Gross National Product (GNP),⁷²³ which it proclaimed did not guarantee the "easing of urgent social and human problems." Both environmental problems and development were, therefore, defined more broadly by the Founex report.

Developing country officials' participation during the Stockholm Conference also reflects a focus on alternative views on development.⁷²⁴ The roots of SD are found in the outcome document of this Conference – the 1972 Declaration of Principles for the Preservation and Enhancement of the Human Environment, which connected environment and development concerns. Mickelson notes how Indira Gandhi, then Prime Minister of India, insisted poverty itself has environmental impacts: "Are not poverty and need the greatest polluters?" While Gandhi insisted that development ought not to be abandoned, she called for the need to prioritize away from the mainstream model of development, which prioritized a unidimensional view of development as growth. She asserted that the conflict was not "between conservation and development, but between environment and the reckless exploitation of man and earth in the

⁷²² Karin Mickelson, "The Stockholm Conference and the Creation of the South–North Divide in International Environmental Law and Policy" in Shawkat Alam et al, eds, *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015) 109. at p 115

⁷²³ Aaron Wu, *Sustaining International Law: History, Nature, and the Politics of Global Ordering* The London School of Economics and Political Science, 2018) [unpublished].

⁷²⁴ Mickelson, *supra* note 722.

name of efficiency.” The root causes of ecological destruction were “the isms of the modern age...which assume that man’s cardinal interest is acquisitions.” Mickelson notes how Gandhi insisted pollution was not a “technical problem but a problem of values.” She argues that Gandhi’s statement may be more representative of the South’s stance at the Stockholm Conference as: “guarded and somewhat skeptical, but at least willing to enter into dialogue.” In other words, the South's portrayal as begrudging participants is simplistic. Throughout the process of getting towards SD, there were alternative visions of development and environment that representatives of the South reiterated.⁷²⁵ Nevertheless, the resulting Stockholm Declaration, despite attempts to challenge the broader project of development, offers “rational planning” as a tool to reconcile conflicts between development and environment, reinforcing a modernist view of progress.

Mickelson further argues how the New International Economic Order proposals and the Cocoyoc Declaration that followed the Stockholm Conference and preceded the Brundtland report also illustrate “nuanced and multi-faceted” accounts of environmental protection and development emerging from the South and its “intellectual allies.”⁷²⁶ The NIEO proposals that the South put forward attempted to reform the international economic system, demanding more equitable distribution of industrial production, more significant financial support, and changes in international markets and governance structures. The Cocoyoc Declaration, which had linkages with the NIEO, in particular, highlighted a change in perspective that called for a new system and a redefinition of the “whole purpose of development.” It demanded the need to recognize

⁷²⁵ *Ibid.*

⁷²⁶ *Ibid.*

multiple paths to development and “self-reliance” while recognizing both “‘inner limits’ of satisfying fundamental human needs...[and] ‘outer limits’ of the planet’s physical integrity.”

In other words, both NIEO proposals and the Cocoyoc Declaration radically criticized and denounced the international system's injustices.⁷²⁷ They highlighted the need to change exploitative trade patterns and offered alternative views on the environment and development. While some governments, including the US, ultimately rejected the Cocoyoc Declaration, it illustrates, once again, that what was at stake in the conversations preceding the Brundtland Report was not environmental protection versus development, but rather alternative views of development and its relationship to the environment.⁷²⁸ The South’s stance in these negotiations was much more multi-faceted and nuanced than what is implied by emphasizing the North-South dynamic.⁷²⁹ Furthermore, as Critical Development scholar Erik Gómez-Baggethun notes, SD is criticized for settling the limits to growth debates which peaked in Cocoyoc that rejected the idea of “growth first, justice in the distribution of benefits later.” It is this watering down of the limits to growth debates that led to eco-modernist ideas of a green economy.⁷³⁰

Against this backdrop and during the economic recession in the North and debt crisis in the South, the UN General Assembly established the World Commission on Environment and Development in 1983, whose mandate included reconciling economic development with environmental protection. Comprised of representatives from each of the UN regional groups and under the chairmanship of the former Prime Minister of Norway, Gro Harlem Brundtland, the WCED published the landmark report “Our Common Future” in 1987, Also known as the

⁷²⁷ *Ibid.*

⁷²⁸ Wu, *supra* note 723.

⁷²⁹ Mickelson, *supra* note 722.

⁷³⁰ Elise Klein & Carlos Eduardo Morreo, eds, *Postdevelopment in practice: alternatives, economies, ontologies*, Routledge critical development studies (London ; New York: Routledge, Taylor & Francis Group, 2019).

Brundtland Report, it first popularized the term SD and defined it as aforementioned “development that meets the needs of the present without compromising the ability of future generations to meet their needs.” Partly due to its “brilliant ambiguity,” this seemed to appease both the Global North and the South and has played a symbolic role ever since and continues to serve as one of the primary documents that defined SD.

TWAIL scholarship relies on critical development scholars such as Wolfgang Sachs, Arturo Escobar to show how the Brundtland report rebranded the problem of ecological destruction as one linked to poverty. While deliberately excluding more radical views that challenged development centred on economic growth and techno-managerial fixes for ecological destruction, poverty reduction was accepted to be the basis for reconciling the different positions. The final Brundtland report insisted that “Those who are poor and hungry will often destroy their immediate environment in order to survive.” Recasting poverty and the poor as the problem shifted the responsibility of tackling environmental issues to the very people suffering from the impacts.

Without challenging the consumption patterns of the industrialized affluent global North that caused the ecological destruction, the solution to both poverty and ecological destruction was increased production, consumption and economic growth. In other words, it equated economic development with environmental protection and further reinforced economic-growth-centred development.⁷³¹ As Ruth Gordon writes, “indeed, more, not less, growth and industrialization were needed if the environment was to be protected and saved.”⁷³²

⁷³¹ Wu, *supra* note 723.

⁷³² Ruth Gordon, “Unsustainable Development” in Shawkat Alam et al, eds, *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015) 50. At 51

In addition, the Brundtland report's conception of SD did not seriously challenge the role of the global economy and institutions to play in the plight of the South and the "rampant poverty." Gordon notes, for instance, how the World Bank and the IMF's interventions in the South have had "devastating effects locally and have also furthered urbanization." The resulting international debt obligations have, for example, forced countries to produce cash crops for export which have led to overexploitation of natural resources and other damaging environmental impacts.⁷³³ This has significant implications for unemployment in the global South, which, in turn, may act as a "push factor" for prospective migrant workers. By subscribing more of the same and reinforcing economic growth, SD failed to challenge the major contributors of both poverty and ecological destruction.

Speaking of the UNCED process, also known as the 1992 "Earth Summit" in Rio that followed the Brundtland Report, Pratap Chatterjee and Matthias Finger further noted:

old thinking about economic growth prevails, old institutions promoting such growth persist, and the old development establishment that had made a living out of such economic growth has repackaged itself in green and miraculously represented itself as the new global environmental leaders⁷³⁴

While the resulting Rio Declaration reinforced the connection between environment and development, there was little discussion of the consumption patterns of the North. The fixation on simply greening economic growth is further illustrated by the 2002 Johannesburg Declaration on Sustainable Development which sought to be more pragmatic than its predecessors through focusing on implementation. It emphasized market-based solutions to environmental problems

⁷³³ *Ibid.* At p. 65

⁷³⁴ Pratap Chatterjee & Matthias Finger, *The Earth Brokers: Power, Politics and World Development*, 1st edition ed (London ; New York: Routledge, 1994). p. 27.

such as public-private partnerships and engagement of the business sector and transparency-based accountability and improved reporting.

Ten years later, Rio+20 was intended to renew the commitment for SD. The two themes identified by the UNGA were the green economy and the institutional framework for SD. This focus on a green economy, once again, sparked North-South tensions. The South was concerned that this focus may be used towards trade restrictions, represented a departure from the consensus achieved in earlier articulations of SD and imposing a single neoliberal development model.⁷³⁵ In General Ban Ki-Moon's words, Rio+20 became a “free market revolution for global sustainability.” Rio+20 rejected any green economy policies that could be disguised as a restriction on international trade and insisted urban infrastructure projects would improve a country’s social welfare.⁷³⁶ The green economy’s emergence in 2012 became, as Aaron Wu writes, the “new one-size-fits-all model to achieving sustainable development.”⁷³⁷ The resulting 2012 UN Resolution and the idea of the green economy it promoted is criticized for, as Goodman and Salleh write, “[reflecting] the rise of neoliberal ecologism, with “ecological” sustainability translated first into “economic” sustainability, and then into “free markets.”

The 2012 U.N. Conference on Sustainable Development (also known as the Rio+20) process laid the foundations for the SDGs and the post-2015 development agenda to succeed the MDGs. Echoing the Brundtland report, the MDGs that preceded the SDGs focused on poverty eradication. However, they were criticized for only addressing the symptoms of poverty rather than underlying causes. There were issues regarding measuring progress towards targets due to inadequate data collection and the overall objectives were limited in scope. As Sakiko Fukuda-

⁷³⁵ Mickelson, *supra* note 722.

⁷³⁶ Wu, *supra* note 723.

⁷³⁷ *Ibid.* at p204

Parr, a prominent development economist who has also done work on the capabilities approach, argues, the use of tangible, measurable targets relied on a reductionist quantification logic. Furthermore, MDGs were also seen as side-stepping rather than aligning with existing human rights obligations such as those pertaining to equality and non-discrimination.

Against the backdrop of the 2008 economic crisis, Arab Spring and the Occupy Movement, inequality became a central topic at Rio+20. In addition, one of the attempts was to rectify the silo-ed approach that characterized SD in the past with the three pillars (social, environmental, economic) treated separately. Furthermore, the SDGs were negotiated alongside climate change negotiation that resulted in the Paris Agreement 2015, which both concluded with a preference on universality.⁷³⁸ Accordingly, the 2015 Paris Agreement stated its objective to “strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty.”⁷³⁹ As Felix Dodds, Ambassador David Donoghue and Jimena Leiva Roesch took part in the process note, both UAE and Pakistani officials played a significant role in promoting SDGs in their earlier days during the Rio+20 process.

The Open Working Group of the SDGs was established in September 2012, chaired by Ambassadors Csaba Körösi and Macharia Kamau, from Hungary and Kenya. It also included membership from Pakistan and the UAE once one seat could be shared by more than one country, increasing the group from 30 to 70 countries. The format was changed to avoid “traditional North-South tensions.” While the first session relied heavily on experts, particularly the EU’s use of promoting scientific expert-led approaches to design SDGs, the second half

⁷³⁸ Felix Dodds, *Negotiating the Sustainable Development Goals: A transformational agenda for an insecure world*, 1st ed (London ; New York : Routledge, 2017.: Routledge, 2016).

⁷³⁹ *Paris Agreement on Climate Change*, 12 December 2015, UNFCCC, 21st sess, annex, UN Doc FCCC/CP/2015/10/add.1 (entered into force 4 November 2016) 23 [*Paris Agreement*].

widened its consultative scope. Throughout the process, several actors intervened from the outside. Pogge and Sengupta famously labelled the draft as a “nice idea, poor execution.”⁷⁴⁰

While the UNGA began the negotiation process for Agenda 2030 in January 2015 relied on input from a wide range of sectors, corporate involvement has been criticized. Pingeot, for instance, notes how the resulting document’s focus on economic growth could be attributed to the fact that most of the corporate involvement was from Europe and the US and featured extractive industries.⁷⁴¹ As Tonia Novitz, an expert on labour standards and SD, argues, while SDGs’ emphasis on participation offers a possible avenue to underrepresented voices, “it seems more likely that there could be deregulatory effects, familiar from the ILO experience, given an international context responsive to corporate power dynamics.”⁷⁴²

Nevertheless, Agenda 2030 lays out an ambitious agenda that sets to pursue economic growth, social development and ecological sustainability that ought to be pursued simultaneously. With their 17 goals and 169 targets, the SDGs are more far-reaching than their predecessor, the MDGs. Several SDGs are relevant to our discussion, including SDG 7 on affordable and clean energy, SDG 8 on Decent work and economic growth, SDG 10 on reduced inequalities, SDG 11 on sustainable cities and communities, and SDG 12 on responsible consumption and production. SD remains the anchor for environmental measures and the international development agenda.

In summary, the historical accounts presented above illustrate how economic growth concerns continued to loom large at the expense of social and environmental issues despite efforts to present alternative views on development. Echoing climate justice dimensions, TWAIL

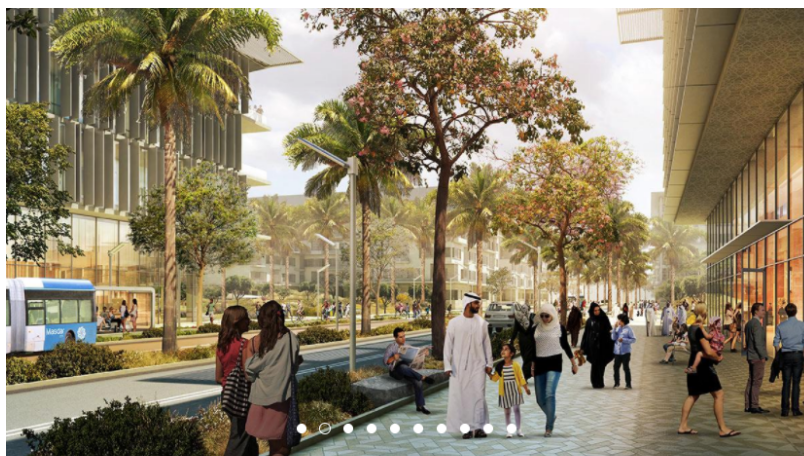
⁷⁴⁰ Thomas Pogge & Mitu Sengupta, “The Sustainable Development Goals (SDGS) as Drafted: Nice Idea, Poor Execution” (2015) 24 Wash Int’l LJ 571–588.

⁷⁴¹ Lou Pingeot, *Corporate influence in the post-2015 process* (2014).

⁷⁴² Margherita & Tonia, *supra* note 59.). p 52

scholars note how SD and its focus on poverty reduction shifted the burden of solving environmental problems to the South while downplaying the role of production and consumption patterns of the affluent in the global North and global South. The solution presented is the same unidimensional economic-centred growth path towards development altered only by techno-managerial fixes designed to sustain economic growth.

4.9 Masdar City Mirroring SD's Hierarchies



MASDAR CITY PHASE II MASTER PLAN

Having elaborated on how SD evolved, this section will argue that SD is likely to be practiced as reflected by Masdar City's story (through reliance on ecological modernization while diluting social dimensions of SD) given SD's connection to the development project, the Brundtland Report's optimism around technological changes, and the way inter- and intragenerational justice are articulated.

Masdar City's consistent hierarchizing of economic dimensions is a feature inherent to SD, which is unable to sufficiently balance competing norms and the different objectives through tradeoffs and synergies or a focus on justice. Upendra Baxi, in his account on Anthropocene

justice, criticizes environmental justice theorists who advocate for “just sustainability” and connect SD to justice.⁷⁴³ He writes, “whether sustainable development is an oxymoron (or Baxi-moron) remains to be decided – but I have always maintained that to achieve sustainable development one must dare to articulate unsustainable thought!” In other words, Baxi is critical of SD’s ability to resolve the competing norms it was conceived to do and its potential to create more just arrangements. For Baxi sustainability is “more a matter of policies and governance rather than an agendum of justice.” The central notion behind SD is development and regardless of how it is defined, development “always signifies a degree of destruction.”⁷⁴⁴

The modern idea of development is often traced back to European Enlightenment and the Western concept of a modern state.⁷⁴⁵ European Enlightenment understood non-European societies as being trapped in a state of nature, placing them within an evolutionary spectrum that understood state control over nature as the basis for modernity and progress. The modern nation-state and its legal system, thus, was tied to this understanding of development which equated development with the degree of state control over nature, from nomadic ways of life to eventually post-industrial systems which would efficiently exploit natural resources. This control over the environment also became equated with inner freedom. Conquest of nature became tied to humanity’s spiritual freedom and the basis of the myth of modernity. TWAIL scholars Natarajan and Kishan Khoday rely on Critical Development Scholar Gilbert Rist’s argument that this idea of development is uniquely Western, where societal growth and economic, scientific

⁷⁴³ Upendra Baxi, “Amartya Sen and Human Rights” in *Human Rights in a Posthuman World* (Oxford University Press, 2009) container-title: Human Rights in a Posthuman World.

⁷⁴⁴ Upendra Baxi, “Intergenerational justice, water rights, and climate change” in *Research Handbook on Law, Environment and the Global South* (Edward Elgar Publishing, 2019) 2.

⁷⁴⁵ Usha Natarajan & Kishan Khoday, “Locating Nature: Making and Unmaking International Law” (2014) 27:3 *Leiden Journal of International Law* 573–593.

and cultural progress were seen as limitless.⁷⁴⁶ Rist and Esteva see SD as another iteration of the concept of development, which given its inability to tackle ecological and economic limits, results in sustaining economic-centred growth and development.

For CD scholars such as Esteva, Former US President Harry Truman's speech at the end of WW2 played a significant role in launching the idea of development. As "old wine in a new bottle,"⁷⁴⁷ SD is then another version of the 1990s' redevelopment in the South that took the shape of economic colonization of the "informal" sector in the name of modernization and under the banner of the war on poverty. As Esteva writes, "sustainable development has been explicitly conceived as a strategy for sustaining 'development,' not for supporting the flourishing and enduring of an infinitely diverse natural and social life."⁷⁴⁸

SD, therefore, essentially greenwashes mainstream development and growth policies. Building on post-colonial scholarship on development, critical development scholars view development as an extension of Western domination that has constructed the "Southern other" as one with problems and needs rather than the ability to make its own decisions or have alternative solutions.⁷⁴⁹ Masdar City's reliance on techno-managerial fixes and narrow focus on the built environment reflects how the predominant view of nature as a resource for generating wealth and environmental degradation as an economic externality that can be managed through technology

⁷⁴⁶ *Ibid.*

⁷⁴⁷ Sam Adelman "Beyond development: Towards sustainability and climate justice in the Anthropocene" in Sam Adelman, Abdul Paliwala & Abdul Paliwala, *The Limits of Law and Development : Neoliberalism, Governance and Social Justice* (Routledge, 2020). at p 62

⁷⁴⁸ Wolfgang Sachs, *Development Dictionary, The: A Guide to Knowledge as Power* (Orient Blackswan, 1997) Google-Books-ID: 5mwwEBL9ktsC.Sachs, Wolfgang, ed. *The Development dictionary: a guide to knowledge as power* (London ; Atlantic Highlands, N.J: Zed Books, 1992).; Gustavo Esteva, Salvatore Babones & Philipp Babcicky, *The Future of Development: A Radical Manifesto* (Bristol: Policy Press, 2013).; Esteva at p13

⁷⁴⁹ Robtel Neajai Pailey, "De-centring the 'White Gaze' of Development" (2020) 51:3 Development and Change 729–745.

and finance has retained. Masdar city's attempts to invent "ergos," a currency based on energy unit expenditure and Masdar Initiative's use of clean development mechanisms are further examples of this eco-modernist approach.

Masdar City's reliance on ecological modernization discourses also mirrors the Brundtland report's optimism around technological changes and fixation on economic growth. The only limits that the Brundtland report alluded to were those "imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities."⁷⁵⁰ However, as the report continues, "technological and social organization can be both managed and improved to make way for a new era of economic growth."⁷⁵¹ This fixation on economic growth and optimism around technological changes make SD more likely to be practiced in a way that reduces solutions to all three 'problems' to merely techno-managerial fixes. It allowed Masdar City to relegate questions of inequality, environmental destruction and associated power relations to "effective techno-scientific eco-management."⁷⁵²

Similarly, Escobar argues the Brundtland report emphasized management, and the SD it conceived allows for the capitalization of nature. Nature is "reduced to stasis" with no agency of its own. SD resignifies nature, resources, the Earth and human life through the gaze of the "Western scientist" in a way that deems poverty as the problem and managers as "arbiters between people and nature."⁷⁵³ SD, as reflected by the Brundtland Report, is criticized for

⁷⁵⁰ *Brundtland Report* Para 27

⁷⁵¹ *Brundtland Report*

⁷⁵² E Swyngedouw, J Hillier & P Healey, eds, "Trouble with Nature – Ecology as the New Opium for the People" in *Conceptual Challenges for Planning Theory* (Ashgate Publishing, Ltd., 2010) 299 publisher: Ashgate Publishing. (Double check)

⁷⁵³ Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World*, new ed., stu-student edition ed, Princeton Studies in Culture/Power/History (Princeton: University Press, 2011). At p 192-211

making poverty eradication and environmental protection possible in “one single feat of Western rationality.” It reproduces the central tenets of “economism” and “developmentalism” while reconciling growth and the environment. Because poverty is deemed to be the problem of ecological significance and growth is needed to eliminate poverty, it is growth that needs to be sustained, not the environment. Thus, for TWAIL scholar James Gaathi, SD is unable to account for the historical and structural foundations of poverty. Echoing these sentiments, Elise Klein and Carlos Eduardo Morreo provocatively write, “the problem is that this mantra of sustainability was swallowed up by capitalism early on, and then emptied of ecological content.”⁷⁵⁴

Just as “dark and poor peasant masses”⁷⁵⁵ were painted as responsible for responses to environmental destruction, Masdar City’s representation of migrant workers as uninformed is able to reinforce the idea that protection from environmental impacts such as heat-related health problems is the migrant workers’ responsibility. Similarly, the utopic, science-fiction-inspired imagery deployed by Masdar City, which allows it to prolong the status-quo, does not conflict with the way SD’s tendency to gloss over social differences. While SD is composed of both inter and intragenerational justice, these are articulated and treated separately as fundamentally different problems. Dominant articulation of intergenerational justice is ahistorical and apolitical, wherein generations are treated as monoliths with aggregable, identifiable interests. This conception flattens the social differences that exist within each generation.⁷⁵⁶ This further absolves the affluent of the global North and South from adequate responsibility for ameliorating any environmental harms that their production and consumption patterns have caused.

