

**Trade Union Position Statement and Substantive Proposals for the Global Compact for
Safe Orderly and Regular Migration
Intergovernmental Negotiations, 9 - 13 July, 2018
(Based on Draft Rev3, released on 29 June, 2018)**

The Global Compact must protect all migrant workers, uphold the UN and ILO normative frameworks on human and labour rights, and ensure social dialogue

If the Global Compact on Migration is to address the reality of migration today as envisaged in the New York Declaration of 2016, it must empower all migrant workers, regardless of their status, with voice at work by ensuring labour rights protections and sustainable livelihoods through decent work. However, we have seen, consistently, throughout the negotiations, a discourse among a number of Member States, purporting to limit the provisions of the core objectives dealing with labour to migrants in regular status. This approach ignores the reality of the millions of undocumented migrant workers worldwide who contribute effectively to the economies of destination countries, and for whom the Global Compact should provide real prospects for better lives through decent jobs, fundamental human and labour rights protections, and pathways to regularization of status. Failure to address these realities while making arbitrary distinctions between regular and irregular migrants, and excluding the latter from fair treatment, constitutes a missed opportunity to advance multilateral cooperation and social progress. Moreover, such an approach contradicts protections in international labour standards, and is a step backward from decades of well-established human rights protections for all migrants. We can ill afford such an outcome for the Global Compact on Migration.

Addressing the major fault-lines in Draft Rev 3

In the proposed language changes to Draft Rev 3 which follows, we address the major fault lines in the text, arising from this ill-advised preoccupation with the distinction between regular and irregular migration. We provide Commentaries which give the rationale for the proposed changes. **Regarding the principle of National Sovereignty**, we believe that the prerogative of Member States to determine policies on regular/irregular migrant status needs to be matched by an equally firm commitment to meet their obligations in respect of international human and labour rights law regarding the fair treatment of all migrants regardless of status. We propose language to address this issue.

In addition, **we urge Member States to delete "engaged in remunerated and contractual" in front of "labour" in Objective 6, paragraph 22 i)** as this phrasing would effectively exclude many irregular migrants from the protections under the fundamental principles and rights at work provisions of the paragraph, including freedom of association and the newly added social dialogue. It would also exclude migrants in the informal economy who make up a large proportion of migrants, as well as migrant workers around the world who are constrained by

circumstances to work without a contract. **We also propose re-instating the provision from Draft Rev 1 on protections for migrants who engage with labour inspectorates**, so that they do not risk harassment, loss of status, or deportation for reporting workplace violations.

Promoting Decent Work for all Migrants, regardless of status

To provide a normative anchor for the promotion of decent work as referenced in many parts of the text, **we Propose a new principle on Decent Work**. Coupled with the principle on Human Rights, the new principle upholds the indivisibility of human rights and fundamental labour rights and ensures the full range of relevant protections to all migrants and their families, irrespective of status.

Implementation, Follow-up and Review of the Global Compact

With regard to Implementation, Follow-up and Review of the Global Compact, we propose that the core specialized agencies with competencies in the field of migration be mentioned explicitly, and that the ILO's competencies in the field of labour migration be recognized and fully utilized. We propose that the Global Compact embed the roles of the social partners in contributing to the sound governance of labour migration through social dialogue and tripartite consultations at national, regional and global levels. In keeping with the Whole-of-Society approach, we propose that multi-stakeholder partnerships be envisaged for implementation, follow-up and review, with clear roles for trade unions and other civil society organisations.

We urge Member States to take these language proposals fully into account as they engage in negotiations for the sixth and final intergovernmental meeting on the Global Compact for Safe, Orderly and Regular Migration.

PROPOSALS ON LANGUAGE	COMMENTARY
<p>Paragraph 15, Guiding Principles. <i>National sovereignty:</i> The Global Compact reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law. Within their sovereign jurisdiction, <u>and with due regard to their obligation to respect, protect and fulfil the human rights of all individuals within their jurisdiction,</u> States may distinguish between regular and irregular migration status, including as they determine their legislative and policy measures for the implementation of the Global Compact, taking into account different national realities, policies, priorities and requirements for entry, residence and work, in accordance with international law.</p>	<p>The principle of national sovereignty must be matched by States' commitments to meet their obligations in respect of international and human rights laws on the fair treatment of all migrants regardless of status. ... </p>
<p>Paragraph 15, Guiding Principles. After the Human Rights Principle, add a new Principle on Decent Work and Labour Rights: <u>"Decent Work and Labour Rights The Global Compact promotes decent work for all migrants and upholds the fundamental principles and rights at work. We recognize that migrant workers must be empowered as agents of change to improve their conditions of work, and exercise freedom of association and the right to bargain collectively".</u></p>	<p>This new principle supports and is consistent with the proposals of a group of "Like-Minded" Member States to strengthen references to the promotion of decent work and fundamental principles and rights at work throughout relevant objectives. Coupled with the principle on Human Rights, the new principle upholds the indivisibility of human rights and fundamental labour rights and ensures the full range of relevant protections to all migrants and their families, irrespective of status. The proposals for new language in this submission aim, among others, to strengthen the provisions on decent work in relevant sections of the text. Decent work is understood, according to the ILO, to rest on four interrelated and mutually supporting objectives: (i) respecting, promoting and realizing the fundamental principles and rights at work; [refer to Commentary at Preamble, paragraph 2, above] (ii) promoting employment by creating a sustainable institutional and economic environment; (iii) developing and enhancing social protection measures; and (iv) promoting social dialogue and tripartism¹ We recommend that the above definition of Decent Work, drawn from the ILO</p>

