



AFL-CIO

AMERICA'S UNIONS

**American Federation
of Labor and
Congress of Industrial
Organizations**

815 16th St., NW
Washington, DC 20006
202-637-5000
aflcio.org

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Special Representative Louise Arbour
Office of the SRSG for International Migration
United Nations, 2 UN Plaza, DC2-1820, New York, N.Y. 10017
Via email: eva.akerman-borje@un.org; christine.matthews@un.org

Dear Special Representative Arbour,

Please accept the following submission from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Solidarity Center toward your report on the global compact for safe, orderly and regular migration.

In recent years, the world has witnessed mass human displacement, widespread suffering, and rising xenophobia. Far too many migrants have died on land and at sea in search of safety and a better life, and millions more are subject to exploitation, criminalization, and discrimination in the workplace and society. There is an urgent need for a global commitment to fair migration and coherent, rights-based policies.

The global compact on migration represents a historic opportunity to meet these needs, and the stakes for this process are high. As approximately two-thirds of the world's 244 million migrants are in the labor force, the global compact on migration will have far-reaching impacts on working people everywhere. It is vital that the compact define and implement policies that protect and empower workers in countries of origin, transit and destination and produce positive labor market outcomes for both local and migrant workers.

The global compact could serve as an important vehicle to encourage pathways out of irregularity and enhance regular migration channels that promote shared prosperity and advance workers' rights. However, in today's challenging political climate, the compact could also serve to advance deportation regimes and abusive temporary work visa programs. The labor movement asserts that the global compact will only be successful if it adheres to human and labor rights standards and does not further criminalize migrants or empower the private sector to dictate the terms of migration governance.

Defining "safe, regular, and orderly"

From the outset, the framing of the Global Compact is problematic. It fails to emphasize a rights-based approach, putting the focus instead on "regular" migration, which obscures the fact that most regular channels for labor migration are not "safe". In fact, they facilitate abuse, restrict rights, and reinforce discrimination. Further, the framing neglects the critical need to address the

plight of millions of undocumented migrants who lack any path to regular status due to dysfunctional immigration systems and political inaction. The global compact will be a failure if it only perpetuates the status quo or tinkers around the edges of failed approaches.

The shortcomings and dangers of the dominant, current model for migration for work are serious. Existing legal channels for temporary labor migration tie workers to a single employer and prop up a global labor recruitment industry that commodifies workers and is rife with abuse. Migrant workers often pay high fees to work and face disturbingly common patterns of abuse, including fraud, discrimination, economic coercion, blacklisting and, in some cases, forced labor and human trafficking.¹

In the United States, for example, approximately 71 percent of labor trafficking victims enter the country on lawful visas, and victims pay an average of \$6,150 in recruitment fees.² Despite migrating through legal channels, these workers are clearly not adequately protected. Meanwhile, immigrant workers without documents are denied pathways into regularity and face criminalization and retaliatory deportation when they dare to assert their rights. As a result, immigrant workers in the U.S. face routine discrimination and the highest rates of wage theft, sexual harassment, injury and even death on the job.

This type of dysfunctional immigration system fuels a global race to the bottom that only benefits corporate interests and unscrupulous employers, seriously undermining any potential positive development outcomes of migration. The compact must instead put forward safe and regular channels that ensure workers' agency in the labor market, respect the ILO's core labor standards, and promote wage growth and social cohesion. Such channels already exist in the form of migration for settlement, family unification, education, and humanitarian and refugee resettlement.

As the justification for a new global compact was couched in humanitarian terms, the compact should prioritize regularization schemes and rights-based channels—which allow migrants the freedom to move, settle, work, and fully participate in society—over expanding temporary work visa programs. Bilateral temporary work visa programs such as the Canada-Guatemala seasonal agricultural worker program, or temporary work visa programs like the U.S. H-2B visa are not models that should be replicated as they severely restrict worker rights, have structural flaws that allow for exploitation, and are creating a subclass of disenfranchised low wage workers, segregated by race, gender and country of origin.

A New Model for Labor Migration

The starting point for any responsible strategy to promote safe and regular migration must be a commitment to maximize opportunities for vulnerable irregular migrants to regularize their status. Until that threshold issue is addressed, there cannot be a meaningful assessment of labor market need, which is the only acceptable motivation for expanding channels for labor migration. The compact should prohibit employers from engaging in international labor recruitment that displaces existing workers or lowers wages and standards, and workers' rights

¹ For the United States, see: International Labor Recruitment Working Group, "The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse," 2013: <https://fairlaborrecruitment.files.wordpress.com/2013/01/the-american-dream-up-for-sale-a-blueprint-for-ending-international-labor-recruitment-abuse1.pdf>.

² Colleen Owen, et al. "Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States," Urban Institute, October 21, 2014. <http://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states>

must be respected during recruitment and employment of migrant workers. Accomplishing these goals requires that appropriate levels of labor migration be established through a data-driven and depoliticized process.

At a minimum, the ILO's recently developed “general principles and operational guidelines on fair recruitment” should be embedded in the compact to promote fair migration and ensure that workers do not enter destination countries in debt bondage or as a source of cheap, exploitable, and disposable labor. Workers, governments, and employers negotiated these consensus guidelines in 2016 based on ILO standards and intended them to inform the work of the ILO, governments and social partners. Among the key principles are a call for recruitment to respond to labor market needs while not diminishing standards or displacing workers and guidance on establishing recruiter registries, banning fees, and requiring contract transparency and freedom of movement.

Beyond recruitment provisions, the structure of work visa programs need comprehensive reforms. Workers should not be tied to a single employer and forced into indefinite seasonal or circular migration for work. Workers should have control of their visas, increased agency and access to justice, and the option for permanent residency and eventual citizenship if they desire it. Family unity and unification should be a priority. Labor migrants should be guaranteed full and equal rights and protections, including the right to form and join a union and to collectively bargain for fair compensation and treatment. Freedom of association is an enabling right and without changing the power dynamics for migrant workers, we can never hope to reverse entrenched patterns of discrimination and exploitation.

The Way Forward

Time is short for states to show leadership on the compact and put forward a rights-based agenda. The agreement will be finalized at the UN general assembly in September 2018, and the contours of the compact are being shaped now. The significant global issues of rising inequality, displacement, and xenophobia cannot be solved by policies that empower employers to undertake discriminatory hiring, depress wages, and create an underclass of workers. Instead, the compact should address the root causes of displacement and complement and support the decent work commitments enshrined in the sustainable development goals, creating a safer, more just world for migrant workers and their local counterparts.

To do this, workers and civil society must have a central role in state decision-making and implementation of the compact at the national level, particularly as it relates to the creation of new channels for migration. The ILO should be designated the lead agency on labor migration programming, as it has a rights-based mandate, tripartite structure, and expertise in labor. The compact should explicitly integrate the ILO's tripartite structure as a central governance mechanism for global labor migration policy and in the creation of review mechanisms.

The compact should also explicitly call on states to develop fair pathways out of irregularity and enhance regular channels that empower migrants to build a life, stay with their families, strengthen communities, and access equal rights. It is time to move beyond temporary or circular migration programs and put the focus on regularization and humanitarian and other permanent channels. Workers, migrant communities, trade unions and civil society have deep expertise and experience from the ground and stand ready to help develop a compact worth agreeing to.