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Trade Union Statement on the Global Compact for Safe Orderly and Regular Migration Intergovernmental Negotiations, 14 - 18 May, 2018

We are part of the global labour movement which has a vision of labour migration that promotes shared prosperity and inclusive growth by lifting up and empowering workers in both origin and destination countries. We were heartened to see key provisions in the *Zero Draft* that upheld the principles of decent work and fair migration for all (e.g. Objectives 5, 6, 15, 18 and 22). Recent deliberations around the Compact, however, have given cause for some concern.

Indeed, the first three months of negotiations since the *Zero Draft* have revealed that there is a real risk of regressing from the standards set forth by the *New York Declaration for Refugees and Migrants*. Urgently, we call on you to maintain the worker rights language in the original *Zero Draft*, and to uphold the following principles during the remaining rounds of negotiations in May, June and July:

- 1. Full Labour Protections for All Workers Regardless of Status:** First and foremost, international human and labour rights instruments (as well as regional instruments and current practice in many countries) clearly provide that irregular migrants are protected by all of the core human and labour rights standards. We are deeply concerned by the push-back by some governments on the key aspects of the *Zero Draft* text that provide human and labour rights protections to all migrants and their families regardless of status, consistent with international law and obligations. In keeping with international human rights laws and labour standards, states' commitments in the Compact must support the International Labour Organization's (ILO) fair labour migration and decent work agendas. The GCM should not call into question protections currently available for irregular migrants in existing international human and labour rights law. Irregular migrants are covered by all of the core ILO labour standards, including freedom of association, the right to organize and collectively bargain. Irregular migrants are further covered by international human rights law as regards the right to due process and access to public services and social protection. Irregular migrants should not be excluded from any of the *GCM's* objectives. An artificial and arbitrary distinction between regular and irregular migrants in the Compact would damage the recognized international commitments to uphold the human and labour rights of all migrant workers, regardless of their status.
- 2. Separation of labour law inspection, enforcement and justice from immigration enforcement:** In order to ensure that unscrupulous employers cannot undermine labour markets, wages and working conditions by exploiting migrant workers with impunity, there must be a clear distinction between labour inspection, enforcement and access to justice for labour violations for migrant workers regardless of status and the enforcement of immigration laws by civil and criminal authorities. It is well documented that when fear of immigration enforcement blocks migrant workers from coming forward to report violations of wage, health and safety, sexual harassment, labour laws, and other workplace and housing standards, then labour standards for those workers fall below the legal standard. This also leads to a decline in conditions for all workers in these sectors. All migrants and in particular irregular migrants must be able to report complaints or seek justice for workplace abuses without fear of deportation or repercussions, and workers in temporary labour migration programs must not be forced to risk their status when they act to enforce labour rights or standards. Therefore, Objective 6, Paragraph 21(j) from Draft Rev 1 should be maintained.
- 3. Safe and regular pathways:** A good starting point for addressing irregular migration is ensuring that policies are put in place that promote sustainable development and decent work for all, in countries of origin, transit and destination. On this, we fully support Objective 2, Paragraph 17 (d) on investing in programmes

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to fulfill the SDGs and addressing the drivers of forced migration. However, in order to reduce irregularity, countries must open up more and better regular channels, including opportunities for permanent residency, settlement and citizenship status, family re-unification, and as noted in the Zero Draft, allowing migrants to change employers and providing for visa portability. Recognizing that regularization schemes and rights-based channels allow migrants the freedom to move, settle, work, and fully participate in society, the GCM should urge expansion of those channels over expanding temporary or circular work programs. To combat irregularity effectively, states must also open up pathways for regularization that do not undermine migrants' status and protections as workers. We are deeply concerned about some of the discourse in the negotiations that call for limiting the GCM to regular migrants. A major priority of the New York Declaration was to find ways to reduce irregularity. The GCM must express a commitment to increasing regular pathways for all migrants, regardless of status, that are fair, sustainable and promote decent work.

- 4. Promoting Decent Work as an Objective:** We support the calls by several governments, (as proposed by the government of Switzerland), to rework the GCM draft to have a dedicated objective on Decent Work, in addition to its specific treatment in Objective 6, in relation to fair recruitment practices. The Global Compact should promote the ILO's fair labour migration agenda, essential components of which are decent work and fundamental principles and rights at work. This means the GCM should have specific points empowering migrant workers, regardless of status, to have voice, agency, participation and representation at work, through freedom of association, including the right to form, join, and hold office in a union, and to collectively bargain for fair compensation and treatment. It also means gender-responsive workplace policies, safe workplaces for women and men, freedom from discrimination and exploitation, and access to justice for all migrant workers, regardless of status. A separate and distinct objective on decent work will support the decades-long established jurisprudence, conventions and standards of the ILO, ensuring that migrant workers receive the recognition that is codified under international law. Also, we urge the inclusion of labour rights along with human rights in the Guiding Principles Paragraph 14, to highlight its importance throughout the text.

- 5. Implementation: Labour Migration Expertise and Promoting National and International Social Dialogue:** We strongly support calls for the International Labour Organization to play a lead role in the implementation of the compact and monitoring of outcomes, including as they relate to the creation of new channels for migration. So much of the implementation of the Compact will relate to the world of work and employment, calling for a strong role for the UN's specialized agency with the most experience on such issues, the ILO. The Compact should explicitly integrate the ILO's tripartite consultative structure of social dialogue (between the government and workers' and employers' representatives) as a central governance mechanism for global labour migration policy, and a necessary vehicle for economic and social integration of refugees and migrants. We also urge inclusion of language in a Decent Work Objective, recommending social dialogue on bilateral, regional, and multilateral migration agreements, so that social dialogue is layered at the national, regional and international levels.

We are committed to continuing to work with you in partnership on a strong GCM that promotes the rights of migrant workers globally.