¹ ILO 2015, Discussion Paper, *Promoting Decent Work for Migrant Workers*

	Discussion Paper cited in the footnote below, be placed, in turn in a footnote.
<p>OBJECTIVE 3, paragraph 19 e). Promote multi-lingual, gender-responsive and evidence-based information campaigns and organize awareness-raising events and pre-departure orientation trainings in countries of origin, in cooperation with local authorities, consular and diplomatic missions, the private sector, trade unions, academia, migrant and diaspora organizations and civil society, in order to promote safe, orderly and regular migration, as well as to highlight the risks associated with irregular and unsafe migration</p>	Trade unions in countries of origin are providing information to migrant workers, including pre-departure orientation training. They should be included in the stakeholders being mentioned.,
<p>OBJECTIVE 5, paragraph 21 c) Review and revise existing options and pathways for regular migration, with a view to optimize skills matching in labour markets, address demographic realities and development challenges and opportunities, in accordance with local and national labour market demands and skills supply, in consultation with the private sector, trade unions and other relevant stakeholders</p>	Trade unions are key stakeholders and are actually engaged in this area of skills matching, demand and supply, through social dialogue. Their role should be highlighted here.
<p>OBJECTIVE 6, paragraph 22 a). Promote signature, ratification, accession and implementation of relevant international instruments related to international labour mobility migration, labour rights, decent work and eliminating forced labour</p>	Two editorial changes: Consistent with Preambular para 2 (Draft Rev 3) citing ILO conventions on decent work and labour migration. States' intent must be to promote labour rights and decent work, but to eliminate forced labour.
<p>OBJECTIVE 6, paragraph 22 c). Improve regulations on public and private recruitment agencies, in order to align them with international guidelines and best practices, prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers, and refrain from charging migrants disproportionate or hidden administrative fees, in order to prevent debt bondage, exploitation and forced labour, including by establishing</p>	We welcome the return to this original wording from Draft Rev 1, thus this phrase is redundant. Administrative fees is part of "related costs." The intent of this para is to prevent debt bondage, exploitation and forced labour resulting from these fees that migrant workers are forced to pay. This deletion serves to align the text with the ILO General Principles and Operational Guidelines for Fair Recruitment which forms part of the normative framework for objective 6, and which recommends the

<p>mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry</p>	<p>prohibition of fees accruing to migrants.</p>
<p>OBJECTIVE 6, paragraph 22 e). Enact and implement national laws that sanction <u>prohibit</u> human and labour rights violations, especially <u>including</u> in cases of forced and child labour, and cooperate with the private sector, including employers, recruiters, subcontractors and suppliers, to build partnerships that promote conditions for decent work, prevent abuse and exploitation, and ensure that the roles and responsibilities within the recruitment and employment processes are clearly outlined, thereby enhancing supply chain transparency <u>and accountability, with a view to ensuring due process, effective complaint mechanisms and remedies for human and labour rights violations in recruitment procedures.</u></p>	<p>Laws should aim to prohibit human and labour rights violations wherever they occur, including in cases of forced and child labour.</p> <p>It is important to maintain the reference to accountability from Draft Rev 1, and also ensure that victims of exploitation or abuse have recourse to judicial procedures for redress. These proposed changes also align the text with other sections that emphasize accountability and due process, such as Objective 10 which addresses trafficking in persons</p>
<p>OBJECTIVE 6, paragraph 22 i). Provide <u>all</u> migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, such as the rights to just and favourable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, <u>to membership in trade unions and the right to collective bargaining,</u> and to the highest attainable standard of physical and mental health, including through wage protection mechanisms, social dialogue and membership in trade unions <u>strengthened protections for migrants who engage with labour inspectorates or other labour law enforcement to remedy cases of exploitation.</u></p>	<p>This is a key paragraph for migrant worker protections in the workplace, regardless of status, and we therefore strongly urge Member States to delete the word "contractual" which would in practice exclude many irregular migrants from the protections under the fundamental principles and rights at work provisions of the paragraph, including freedom of association, whereas these apply to all workers. Limiting the provision by introducing the term "remunerated and contractual" violates core ILO international labour standards and UN human rights treaties. We further propose shifting "membership in trade unions" to the list of fundamental principles and rights at work, (a logical shift); and we strongly urge Member States to retain the reference to labour inspectorates from Draft Rev 1, while clarifying their important function, of ensuring that access to due process is safeguarded in cases of exploitation. In order to ensure that unscrupulous employers cannot undermine labor markets, wages and working conditions by exploiting migrant workers with impunity, there must be a clear distinction between labor inspection, enforcement and access to justice for labor violations for migrant workers regardless of status. It is well</p>