⁷⁵⁴ Klein & Morreo, *supra* note 730.

⁷⁵⁵ Arturo Escobar, *supra* note 753. At p195

⁷⁵⁶ Eisen, Mykitiuk & Scott, “Jessica Eisen, Roxanne Mykitiuk & Dayna Nadine Scott, “Constituting Bodies into the Future”, *supra* note 54.

Not only is the ahistorical conception of generations as aggregable monoliths in SD problematic, but so is the way *Anthropos*, itself, is constructed in both Anthropocene⁷⁵⁷ discourse and law. According to critical environmental law scholar Anna Grear, the *Anthropos* assumed in both the Anthropocene discourse and law relies on a paradigmatic “rational human subject.” It presents a straightforward species-being that has the responsibility to address the climate change crisis without recognizing the hierarchies that are imposed not only on non-human species such as animals and ecosystems but also other human beings. Such references to humanity as a monolithic category of species are problematic when we are trying to attribute responsibility to climate change. This particularistic human subject is considered the center through which others struggle for full legal recognition. Instead, there is a need, Grear insists, to expose the different hierarchies and understand the climate crisis as one of a “crisis of human hierarchies of being.” SD’s insufficient attention to historical and structural foundations of poverty is unable to expose these hierarchies.

Philippe Cullet and Sujith Koonan add that the unevenness of climate change is not only along the level of countries. Economic growth and the “rise of the Rest” over the past couple of decades has strengthened an economic and intellectual elite in the South who are more like their affluent counterparts in the North than they are with the majority of the poor in their countries. In

⁷⁵⁷ The Anthropocene, a term popularized by Paul Crutzen in 2000, has captured a wide audience. It refers to the geological epoch which has succeeded the Holocene era and marks the large-scale human modification of the Earth System through extensive industrial impacts and harms upon the biosphere, emphasizing the centrality of “mankind in geology and ecology.”⁷⁵⁷ Human activity has had such a profound impact on the geoclimatic environment that humans are now considered to have an ecologically critical impact on the Earth’s biophysical system.

addition, the poor and marginalized in the North are similarly disadvantaged as their counterparts in the South, even though the intensity may be drastically different.⁷⁵⁸

Both Northern and Southern elites, as Gonzales quotes Davis, “will undoubtedly abandon their compatriots and seek refuge in “green and gated oases of permanent affluence on an otherwise stricken planet”⁷⁵⁹ Similarly, as Malm and Hornborg observe, “For the foreseeable future—indeed, as long as there are human societies on Earth—there *will* be lifeboats for the rich and privileged. If climate change represents a form of apocalypse, it is not universal, but uneven and combined: the species is as much an abstraction at the end of the line as at the source.”⁷⁶⁰ Masdar city is an example of such a “lifeboat,” a “green and gated oasis” where racialized, poor “low-skilled” South Asian migrant workers are treated as “expendable.”⁷⁶¹

4.10 Agenda 2030 – partial inclusion of migration and related movement and supportive capabilities yet persistent tensions

Agenda 2030 and its SDGs, unlike the MDGs, are universal and explicitly include migrants in its plan of action for “people, planet and prosperity,” pledging to “leave no one behind.” In contrast to the MDGs, the SDG’s have been applauded for relying on an “unprecedented” participatory process which included a host of non-state actors, including civil society organization, the IOM and the ILO, who were able to frame migration as a development

⁷⁵⁸ Philippe Cullet & Sujith Koonan, “Introduction to the Research Handbook on Law, Environment and the Global South” in *Research Handbook on Law, Environment and the Global South* (Edward Elgar Publishing, 2019) xvi..

⁷⁵⁹ Mike Davis, “Who Will Build the Ark?” (2010) 61 New Left Review, online: <<https://newleftreview.org/issues/ii61/articles/mike-davis-who-will-build-the-ark>>. 29. ; Carmen G Gonzalez, “Climate Change, Race, and Migration” *Climate Change* 39.

⁷⁶⁰ Anna Grear, “Deconstructing Anthropos: A Critical Legal Reflection on ‘Anthropocentric’ Law and Anthropocene ‘Humanity’” (2015) 26:3 *Law Critique* 225–249.

⁷⁶¹ Gonzalez, *supra* note 759.

issue and advocate for the inclusions of migration.⁷⁶² As Section 4.2 noted, not only are women migrants, migrant workers, refugees, internally displaced persons, and migrant workers in precarious employment explicitly mentioned, but the SDGs also seek to promote “decent work for all” and “safe, orderly, regular and responsible migration.” While the SDGs still use MDGs’ goal-target-indicator approach⁷⁶³, proponents argue the SDGs seem to incorporate more complex and qualitative aspects such as inclusion rather than only tangible and measurable outcomes.⁷⁶⁴ However, a closer look at the content of the SDGs and the indicators being used reveals that persistent tensions have not been resolved and migrant workers’ movement and supportive capabilities are not sufficiently protected.

Firstly, Agenda 2030 is criticized for maintaining a traditional take on economic-centred growth. For post-development scholars such as Demaria and Kothari, SDGs fail to recognize the historical and structural roots underlying poverty and inequities; they fail to recognize the economic growth’s biophysical limits; continue to treat modern science and technology as a panacea while marginalizing other forms of knowledge.⁷⁶⁵ Furthermore, as Esquivel writes, not only do SDGs see industrialization as growth’s main driver (target 9.2), but “[e]conomic growth is the ‘first and foremost’ generator of domestic resources needed to achieve the SDGs (para.

⁷⁶² The participatory process itself including civil society organizations and others actively advocated for the inclusion of migration in the Agenda 2030 with 312 organization signing the Stockholm Agenda on Migration and Migration Related Goals and Targets in 2014. International Organization for Migration and the Global Migration Group lobbied for the inclusion of migration

⁷⁶³ Where each goal has a targets which, in turn, correspond to indicators that are used to monitor the implementation of SDGs.

⁷⁶⁴ Sakiko Fukuda-Parr, “Sustainable Development Goals” (2018) The Oxford Handbook on the United Nations, online:

<<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780198803164.001.0001/oxfordhb-9780198803164-e-42>>.

⁷⁶⁵ Federico Demaria & Ashish Kothari, “The Post-Development Dictionary agenda: paths to the pluriverse” (2017) 38 Third World Quarterly 1–12.

66), tying social protection and other redistributive policies (Targets 1.3, 5.4, and 10.4) to this ‘grow first, redistribute later’ proviso.”⁷⁶⁶ This, Esquivel concludes, implicitly conflates economic growth with societal progress. Adelman argues, “The SDGs reproduce growth fetishism by promoting an intrinsically anthropocentric approach to sustainability that reinforces the long-standing criticism that sustainable development is an oxymoron.”⁷⁶⁷

This conflation is made explicitly clear in SDG 8, which calls for promoting decent work for all but is coupled with “sustained inclusive and sustainable economic growth.” Together with its indicators, SDG8 reflects a substantial “growth-employment nexus.” SDG 8’s indicators maintain a focus on GDP and per capita growth. (8.11, 8.2.1. and 8.4.2, for instance, all rely on GDP per capita). As Rai et al. observe, this is problematic because GDP excludes social reproductive work.⁷⁶⁸

A closer look at Goal 8 on decent work also reveals that it fails to protect supportive capabilities for migrant workers. Goal 8’s focus on “full and productive employment” is monitored through average hourly earnings and unemployment rate. Neither does this indicator disaggregate based on migrant status, nor does it take meaningful labour and precarious work into consideration. Moreover, target 8.8 (on labour rights and safe and secure working environments) is monitored through “fatal and non-fatal occupational injuries per 100,000 workers, by sex and migrant status.” This reflects a narrow understanding of safe and secure working environments and fails to acknowledge the difficulties in reporting occupational

⁷⁶⁶ Valeria Esquivel, “Power and the Sustainable Development Goals: a feminist analysis” (2016) 24:1 Gender & Development 9–23.

⁷⁶⁷ Sam Adelman, “The sustainable development goals, Anthropocentrism and Neoliberalism” in Duncan French & Louis J Kotzé, *Sustainable Development Goals: Law, Theory and Implementation* (Edward Elgar Publishing, 2018) Google-Books-ID: e81eDwAAQBAJ.

⁷⁶⁸ Which puts it in conflict with SDG 5. Shirin M Rai, Benjamin D Brown & Kanchana N Ruwanpura, “SDG 8: Decent work and economic growth – A gendered analysis” (2019) 113 World Development 368–380.

injuries, which is particularly relevant in UAE's case. Indicator 8.8.2's inclusion of "freedom of associate and collective bargaining" is promising but is weakened by the inclusion of national compliance with national legislation. As discussed in chapter 3, national legislation may be designed itself to reproduce irregularity and precarity. A better alternative would have been an indicator that included the number of receiving-state countries that have signed ILO instruments and the ICRMW.⁷⁶⁹

Similar to indicators 8.8, 10.7 (on facilitating orderly, safe, regular and responsible migration and mobility of people), it is monitored through indicators such as "number of people who died or disappeared in the process of migration," which reflects indicators' reductionist nature. While the inclusion of recruitment costs is promising, 10.7.1 (the number of countries with well-managed migration policies) could have been more robust and improved if it disaggregated based on the number of receiving-states and sending-states. In addition, without the inclusion of family reunification, SDG 10 and its indicators are unable to ensure migrant workers' supportive capabilities. 10.7.1.

Furthermore, "well-managed migration" is not clearly defined.⁷⁷⁰ As Suliman suggests, based on migration-development literature, however, this may be predicated on the assumption that there is an "optimal migration policy" which can configure migrant labour and remittances in a "win-win-win" scenario.⁷⁷¹ SDG's reference to the migration-management approach is met with skepticism since it has been criticized for overshadowing a focus on migrants' human rights (piper) and for depoliticizing migration. The inclusion of "responsible" migration, which made

⁷⁶⁹ *SDG Targets and Indicators* 8.8.2. Secondly, indicator 8.8.2's inclusion of national compliance with labour rights based on ilo textual sources and national legislation by sex and migrants status is promising. But the inclusion of national legislation risks diluting the results. (8.8.1, 8.8.2)

⁷⁷⁰ Dalby et al, *supra* note 639. Dalby, at p 85

⁷⁷¹ Samid Suliman, "Migration and Development after 2015" (2017) 14:3 *Globalizations* 415–431.

its way to the GCM, is also criticized for its narrow conception of responsibility and construction of the “responsible migrant” who is a rights-bearer *because* they contribute to development.⁷⁷²

Furthermore, SDGs’ template of goals-targets-indicators gives the impression that progress is possible on all fronts without tensions between targets and that they are measurable through quantitative indicators in most cases.⁷⁷³ Moreover, SDG targets are silent about the interlinkages among goals. While these goals seek to be “universal, indivisible and interlinked” (clause 71) without being able to take adequately deal with tradeoffs, they are likely to get co-opted.⁷⁷⁴ As Preibisch et al. write, mobility in SDG 10.7 is connected to migration control from the perspective of the receiving-state and upheld as a human right; there is little consideration of whether the two can be compatible or valued equally.⁷⁷⁵

In addition, while two of the 247 indicators disaggregate based on migrant status, none of them consider race or ethnicity. They note that while target 10.3 focuses both on “equal opportunity and reduce inequalities of outcome,” the indicators used do not adequately capture these elements. 10.3.1 only uses “perception data” (proportion of the population reporting having personally felt discriminated against or harassed within the last 12 months). From a capabilities-based perspective, the use of perception data is more likely to fall within the trap of adaptive preferences.⁷⁷⁶ Similarly, the indicators used to monitor life-long learning opportunities also do

⁷⁷² Christina Oelgemöller & Kathryn Allinson, “The Responsible Migrant, Reading the Global Compact on Migration” (2020) 31:2 Law Critique 183–207. 3

⁷⁷³ Esquivel, “Power and the Sustainable Development Goals”, *supra* note 766.

⁷⁷⁴ Mark Stafford-Smith et al, “Integration: the key to implementing the Sustainable Development Goals” (2017) 12:6 Sustain Sci 911–919.

⁷⁷⁵ Preibisch, Dodd & Su, *supra* note 116.

⁷⁷⁶ Inga T Winkler & Margaret L Satterthwaite, “Leaving no one behind? Persistent inequalities in the SDGs” (2017) 21:8 The International Journal of Human Rights 1073–1097.

not disaggregate based on migrant status, which has implications for expanding migrant workers' supportive capabilities.⁷⁷⁷

More generally, SDG's approach to global governance through goal-setting also raises concerns. While SDGs are grounded in international law, they are non-binding.⁷⁷⁸ Unlike other goals or targets on SD, such as the protection of the ozone layer, governments are under no legal obligation to incorporate the goals into their legal systems. While the SDGs aspire to universally applicable, governments are able to exercise their freedom in interpreting and implementing them and are expected to adapt them to national and local contexts. In addition, goal-setting governance functions through weak institutional oversight; implementation of the SDGs is being fulfilled by the high-level political forum on sd, which is relatively new.⁷⁷⁹ Furthermore, while using quantitative indicators attempts to communicate development objectives with a "sense of scientific certitude and serious intent with potential for accountability," this quantification reduces complex and intangible visions into measurable objectives and can have a distorting effect. There is a risk that most transformative SDGs will be neglected in favour of other simpler ones that do not involve complex, structural issues.⁷⁸⁰

Lastly, Agenda 2030's narrow understanding of migration-as-development risks reproducing unequal hierarchies. As Suliman argues, SDG's reliance on migration-as-

⁷⁷⁷ *SDG Targets and Indicators* 4.3.1 ex

⁷⁷⁸ And given they are a UN General Assembly resolution, it does not intend to grant any immediate legal force to the goals

⁷⁷⁹ Frank Biermann, Norichika Kanie & Rakhyun E Kim, "Global governance by goal-setting: the novel approach of the UN Sustainable Development Goals" (2017) 26–27 *Current Opinion in Environmental Sustainability* (Open issue, part II) 26–31.

⁷⁸⁰ Sakiko Fukuda-Parr, "From the Millennium Development Goals to the Sustainable Development Goals: shifts in purpose, concept, and politics of global goal setting for development" (2016) 24:1 *Gender & Development* 43–52.; Angelina Fisher & Sakiko Fukuda-Parr, "Introduction—Data, Knowledge, Politics and Localizing the SDGs" (2019) 20:4 *Journal of Human Development and Capabilities* 375–385.

development indexes migrants in accordance with their contribution to development. In other words, migration is seen as development's function, and migrants' contributions are predominantly in terms of economic costs and contributions.⁷⁸¹ SDG's indicators, as discussed above, are also concerned with migrants as a category of labour and progress is indexed to the presence of well-managed migration policies. Furthermore, while Addis Ababa Action Agenda, which sets out the concrete policies and actions for Agenda 2030, has a comprehensive way of global financing for development, it conceives concerted effort on migration as liberalization of financial remittances. Both the aforementioned "well-managed migration" and AAA's representation of migration through the lens of remittances depoliticize migration as it is represented as a technocratic and financial issue, further reinforcing the ideological justifications for economic-centred development and growth. Suliman concludes in so doing, SDG's inclusion of migration is marginal and fails to address "the conditions by which migration has been integrated into the global economy through its exclusions from the politics of development."⁷⁸² The SDGs, therefore, serve as the basis for market-oriented migration governance initiatives to be endorsed, which may have harmful outcomes. These can include temporary labour migration regimes (such as the kafala system), which are seen as an effective method of migration management that produce positive developmental benefits and provides greater flexibility. However, this reinforces the production of desirable and undesirable migrants.⁷⁸³

SDG's migration-as-development perspective, therefore, perpetuates the system where migrants who are considered to contribute to a country's economy are preferred. This calculation, as we have seen in Chapter 3, is based on informal hierarchies and legitimizes

⁷⁸¹ Suliman, *supra* note 771.P12

⁷⁸² *Ibid.*

⁷⁸³ Smith, "Migration, development and security within racialised global capitalism", *supra* note 116.

Masdar city's role to attract only those considered as contributing towards sustainable development. As Raghuram writes, migrants whose "offerings may not be easily aligned with an imaginary conception of the needs" as developmental are not considered.⁷⁸⁴

Also related to this is the logic that underpins this view of migrants as endowed with human, economic and social capital. Olgemöller and Allinson add that in this context, migrants are seen as "new agents of change," which rests on a "sedentary bias," fixing migrants into place and seeing them as an essentialized ethnic identity. In assuming that migrants will either not want to move and, if they do naturally, will want to return to their respective countries of origin, they are considered willing to cooperate in development practices.⁷⁸⁵

This perspective and its optimism on remittances also have implications for migrant workers' supportive capabilities, as it individualizes the responsibility to care for others who are territorially located elsewhere and does not take into consideration the importance of routes towards family reunification and citizenship. Moreover, in continuously forging links with distant others through sending money to their families, migrant workers are left with fewer resources available to secure the connections locally and or to those "back home," which can undermine migrant workers' everyday well-being.⁷⁸⁶ Many of the interviewed returning migrant workers shared concerns of feeling disconnected from their homes in Pakistan. "*Na idhar kay rahay na udhar kay*,"⁷⁸⁷ one of the returning migrant workers who had spent more than 30 years in the Gulf recalled how he felt he was left "neither there nor here." Indeed returning migrant workers are colloquially referred to as "*bahar kay log*."⁷⁸⁸ An over-reliance on remittances as an

⁷⁸⁴ Raghuram, "Which migration, what development?", *supra* note 78.

⁷⁸⁵ Olgemöller & Allinson, *supra* note 772.

⁷⁸⁶ Raghuram, "Which migration, what development?", *supra* note 78.

⁷⁸⁷ Urdu for "neither there nor here"

⁷⁸⁸ Urdu for "outsiders"

indicator and its inability to take family reunification and citizenship routes into account fails to capture supportive capabilities.

Lastly, from a capabilities-based perspective, movement and supportive capabilities ought to be seen as ends. These must be expanded not because they are instrumental towards other goals but because they are significant ends in and of themselves. As Novitz argues (in support for engaging with sustainability), there are two conditions that would diminish the threat posed by using SD to justifying labour standards: (a) if labour standards are seen as having a “distinct merit of social sustainability,” i.e. not merely instrumental or subsidiary to other aspects of SD (b) SD ought to be a result of a “full, inclusive, participatory process” and not treated as a “technical science.”⁷⁸⁹ Not only is there skepticism if either of these has been met so far, but as a 2019 ILO on SDG 8 report notes, insufficient institutional and financial capacity remain major roadblocks for this to become a reality⁷⁹⁰.

In summary, there are a number of shortfalls that Agenda 2030 suffers from despite its inclusion of migration-related issues. Not only does it maintain a traditional take on economic-centred growth, but its indicators also reflect a narrow understanding and only two of the indicators disaggregate based on migrant status and none based on race and ethnicity. There are significant tensions between them. The reductionist nature of some of these indicators (absence of family reunification and meaningful labour) fails to capture the full breadth of supportive and movement capabilities. Their use of goal-setting also raises concerns. Furthermore, in SDG’s narrow understanding of migration-as-development, migrants are indexed according to their contribution to development which is predominantly measured in terms of economic costs and

⁷⁸⁹ Novitz, *supra* note 635.

⁷⁹⁰ *Time to Act for SDG 8 : Integrating Decent Work, Sustained Growth and Environmental Integrity*, Report, www.ilo.org, Report (2019).

contributions. In serving as a basis for market-oriented migration governance initiatives that seek to “win-win-win,” there is a risk that this will reinforce temporary labour migration regimes which produce “desirable” and “undesirable” migrants, potentially perpetuating unequal hierarchies. Migration-as-development also risks the pitfalls of treating movement and supportive capabilities or other migration-related capabilities as instrumental towards development and significant ends with distinct merit. This narrative justifies eco-city projects such as Masdar City to use their given role in SD to limit access to a select few who are considered “desirable,” while the worse-off are rendered expendable.

4.11 Conclusion:

The same fixation on a unidimensional view of economic-centred growth development that riddled international negotiations on sustainable development occupies Masdar City and other eco-cities seeking to hide their profit-driven goals under the cloak of SD. However, this may not be a surprise given how sustainable development itself was conceived as an overarching policy imperative. Such a concept, in practice, as shown through the example of Masdar, is unlikely to offer an opportunity to expand migrant workers’ supportive and movement capabilities while removing the unequal hierarchies that characterize the international and domestic legal regimes regulating migrant workers as discussed, respectively in Chapter 2 and 3. While Masdar City’s role in Abu Dhabi’s “fractured urbanity” is still in the process of being determined as it is still under construction, its construction, conception of SD and development so far has been one that relies on eco-modernist logic and seeks to attract “high-skilled,” highly educated clean technology and renewable energy researchers and professionals that will work towards building Abu Dhabi’s diversified knowledge-based economy. It is not for the “low-

skilled” or “unskilled” migrant workers who are instead treated as passive, temporary, uninformed and made invisible in the city’s promotion and some of its residents’ accounts. While Agenda 2030 takes migration into account and references precarious employment and regular migration, it also suffers from significant shortfalls, including an inability to resolve persistent tensions between economic-centred growth and SD’s so-called social pillar. While the SD’s breadth which allows it to be applied in the context of labour standards, migration and trade law, may bode well for its ability to counter the IML’s fragmentation, its inability to counter developmentalism and economic-centred growth makes it likely to get co-opted. Masdar city’s story, therefore, is able to crystallize SD’s inherent tensions that work to reinforce the expendability of racialized, poor “low-skilled” South Asian migrant workers who are erased and left behind in this post-oil future.⁷⁹¹

⁷⁹¹ Gonzalez, *supra* note 759.

CHAPTER 5: **Working Towards Sustaining Justice**

“Earlier this year, I was in Mandi Bahauddin, and I was speaking to someone whose son was killed in the Greek border, and he was telling me how he was recruited by a local agent...and he had paid 1.3 million rupees to get him to Europe and all. Then I asked him if he was pursuing a case against that person. Because he was a local guy, and he was still around. He said no. I haven’t been to the police and... I said why. Do you not care for your son who has died? He said no. Because...he has now promised that he will take my second son without a charge.”

Migrant Rights Center Employee

When asked what had struck him the most, one Pakistani government official working in Islamabad recounted this harrowing story quoted above of a father who lost his son on the Greek border and yet was sending one of his other sons through the same “local agent.” Sitting next to the giant yellow letters that read “Happiness” in Masdar City, I was reminded of the many such accounts I heard throughout my fieldwork in contrast to the many “moons” that were promised to migrant workers such as Suleiman. Chapter 1 opened with the question: does Masdar city, dubbed “spaceship in the desert,” have space for migrant justice? This eco-city served as an entry point to investigate the intersections between migration, labour and environment. A multi-scalar analysis sketched several striations and patterns that produce the unequal regimes governing migrant workers and unequal futures of Sustainable Development (SD). I looked at how labour migration regimes distribute movement and supportive capabilities and what Masdar’s story tells us about SD’s compatibility with migrant justice.

Chapter 2 discussed the main features of international migration law: a plurality in sources (and resulting fragmentation); an across-the-board differentiation; a trend towards softer mechanisms. International migration law’s “giant unassembled juridical jigsaw puzzle”⁷⁹²

⁷⁹² Lillich, *supra* note 218. At p 9

consists of multiple regimes, resulting in an overlapping that reinforces the exclusion of migrants in an irregular situation. For both international human rights and International Labor Organization-promulgated labour law, there is a tendency to hinge more liberal provisions on migrant workers' status, allowing states to determine the protection of migrant workers' capabilities. In contrast to instruments on trafficking and smuggling, even when a growing number of softer mechanisms such as the ICRMW⁷⁹³ are adopted for migrant workers, a lack of political will, existing norms, and weak enforcement mechanisms limit the potential of those mechanisms to enhance movement and supportive capabilities for all migrant workers. Together these features result in fragmentation which confines migrant workers to certain sectors and creating a precarious, 'ultra-flexible' workforce. This fractures the application of domestic labour law yet helps states further their prerogative to determine rules on labour migration, even in an allegedly post-Westphalian community.⁷⁹⁴

Chapter 3 discussed how United Arab Emirates' (UAE) regime that regulates migrant workers, in turn, allows the state to offload several responsibilities to protect migrant workers' movement and supportive capabilities to individual sponsors. The expansive role was given to non-state actors such as the *kafeel*,⁷⁹⁵ *arbab*,⁷⁹⁶ recruiters, contractors, subcontractors -- and the power imbalances embedded in these relationships -- significantly inhibit migrant workers' substantive freedoms such as movement and supportive capabilities. Alongside informal hierarchies determined by race, gender, nationality, ethnicity, class etc., stringent citizenship rules, Emiratization and the availability of routes to circumvent the *kafala* system enhance

⁷⁹³ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* UNGAOR 45th Sess., Supp. No. 49A, UN Doc. A/45/49 (1990). [*Migrant Workers' Convention*].

⁷⁹⁴ Shachar et al, *supra* note 397.

⁷⁹⁵ Arabic for sponsor

⁷⁹⁶ Arabic for immediate boss

movement and supportive capabilities for a narrow group of “hyper-rich,” hyper-mobile migrant workers. In contrast, the majority of racialized “low-skilled,” “low-income” migrant workers have limited opportunities that keep them under conditions of precarity, irregularity, and deportability. Given the lack of protection of migrant workers in an irregular situation in international law, this becomes all the more significant. With the *kafala* system’s basic features left intact and inadequate enforcement and access to justice, recent reforms have little potential to expand migrant workers’ real freedoms.

Chapter 4 turned to see whether SD can be a site through which to pursue migrant justice. Can SD drive attention to migrant workers’ capabilities in a way that favours the worse-off agents? This is examined through Masdar City’s case in light of the United Nations’ Sustainable Development Goals (SDGs).⁷⁹⁷ However, I found that Masdar City’s embrace of ecological modernization hollows SD of its social content and allows it to prolong the status quo for migrant workers while enhancing movement and supportive capabilities for a select few. In contrast to its efforts to attract “wealthy expatriates” who are seen as contributing to UAE’s knowledge-based economy, “low-skilled” migrant workers maintaining and building the city are still regarded as uninterested and uninformed. Scholarship in the Third World Approaches to International Law and critical development traditions provide explanatory accounts, noting how the eco-modernist approach is a thread that runs across SD’s evolution. While the SDGs in Agenda 2030⁷⁹⁸ take precarious employment and irregular migration into account, they do so only partially. Persistent tensions and hierarchies dilute SD’s social pillar and render the concept unlikely to ameliorate the shortfalls of the regimes governing migrant workers in the UAE.

⁷⁹⁷ *Transforming our world: the 2030 Agenda for Sustainable Development*, UN General Assembly, Sess 70th, A/RES/70/1 (21 October 2015) [*Agenda 2030*]

⁷⁹⁸ *Ibid.*

Agenda 2030's use of migration-as-development further justifies states to use projects such as Masdar City to selectively choose "desirable" migrants and view them as merely economic agents.

The foregoing analysis sought to use movement and supportive capabilities as the evaluative space. It supplemented this critical capabilities-based approach with theoretical insights from environmental justice, critical development theory, TWAIL, an account of collective capability agency, and a principle favouring worse-off agents. It is time to take stock. This chapter aims to reflect on the project and determine what insights were gained from applying this lens. What tools do capabilities-based approaches and theories offer critical scholars? What, if anything, does a critical capabilities-based environmental justice lens offer? What are some of its most significant limitations, and how can it be furthered?

5.1 A critical capabilities-based approach: insights and tools

"I liked the UAE...in terms of cleanliness and things like that...but the climate there is *very* tough...and for our job, it is very tough. Now imagine walking a few kilometres in 48 degrees Celsius...this I am sure you know too...I mean I got used to it...but in our job you know there a lot of small tasks that require going back and forth...like when we have to maintain the car's temperature because the customer has to leave...the water would be at boiling temperature, *but we would keep working happily...because we had a means of living.*"

- Muzammil, returning migrant worker

The quote above reflects one way a focus on capabilities and opportunities as an evaluative lens can help provide more sophistication and nuance than its competing approaches. Muzammil's account above highlights the potential pitfall of relying on subjective accounts of well-being such as happiness. As detailed in Chapter 1, metrics such as happiness suffer from the problem of adaptive preferences; capabilities are better able to account for precarity-adjusted aspirations. While both are utilitarian and the Capabilities Approach (CA) is consequentialist,

proponents of the CA emphasize that it can provide an objective analysis of peoples' real opportunities.⁷⁹⁹ While it can integrate happiness as one of the components of a person's overall value-preferences, this is not essentialized. In evaluative exercises, the CA looks at whether the range of opportunities is being expanded.⁸⁰⁰

Furthermore, using capabilities as the evaluative space also offers advantages over primary goods approaches and other resourcist metrics that are less able to take account of people's different abilities to convert resources into valuable ends. As one of the interviewed civil society organization (CSO) members noted:

“It is just very easy and probably too lazy of me to say economic reasons, but...if it's economic reasons, then you should have ideally options within your own country to manage that. But because of these reasons, like climate change, domestic violence, for political reasons, that [migrant workers] feel they don't have that option...that they have to go.”⁸⁰¹

This excerpt highlights how a focus on capabilities understood as substantive options or opportunity freedoms is also understood by migrant workers rights' advocates in the Gulf Cooperation Council (GCC) region. While this particular framing reinforces a sedentary bias,⁸⁰² an expansion of capabilities avoids paternalistic attitudes towards migrant workers. Here, however, over-emphasizing the benefits of being able to stay in one's country of origin may also have the unintentional consequence of presenting migration as a problem to be solved. Nevertheless, as an alternative to resourcist and preference-centred metrics, capabilities can better grasp a broader informational basis that includes peoples' different abilities to convert

⁷⁹⁹ Menkel-Meadow et al, *supra* note 122.

⁸⁰⁰ Menkel-Meadow et al, *supra* note 128. at p 15

⁸⁰¹ Interview Civil Society Organization Official

⁸⁰² Stephen Castles, “Development and Migration--Migration and Development: What Comes First? Global Perspective and African Experiences” (2009) 56:121 *Theoria* 1–31.; Stephen Castles, “Understanding Global Migration: A Social Transformation Perspective” (2010) 36:10 *Journal of Ethnic and Migration Studies* 1565–1586.

resources into valuable functionings and counters the malleability of subjective accounts of well-being.

Furthermore, in Chapter 2 on international migration law, a focus on capabilities was particularly helpful in highlighting how migrant workers' choices are constrained and international migration law's fragmentation, differentiation and softness shape opportunities. Employing a critical CA as the evaluative lens required me to look at arrangements comprehensively. Although this is a demanding exercise, it allowed me to see the range and kinds of opportunities available to workers while also being attentive to how some opportunities depend on others. This quality of the CA has been useful for feminist scholars researching care work. Consider the following example by Ingrid Robeyns:

Take the following functionings: (1) to hold a job, which will require you to spend many hours on working and commuting, but will generate the income needed to properly feed yourself and your family; (2) to care for your children at home and give them all the attention, care and supervision they need. In a piecemeal analysis, both (1) and (2) are opportunities open to that parent, but they are not *both together* open to her. The point about the capability approach is precisely that it is comprehensive; we must ask which *sets* of capabilities are open to us, that is: can you simultaneously provide for your family and properly care for and supervise your children? Or are you rather forced to make some hard, perhaps even tragic, choices?⁸⁰³

This comprehensive nature of CA is also relevant for feminists and disability scholars for looking at inequality "side-ways," i.e. where people with the same amount of resources have different abilities to turn their resources into valuable ends. This aspect helped me counter the dominant argument that migrant workers in the UAE experience better well-being because they are earning higher salaries than they would have been in Pakistan (or any other country of origin). Even if we agree that migrant workers are able to earn more, the prevalence of wage theft and other wage-related issues as documented in Chapter 4 notwithstanding, opportunities to

⁸⁰³ Robeyns, *supra* note 108, "at 52

pursue support ones' family are limited for some migrants than for nationals "back home" who have the *same* resources.

Furthermore, in Chapter 3 on UAE's *kafala* system, a focus on capabilities and functionings provided insight into how workers are seen as willfully opting for illegal routes. A predominantly outcome-focused view would celebrate migrant workers' ability to carve out ways to prolong their stay without seeing how available routes and opportunities may place migrant workers at more risk of irregularity. This perception of migrants as willfully choosing irregular routes was also represented in accounts of civil society member working in Pakistan. One official noted how "irregular migration is as natural as brushing teeth"⁸⁰⁴ for some seeking to migrate. A capabilities-based perspective is, therefore, a useful corrective because looking at the distribution of the range of opportunities can highlight how these choices are constrained. A focus on the range of opportunities and whether they are effective and real may help inform CSO officials' perception of migrant workers as deliberately choosing illegal routes and, therefore, less deserving of assistance.

In Chapter 4's discussion of SD, a capabilities-based approach explicitly re-hierarchized social and environmental objectives over economic dimensions. Capabilities-based environmental justice scholar David Schlosberg's suggestion to further differentiate luxury and subsistence emissions is also promising.⁸⁰⁵ Here, however, critical development and TWAIL scholarship were more suited to explain why Masdar City's reliance on eco-modernist approaches allows it to apply a veneer of SD without meaningfully addressing the social pillar at

⁸⁰⁴ Interview Migrant Rights Center Employee

⁸⁰⁵ Schlosberg, "Further uses for the luxury/subsistence distinction", *supra* note 157.

all, let alone the underlying power imbalances and structures that render migrant workers expendable.

The informational gains wrought through applying the CA lens may help lawyers and policy-makers design tools to better evaluate precarity and vulnerability. Looking at the different kinds of constraints migrants may face allows us to see what conditions make it more likely for precarious forms of work to emerge – and therefore, what conditions future eco-cities would have to put in place to tackle precarity. While environmental lawyers may continue to find it helpful as an alternative for cost-benefit-analyses,⁸⁰⁶ labour lawyers can best use it as *one* of the justificatory bases for labour rights as not only instrumental towards other goals such as SD but as significant ends on their own.⁸⁰⁷ These rights can advocate for more complex capabilities such as meaningful labour and being able to support oneself and one's family, as my suggestion to focus on movement and supportive capabilities could be used towards.

Following some proponents discussed in Chapter 1 who have used CA to invert the orientation of regimes,⁸⁰⁸ I found the critical CA approach helpful to re-hierarchize social dimensions of SD over other economic dimensions which have continued to loom large; movement and supportive capabilities are then seen as ends on their own. However, unlike some proponents such as Langille⁸⁰⁹ and Routh,⁸¹⁰ I do not argue that the CA can serve as *the* normative foundation for labour law or migration law as a whole. In addition, while most of

⁸⁰⁶ Roesler, "Addressing Environmental Injustices", *supra* note 115.; Holland, *supra* note 153.

⁸⁰⁷ See for e.g. Deakin, *supra* note 118.

⁸⁰⁸ Clair Gammage, "(Re)Imagining the Trade-Labour Linkage: The Capabilities Approach" in *The Capability Approach to Labour Law* (Oxford University Press, 2019) 290.

⁸⁰⁹ Langille, *supra* note 151.

⁸¹⁰ Supriya Routh, "The Need to Become Fashionable" in *The Capability Approach to Labour Law* (Oxford University Press, 2019) 103.

these scholars worked in the context of democracies, this project sought to apply it in the context of the UAE.

Rather than using Anderson's version of democratic equality like Fudge⁸¹¹ and Routh⁸¹² do, I coupled capabilities as a metric of justice with a potentially more radical distributive rule: Lea Ypi's rule that favours worse-off agents to balance emigration and migration demands.⁸¹³ This, one may argue, goes beyond Sen's more pragmatic view of focusing on comparing feasible alternatives. However, I hoped that in coupling CA with a more radical distribution rule, as well as critical insights from environmental justice, critical development and TWAIL scholarship, I could address the most potent critique of CA - that without a robust structural account, it implicitly accepts neoliberalism and is not transformative.

While I agree with Sen's criticisms of transcendental institutional approaches to justice and their focus on 'getting the institutions right' and diagnosing justice by simply imagining a perfectly just society, I find his incremental approach to removing injustices less convincing.⁸¹⁴ Nevertheless, as Robeyns' modular view of CA has shown, this aspect is not a core element of all capabilities-based applications. This argument may also help environmental justice scholars who have recently questioned how "transformative capabilities-based approaches to justice actually are."⁸¹⁵ This position also compliments Robeyns' contention that it is possible to construct capability theories that are less liberal by not prioritizing agency and autonomy.⁸¹⁶ For

⁸¹¹ *Labour as a 'Fictive Commodity': Radically Reconceptualizing Labour Law*, SSRN Scholarly Paper, by Judy Fudge, papers.ssrn.com, SSRN Scholarly Paper ID 1721265 (Rochester, NY: Social Science Research Network, 2011).

⁸¹² Supriya Routh, *Enhancing Capabilities through Labour Law: Informal Workers in India* (Routledge, 2014) Google-Books-ID: V0gsAwAAQBAJ.

⁸¹³ Ypi, "Justice in Migration", *supra* note 183.

⁸¹⁴ Sen, *supra* note 102.

⁸¹⁵ Martin, Adrian et al, "Environmental Justice and Transformations to Sustainability" (2020) 62:6 *Environment: Science and Policy for Sustainable Development* 19–30.

⁸¹⁶ Robeyns, *supra* note 108.

example, some work on care ethics which prioritizes protecting the vulnerable over enhancing agency.⁸¹⁷

Lastly, while the CA is firmly within the liberal theory, its critiques of resourcism, utilitarianism, social contract theory, and transcendental institutionalism may help critical scholars. Its pluralism, in terms of the different values it can encompass, and additional principles it can rely on, and view of human beings as multidimensional (able to value multiple things) has the potential to open the space to include different worldviews, including the many pluriverses critical development scholars advocate for. Here, Sen's work on rationality is useful for its critiques of mainstream economics, exposing how rationality is viewed narrowly as maximizing self-interest.⁸¹⁸ While this project was not able to fully take advantage of this aspect of Sen's work, recent CA literature on the role of empathy is also promising.⁸¹⁹ Also, Sen's work on social choice theory and the plurality of reasons ranked in partial ordering without the need for consensus is important for constitutional reasoning and deliberative democracy.⁸²⁰

5.2 Limitations and Major Critiques of CA

However, there remain significant limitations of applying capabilities-based approaches and several major critiques assessed below. Firstly, while Sen has consistently defended his

⁸¹⁷ See for e.g. Christopher Groves et al, "A Missing Link? Capabilities, the Ethics of Care and the Relational Context of Energy Justice" (2021) 0:0 Journal of Human Development and Capabilities 1–21. ; Catriona Mackenzie, "The Importance of Relational Autonomy and Capabilities for an Ethics of Vulnerability" in Catriona Mackenzie, Susan Dodds & Wendy Rogers, eds, *Vulnerability: New Essays in Ethics and Feminist Philosophy* (Oxford University Press, 2013) container-title: Vulnerability.

⁸¹⁸ Sen, *supra* note 142.

⁸¹⁹ See for e.g. Rachel Nussbaum Wichert & Martha C Nussbaum, "Can There Be Friendship Between Human Beings and Wild Animals?" (2021) 0:0 Journal of Human Development and Capabilities 1–21.

⁸²⁰ Sen, *supra* note 111.; Menkel-Meadow et al, *supra* note 122.

contribution as intentionally incomplete⁸²¹ and its proponents insist it is not an explanatory theory, CA suffers from the absence of an account on structural constraints. CA is then likely to take the shape of weaker forms such as human development that fail to address historical and structural foundations of injustice or the power imbalances and patterns of uneven development.

This under-specified nature of CA is both its appeal and its drawback. One may ask if so many other aspects (an explicit account of structural constraints, agency, focus on capabilities versus functionings, other relevant principles etc.) have to be specified and supplemented, then what is the value of starting with CA in the first place? The value, as I have argued, is primarily its means-ends distinction which is able to divert attention from other metrics and its ability to capture and treat complex beings and doings -- such as meaningful labour and being able to support oneself and one's family -- as valuable ends on their own. However, as Hill and many others have argued, it is not concerned with "why or how socio-economic and political institutional conversion factors impinge on labour."⁸²² The concept of conversion factors only deals with one's ability to convert resources into valuable ends but does not consider why certain resources are not there, to begin with.