	<p>documented that when fear of immigration enforcement blocks migrant workers from coming forward to report violations of wage, health and safety, sexual harassment, labor laws, and other workplace standards, then labor standards for those workers fall below the legal standard. This also leads to a decline in conditions for all workers in these sectors. Irregular migrants must be able to report complaints or seek justice for workplace abuses without fear of deportation, and workers in temporary labor migration programs must not be forced to risk their status when they act to enforce labor rights or standards.</p>
<p>OBJECTIVE 6, paragraph 22 j). Ensure <u>that all</u> migrants work<u>ers</u>ing in the informal economy have safe access to effective reporting, complaint, and redress mechanisms in cases of exploitation, abuse or violations of their rights in the workplace, in a manner that does not exacerbate vulnerabilities of migrants that denounce such incidents and allow<u>s</u> them to participate in respective legal proceedings, whether in the country of origin or destination</p>	<p>While migrants in the informal economy may find themselves in heightened situations of vulnerability, it is important that the Global Compact promote measures guaranteeing access to due process, complaints and redress mechanisms for all workplace violations affecting migrant workers, both in the informal and formal economies. We therefore urge Member States to delete the specific reference to the informal economy.</p>
<p>OBJECTIVE 7, paragraph 23 h) Develop accessible and expedient procedures that facilitate transitions from one status to another and inform migrants of their rights and obligations, so as to prevent migrants from falling into an irregular status in the country of destination, <u>and</u> to reduce precariousness of status and related vulnerabilities, as well as to enable individual status assessments for migrants, including for those who have fallen out of regular status, <u>or those who are involved in good faith labour disputes,</u> without fear of arbitrary expulsion</p>	<p>Remediation for migrants in vulnerable situations (both irregular and temporary workers) must include the possibility to remain in the country while issues of abuse, rights violations, labour disputes or unfair labour practices are being resolved.</p>
<p>OBJECTIVE 18, paragraph 34 f). Promote inter-institutional networks and collaborative programmes for</p>	<p>These partnerships should involve trade unions who bring the voice of their migrant-worker membership, and experience from their representative</p>

<p>partnerships between the private sector and educational institutions in countries of origin and destination to enable mutually beneficial skills development opportunities for migrants, communities and participating partners, including by building on the best practices of the Business Mechanism developed in the context of the Global Forum on Migration and Development, <u>and associating trade unions in the operational activities of this mechanism.</u></p>	<p>roles in support of that membership, on labour-market integration, skills development, and promotion of decent work.</p>
<p>IMPLEMENTATION, paragraph 45 b) ...the network will fully draw from the technical expertise and experience of relevant entities within the United Nations system, <u>in particular the core specialized agencies: the ILO, UNHCR, OHCHR, UNICEF, and UN Women.</u></p>	<p>We welcome the fact that the proposed UN network on migration will "draw from the technical expertise and experience of relevant entities within the UN". In this regard, we believe that the core specialized agencies with competencies related to migration should be referenced explicitly. We also wish to draw attention to the critical importance of labour migration within the Global Compact. The ILO's core competencies and expertise in this field should be fully recognized, both at the normative and operational levels. We believe that the ILO should be given a lead role in the global governance of labour migration, and that this role should be made explicit in this section of the text.</p>
<p>IMPLEMENTATION, paragraph 47-1) [new] <u>Recognizing the importance of the Whole-of-Society approach for the implementation of the Global Compact, foster multi-stakeholder partnerships, ensuring a clear role for trade unions and other civil society organizations in consultations on migration policy formulation and implementation at global, regional, and national levels.</u></p>	<p>To be consistent with the Whole-of-Society principle, Implementation modalities must foresee a clear role for stakeholders, and in particular, for trade unions and other civil society organizations.</p>
<p>FOLLOW-UP AND REVIEW paragraph 49 d) The International Migration Review Forum shall discuss the implementation of the Global Compact at the local, national, regional and global levels, as well as allow for <u>social dialogue and</u> interaction with other relevant</p>	<p>Recognizing the crucial contribution of the ILO in relation to labour migration policy, including through its tripartite processes of social dialogue at national, regional and global levels, we call for the strengthening of the role of that organization with regard to the monitoring, implementation and</p>

<p>stakeholders, with a view to building upon accomplishments and identifying opportunities for further cooperation</p>	<p>review of labour migration policy at all of these levels, and for the use of social dialogue to engage the social partners in monitoring and review of migration policies and programmes.</p>
<p>FOLLOW-UP AND REVIEW paragraph 51 We invite the Global Forum on Migration and Development to provide a space for annual informal exchange among States on the implementation of the Global Compact, <u>including consultations with trade unions and other civil society organizations</u>, and report the findings, best practices and innovative approaches to the International Migration Review Forum.</p>	<p>Consistent with the Whole-of-Society Principle, the GFMD should provide an assured and meaningful space for consultations and dialogue with trade union and other civil society organizations.</p>