This is why the foregoing analysis that relied on a CA was better at evaluating legal regimes and instruments but did not offer tools to assist when migrants were erased altogether. Critical Development (CD) and TWAIL accounts were used instead to partially explain how Masdar City practiced SD erased migrant workers (let alone enhance their opportunities). Those supplementary frameworks were also necessary as Agenda 2030 and SD are equally silent on

⁸²¹ The title, itself, of Sen's book that brings together his contributions on the subject, "Idea of Justice," denotes it is not intended to be a complete theory of social justice

⁸²² Menkel-Meadow et al, *supra* note 122. at p 243; Elizabeth Hill, *Worker Identity, Agency and Economic Development: Women's Empowerment in the Indian Informal Economy* (Taylor & Francis, 2010) Google-Books-ID: RzDJ6L_yWeIC.

structural and historical foundations of injustices. While interviewing migrant workers in Masdar City could have allowed a more nuanced capabilities-based analysis, the weight still would have been pulled by the chosen supplementary accounts of structural constraints. Nevertheless if accounts from migrant workers building and maintaining Masdar City were accessible, this analysis, particularly Chapter 4, would have applied a more thick critical capabilities approach that foregrounded migrant workers' lived experiences.

CA's lack of structural account is criticized by many critical scholars. B.S. Chimni, while limiting his argument to Sen's 'development as freedom,' provocatively criticizes Sen's conceptualization of development for mirroring mainstream discourses of international law in its inability to appreciate the role of structural constraints that impede the realization of his goals.⁸²³ Yet Chimni concludes, "this does not take anything away from the enormous merit of Sen's conceptualization of development as freedom, it only points to how the dominant classes and state can co-opt the most radical of discourses to its ends."⁸²⁴ Nevertheless, the underspecified nature of CA, according to Ingrid Robeyns, allows for the possibility of 'Marxist capabilitarians'⁸²⁵ in addition to 'libertarian capabilitarians.' But overall, I agree with Chimni that, without explicit structural accounts, it is more likely to get co-opted as Sen's development as freedom and as SD. As Chapter 4 shows, CA's means-ends distinction is able to re-hierarchize SD's dimensions, but only critical accounts such as CD and TWAIL can help explain the obstacles that prevent this.

⁸²³ Bhupinder Chimni, "The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels" (2008) 1:1 *The Law and Development Review*, online: <<http://www.degruyter.com/view/j/ldr.2008.1.1/ldr.2008.1.1.1007/ldr.2008.1.1.1007.xml>>.

⁸²⁴ *Ibid.* at p 19

⁸²⁵ There have been attempts to, in fact, also propose a list of Marxist capabilities. This is perhaps related to how the CA is not meant to serve as an explanatory theory. David Leopold, "Karl Marx and the Capabilities Approach" in Enrica Chiappero-Martinetti, Mozaffar Qizilbash & Siddiqur Osmani, eds, *The Cambridge Handbook of the Capability Approach* (Cambridge: Cambridge University Press, 2020) 40.

Secondly, some capabilities-based approaches are criticized for their inability to take power, inequalities, and political economy into account. In her recent book, Robeyns provides possible responses to these critiques and argues that it is possible to supplement a capabilities-based application with an account that pays more attention to social and cultural constraints on peoples' choices, as she does in her work on care work. In response to Thomas Pogge,⁸²⁶ who argues that Sen's work overemphasizes the role of the governments while underemphasizing that of the global economic system, Robeyns responds that such critiques are less about the CA and more about CA scholars' research agendas.⁸²⁷ Where urgent issues of justice exist, a political economy analysis of unjust structures is required. There is nothing in CA's 'core modules' that would not allow this. Lastly, in response to the contention that CA implicitly accepts and/or reinforces neoliberal economic policies that prioritize free markets and privatize public goods, she argues that CA does not support an unfettered market as *the* institution that enhances capabilities. Rutgers Claasen, in fact, argues CA endorses regulating markets and constraining property rights. In other words, the question of what institutions can expand capabilities cannot rest with CA alone and must be done through the political economy. Similarly, I found that the critical CA lens that TWAIL and CD supplemented could have been more robust if it could fully account for the political economy of labour migration.

Thirdly, another significant critique of capabilities-based approaches is that they are too individualistic, and this focus on the individual reinforces neoliberalism. Robeyns' view, however, is that CA relies on 'ethical individualism,' which differs from methodological and ontological individualism. In other words, it claims that what should count in our evaluative

⁸²⁶ Thomas Pogge, "A Critique of the Capability Approach" in Brighouse & Robeyns, *supra* note 105.

⁸²⁷ Robeyns, *supra* note 108.

exercises is individuals as units of ultimate moral concern. This differs from a commitment that all social phenomena are to be explained wholly and exclusively in terms of individuals, their properties, and individual gains or well-being. Therefore, Robeyns argues that this makes CA compatible with other ontologies that recognize the importance of connecting people and their broader social relations. Several others have contributed towards notions of collective capabilities and collective agency, arguing that many capabilities can only be achieved through collective actions.⁸²⁸

In line with Schlosberg who uses this as a basis for collective capabilities in the context of indigenous environmental justice, I also tried to find an account on agency that focused on community ties. My attempt to use Razia Shariff's work on collective capability agency was intended to highlight how individual agency goals ought to be transformed. For Sharif, capabilities depend on collectivities and relations. Relying on critical theory and her case study, she argues that a shift must occur for each of Sen's instrumental freedoms to one with collective agency capability. For instance, social network capital develops from having an "alienated society" to a highly networked with "organic solidarity."⁸²⁹ Chapter 2 showed how the segmentation in international migration law breaks the links that could condense to allow for this shift towards collective agency capability. The multiple statuses undermine resistance from crystallizing around a shared identity. Similarly, the individualized, discretionary nature of the *kafala* system discussed in Chapter 3 also undermines this shift. Migrant workers' accounts are replete with the notion that their working and living conditions depend entirely on your recruiter,

⁸²⁸ See for e.g. Jérôme Pelenc, Didier Bazile & Cristian Ceruti, "Collective capability and collective agency for sustainability: A case study" (2015) 118 *Ecological Economics* 226–239. Jérôme Ballet, Jean-Luc Dubois & François-Régis Mahieu, "Responsibility for Each Other's Freedom: Agency as the Source of Collective Capability" (2007) 8:2 *Journal of Human Development* 185–201.

⁸²⁹ Shariff, *supra* note 182.

kafeel, immediate boss and the many “middlemen.” This heterogeneous system, the “racial wage”⁸³⁰, as well as segregated urban development⁸³¹ undermine resistance from crystallizing around a shared identity.

In addition, supportive capabilities were used as one of the foci to counter the individualist focus of CA and highlight relational aspects. As aforementioned given interviews and results of using Alkire’s method of partial ranking, I focused on movement and supportive capabilities. While the former could be described as being able to move freely inside and outside the receiving state (UAE), supportive capabilities were described as being able to support oneself and one’s family (understood broadly to include community). I found using supportive capabilities helpful because of their breadth and ability to couple traditional resourcist metrics such as wages with a host of other aspects such as lifelong learning opportunities, which compelled me to think of each scenario more holistically. As Chapter 3 revealed, they were able to emphasize the lack of family reunification opportunities and stringent citizenship rules. I suspected this would help highlight the interconnections and interdependencies between migrants and their familial and community ties. This is particularly relevant considering the practice of taking loans from families and other community members to pay for recruitment costs. I wondered if highlighting this relationship would be able to counter the individualist focus of the CA. While the breadth required me to think of each arrangement holistically, it also allowed me to go beyond thinking of each migrant worker as a “bounded autonomous liberal individual.”⁸³²

Fourthly, some critics point to the lack of clarity between the role of preferences that can shape people’s capabilities and how “reason to value” is defined. Sen clarifies that he uses the

⁸³⁰ Vitalis, *supra* note 441.

⁸³¹ Elsheshtawy, “Urban enclaves and transient cosmopolitanism”, *supra* note 682.

⁸³² Seck, “Transnational Labour Law and the Environment”, *supra* note 18.

word ‘preferences’ differently from its use in moral philosophy or a psychological sense. Sen uses ‘preferences’ borrowing from Arrow and social choice theory which reflects not tastes; rather, it reflects all the values, i.e. “persons entire system of values, includes values about values.”⁸³³ However, even with this clarification of preferences’ relationship with capabilities, the additional requirement that opportunities ought to be those “one has reason to value” (that would survive reasoned scrutiny) is still unclear. As Robeyns contends, “reason to value” has remained under-theorized. In fact, Fibieger Byskov argues that this aspect of the capability definition ought to be removed altogether.⁸³⁴ Sen is also criticized for putting “too great a faith in traditional philosophical and economic processes of a logical reason to get us to good policies”⁸³⁵ and for having such a demanding conception of deliberative democracy. While he is referred to as a “feminist economist and philosopher,” Sen’s view of reasoning and the role of deliberative democracy may be problematic for some feminists. As Iris Marion Young has argued, such a version of deliberative democracy and its potential for long political meetings may exclude people with child-care responsibilities.⁸³⁶

In addition, another significant critique of CA is directed towards Sen’s view of human rights. While Nussbaum equates human rights with capabilities, Sen draws on Bentham’s skepticism over natural rights and sees them as playing a similar normative role as utility where they are given fundamental ethical importance. He parts ways with both Bentham and Hart, claiming that normal rights can inspire legislation, but formal law is only *one* way of realizing them. Therefore, human rights are essential ethical claims but not legally secured moral

⁸³³ Sen, *supra* note 142.

⁸³⁴ Fibieger Byskov, “Beyond ‘having reason to value’”, *supra* note 109.

⁸³⁵ Menkel-Meadow et al, *supra* note 128.

⁸³⁶ *Ibid.* at p 21

demands. In fact, he does not consider the Universal Declaration of Human Rights as a legal instrument. Law is understood as the “command of the sovereign under threat of sanction”; municipal laws may help enforce laws, but treaty laws simply list pre-existing laws. Benhabib criticizes this narrow understanding of human rights and law and argues that not all essential moral claims amount to human rights claims, and in fact, it is a legal process that allows them to take that shape.⁸³⁷ Similarly, Baxi finds Sen’s conceptualization of law as problematic and argues that when enacted legislation is absent, the process of recognizing claims as human rights claims amounts to customary law or treaty law.⁸³⁸

Furthermore, for Sen, anyone who is able to can help promote human rights; duties are dispersed across the society accordingly. However, this individualization of a Senian version of human rights may help justify systems such as UAE’s *kafala* system, where responsibility and obligations are offloaded to different actors. It may also help justify the GCM’s construction of a “responsible migrant.” In short, without an explicit structural account emphasizing how concentrated state and economic power may be organized to undermine them, this “people-centred” view of human rights may be harmful.

While Sen’s particular account of human rights remains significantly weakened by treating law as secondary, a move away from human rights-centred approaches may serve fruitful in the context of authoritarian regimes such as the UAE. As one of the interviewed CSO members recounted, “The foreign expats can’t accept the reality here. You can’t argue about human rights in an office. You have to be so respectful and choose your battles.”⁸³⁹ The more neutral language of capabilities and opportunities can be a more pragmatic choice even though it

⁸³⁷ Benhabib, *supra* note 129.

⁸³⁸ Baxi, *supra* note 743.

⁸³⁹ Interview with CSO member

may encompass more demanding claims such as those including meaningful labour.

Nevertheless, it is crucial to note Sen's skepticism of human rights and law's hegemony stems from a critical approach to formal justice, formal legal principles and procedures.

Lastly, a potential critique of this specific application of a capabilities-based approach in the context of migrant workers in the UAE and eco-cities poses the question: why frame environmental justice in terms of capabilities when migrant workers do not *even* have basic rights? Here, I find environmental justice scholars' conviction to dispel the myth that "the poor are too busy surviving" helpful. Masdar City's story shows how migrant workers such as the "man with a brush" are at the forefront of the green economy yet are either erased or represented as uninterested and uninformed. As reflected in returning migrant workers' interviews, the environment (particularly working outside) is not an abstract concept, polluted and decreasing in beauty or scenic value. For many, it is experienced in their everyday lives, which have already exposed them to hazards.⁸⁴⁰

Environmental justice scholarship highlights that temporary labour migration and environmental justice are fundamentally linked, considering in most industries, it is often migrant workers, ethnic minorities and women of colour who are willing to take high-risk, lower-paid jobs that put them at greater risk of exposure to environmental harms.⁸⁴¹ It is the workplace where exposure is the most intense and where people are first exposed. And while this was not found in the case of Masdar City given the context of the UAE, it is the workplace where people begin to resist environmental injustices. Recent scholarship on just transitions notes how arguments both in favour and opposed to some efforts towards a post-carbon economy such as

⁸⁴⁰ Ken Geiser, "The Emergence of a National Anti-Toxic Chemical Movement," *Exposure* 27 (February 1983), 3 at 67.

⁸⁴¹ Pellow & Park, *supra* note 175. at 68

solar energy farms and Green New Deals may erase work and labour.⁸⁴² In the context of Covid-19, it is all the more significant to centre justice concerns of the most marginalized who continue to be disproportionately burdened by public good issues such as climate change and public health.

Similarly, CA's ability to counter the usual sequencing of economic objectives over social and environmental dimensions is also helpful. While it may be challenging to do environmental justice-inspired research in contexts such as the UAE and outside the country, it is worth pursuing such projects. Given the political climate, it was difficult to talk about migrant workers explicitly. Finding interviewees and building long, meaningful relationships with interviewees based on a few in-person interactions proved difficult to maintain by communicating online alone, especially considering peoples' anxieties over surveillance in the context of crackdowns and arrests of critics who have been vocal on social media. Given the transient nature of the migrant population, particularly in the UAE, it was also difficult to maintain connections with interviewees over the years.

In the context of climate change, it will be increasingly important to highlight these dynamics and work on intersections such as migration, environment and labour while centring the concerns and voices of racialized, marginalized communities who are disproportionately and routinely made expendable by fossil-fuel industries, post-oil futures and climate change itself. A focus on the UAE is able to highlight the importance of a holistic approach towards a just transition that can only be socially, environmentally and economically sustainable if the underlying power structures that have created environmental problems such as climate change

⁸⁴² Smith & Scott, *supra* note 100.

are countered. Post-oil futures must center justice issues faced by the most vulnerable and just transitions must foreground, rather than erase, workers.⁸⁴³

In summary, using capabilities as an evaluative lens has advantages over other preference or resource-centred metrics. It is most helpful for evaluating legal regimes and instruments comprehensively to see how the distribution of opportunities constrain certain migrant workers. While it can be used for multiple purposes, it serves as only *one* of the normative bases for certain labour rights and can go beyond them to include more complex beings and doings such as meaningful labour, supporting oneself and one's family and being able to move freely. As I have tried to demonstrate through this work, its biggest strength may be its means-ends distinction and its ability to counter the usual sequencing of economic concerns over social and environmental ones, as reflected by my analysis of how SD applies in Masdar City. However, significant critiques and limitations include CA's incompleteness and lack of an explicit structural analysis, and focus on individuals, Sen's unwavering faith in reason and conceptualization of human rights. This dissertation aimed to see whether pairing CA with critical strands of scholarship in EJ, TWAIL, and Critical Development studies would help make it more robust and address some of these shortfalls. Nevertheless, as Robeyns writes, "it is clear that the capability approach will not solve all the world's problems, and that we should regard it as a tool to help us in analyzing cases that need our attention, rather than an intellectual project that has become an end in itself for academics."⁸⁴⁴

5.3 Future Research

⁸⁴³ *Ibid.*

⁸⁴⁴ Robeyns, *supra* note 108. p194

In light of the critiques raised in the previous section, future research agenda for CA-based environmental justice scholars should include using political economic analyses and centring the role of racism. This may help further a theory of justice with a more coherent, explicit account of structural constraints. In addition, drawing on Carmen Gonzalez's recent work on racial capitalism, climate change and migration, there ought to be more race-conscious approaches to climate change mitigation and adaptation, whether they are inspired by CA or other normative bases. This includes CD and post-development scholarship criticized for romanticizing and essentializing the 'local' and 'traditional.' with an "overly moralizing rhetoric." As Pailey further argues, while post-development is able to center class and gender, it "suffers from a 'white gaze' problem in that it remains conspicuously silent on race, racism and racialized forms of Northern hegemony."⁸⁴⁵ It also disregards the role of the state while leaving its claims that the global South is generally anti-mainstream development, for the most part unsupported.⁸⁴⁶

While CA is also being applied in the context of non-human animals, more needs to be done to connect CA-inspired approaches to degrowth.⁸⁴⁷ Although CA's means-ends distinction can critique an economic-centred growth view of development, its focus on capabilities or substantive opportunity freedoms cannot tell us *how* to get there. Critical development scholars who advocate for transitions towards degrowth argue that the ways SD and green economy are

⁸⁴⁵ Pailey, *supra* note 749. At 739

⁸⁴⁶ Stefan Andreasson, "Fossil-fuelled development and the legacy of Post-Development theory in twenty-first century Africa" (2017) 38:12 Third World Quarterly 2634–2649.; Ilan Kapoor, "Cold critique, faint passion, bleak future: Post-Development's surrender to global capitalism" (2017) 38:12 Third World Quarterly 2664–2683.

⁸⁴⁷ Degrowth was developed as a critique of growth and the omnipresence of market-based relations in society by reducing energy and material throughput to respect planetary biophysical limits. See for e.g. Giacomo D'Alisa, Federico Demaria & Giorgos Kallis, *Degrowth: A Vocabulary for a New Era* (Routledge, 2014) Google-Books-ID: JhxWBQAAQBAJ.

approached have worsened planetary health and failed to reduce poverty and inequality.⁸⁴⁸ For Escobar, degrowth and pluriverses such as Buen Vivir could be “fellow travelers” where the former can take the latter in more urban contexts or are in the global North.⁸⁴⁹ Both share a focus on a complete reorganization of society that “recenters harmony” among humans and the more-than-human world.⁸⁵⁰ Vandenhoe, on the other hand, argues for no-growth to replace economic growth so that environmental and social aspects are prioritized over economic growth, as strong definitions of sustainable development suggest.

Meanwhile, Richard Douthwaite relies on leading ecological economist and proponent of steady-state economics, Herman Daly, for his argument that a sustainable society does not use renewable resources faster than they can regenerate, use nonrenewable resources faster than renewable substitutes are developed, and release pollutants faster than natural systems can break down.⁸⁵¹ Daly, who defined SD as “development without growth,” argues, “[t]he term sustainable growth should be rejected as a bad oxymoron” Here, again, environmental justice concerns of the most vulnerable and marginalized ought to be centred. Echoing Chimni’s remarks, therefore, future research should also focus on emancipation *to*, not only emancipation from. This would include visioning and futurities that include plural paths, including degrowth and pluriverses, but by centring environmental justice concerns. While degrowth tackles material

⁸⁴⁸ Ashish Kothari, Federico Demaria & Alberto Acosta, “Buen Vivir, Degrowth and Ecological Swaraj: Alternatives to sustainable development and the Green Economy” (2014) 57:3 Development 362–375.; Ashish Kothari, “Radical well-being alternatives to development” in *Research Handbook on Law, Environment and the Global South* (Edward Elgar Publishing, 2019) 64.

⁸⁴⁹ Arturo Escobar, “Degrowth, postdevelopment, and transitions: a preliminary conversation” (2015) 10:3 Sustain Sci 451–462.

⁸⁵⁰ Patricia E (Ellie) Perkins, “Climate justice, commons, and degrowth” (2019) 160 Ecological Economics 183–190.

⁸⁵¹ Richard Douthwaite, “Is it possible to build a sustainable world?” in Ronaldo Munck & Denis O’Hearn, *Critical Development Theory: Contributions to a New Paradigm* (Zed Books, 1999) Google-Books-ID: AU4Bc5WNHfIC. at p159

throughput and over-consumption in rich countries, it may insufficiently take equity into account, particularly the impacts of reducing GDP on particular people and geographic areas. As Ellie Perkins warns, “it seems dangerous to advocate degrowth without very clear and specific corollary measures to negate the tendency of the powerful to come out better-off.”⁸⁵²

In addition, there is much to add to research on migrant workers’ perceptions of receiving-countries in the North, including Canada. A number of the interviewed returning migrant workers viewed receiving countries in the North as their preferred destination, where everyone is treated equally, and there are more opportunities. One interviewee noted how someone “told [him] that you have spoiled your entire life...If you were in America, or Canada, you would have been doing all types of jobs.”⁸⁵³ While there is comparative work on temporary labour migration regimes, there may be value in including how migrant workers’ own subjectivities inform or unsettle dominant understanding of North-South migration and South-South migrations.

In addition, in their re-telling of their experiences, migrant workers often also reproduced subjectivities of who is a “desirable” as opposed to an “undesirable” migrant. For instance, interviewed returning migrant workers often reproduced the informal hierarchies that associate certain professions with certain nationalities, ethnicities, races, gender etc. One interviewed returning migrant worker noted how there were no children camel jockeys anymore in Abu Dhabi but then later added that there were Sudanese children – this was okay because “that’s what they do.” Some also associate their poor working and living conditions to lack of education or experience and vice versa. For instance, one of the interviewed returning migrant workers

⁸⁵² Perkins, *supra* note 850.

⁸⁵³ Returning migrant worker interview

recalled, “They kept the good technicians in good conditions...because I was an all-rounder technician.”⁸⁵⁴ While there is already a growing body of anthropological work in this area, it would be fruitful to situate these findings in relation to how migrants are constructed in both international migration and environmental legal regimes.

5.4 Concluding Remarks

“There is no freedom...you can’t do any job on another site.”⁸⁵⁵
-Pakistani returning migrant worker

“This city will also die.”⁸⁵⁶
Masdar city student-resident

On my flight from Dubai to Karachi, I sat next to Jamshaid, a Pakistani camel driver in his 20’s who worked in Abu Dhabi. He was going back to Rahim Yar Khan after what he called were “grueling”⁸⁵⁷ two years. He had been earning 200 USD and worked 7-days a week. His *arbab* constantly blamed him for sick livestock and his *kafeel* did not pay for his return ticket. Though his *kafeel* had “given [him] permission” to work elsewhere, he could not find employment in time. Having lived on a remote farm with only a handful of other employees, he did not have a network to reach to and know where to look. “There is no freedom,” he concluded with a sigh. When asked if he would go back to the UAE, he said in one breath, “Of course, I will go wherever there is work.”⁸⁵⁸

Migration is the norm, not an aberration. There may be many roads towards sustaining justice for migrants, and while it may be dangerous to speculate, migration will remain prevalent.

⁸⁵⁴ Returning migrant worker interview

⁸⁵⁵ Returning migrant worker interview

⁸⁵⁶ Masdar student-resident interview

⁸⁵⁷ Returning migrant worker interview

⁸⁵⁸ Returning migrant worker interview

Covid-19 has not only exacerbated pre-existing inequalities and expedited the “future of work” but has also had a profound impact on migrants, who have been left in limbo once again. It has complicated return and repatriation processes for migrants who have lost jobs.⁸⁵⁹ It has increased the risk of contracting Covid-19 for migrants working on the “frontlines” and migrants held in immigration detention facilities for longer periods. While Masdar City became one of the centers for Covid-19 action,⁸⁶⁰ the UAE banned visas for Pakistanis due to “security reasons.” Although stories detailing migrants stranded and mass exoduses are plenty, the extent of the impact on migrants is still unfolding. Meanwhile, the UAE launched its space program, which includes building a human settlement on Mars by 2117.⁸⁶¹ All this is to say that although Masdar’s “spaceship in the desert” remains incomplete, the question of whether there will space for migrant justice on the many moons promised to migrants remains just as pressing.

⁸⁵⁹ United Nations, “Impact of COVID-19 on Migrants and Refugees in the Arab Region Technical Paper” (2020) online:< https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_764756.pdf>; Omer Karasapan, “Pandemic highlights the vulnerability of migrant workers in the Middle East”, (17 September 2020), online: *Brookings* <<https://www.brookings.edu/blog/future-development/2020/09/17/pandemic-highlights-the-vulnerability-of-migrant-workers-in-the-middle-east/>>.

⁸⁶⁰“New COVID-19 vaccination centre opens in Abu Dhabi’s Masdar City”, (23 February 2021), online: <<https://gulfnews.com/uae/new-covid-19-vaccination-centre-opens-in-abu-dhabis-masdar-city-1.77394049>>; “UAE assured visa ban ‘temporary’ to check COVID, says Pakistan”, *Al Jazeera* (20 December 2020), online: <<https://www.aljazeera.com/news/2020/12/20/halting-of-visas-for-pakistanis-temporary-uae-tells-pakistan>>.

⁸⁶¹ “Emirates Mars Mission Overview”, (2021), online: *Emirates Mars Mission* <<https://www.emiratesmarsmission.ae/mission/about-emm>>.

Bibliography

The Emigration Ordinance, Pakistan 1979.

Report of the Committee set up to examine the representation alleging non-observance by the United Arab Emirates of the Forced Labour Convention, 1930 (No 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC), 2017 ILO Governing Body:

Adelman, Sam, Abdul Paliwala & Abdul Paliwala, *The Limits of Law and Development : Neoliberalism, Governance and Social Justice* (Routledge, 2020).

Aleinikoff, T Alexander & Vincent Chetail, eds, *Migration and International Legal Norms* (T.M.C. Asser Press, 2003).

Alexander, John M, *Capabilities and social justice: the political philosophy of Amartya Sen and Martha Nussbaum* (Aldershot, England: Ashgate Pub. Ltd., 2008).

Alkire, Sabina, *Valuing Freedoms: Sen's Capability Approach and Poverty Reduction* (Oxford University Press, 2005).

Al-Rasheed, Madawi, *Transnational Connections and the Arab Gulf* (Routledge, 2004).

Al-Rasheed, Madawi & Professor Madawi Al-Rasheed, *Transnational Connections and the Arab Gulf* (Psychology Press, 2005).

Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World*, new ed., stu-student edition ed, Princeton Studies in Culture/Power/History (Princeton: University Press, 2011).

Ashiagbor, Diamond, ed, *Re-Imagining Labour Law for Development: Informal Work in the Global North and South* (Hart Publishing, 2019).

Avery, Donald, *Reluctant Host: Canada's Response to Immigrant Workers, 1896-1994* (McClelland & Stewart, 1995).

Banakar, Reza & Max Travers, *Law and Social Theory* (A&C Black, 2014).

Bargach, Jamila, *Orphans of Islam: Family, Abandonment, and Secret Adoption in Morocco* (Rowman & Littlefield, 2002).

Bastia, Tanja & Ronald Skeldon, *Routledge Handbook of Migration and Development* (Routledge, 2020).

Begum, Rothna et al, *"I already bought you": abuse and exploitation of female migrant domestic workers in the United Arab Emirates* (New York: Human Rights Watch, 2014).

Benhabib, Seyla, *Dignity in Adversity: Human Rights in Troubled Times* (John Wiley & Sons, 2013).

— — —, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004).

Birnie, Patricia, Alan Boyle & Catherine Redgwell, *International Law and the Environment*, 3rd edition ed (Oxford ; New York: Oxford University Press, 2009).

Blackett, Adelle & Anne Trebilcock, *Research Handbook on Transnational Labour Law* (Edward Elgar Publishing, 2015).

Blackett, Adelle, Anne Trebilcock & David J Doorey, *Research handbook on transnational labour law*, Research handbooks in international law (Cheltenham, UK; Edward Elgar Publishing Limited, 2015).

Bloom, Tendayi, Katherine Tonkiss & Phillip Cole, eds, *Understanding statelessness: lives in limbo*, Routledge studies in human rights 4 (Abingdon, Oxon ; New York, NY: Routledge, 2017).

Brighouse, Harry & Ingrid Robeyns, *Measuring justice: primary goods and capabilities* (Cambridge [England]: Cambridge University Press, 2010).

Chatterjee, Pratap & Matthias Finger, *The Earth Brokers: Power, Politics and World Development*, 1st edition ed (London ; New York: Routledge, 1994).

Chetail, Vincent, *International migration law*, first edition ed (Oxford, United Kingdom: Oxford University Press UK, 2019).

— — —, *International Migration Law* (Oxford University Press, 2019).

Chetail, Vincent & Céline Bauloz, *Research Handbook on International Law and Migration* (Edward Elgar Publishing, 2014).

Cholewinski, Ryszard et al, *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights* (Cambridge University Press, 2009).

Choudry, A A, *Just work?: migrant workers' struggles today*, Mondli Hlatshwayo, ed, Wildcat: workers' movements and global capitalism (London : Pluto Press, 2016).

Choudry, Aziz & Adrian A Smith, *Unfree Labour?: Struggles of Migrant and Immigrant Workers in Canada* (PM Press, 2016).

Cole, Luke W & Sheila R Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (NYU Press, 2001).

Comim, Flavio, Shailaja Fennell & P B Anand, *New frontiers of the capability approach* (Cambridge, United Kingdom: Cambridge University Press, 2018).

Comim, Flavio, Mozaffar Qizilbash & Sabina Alkire, eds, *The Capability Approach: Concepts, Measures and Applications* (Cambridge: Cambridge University Press, 2008).

Costello, Cathryn, M R (Mark Robert) Freedland, & Oxford Scholarship Online - York University, *Migrants at work: immigration and vulnerability in labour law* (Oxford: Oxford University Press, 2014).

Dalby, Simon et al, *Achieving the Sustainable Development Goals: Global Governance Challenges* (Routledge, 2019).

— — —, *Achieving the Sustainable Development Goals: Global Governance Challenges* (Routledge, 2019).

D'Alisa, Giacomo, Federico Demaria & Giorgos Kallis, *Degrowth: A Vocabulary for a New Era* (Routledge, 2014).

Datta, Ayona & Abdul Shaban, eds, *Mega-urbanization in the global South: fast cities and new urban utopias of the postcolonial state*, Routledge studies in urbanism and the city (London ; New York, NY: Routledge/Taylor & Francis Group, 2017).

Dauvergne, Catherine, *Making People Illegal: What Globalization Means for Migration and Law*, reprint edition ed (Cambridge: Cambridge University Press, 2009).

Davids, Professor Tine et al, *Women, Gender, Remittances and Development in the Global South* (Ashgate Publishing, Ltd., 2015).

De Genova, Nicholas & Nathalie Mae Peutz, *The deportation regime: sovereignty, space, and the freedom of movement* (Durham [N.C.]: Duke University Press, 2010).

— — —, *The deportation regime: sovereignty, space, and the freedom of movement* (Durham, NC: Duke University Press, 2010).

Di Lieto, Giovanni, *Migrant labour law: unfolding justice at work in free markets* (Sydney, NSW : The Federation Press, 2016).

Dobson, Andrew, *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (Oxford University Press, 1999).

— — —, *Justice and the Environment: Conceptions of Environmental Sustainability and Theories of Distributive Justice* (Clarendon Press, 1998).

Dodds, Felix, *Negotiating the Sustainable Development Goals: A transformational agenda for an insecure world*, 1st ed (London ; New York : Routledge, 2017.: Routledge, 2016).

D'Souza, Radha, *What's Wrong with Rights?: Social Movements, Law and Liberal Imaginations* (London: Pluto Press, 2017).

Esteva, Gustavo, Salvatore Babones & Philipp Babczyk, *The Future of Development: A Radical Manifesto* (Bristol: Policy Press, 2013).

Feenan, Dermot, ed, *Exploring the “Socio” of Socio-Legal Studies*, Palgrave Socio-Legal Studies (Palgrave Macmillan UK, 2013).

French, Duncan & Louis J Kotzé, *Sustainable Development Goals: Law, Theory and Implementation* (Edward Elgar Publishing, 2018).

Fudge, Judy et al, *The precarious migrant status and precarious employment: the paradox of international rights for migrant workers*, Working paper series (Metropolis British Columbia) ; 11-15 (Vancouver, B.C.): Metropolis British Columbia, 2011).

Gardner, Andrew, *City of strangers: Gulf migration and the Indian community in Bahrain* (Ithaca: ILR Press, 2010).

Günel, Gökçe, *Spaceship in the Desert: Energy, Climate Change, and Urban Design in Abu Dhabi* (Durham: Duke University Press Books, 2019).

— — —, *Spaceship in the Desert: Energy, Climate Change, and Urban Design in Abu Dhabi*, illustrated edition ed (Durham: Duke University Press Books, 2019).

Halpern, Orit, *Beautiful Data: A History of Vision and Reason since 1945* (Duke University Press, 2015).

Harsdorff, Marek et al, *Towards an ILO approach to climate change adaptation* (Geneva: ILO, 2011).

Heard-Bey, Frauke, *From trucional states to United Arab Emirates: a society in transition* (London: Longman, 1982).

Hettinger, Ned et al, *Ethical Adaptation to Climate Change: Human Virtues of the Future* (Cambridge, Mass: The MIT Press, 2012).

Hill, Elizabeth, *Worker Identity, Agency and Economic Development: Women’s Empowerment in the Indian Informal Economy* (Taylor & Francis, 2010).

Holland, Breena, *Allocating the earth: a distributional framework for protecting capabilities in environmental law and policy*, 1st ed ed (Oxford: Oxford University Press, 2014).

Howell, P A, *The Judicial Committee of the Privy Council 1833-1876: Its Origins, Structure and Development* (Cambridge University Press, 2009).

Jain, Prakash C & Ginu Zacharia Oommen, *South Asian Migration to Gulf Countries: History, Policies, Development* (Routledge, 2017).

Kamrava, Mehran & Zahra Babar, eds, *Migrant labour in the Persian Gulf* (London: Hurst, 2012).

Khalaf, Abdulhadi, Omar AlShehabi & Adam Hanieh, *Transit States: Labour, Migration and Citizenship in the Gulf* (Pluto Press, 2015).

Klein, Elise & Carlos Eduardo Morreo, eds, *Postdevelopment in practice: alternatives, economies, ontologies*, Routledge critical development studies (London ; New York: Routledge, Taylor & Francis Group, 2019).

Kunz, Rahel, *The Political Economy of Global Remittances: Gender, Governmentality and Neoliberalism* (Taylor & Francis, 2011).

Lambert, Rob & Andrew Herod, eds, *Neoliberal Capitalism and Precarious Work: Ethnographies of Accommodation and Resistance* (Cheltenham, UK: Edward Elgar Pub, 2016).

Lillich, Richard B, *The Human Rights of Aliens in Contemporary International Law* (Manchester University Press, 1984).

Longva, Anh Nga, *Walls built on sand: migration, exclusion, and society in Kuwait* (Boulder, Colo: Westview Press, 1997).

Lori, Noora, *Offshore Citizens* (Cambridge University Press, 2019).

Lori, Noora Anwar, *Unsettling State: Non-citizens, State Power and Citizenship in the United Arab Emirates* Johns Hopkins University, 2013) [unpublished].

Lowe, Vaughan, *Sustainable Development and Unsustainable Arguments* (Oxford University Press).

Luomi, Mari, *The Gulf monarchies and climate change: Abu Dhabi and Qatar in an era of natural unsustainability*, Power and politics in the Gulf (London: Hurst [u.a.], 2012).

— — —, *The Gulf monarchies and climate change: Abu Dhabi and Qatar in an era of natural unsustainability* (Oxford: Oxford University Press, 2014).

Mahdavi, Pardis, *Gridlock: labor, migration, and human trafficking in Dubai* (Stanford, California: Stanford University Press, 2011).

Margherita, Pieraccini & Novitz Tonia, *Legal Perspectives on Sustainability* (Policy Press, 2020).

Marino, Stefania, Judith Roosblad & Rinus Penninx, *Trade Unions and Migrant Workers: New Contexts and Challenges in Europe* (Edward Elgar Publishing, 2017).

Mascarenhas, Priyanjali, *The transfer and mobilisation of sustainability concepts to Abu Dhabi: the case of Masdar and the Urban Planning Council* (phd, The London School of Economics and Political Science (LSE), 2018) [unpublished].

Maul, Daniel, *The International Labour Organization: 100 years of global social policy* (Berlin, Germany : Geneva, Switzerland : in association with International Labour Office: DE GRUYTER Oldenbourg, 2019).

McGeehan, Nicholas, *Migrant workers' rights on Saadiyat Island in the United Arab Emirates: 2015 Progress Report* (New York, N.Y.: Human Rights Watch, 2015).

— — —, *Migrant workers' rights on Saadiyat Island in the United Arab Emirates: 2015 Progress Report* (New York, N.Y.: Human Rights Watch, 2015).

Menkel-Meadow, Carrie et al, eds, *Amartya Sen and law*, Philosophers and law (London ; Routledge, Taylor & Francis Group, 2020).

Mezzadra, Sandro & Brett Neilson, *Border as Method, or, the Multiplication of Labor* (Duke University Press, 2013).

Miles, Robert, *Capitalism and Unfree Labour: Anomaly or Necessity?* (London ; New York : New York, NY: Tavistock Books, 1989).

Moyn, Samuel, *The Last Utopia: Human Rights in History* (Harvard University Press, 2012).

Munck, Ronaldo & Denis O'Hearn, *Critical Development Theory: Contributions to a New Paradigm* (Zed Books, 1999).

Novitz, Tonia, David Mangan, & British Academy, *The role of labour standards in development: from theory to sustainable practice?*, British Academy original paperbacks (Oxford: Published for the British Academy by Oxford University Press, 2011).

Novotny, Patrick, *Where we live, work, and play: the environmental justice movement and the struggle for a new environmentalism*, Praeger series in transformational politics and political science (Westport, Conn: Praeger, 2000).

Onley, James, *The Arabian Frontier of the British Raj: Merchants, Rulers, and the British in the Nineteenth-Century Gulf* (OUP Oxford, 2007).

Opeskin, Brian R, Richard Perruchoud & Jillyanne Redpath-Cross, *Foundations of international migration law*, ebrary, Inc (Cambridge, UK: Cambridge University Press, 2012).

Paliwala, Abdul, *The Limits of Law and Development: Neoliberalism, Governance and Social Justice*, 1st ed, Sam Adelman, ed (Abingdon, Oxon; New York, NY: Routledge, 2020. | "A Glasshouse book": Routledge, 2020).

Panizzon, Marion et al, *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (London, UNITED KINGDOM: Palgrave Macmillan Limited, 2015).

— — —, *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (London, UNITED KINGDOM: Palgrave Macmillan Limited, 2015).

Pellow, David N, *Resisting global toxics: transnational movements for environmental justice*, Urban and industrial environments (Cambridge, Mass: MIT Press, 2007).

Pellow, David N & Lisa Sun-Hee Park, *The Silicon Valley of dreams: environmental injustice, immigrant workers, and the high-tech global economy*, Critical America (New York: New York University Press, 2002).

Pellow, David Naguib, *What is Critical Environmental Justice?* (Cambridge, UK ; Malden, MA, USA: Polity, 2017).

Pingeot, Lou, *Corporate influence in the post-2015 process* (2014).

Politakis, Georges P et al, *ILO100: law for social justice* (Geneva: ILO, 2019).

Poschen, Peter, *Decent Work, Green Jobs and the Sustainable Economy : Solutions for Climate Change and Sustainable Development* (Routledge, 2015).

Poschen, Peter & Greenleaf Online Library - York University, *Decent work, green jobs and the sustainable economy: solutions for climate change and sustainable development* (Sheffield: Greenleaf Pub. Ltd., 2015).

Pratt, Geraldine, *Families Apart: Migrant Mothers and the Conflicts of Labor and Love* (Minneapolis: Univ Of Minnesota Press, 2012).

Rauschmayer, Felix, Ines Omann & Johannes Frühmann, eds, *Sustainable development: capabilities, needs, and well-being* (London ; New York: Routledge, 2011).

Robeyns, Ingrid, *Wellbeing, Freedom and Social Justice: The Capability Approach Re-Examined*, 1st ed (Open Book Publishers, 2017).

Routh, Supriya, *Enhancing Capabilities through Labour Law: Informal Workers in India* (Routledge, 2014).

Sachs, Wolfgang, *Development Dictionary, The: A Guide to Knowledge as Power* (Orient Blackswan, 1997).

Sassen, Saskia, *Losing Control?: Sovereignty in the Age of Globalization* (New York: Columbia University Press, 1996).

— — — , *The Global City: New York, London, Tokyo* (Princeton University Press, 2013).

Schlosberg, David, *Defining Environmental Justice* (Oxford University Press, 2007).

Scott, Dayna Nadine, *Our Chemical Selves: Gender, Toxics, and Environmental Health* (UBC Press, 2015).

Sen, Amartya, *Collective Choice and Social Welfare* (Harvard University Press, 2018).

— — —, *Rationality and Freedom* (Harvard University Press, 2004).

— — —, *The Idea of Justice* (Cambridge, Mass: Belknap Press of Harvard University Press, 2009).

Sen, Amartya Kumar, *Development as freedom*, 1st anchor books ed. ed (New York: Anchor books, 1999).

Sen, Amartya & Bernard Williams, eds, *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982).

Shachar, Ayelet, *Selecting By Merit: The Brave New World of Stratified Mobility* (Oxford University Press).

— — —, *The shifting border: Legal cartographies of migration and mobility: Ayelet Shachar in dialogue*, 1st ed (Manchester University Press, 2020).

Smith, Ted et al, *Challenging the chip: labor rights and environmental justice in the global electronics industry* (Philadelphia: Temple University Press, 2006).

Standing, Guy, *The Precariat: The New Dangerous Class*, revised ed. edition ed (London, UK ; New York, NY: Bloomsbury Academic, 2014).

Sze, Julie, *Fantasy islands: Chinese dreams and ecological fears in an age of climate crisis* (Oakland, California : University of California Press, 2015).

Teitelbaum, Joshua, ed, *Political liberalization in the Persian Gulf* (New York: Columbia University Press, 2009).

Thompson, Allen & Jeremy Bendik-Keymer, *Ethical Adaptation to Climate Change: Human Virtues of the Future* (MIT Press, 2012).

Vitalis, Robert, *America's Kingdom: Mythmaking on the Saudi Oil Frontier* (Stanford University Press, 2007).

Vora, Neha, *Impossible citizens: Dubai's Indian diaspora* (Durham [N.C.]: Duke University Press, 2013).

Vosko, O, *Precarious Employment: Understanding Labour Market Insecurity in Canada* (McGill-Queen's Press - MQUP, 2005).

Wippel, Steffen et al, *Under Construction: Logics of Urbanism in the Gulf Region* (Routledge, 2016).

Wu, Aaron, *Sustaining International Law: History, Nature, and the Politics of Global Ordering* (The London School of Economics and Political Science, 2018) [unpublished].

x, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* by Bullard, Robert D. Published by Sierra Club Books 1st (first) edition (2005) Paperback, 1st ed (Counterpoint, 2005).

Yigitcanlar, Tan, *Technology and the City: Systems, applications and implications* (Routledge, 2016).

Abu-Lughod, Janet L, “The Islamic City--Historic Myth, Islamic Essence, and Contemporary Relevance” (1987) 19:2 *International Journal of Middle East Studies* 155–176.

Acharya, Payel, Bethany Boggess & Kai Zhang, “Assessing Heat Stress and Health among Construction Workers in a Changing Climate: A Review” (2018) 15:2 *International Journal of Environmental Research and Public Health* 247.

Achiume, E Tendayi, “Migration as Decolonization” (2019) 71:6 *Stan L Rev* 1509–1574.

Al Awad, Mouawiya, “The cost of foreign labor in the United Arab Emirates” (2010) 3 *Institute for Social & Economic Research (ISER), Working Paper*.

Alberti, Gabriella, Jane Holgate & Maite Tapia, “Organising migrants as workers or as migrant workers? Intersectionality, trade unions and precarious work” (2013) 24:22 *The International Journal of Human Resource Management* 4132–4148.

Al-Muhairi, Ali, “The Development of the UAE Legal System and Unification with the Judicial System” (1996) 11:2 *Arab LQ* 116–160.

Al-Muhairi, Butti Sultan Butti Ali, “The Development of the Uae Legal System and Unification With the Judicial System*” (1996) 11:2 *Arab Law Quarterly* 116–160.

Al-Sarihi, Aisha, “Integrating Climate Change Policies with Economic Diversification Strategies: Challenges and Opportunities in Oman and the UAE” (2018) 07.16.18 *Issue Brief*, online: <<https://scholarship.rice.edu/handle/1911/102780>>.

AlShehabi, Omar Hesham, “Policing labour in empire: the modern origins of the Kafala sponsorship system in the Gulf Arab States” (2019) 0:0 *British Journal of Middle Eastern Studies* 1–20.

Alston, Philip, “Facing Up to the Complexities of the ILO’s Core Labour Standards Agenda” (2005) 16:3 *Eur J Int Law* 467–480.

Anand, Sudhir & Amartya Sen, “Human Development and Economic Sustainability” (2000) 28:12 *World Development* 2029–2049.

Andreasson, Stefan, “Fossil-fuelled development and the legacy of Post-Development theory in twenty-first century Africa” (2017) 38:12 *Third World Quarterly* 2634–2649.

Ansari, Sarah, “The Movement of Indian Muslims to West Pakistan after 1947: Partition-Related Migration and its Consequences for the Pakistani Province of Sind” in Judith M Brown &

Rosemary Foot, eds, *Migration: The Asian Experience* St Antony's (London: Palgrave Macmillan UK, 1994) 149.

Appiagyei-Atua, Kwadwo, "Ethical Dimensions of Third-World Approaches to International Law (twail): A Critical Review" (2015) 8:3–4 *African Journal of Legal Studies* 209–235.

Atapattu, Sumudu, "From Our Common Future to Sustainable Development Goals: Evolution of Sustainable Development under International Law" (2018) 36:2 *Wis Int'l LJ* 215–246.

— — —, "From Our Common Future to Sustainable Development Goals: Evolution of Sustainable Development under International Law" (2018) 36:2 *Wis Int'l LJ* 215–246.

— — —, "The Paris Agreement and human rights: is sustainable development the 'new human right'?" (2018) 9:1 *Journal of Human Rights and the Environment* 68–88.

Atapattu, Sumudu & Carmen G Gonzalez, "The North–South Divide in International Environmental Law: Framing the Issues" in Carmen G Gonzalez et al, eds, *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015) 1.

Atapattu, Sumudu & Shyami Puvimanasinghe, "Guidance from the Ground up: Lessons from South Asia for Realizing the Sustainable Development Goals" (2019) *The Right to Development* 141–167.

Awadh, Omair, "Sustainability and green building rating systems: LEED, BREEAM, GSAS and Estidama critical analysis" (2017) 11 *Journal of Building Engineering* 25–29.

Azhari, Asma, "The Kafala 'Sponsorship' System in Saudi Arabia" A Critical Analysis from the Perspective of International Human Rights and Islamic Law" (2017) Volume 10 (2016-17) *SOAS Journal of Postgraduate Research* 61–80.

Ballet, Jérôme, Jean-Luc Dubois & François-Régis Mahieu, "Responsibility for Each Other's Freedom: Agency as the Source of Collective Capability" (2007) 8:2 *Journal of Human Development* 185–201.

Barral, Virginie, "Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm" (2012) 23:2 *Eur J Int Law* 377–400.

— — —, "Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm" (2012) 23:2 *Eur J Int Law* 377–400.

Battistella, Graziano, "Labour Migration in Asia and the Role of Bilateral Migration Agreements" in Marion Panizzon, Gottfried Zürcher & Elisa Fornalé, eds, *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (London: Palgrave Macmillan UK, 2015) 299.

Batty, David, "Call for UN to investigate plight of migrant workers in the UAE", *The Guardian* (13 September 2014), online: <<http://www.theguardian.com/global-development/2014/sep/13/migrant-workers-uae-gulf-states-un-ituc>>.

Baxi, Upendra, “Amartya Sen and Human Rights” in *Human Rights in a Posthuman World* (Oxford University Press, 2009).

— — —, “Intergenerational justice, water rights, and climate change” in *Research Handbook on Law, Environment and the Global South* (Edward Elgar Publishing, 2019) 2.

Benach, J et al, “Precarious Employment: Understanding an Emerging Social Determinant of Health” (2014) 35:1 *Annual Review of Public Health* 229–253.

Biermann, Frank, Norichika Kanie & Rakhyun E Kim, “Global governance by goal-setting: the novel approach of the UN Sustainable Development Goals” (2017) 26–27 *Current Opinion in Environmental Sustainability* (Open issue, part II) 26–31.

Blank, Nathan R, “Making Migration Policy: Reflections on the Philippines’ Bilateral Labor Agreements: Reflections on the Philippines’ Bilateral Labor Agreements” (2011) 3:2 *Asian Politics & Policy* 185–205.

Bohning, Roger, “The ILO and the New UN Convention on Migrant Workers: The Past and Future” (1991) 25:4 *The International Migration Review* 698–709.

Bohning, Roger & International Labour Office, “The ILO and the New UN Convention on Migrant Workers: The Past and Future” 13.

Boström, Magnus, “A missing pillar? Challenges in theorizing and practicing social sustainability: introduction to the special issue” (2017) *Sustainability: Science, Practice and Policy*, online: <<https://www.tandfonline.com/doi/abs/10.1080/15487733.2012.11908080>>.

Byskov, Morten F, “Selecting Capabilities for Development: An Evaluation of Proposed Methods” in Flavio Comim, P B Anand & Shailaja Fennell, eds, *New Frontiers of the Capability Approach* (Cambridge: Cambridge University Press, 2018) 198.

Cammett, Melani & Marsha Pripstein Posusney, “Labor Standards and Labor Market Flexibility in the Middle East: Free Trade and Freer Unions?” (2010) 45:2 *St Comp Int Dev* 250–279.

Caprotti, Federico, “Eco-urbanism and the Eco-city, or, Denying the Right to the City?” (2014) 46:5 *Antipode* 1285–1303.

Carens, Joseph H, “Aliens and Citizens: The Case for Open Borders” (1987) 49:2 *The Review of Politics* 251–273.

Castles, Stephen, “Development and Migration or Migration and Development: What Comes First?” (2009) 18:4 *Asian and Pacific Migration Journal* 441–471.

— — —, “Development and Migration--Migration and Development: What Comes First? Global Perspective and African Experiences” (2009) 56:121 *Theoria* 1–31.

— — —, “Understanding Global Migration: A Social Transformation Perspective” (2010) 36:10 *Journal of Ethnic and Migration Studies* 1565–1586.

Cécile Vittin-Balima, “Migrant workers: The ILO standards”, online: <<http://library.fes.de/pdf-files/gurn/00067.pdf>>.

Cerna, Lucie, James Hollifield & William Hynes, “Trade, Migration and the Crisis of Globalization” in Marion Panizzon, Gottfried Zürcher & Elisa Fornalé, eds, *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (London: Palgrave Macmillan UK, 2015) 17.

Chetail, Vincent, “The Architecture of International Migration Law: A Deconstructivist Design of Complexity and Contradiction” (2017) 111 AJIL Unbound 18–23.

Chimni, Bhupinder, “The Sen Conception of Development and Contemporary International Law Discourse: Some Parallels” (2008) 1:1 The Law and Development Review, online: <<http://www.degruyter.com/view/j/ldr.2008.1.1/ldr.2008.1.1.1007/ldr.2008.1.1.1007.xml>>.

Cholewinski, Ryszard, “The Human and Labor Rights of Migrants: Visions of Equality” (2007) 22:2 Geo Immigr LJ 177–220.

— — —, “The ILO and the Global Compact for Safe, Orderly and Regular Migration: labour migration, decent work and implementation of the Compact with specific reference to the Arab states region” (2020) 16:3 International Journal of Law in Context 304–320.

Cordeaux, Emily Jane, “Contrasting responses to migrant worker precarity in Canada and the United Arab Emirates” (2014), online: <<http://summit.sfu.ca/item/14820>>.

Crabtree, Andrew, ed, “Sustainability, Capabilities and Human Security” (2020) Springer eBooks, online: <<http://myaccess.library.utoronto.ca/login?url=https://link.springer.com/10.1007/978-3-030-38905-5>>.

Crampsie, Siân, “City of dreams - [power masdar city]” (2008) 3:15 Engineering Technology 50–55.

Crawley, Heaven & Dimitris Skleparis, “Refugees, migrants, neither, both: categorical fetishism and the politics of bounding in Europe’s ‘migration crisis’” (2017) 44 Journal of Ethnic and Migration Studies 1–17.

Crot, Laurence, “Planning for Sustainability in Non-democratic Polities: The Case of Masdar City” (2013) 50:13 Urban Studies 2809–2825.

Cugurullo, Federico, “How to Build a Sandcastle: An Analysis of the Genesis and Development of Masdar City” (2013) 20:1 Journal of Urban Technology 23–37.

— — —, “How to Build a Sandcastle: An Analysis of the Genesis and Development of Masdar City” (2013) 20:1 Journal of Urban Technology 23–37.

— — —, “The Business of Utopia: Estidama and the Road to the Sustainable City” 24.

— — —, “Urban eco-modernisation and the policy context of new eco-city projects: Where Masdar City fails and why” (2016) 53:11 *Urban Studies* 2417–2433.

— — —, “Urban eco-modernisation and the policy context of new eco-city projects: Where Masdar City fails and why” (2016) 53:11 *Urban Studies* 2417–2433.

Cugurullo, Federico, Davide Ponzini & Politecnico di Milano, “The transnational smart city as urban eco-modernisation: the case of Masdar City in Abu Dhabi” 23.

Cullet, Philippe & Sujith Koonan, “Introduction to the Research Handbook on Law, Environment and the Global South” in *Research Handbook on Law, Environment and the Global South* (Edward Elgar Publishing, 2019) xvi.

Damir-Geilsdorf, Sabine & Michaela Pelican, “Between regular and irregular employment: subverting the *kafala* system in the GCC countries” (2019) 8:2 *Migration and Development* 155–175.

Davies, A C L, “Migrant Workers in Agriculture: A Legal Perspective” in M R (Mark Robert) Freedland & Cathryn Costello, eds, *Migrants at Work* (Oxford: Oxford University Press, 2014).

Davis, Mike, “Who Will Build the Ark?” (2010) 61 *New Left Review*, online: <<https://newleftreview.org/issues/ii61/articles/mike-davis-who-will-build-the-ark>>.

De Genova, Nicholas, “Detention, Deportation, and Waiting: Toward a Theory of Migrant Detainability” (2019) 2:1 *GaV* 92–104.

De Jong, Martin, Thomas Hoppe & Negar Noori, “City Branding, Sustainable Urban Development and the Rentier State. How Do Qatar, Abu Dhabi and Dubai Present Themselves in the Age of Post Oil and Global Warming?” (2019) 12:9 *Energies* 1657.

— — —, “City Branding, Sustainable Urban Development and the Rentier State. How Do Qatar, Abu Dhabi and Dubai Present Themselves in the Age of Post Oil and Global Warming?” (2019) 12:9 *Energies* 1657.

Deakin, Simon, “The Capability Approach and the Economics of Labour Law” in Brian Langille, ed, *The Capability Approach to Labour Law* (Oxford University Press, 2019).

Dehm, Julia, “Reflections on Paris: Thoughts Towards a Critical Approach to Climate Law” (2018) *Revue québécoise de droit international* 61.

Dehm, Sara, “Transnational Migration Law: Authority, Contestation, Decolonization” (2019) *SSRN Journal*, online: <<https://www.ssrn.com/abstract=3465335>>.

Demaria, Federico & Ashish Kothari, “The Post-Development Dictionary agenda: paths to the pluriverse” (2017) 38 *Third World Quarterly* 1–12.

Dematteo, Robert et al, “Chemical Exposures of Women Workers in the Plastics Industry with Particular Reference to Breast Cancer and Reproductive Hazards” (2013) 22:4 NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy 427–448.

Doorey, David J, “Just Transitions Law: Putting Labour Law to Work on Climate Change” (2017) 30:2 Journal of Environmental Law and Practice; Scarborough 201–239.

Eelens, Frank & J D Speckmann, “Recruitment of Labor Migrants for the Middle East: The Sri Lankan Case” (1990) 24:2 International Migration Review 297.

Egute, Terence Onang, Eike Albrecht & Kelvin Awanaya Egute, “From Stockholm to Paris: Four Decades of Sustainability in International Law” in Michael Schmidt et al, eds, *Sustainable Global Value Chains* Natural Resource Management in Transition (Cham: Springer International Publishing, 2019) 63.

Ehresman, Timothy G & Chukwumerije Okereke, “Environmental justice and conceptions of the green economy” (2015) 15:1 Int Environ Agreements 13–27.

Eisen, Jessica, Roxanne Mykitiuk & Dayna Nadine Scott, ““Constituting Bodies into the Future: Toward a Relational Theory of Intergenerational Justice”” (2018) 51:1 UBC Law Review 1–52.

Ellermann, Antje, “Discrimination in migration and citizenship” (2020) 46:12 Journal of Ethnic and Migration Studies 2463–2479.

Elsheshtawy, Yasser, “Urban enclaves and transient cosmopolitanism: Scenes from Abu Dhabi and Dubai” (2020) City 1–13.

Errichiello, Gennaro, “Foreign Workforce in the Arab Gulf States (1930–1950): Migration Patterns and Nationality Clause” (2012) 46:2 International Migration Review 389–413.

Escobar, Arturo, “Degrowth, postdevelopment, and transitions: a preliminary conversation” (2015) 10:3 Sustain Sci 451–462.

— — —, “Sustainability: Design for the pluriverse” (2011) 54:2 Development 137–140.

Eslava, Luis & Sundhya Pahuja, “Between Resistance and Reform: TWAIL and the Universality of International Law” (2011) 3 Trade L & Dev 103.

Esquivel, Valeria, “Power and the Sustainable Development Goals: a feminist analysis” (2016) 24:1 Gender & Development 9–23.

Farquhar, Stephanie et al, “Promoting the Occupational Health of Indigenous Farmworkers” (2008) 10:3 Journal of Immigrant and Minority Health 269–280.

Fibieger Byskov, Morten, “Beyond ‘having reason to value’: why we should adopt a procedure-independent and value-neutral definition of capabilities” (2020) 27:1 Journal of Economic Methodology 18–35.

Fisher, Angelina & Sakiko Fukuda-Parr, “Introduction—Data, Knowledge, Politics and Localizing the SDGs” (2019) 20:4 *Journal of Human Development and Capabilities* 375–385.

Forstenlechner, Ingo et al, “Emiratisation: determining the factors that influence the recruitment decisions of employers in the UAE” (2012) 23:2 *The International Journal of Human Resource Management* 406–421.

Foster, Nicholas, “Guarantees in the UAE: A Comparative Analysis in the Light of English Law, French Law and the Shari’a” (1998) 5 *YB Islamic & Middle E L* 42–87.

Fraser, Nancy, “Injustice at Intersecting Scales: On ‘Social Exclusion’ and the ‘Global Poor’” (2010) 13:3 *European Journal of Social Theory* 363–371.

Fudge, Judy, “Blurring Legal Boundaries: Regulating for Decent Work” 26.

— — —, “Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers” (2012) 34 *Comp Lab L & Pol’y J* 95–132.

— — —, “Slavery and Unfree Labour: The Politics of Naming, Framing, and Blaming” (2018) 82:1 *Labour / Le Travail* 227–244.

Fukuda-Parr, Sakiko, “From the Millennium Development Goals to the Sustainable Development Goals: shifts in purpose, concept, and politics of global goal setting for development” (2016) 24:1 *Gender & Development* 43–52.

— — —, “Sustainable Development Goals” (2018) *The Oxford Handbook on the United Nations*, online:
<<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780198803164.001.0001/oxfordhb-9780198803164-e-42>>.

Fukuda-Parr, Sakiko & Ismael Cid-Martinez, “Capability Approach and Human Development” in Machiko Nissanke & José Antonio Ocampo, eds, *The Palgrave Handbook of Development Economics: Critical Reflections on Globalisation and Development* (Cham: Springer International Publishing, 2019) 441.

Gamlen, Alan, Chris Kutarna & Ashby Monk, “Citizenship as Sovereign Wealth: Re-thinking Investor Immigration” (2019) 10:4 *Global Policy* 527–541.

Gammage, Clair, “(Re)Imagining the Trade–Labour Linkage: The Capabilities Approach” in *The Capability Approach to Labour Law* (Oxford University Press, 2019) 290.

Gardner, Andrew et al, “A Portrait of Low-Income Migrants in Contemporary Qatar” (2013) 3:1 *Journal of Arabian Studies* 1–17.

— — —, “Reflections on the Role of Law in the Gulf Migration System” (2018) 47:S1 *The Journal of Legal Studies* S129–S147.

- Gardner, Andrew M, “Gulf Migration and the Family” (2011) 1:1 *Journal of Arabian Studies* 3–25.
- Gauna, Eileen, “Environmental Law, Civil Rights and Sustainability: Three Frameworks for Environmental Justice” (2012) 19:1 *Journal of Environmental and Sustainability Law* 34.
- Ghai, Dharam, “Decent work: Concept and indicators” (2003) 142:2 *International Labour Review* 113–145.
- Goldin, Laura J et al, “Indoor Air Quality Survey of Nail Salons in Boston” (2014) 16:3 *J Immigrant Minority Health* 508–514.
- Gonzalez, Carmen, “Racial Capitalism, Climate Justice, and Climate Displacement” (2020) OSLS, online: <<https://onafirstonline.wordpress.com/2020/06/11/racial-capitalism-climate-justice-and-climate-displacement-carmen-g-gonzalez/>>.
- Gonzalez, Carmen G, “Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade” (2000) 78 *Denv U L Rev* 979.
- Gonzalez, Carmen G, “Climate Change, Race, and Migration” *Climate Change* 39.
- Gonzalez, Carmen G, “Food Justice: An Environmental Justice Critique of the Global Food System” in Shawkat Alam et al, eds, *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015) 401.
- Gordon, Ruth, “Unsustainable Development” in Shawkat Alam et al, eds, *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015) 50.
- Grant, Stefanie & Beth Lyon, “Indirect Success? The impact and use of the ICRMW in other UN fora” (2018), online: <<https://osf.io/preprints/lawarxiv/chdap/>>.
- Grear, Anna, “Deconstructing Anthropos: A Critical Legal Reflection on ‘Anthropocentric’ Law and Anthropocene ‘Humanity’” (2015) 26:3 *Law Critique* 225–249.
- Gregson, Nicky et al, “Doing the ‘dirty work’ of the green economy: Resource recovery and migrant labour in the EU” (2016) 23:4 *European Urban and Regional Studies* 541–555.
- Griffiths, Steven & Benjamin K Sovacool, “Rethinking the future low-carbon city: Carbon neutrality, green design, and sustainability tensions in the making of Masdar City” (2020) 62 *Energy Research & Social Science* 101368.
- Groves, Christopher et al, “A Missing Link? Capabilities, the Ethics of Care and the Relational Context of Energy Justice” (2021) 0:0 *Journal of Human Development and Capabilities* 1–21.
- Guild, Elspeth, Tugba Basaran & Kathryn Allinson, “From Zero to Hero? An analysis of the human rights protections within the Global Compact for Safe, Orderly and Regular Migration (GCM)” (2019) 57:6 *International Migration* 43–59.

Haas, Hein de, “Migration Theory: Quo Vadis?” (2014) 100 IMI Working Paper Series, online: <<https://www.migrationinstitute.org/publications/wp-100-14>>.

— — —, “The Migration and Development Pendulum: A Critical View on Research and Policy” (2012) 50:3 *International Migration* 8–25.

Haas, Hein de & Francisco Rodríguez, “Mobility and Human Development: Introduction” (2010) 11:2 *Journal of Human Development and Capabilities* 177–184.

Halabi, Romina, “Contract Enslavement of Female Migrant Domestic Workers in Saudi Arabia and the United Arab Emirates” *HUMAN RIGHTS* 16.

Halpern, Orit et al, “Test-Bed Urbanism” (2013) 25:2 70 *Public Culture* 272–306.

Hamzeh, Shahrzad, “The Shalwar Kameez: Pakistan’s Persian-Influenced National Garment” (2020) *Theatre and Dance*, online: <<https://ir.library.illinoisstate.edu/ursthe/2>>.

Hassan, H A & J Houdmont, “Health and safety implications of recruitment payments in migrant construction workers” (2014) 64:5 *Occupational Medicine* 331–336.

Hastie, Bethany, “The Inaccessibility of Justice for Migrant Workers: A Capabilities-Based Perspective” (2017) 34 *Windsor YB Access Just* 20–39.

Helfer, Laurence R, “Monitoring Compliance with Unratified Treaties: The ILO Experience The Law and Politics of International Delegation” (2008) 71:1 *Law & Contemp Probs* 193–218.

Helmke, Gretchen & Steven Levitsky, “Informal Institutions and Comparative Politics: A Research Agenda” (2004) 2:4 *Perspectives on Politics* 725–740.

Ho, Engseng, “Empire through diasporic eyes: a view from the other boat” (2004) 46:2 *Comparative studies in society and history* 210–246.

Hodson, Mike & Simon Marvin, “Urbanism in the anthropocene: Ecological urbanism or premium ecological enclaves?” (2010) 14:3 *City* 298–313.

Holder, Cindy L & Jeff J Cornthassel, “Indigenous Peoples and Multicultural Citizenship: Bridging Collective and Individual Rights” (2002) 24:1 *Human Rights Quarterly* 126–151.

Holland, Breena, “Justice and the Environment in Nussbaum’s ‘Capabilities Approach’ Why Sustainable Ecological Capacity Is a Meta-Capability” (2008) 61:2 *Political research quarterly* 319–332.

Jamal, Manal A, “The ‘Tiering’ of Citizenship and Residency and the ‘Hierarchization’ of Migrant Communities: The United Arab Emirates in Historical Context” (2015) 49:3 *International Migration Review* 601–632.

Jureidini, Ray, “Wage Protection Systems and Programmes in the GCC” in *Migration to the Gulf: Policies in Sending and Receiving Countries* edited by Philippe Fargues and Nasra M

Shah Gulf Labour Markets, Migration, and Population (GLMM) Programme (European University Institute and Gulf Research Center, 2018) 31.

Kamal, Baher, “Climate Migrants Might Reach One Billion by 2050 - World”, *IPS News* (21 August 2017), online: <<https://reliefweb.int/report/world/climate-migrants-might-reach-one-billion-2050>>.

Kaminer, Ariel & Sean O’Driscoll, “Workers at N.Y.U.’s Abu Dhabi Site Faced Harsh Conditions”, *The New York Times* (19 May 2014), online: <<https://www.nytimes.com/2014/05/19/nyregion/workers-at-nyus-abu-dhabi-site-face-harsh-conditions.html>>.

Kapoor, Ilan, “Cold critique, faint passion, bleak future: Post-Development’s surrender to global capitalism” (2017) 38:12 *Third World Quarterly* 2664–2683.

Karatani, Rieko, “How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins” (2005) 17 *Int’l J Refugee L* 517–541.

Kazim, Aqil, “Pearl industry in the UAE region in 1869-1938: Its construction, reproduction, and decline” (2018) 18 *RUDN Journal of Sociology* 452–469.

Kelly, Annie & Niamh McIntyre, “Workers at Dubai’s Expo 2020 likely to have suffered dangerous heat stress”, *The Guardian* (3 October 2019), online: <<https://www.theguardian.com/global-development/2019/oct/03/workers-at-dubai-expo-2020-heat-stress>>.

Keshavarzian, Arang, “Geopolitics and the Genealogy of Free Trade Zones in the Persian Gulf” (2010) 15:2 *Geopolitics* 263–289.

Khadria, Binod et al, “The UN Global Compact for Safe, Orderly and Regular Migration: Its Impact on Asia” (2019) 57:6 *International Migration* 286–302.

Khan, Azfar & Hélène Harroff-Tavel, “Reforming the Kafala: Challenges and Opportunities in Moving Forward” (2011) 20:3–4 *Asian and Pacific Migration Journal* 293–313.

Klein Solomon, Michele & Suzanne Sheldon, “The Global Compact for Migration: From the Sustainable Development Goals to a Comprehensive Agreement on Safe, Orderly and Regular Migration” (2019) 30:4 *International Journal of Refugee Law* 584–590.

Kothari, Ashish, “Radical well-being alternatives to development” in *Research Handbook on Law, Environment and the Global South* (Edward Elgar Publishing, 2019) 64.

Kothari, Ashish, Federico Demaria & Alberto Acosta, “Buen Vivir, Degrowth and Ecological Swaraj: Alternatives to sustainable development and the Green Economy” (2014) 57:3 *Development* 362–375.

Kountouris, Nicola, “The Legal Determinants of Precariousness in Personal Work Relations: A European Perspective” (2012) 34:1 *Comp Lab L & Pol’y J* 21–46.

Kukathas, Chandran, “The Mirage of Global Justice” (2006) 23:01 SOY 1.

L Kalleberg, Arne et al, eds, “Probing Precarious Work: Theory, Research, and Politics” in *Precarious Work* Research in the Sociology of Work (Emerald Publishing Limited, 2017) 1.

Langille, Brian, “Introduction: The Capability Approach to Labour Law — Why are We Here?” in *The Capability Approach to Labour Law* (Oxford University Press, 2019) 1.

Lara, Juan De, “‘This Port Is Killing People’: Sustainability without Justice in the Neo-Keynesian Green City” (2018) 108:2 *Annals of the American Association of Geographers* 538–548.

Lele, Sharachchandra, “Sustainable Development Goal 6: watering down justice concerns” (2017) 4:4 *Wiley Interdisciplinary Reviews: Water* e1224.

Leopold, David, “Karl Marx and the Capabilities Approach” in Enrica Chiappero-Martinetti, Mozaffar Qizilbash & Siddiqur Osmani, eds, *The Cambridge Handbook of the Capability Approach* (Cambridge: Cambridge University Press, 2020) 40.

Linden, Marcel van der, “The International Labour Organization, 1919–2019: An Appraisal” (2019) 16:2 *Labor* (Durham, NC) 11–41.

Loneragan, Steve, “The Role of Environmental Degradation in Population Displacement” (1998) 4 *Environmental Change and Security Project Report* 11.

Longva, Anh Nga, “Keeping Migrant Workers in Check: The Kafala System in the Gulf” (1999) 211 *Middle East Report* 20.

— — —, “Keeping Migrant Workers in Check: The Kafala System in the Gulf” (1999) 211 *Middle East Report* 20.

Lönnroth, Juhani, “The International Convention on the Rights of All Migrant Workers and Members of Their Families in the Context of International Migration Policies: An Analysis of Ten Years of Negotiation” (1991) 25:4 *International Migration Review* 710–736.

Lori, Noora, “National Security and the Management of Migrant Labor: A Case Study of the United Arab Emirates” (2011) 20:3–4 *Asian and Pacific Migration Journal* 315–337.

Lubell, Sam, “Blood, sand, and tears: Worker abuse alleged in the U.A.E” (2007) 195:8 *Architectural Record* 33–34.

Lyutov, Nikita, “The ILO System of International Labour Standards and Monitoring Procedures: Too Complicated to Be Effective” (2014) 64:2 *Zbornik PFZ* 255–276.

Mackenzie, Catriona, “The Importance of Relational Autonomy and Capabilities for an Ethics of Vulnerability” in Catriona Mackenzie, Susan Dodds & Wendy Rogers, eds, *Vulnerability: New Essays in Ethics and Feminist Philosophy* (Oxford University Press, 2013).

Mahdavi, Pardis & Christine Sargent, “Questioning the Discursive Construction of Trafficking and Forced Labor in the United Arab Emirates” (2011) 7:3 *Journal of Middle East Women’s Studies* 6–35.

Mallett, Richard, “Decent work, migration and the 2030 Agenda for Sustainable Development” 20.

Mantouvalou, V, “Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation” (2013) 13:3 *Human Rights Law Review* 529–555.

Mantouvalou, Virginia, “Work, Human Rights, and Human Capabilities” in *The Capability Approach to Labour Law* (Oxford University Press, 2019) 202.

Marchand, Marianne H, “The Future of Gender and Development after 9/11: Insights from Postcolonial Feminism and Transnationalism” (2009) 30:5 *Third World Quarterly* 921–935.

Martin, Philip & Martin Ruhs, “Labour Market Realism and the Global Compacts on Migration and Refugees” (2019) 57:6 *International Migration* 80–90.

Maupain, Francis, “A Second Century for What?: The ilo at a Regulatory Crossroad” (2019) 1: *aop International Organizations Law Review* 1–53.

Mayer, Benoît, “Sustainable development law on environmental migration: the story of an obelisk, a bag of marbles, and a tapestry” (2012) 14:2 *Environmental law review* 111–133.

McCann, Deirdre & Judy Fudge, “Unacceptable forms of work: A multidimensional model” (2017) 156:2 *International Labour Review* 147–184.

McCauley, L A et al, “Work characteristics and pesticide exposures among migrant agricultural families: a community-based research approach.” (2001) 109:5 *Environ Health Perspect* 533–538.

McLaurin, James Reagan, “Labor Law in the United Arab Emirates: A Review and Recommendations” (2008) 12:2 *Allied Academies International Conference Academy of Legal, Ethical and Regulatory Issues Proceedings*; Arden 15–19.

Mednicoff, David M & Joanna E Springer, “The Rule of Law and Political Liberalization in the Arab Gulf” in *Gulf Politics and Economics in a Changing World* (WORLD SCIENTIFIC, 2013) 79.

Menkel-Meadow, Carrie et al, “Introduction Sen and Law (Editors’ Introduction)” in *Amartya Sen and Law* (London: Routledge, Taylor Francis Group, 2020).

Merry, Sally Engle, “Legal Pluralism” (1988) 22:5 *Law & Soc’y Rev* 869–896.

Mickelson, Karin, “Rhetoric and Rage: Third World Voices in International Legal Discourse” (1997) 16:2 *Wis Int’l LJ* 353–420.

— — —, “The Stockholm Conference and the Creation of the South–North Divide in International Environmental Law and Policy” in Shawkat Alam et al, eds, *International Environmental Law and the Global South* (Cambridge: Cambridge University Press, 2015) 109.

Mohanty, Chandra Talpade, “Transnational Feminist Crossings: On Neoliberalism and Radical Critique” (2013) 38:4 *Signs: Journal of Women in Culture and Society* 967–991.

Moore, Frances C, “Toppling the Tripod: Sustainable Development, Constructive Ambiguity and the Environmental Challenge” (2011) 5 141–150.

Moyce, Sally C & Marc Schenker, “Migrant Workers and Their Occupational Health and Safety” (2018) 39:1 *Annual Review of Public Health* null.

Mueller, V, C Gray & K Kosec, “Heat stress increases long-term human migration in rural Pakistan” (2014) 4:3 *Nature Clim Change* 182–185.

Nafziger, James A R, “The General Admission of Aliens under International Law” (1983) 77:4 *The American Journal of International Law* 804–847.

Nagy, Sharon, “Making room for migrants, making sense of difference: Spatial and ideological expressions of social diversity in urban Qatar” (2006) 43:1 *Urban Studies* 119–137.

Natarajan, Usha & Kishan Khoday, “Locating Nature: Making and Unmaking International Law” (2014) 27:3 *Leiden Journal of International Law* 573–593.

Newman, Peter, “Sustainable cities of the future: The behavior change driver” (2010) 11 *Sustainable Dev L & Pol’y* 7.

Novitz, Tonia, “Engagement with sustainability at the International Labour Organization and wider implications for collective worker voice” (2020) 159:4 *International Labour Review* 463–482.

Obrocaru, Simon Andra, “Tackling Racial Discrimination: Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. the United Arab Emirates) Studies and Comments on Case Law and Legislation” (2019) 21 *Romanian J Int’l L* [58]–[67].

Oelgemöller, Christina & Kathryn Allinson, “The Responsible Migrant, Reading the Global Compact on Migration” (2020) 31:2 *Law Critique* 183–207.

Okafor, Obiora Chinedu, “Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?” (2008) 10:4 *International Community Law Review* 371–378.

Okafor, Obiora Chinedu, Titilayo Adebola & Basema Al-Alami, “Viewing the International Labour Organization’s Social Justice Praxis Through a Third World Approaches to International Law Lens: Some Preliminary Insights” in Georges P Politakis, Tomi Kohiyama & Thomas Lieby, eds, *ILO 100: Law for Social Justice* (2019).

Olney, Shauna & Ryszard Cholewinski, “Migrant Workers and the Right to Non-discrimination and Equality” in Cathryn Costello & Mark Freedland, eds, *Migrants at Work* (Oxford University Press, 2014) 258.

Olwig, Karen Fog & Ninna Nyberg Sørensen, “Mobile livelihoods” 20.

Onley, James, “Indian Communities in the Persian Gulf, c. 1500–1947” in Lawrence G Potter, ed, *The Persian Gulf in Modern Times* (New York: Palgrave Macmillan US, 2014) 231.

Page, Edward A, “Intergenerational justice of what: Welfare, resources or capabilities?” (2007) 16:3 *Environmental Politics* 453–469.

Pailey, Robtel Neajai, “De-centring the ‘White Gaze’ of Development” (2020) 51:3 *Development and Change* 729–745.

Paul, Bâc Dorin, “A History of the Concept of Sustainable Development: Literature Review” 5.

Pelenc, Jérôme, Didier Bazile & Cristian Ceruti, “Collective capability and collective agency for sustainability: A case study” (2015) 118 *Ecological Economics* 226–239.

Perkins, Patricia E (Ellie), “Climate justice, commons, and degrowth” (2019) 160 *Ecological Economics* 183–190.

Pezzoli, Keith, “Sustainable Development Literature: A Transdisciplinary Bibliography” (1997) 40:5 *Journal of Environmental Planning and Management* 575–602.

Piper, Nicola, “Migration and the SDGs” (2017) 17:2 *Global Social Policy* 231–238.

— — —, “Obstacles to, and opportunities for, ratification of the ICRMW in Asia” in Antoine Pecoud, Paul de Guchteneire & Ryszard Cholewinski, eds, *Migration and Human Rights: The United Nations Convention on Migrant Workers’ Rights* (Cambridge: Cambridge University Press, 2009) 171.

Pogge, Thomas & Mitu Sengupta, “The Sustainable Development Goals (SDGS) as Drafted: Nice Idea, Poor Execution” (2015) 24 *Wash Int’l LJ* 571–588.

Ponzini, Davide, “Large scale development projects and star architecture in the absence of democratic politics: The case of Abu Dhabi, UAE” (2011) 28:3 *Cities* 251–259.

Preibisch, Kerry, Warren Dodd & Yvonne Su, “Pursuing the capabilities approach within the migration–development nexus” (2016) 42:13 *Journal of Ethnic and Migration Studies* 2111–2127.

— — —, “Pursuing the capabilities approach within the migration–development nexus” (2016) 42:13 *Journal of Ethnic and Migration Studies* 2111–2127.

Puvimanasinghe, Shyami, “From a Divided Heritage to a Common Future? International Investment Law, Human Rights, and Sustainable Development” in Shawkat Alam et al, eds,

International Environmental Law and the Global South (Cambridge: Cambridge University Press, 2015) 317.

Raghuram, Parvati, “Which migration, what development? Unsettling the edifice of migration and development” (2009) 15:2 *Population, Space and Place* 103–117.

Rahma, Fatma Al, “Sheikh Zayed and a Sustainable Legacy” *The Gazelle* (December 2018), online: <<https://www.thegazelle.org/issue/148/features/sheikh-zayed-and-a-sustainable-legacy>>.

Rahman, MD Mizanur, “Bangladeshi Migrant Workers in the UAE: Gender-Differentiated Patterns of Migration Experiences” (2011) 47:2 *Middle Eastern Studies* 395–411.

Rai, Shirin M, Benjamin D Brown & Kanchana N Ruwanpura, “SDG 8: Decent work and economic growth – A gendered analysis” (2019) 113 *World Development* 368–380.

Rajagopal, Balakrishnan, “Locating the Third World in Cultural Geography” (2000) 15:1 *Third World Legal Studies*, online: <<https://scholar.valpo.edu/twls/vol15/iss1/2>>.

Ramji-Nogales, Jaya & Peter J Spiro, “Introduction to Symposium on Framing Global Migration Law” (2017) 111 *AJIL Unbound* 1–2.

Rapoport, Elizabeth, “Utopian Visions and Real Estate Dreams: The Eco-city Past, Present and Future” (2014) 8:2 *Geography Compass* 137–149.

Redclift, Michael, “Sustainable development (1987–2005): an oxymoron comes of age” (2005) 13:4 *Sustainable Development* 212–227.

Reiche, Danyel, “Renewable Energy Policies in the Gulf countries: A case study of the carbon-neutral ‘Masdar City’ in Abu Dhabi” (2010) 38:1 *Energy Policy* 378–382.

Robeyns, Ingrid, “Core Ideas and the Framework” in *Wellbeing, Freedom and Social Justice The Capability Approach Re-Examined*, 1st ed (Open Book Publishers, 2017) 21.

— — —, “Sen’s Capability Approach and Gender Inequality: Selecting Relevant Capabilities” (2003) 9:2–3 *Feminist Economics* 61–92.

— — —, “The Capability Approach” in Edward N Zalta, ed, *The Stanford Encyclopedia of Philosophy*, winter 2016 ed (Metaphysics Research Lab, Stanford University, 2016).

— — —, “The Capability Approach: a theoretical survey” (2005) 6:1 *Journal of Human Development* 93–117.

Roesler, Shannon M, “Addressing environmental injustices: a capability approach to rulemaking” (2011) 114 *W Va L Rev* 49.

— — —, “Addressing Environmental Injustices: A Capability Approach to Rulemaking” (2011) 114 *W Va L Rev* 49.

Roper, Steven D & Lilian A Barria, “Understanding Variations in Gulf Migration and Labor Practices” (2014) 6:1 Middle E L & Governance 32–52.

— — —, “Understanding Variations in Gulf Migration and Labor Practices” (2014) 6:1 Middle East Law Gov 32–52.

Routh, Supriya, “The Need to Become Fashionable” in *The Capability Approach to Labour Law* (Oxford University Press, 2019) 103.

Ruhs, Martin & Philip Martin, “Numbers vs. Rights: Trade-Offs and Guest Worker Programs¹” (2008) 42:1 International Migration Review 249–265.

Sands, Philippe, “International Law in the Field of Sustainable Development” (1995) 65:1 British Yearbook of International Law 303–381.

Scalettaris, G, “Refugee Studies and the international refugee regime: a reflection on a desirable separation” (2007) 26:3 Refugee Survey Quarterly 36–50.

Schlosberg, David, “Further uses for the luxury/subsistence distinction: Impacts, ceilings, and adaptation” (2019) 21:2 The British Journal of Politics and International Relations 295–302.

— — —, “Theorising environmental justice: the expanding sphere of a discourse” (2013) 22:1 Environmental Politics 37–55.

Schlosberg, David & David Carruthers, “Indigenous struggles, environmental justice, and community capabilities” (2010) 10:4 Global Environmental Politics 12–35.

— — —, “Indigenous Struggles, Environmental Justice, and Community Capabilities” (2010) 10:4 Global Environmental Politics 12–35.

Schultz, Emily et al, “A Sustainability-Fitting Interpretation of the Capability Approach: Integrating the Natural Dimension by Employing Feedback Loops” (2013) 14:1 Journal of Human Development and Capabilities 115–133.

Scott, Dayna Nadine, “What is Environmental Justice?” (2014).

Scott, Dayna Nadine & Adrian A Smith, “Sacrifice Zones in the Green Energy Economy: The New Climate Refugees” (2016) 26 Transnat’l L & Contemp Probs 371–382.

— — —, “Sacrifice Zones in the Green Energy Economy: The New Climate Refugees” (2016) 26 Transnat’l L & Contemp Probs 371.

Secombe, I J & R I Lawless, “Foreign Worker Dependence in the Gulf, and the International Oil Companies: 1910-50” (1986) 20:3 The International Migration Review 548–574.

Secombe, Ian J, “Labour migration to the Arabian Gulf: evolution and characteristics 1920–1950” (1983) 10:1 British Society for Middle Eastern Studies Bulletin 3–20.

Seck, Sara L, “Transnational Business and Environmental Harm: A TWAIL Analysis of Home State Obligations Special Issue: Third World Approaches to International Law” (2011) 3 Trade L & Dev [xvii]-202.

— — —, “Transnational Labour Law and the Environment: Beyond the Bounded Autonomous Worker” (2018) 33:02 Canadian Journal of Law and Society / Revue Canadienne Droit et Société 137–157.

Sen, Amartya, “Open and Closed Impartiality” (2002) 99:9 The Journal of Philosophy 445–469.

— — —, “The Ends and Means of Sustainability” (2013) 14:1 Journal of Human Development and Capabilities 6–20.

— — —, “The Global Reach of Human Rights” (2012) 29:2 Journal of Applied Philosophy 91–100.

— — —, “Work and rights” (2000) 139:2 International Labour Review 119–128.

Shariff, Razia, “Collective Agency Capability: How Capabilities Can Emerge in a Social Moment” in Flavio Comim, P B Anand & Shailaja Fennell, eds, *New Frontiers of the Capability Approach* (Cambridge: Cambridge University Press, 2018) 153.

Shaw, M N, “Territory in International Law*” (1982) 13 Netherlands Yearbook of International Law 61–91.

Simpson, Ian R, “Contradictions of citizenship and environmental politics in the Arabian littoral” (2020) 16:1 Journal of the Indian Ocean Region 79–99.

Smith, Adrian A, “Migration, development and security within racialised global capitalism: refusing the balance game” (2016) 37:11 Third World Quarterly 2119–2138.

— — —, “Migration, development and security within racialised global capitalism: refusing the balance game” (2016) 37:11 Third World Quarterly 2119–2138.

— — —, “Temporary Labour Migration and the ‘Ceremony of Innocence’ of Postwar Labour Law: Confronting ‘the South of the North’” (2018) 33:2 Canadian Journal of Law & Society / La Revue Canadienne Droit et Société 261–277.

Smith, Adrian & Dayna Nadine Scott, “Law, Labour and Landscape in a Just Transition” in Usha Natarajan & Julia Dehm, eds, *Locating Nature: Making and Unmaking International Law* (Cambridge University Press, Forthcoming).

Stafford-Smith, Mark et al, “Integration: the key to implementing the Sustainable Development Goals” (2017) 12:6 Sustain Sci 911–919.

Stasiulis, Daiva, Zaheera Jinnah & Blair Rutherford, “Migration, Intersectionality and Social Justice” (2020) 2020:14 Studies in Social Justice 1–21.

Stephens, Beth, “Litigating customary international human rights norms.” (1995) 25:1 2 Georgia Journal of International and Comparative Law 203.

Suliman, Samid, “Migration and Development after 2015” (2017) 14:3 Globalizations 415–431.

Sutherland, Peter D, “Migration is development: how migration matters to the post-2015 debate” (2013) 2:2 Migration and Development 151–156.

Swyngedouw, E, J Hillier & P Healey, eds, “Trouble with Nature – Ecology as the New Opium for the People” in *Conceptual Challenges for Planning Theory* (Ashgate Publishing, Ltd., 2010) 299.

Swyngedouw, Erik & Maria Kaika, “Urban Political Ecology. Great Promises, Deadlock... and New Beginnings?” (2014) 60:3 *dag* 459–481.

Sze, Julie & Jonathan K London, “Environmental Justice at the Crossroads” (2008) 2:4 Sociology Compass 1331–1354.

Taylor, Jennifer, “Shiny, slick and sustainable: Abu Dhabi’s Masdar City is an experiment in sustainability built on oil money. But will it work?” (2009) 35:5 *Alternatives Journal* 18–19.

Thomas, Chantal, “Convergences and Divergences in International Legal Norms on Migrant Labor Labor Law and Development: Perspectives on Labor Regulation in Africa and the African Diaspora” (2010) 32:2 *Comp Lab L & Pol’y J* 405–442.

Thomast, Chantal, “Convergences and Divergences in International Legal Norms on Migrant Labor” 32 39.

Toledo, Hugo, “The political economy of emiratization in the UAE” (2013) 40:1 *Journal of Economic Studies* 39–53.

Turak, Natasha, “70% of Dubai companies expect to go out of business within six months due to coronavirus pandemic, survey says”, *CNBC* (21 May 2020), online:
<<https://www.cnbc.com/2020/05/21/coronavirus-dubai-70percent-of-companies-expect-to-close-in-six-months.html>>.

Ullah, AKM Ahsan & Md Shahidul Haque, “Introduction: Migration—Development Debate” in AKM Ahsan Ullah & Md Shahidul Haque, eds, *The Migration Myth in Policy and Practice: Dreams, Development and Despair* (Singapore: Springer, 2020) 1.

Umar, Muhammad Awais & Fahad Saeed, “Role of Heat Stress in Migration Decision: A Case Study of Faisalabad” 30.

Valenta, Marko, “A comparative analysis of migration systems and migration policies in the European Union and in the Gulf Cooperation Council Countries” (2017) 6:3 *Migration and Development* 428–447.

— — —, “Labour Migrations to Resource-rich Countries: Comparative Perspectives on Migrants’ Rights in Canada, Norway and the United Arab Emirates” (2017) 24:2 *International Journal on Minority and Group Rights* 150–173.

— — —, “Temporary Labour–Migration System and Long–term Residence Strategies in the United Arab Emirates” (2020) 58:1 *International Migration* 182–197.

Voget-Kleschin, Lieske, “Employing the Capability Approach in Conceptualizing Sustainable Development” (2013) 14:4 *Journal of Human Development and Capabilities* 483–502.

Vora, Neha & Natalie Koch, “Everyday Inclusions: Rethinking Ethnocracy, *Kafala* , and Belonging in the Arabian Peninsula: Everyday Inclusions” (2015) 15:3 *Stud Ethn Nation* 540–552.

— — —, “Everyday Inclusions: Rethinking Ethnocracy, *Kafala*, and Belonging in the Arabian Peninsula” (2015) 15:3 *Studies in Ethnicity and Nationalism* 540–552.

Vora Neha & Koch Natalie, “Everyday Inclusions: Rethinking Ethnocracy, *Kafala*, and Belonging in the Arabian Peninsula” (2015) 15:3 *Studies in Ethnicity and Nationalism* 540–552.

Vosko, Leah F, “‘Decent Work’: The Shifting Role of the ILO and the Struggle for Global Social Justice” (2002) 2:1 *Global Social Policy* 19–46.

WAM, “Pakistan and UAE MoU to ensure risk-free employment”, *Gulf Today* (19 June 2019), online: <<https://www.gulftoday.ae/news/2019/06/19/pak-and-uae-mou-to-ensure-risk-free-employment>>.

— — —, “UAE leading in sound migration governance”, *Gulf Today* (25 January 2020), online: <<https://www.gulftoday.ae/news/2020/01/25/uae-leader-in-sound-migration-governance>>.

Webster, Nick, “UAE Cabinet to remove job title demand when sponsoring relatives”, *The National* (31 March 2019), online: <<https://www.thenationalnews.com/uae/government/uae-cabinet-to-remove-job-title-demand-when-sponsoring-relatives-1.843660>>.

Weidel, Timothy, “Moving Towards a Capability for Meaningful Labor” (2018) 19:1 *Journal of Human Development and Capabilities* 70–88.

Weiss, Edith Brown, “In Fairness To Future Generations and Sustainable Development” 8 9.

Weissbrodt, David & Justin Rhodes, “United Nations Treaty Body Monitoring of Migrant Workers in the Middle East” (2013) 5:1–2 *Middle East Law and Governance* 71–111.

Western, Shaina D, Sarah P Lockhart & Jeannette Money, “Does anyone care about migrant rights? An analysis of why countries enter the convention on the rights of migrant workers and their families” (2019) 23:8 *The International Journal of Human Rights* 1276–1299.

Wichert, Rachel Nussbaum & Martha C Nussbaum, “Can There Be Friendship Between Human Beings and Wild Animals?” (2021) 0:0 *Journal of Human Development and Capabilities* 1–21.

Wickramasekara, Piyasiri, “Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review” (2015) SSRN Journal, online: <<http://www.ssrn.com/abstract=2636289>>.

— — —, “Migration Regimes and Their Linkages for Family Unity, Integrity and Development” *The Palgrave Handbook of International Labour Migration* 35.

— — —, “Something is Better than Nothing: Enhancing the Protection of Indian Migrant Workers Through Bilateral Agreements and Memoranda of Understanding” (2012) SSRN Journal, online: <<http://www.ssrn.com/abstract=2032136>>.

Wimmer, Andreas & Nina Glick Schiller, “Methodological nationalism and beyond: nation–state building, migration and the social sciences” (2002) 2:4 *Global Networks* 301–334.

Winkler, Inga T & Margaret L Satterthwaite, “Leaving no one behind? Persistent inequalities in the SDGs” (2017) 21:8 *The International Journal of Human Rights* 1073–1097.

Woest, Virginie, “Decent Work and the Sustainable Development Goals: A Guidebook on SDG Labour Market Indicators” 92.

Woldemariam, Samuel Berhanu, Amy Maguire & Jason von Meding, “Forced Human Displacement, the Third World and International Law: A Twail Perspective” (2019) 20:1 *Melb J Int’l L* 248–276.

Ypi, Lea, “Borders of Class: Migration and Citizenship in the Capitalist State” (2018) 32:2 *Ethics & International Affairs*; New York 141–152.

— — —, “Justice in Migration: A Closed Borders Utopia?*” (2008) 16:4 *Journal of Political Philosophy* 391–418.

Zain, Asma Ali, “Pakistan sets Dh800 base salary for workers”, *Khaleej Times* (7 December 2018), online: <<https://www.khaleejtimes.com/nation/dubai/minimum-wage-set-for-pakistani-workers-in-uae-->>>.

Zetter, Roger, “Labelling Refugees: Forming and Transforming a Bureaucratic Identity” (1991) 4:1 *J Refug Stud* 39–62.

Zumbansen, Peer, “Can transnational law be critical? Reflections on a contested idea, field and method” in *Research Handbook on Critical Legal Theory* (Edward Elgar Publishing, 2019) 473.

“ILO100 – Law for Social Justice” 1034.

“New COVID-19 vaccination centre opens in Abu Dhabi’s Masdar City”, (23 February 2021), online: <<https://gulfnews.com/uae/new-covid-19-vaccination-centre-opens-in-abu-dhabis-masdar-city-1.77394049>>.

“The great race” *The Economist* (6 July 2002), online: <<https://www.economist.com/special-report/2002/07/06/the-great-race>>.

“UAE: Abuses at NYU, Louvre, Guggenheim Project”, *Human Rights Watch* (10 February 2015), online: <<https://www.hrw.org/news/2015/02/10/uae-abuses-nyu-louvre-guggenheim-project>>.

“UAE assured visa ban ‘temporary’ to check COVID, says Pakistan”, *Al Jazeera* (20 December 2020), online: <<https://www.aljazeera.com/news/2020/12/20/halting-of-visas-for-pakistanis-temporary-uae-tells-pakistan>>.

Abu Dhabi Dialogue, “About Abu Dhabi Dialogue”, online: *Abu Dhabi Dialogue* <<http://abudhabidialogue.org.ae/about-abu-dhabi-dialogue>>.

Arthurs, Harry W, *The Constitutionalization of Labour Rights*, SSRN Scholarly Paper, by Harry W Arthurs, papers.ssrn.com, SSRN Scholarly Paper ID 1531326 (Rochester, NY: Social Science Research Network, 2009).

Bureau of Emigration & Overseas Employment, “How to get Emigrant’s Protection - Bureau of Emigration & Overseas Employment”, (23 March 2021), online: *Bureau of Emigration & Overseas Employment Government of Pakistan* <<https://beoe.gov.pk/how-to-get-emigrants-protection>>.

Burrow, Sharon, *How will climate change affect jobs?* (2015).

Das Gupta, Ashin et al, *India and the Indian Ocean world : trade and politics* (New Delhi, India : Oxford University Press, 2004).

Elsheshtawy, Yasser, “Sultans of Green: Arab Gulf Cities and the New Urban Agenda”, (10 August 2018), online: *Dubaization* <<https://dubaization.com/post/176821563973/the-sultans-of-green-arab-gulf-cities-and-the-new>>.

Fargues, Philippe & Nasra M Shah, *Skilful Survivals: Irregular Migration to the Gulf*, by Philippe Fargues & Nasra M Shah (Gulf Research Center (GRC), 2017).

Fargues, Philippe, Nasra M Shah & Imco Brouwer, *Working and Living conditions of Low-Income Migrant Workers in the hospitality and construction Sectors in the United Arab emirates*, by Philippe Fargues, Nasra M Shah & Imco Brouwer, GLMM-RR-No. 2/2019 (2019).

Fudge, Judy, *Labour as a ‘Fictive Commodity’: Radically Reconceptualizing Labour Law*, SSRN Scholarly Paper, by Judy Fudge, papers.ssrn.com, SSRN Scholarly Paper ID 1721265 (Rochester, NY: Social Science Research Network, 2011).

International Organization for Migration, “Regional Consultative Process on Overseas Employment and Contractual Labour for Countries of Origin in Asia (Colombo Process)”, (2 February 2015), online: *International Organization for Migration* <<https://www.iom.int/regional-consultative-process-overseas-employment-and-contractual-labour-countries-origin-asia>>.

Iredale, Robyn & Nicola Piper, *Identification of the obstacles to the signing and ratification of the UN Convention on the Protection of the Rights of All Migrant Workers: the Asia-Pacific*

perspective; executive summary, by Robyn Iredale & Nicola Piper, UNESCO Series of Country Reports on the Ratification of the UN Convention on Migrants (UNESCO, 2003).

Karasapan, Omer, “Pandemic highlights the vulnerability of migrant workers in the Middle East”, (17 September 2020), online: *Brookings* <<https://www.brookings.edu/blog/future-development/2020/09/17/pandemic-highlights-the-vulnerability-of-migrant-workers-in-the-middle-east/>>.

LO 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* (2018).

Lori, Noora, *Temporary Workers or Permanent Migrants?: The Kafala System and Contestations over Residency in the Arab Gulf States*, by Noora Lori (Institut français des relations internationales, 2012).

MacDonald, Euan & Ryszard Cholewinski, *The Migrant workers convention in Europe: obstacles to the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: EU/EEA Perspectives*, by Euan MacDonald & Ryszard Cholewinski, UNESCO Migration Studies (UNESCO, 2007).

Mantouvalou, Virginia, *Work, Human Rights, and Human Capabilities* (Oxford, 2018).

Masdar, “FAQ”, (2021), online: *Masdar* <<http://masdar.ae/en/About Us/Useful Links/FAQ>>.

Masdar Staff, “Masdar Advises Workers How to Stay Safe in the Summer Heat”, (2 June 2015), online: *Masdar* <<https://news.masdar.ae/en/news/2018/11/28/09/55/masdar-advises-workers-how-to-stay-safe-in-the-summer-heat>>.

Novitz, Tonia & David Mangan, *The Role of Labour Standards in Development: From theory to sustainable practice*, OUP Catalogue, by Tonia Novitz & David Mangan, RePEc - Econpapers, OUP Catalogue (Oxford University Press, 2011).

Outka, Uma, *Environmental Justice in the Renewable Energy Transition*, SSRN Scholarly Paper, by Uma Outka, papers.ssrn.com, SSRN Scholarly Paper ID 2153118 (Rochester, NY: Social Science Research Network, 2012).

Piché, Victor, Eugénie Pelletier & Dina Epale, *Identification of the Obstacles to the Ratification of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: The Canadian Case*, by Victor Piché, Eugénie Pelletier & Dina Epale, Zotero, UNESCO Series of Country Reports on the Ratification of the UN Convention on Migrants (UNESCO).

Popova, Natalia et al, *ILO global estimates on international migrant workers: results and methodology*, by Natalia Popova et al, Open WorldCat (2018).

Sen, Sudhir Anand and Amartya, *Sustainable Human Development: Concepts and Priorities*, by Sudhir Anand and Amartya Sen, ideas.repec.org, Human Development Occasional Papers (1992-

2007) HDOCPA-1994-03 (Human Development Report Office (HDRO), United Nations Development Programme (UNDP), 1994).

Shah, Dr Nasra M et al, *Pakistan Migration Report 2020*, by Dr Nasra M Shah et al, Zotero (Centre on International Migration, Remittances and Diaspora).

T, Malit & George Naufal, *Asymmetric Information under the Kafala Sponsorship System: Impacts on Foreign Domestic Workers' Income and Employment Status in the GCC Countries*, IZA Discussion Paper, by Malit T & George Naufal, RePEc - Econpapers, IZA Discussion Paper 9941 (Institute for the Study of Labor (IZA), 2016).

Tord Kjellstrom, Nicolas Maître, *Working on a warmer planet: The effect of heat stress on productivity and decent work*, Report, by Nicolas Maître Tord Kjellstrom, www.ilo.org, Report (2019).

Trebilcock, Anne, *Decent work and the informal economy*, Working Paper, by Anne Trebilcock, www.econstor.eu, Working Paper 2005/04 (WIDER Discussion Paper, 2005).

Wickramasekara, Piyasiri, *Circular Migration: A Triple Win or a Dead End*, by Piyasiri Wickramasekara, DOI.org (Crossref), Global Union Research Network Discussion paper no. 15 (International Labour Organization, 2011).

Zailer, Andrei, “Fijiri: Collective Work Songs of the Gulf Pearl Divers”, online: *East East, Cultural Creative Agency* <https://easteast.world/en/posts/69?fbclid=IwAR3oVbJIQj6O1_H95RRbOCM36OB9ctdZn21OXr5ZyOsMf4KiYtLz-UaCmIM>.

Abu Dhabi Economic Vision 2030 (Abu Dhabi Government, 2006).

“Emirates Mars Mission Overview”, (2021), online: *Emirates Mars Mission* <<https://www.emiratesmarsmission.ae/mission/about-emm>>.

Full Text PDF.

“GFMD Working Group on Sustainable Development and International Migration | Global Forum on Migration and Development”, online: <<https://www.gfmd.org/gfmd-working-group-sustainable-development-and-international-migration>>.

“Global Forum on Migration and Development United Arab Emirates Summit”, online: *The International Catholic Migration Commission (ICMC)* <<https://www.icmc.net/calendar/global-forum-on-migration-and-development-dubai-summit/>>.

“Golden visa - Long-term residence visas in the UAE - The Official Portal of the UAE Government”, online: *The United Arab Emirates Government Portal* <<https://u.ae/en/information-and-services/visa-and-emirates-id/residence-visa/long-term-residence-visas-in-the-uae>>.

“Legacy of Sheikh Zayed”, (2021), online: *Zayed Sustainability Prize* <<https://zayedustainabilityprize.com/en/about/legacy-of-sheikh-zayed>>.

“Live - Masdar City”, (2021), online: <<https://masdarcity.ae/en/live/overview#Sustainability>>.

Migration in the 2030 Agenda (International Organization for Migration, 2017).

“Sustainable Environment and Infrastructure”, (2018), online: *UAE Vision 2021* <<https://www.vision2021.ae/en/national-agenda-2021/list/environment-circle>>.

“The Global Reporting Initiative (GRI) - United Nations Partnerships for SDGs platform”, online: <<https://sustainabledevelopment.un.org/partnership/partners/?id=96>>.

Time to Act for SDG 8 : Integrating Decent Work, Sustained Growth and Environmental Integrity, Report, www.ilo.org, Report (2019).

“Toxins in Nail Salons: When Environmental and Reproductive Justice Meet”, (1 September 2012), online: *NWHN* <<https://nwhn.org/toxins-in-nail-salons-when-environmental-and-reproductive-justice-meet/>>.

UAE Vision 2021: United in Ambition and Determination (2014).

“What is Expo 2020 Dubai?”, online: *Expo 2020* <<https://www.expo2020dubai.com/en/discover/about>>.