**United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families**

*Draft General Comment No. 6 on the Convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration*

**Concept Note, Guiding Questions and Call for Submissions**

*In follow-up to the extraordinary meeting of the CMW Working Group on General Comment No. 6 in Agadir, Morocco, 10-11 May 2022*

1. **Introduction**

At its thirtieth session in April 2019, the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Committee) established a working group on the Convention and the Global Compact for Safe, Orderly and Regular Migration, which was endorsed by the General Assembly on 19 December 2018 in its resolution 73/195 (the Global Compact). Following some preparatory work by the working group, which is coordinated by Mr. Mohamed Charef, the Committee decided to elaborate a new general comment (No. 6) on the convergence of the Convention and the Global Compact at its inter-sessional meeting of 12 November 2020.

Upon an invitation from the President of the General Assembly, the Committee was also represented by the Chair, Mr. Corzo Sosa, alongside Mr. Charef, at the first International Migration Review Forum under the Global Compact in New York, from 17 to 20 May 2022. They participated in open consultations with stakeholders, including national human rights institutions and civil society organizations, and a number of technical round tables. In his intervention, the Chair focused on the convergence between the Convention and the Global Compact for Migration and emphasized the work of the Committee on general comment No. 6.

During the course of its thirty-first to thirty-fourth sessions, and during the intersessional periods, the working group and the Committee have continued their activities for the elaboration of general comment No. 6. Five relevant documents have been developed to date by the working group:

(a) The first draft of a comparative analysis of the Convention and the Global Compact, prepared by Mr. Charef;

 (b) A position paper of the Committee for the Global Forum on Migration and Development that addresses the coexistence of the Convention and the Global Compact, developed by Mr. Oumaria;

 (c) A paper analysing the four-dimensional vision of human rights in the Global Compact, prepared by the Chair, Mr. Corzo Sosa;

(d) A presentation prepared by Mr. Charef for the thirty-fourth session of the Committee clustering the objectives of the Global Compact for Migration into four broader axes where they correspond to the substantive articles of the Convention, highlighting the gaps between the two instruments (see below);

(e) A guide to improve process and outputs of the international migration review forum under the Global Compact and align them with the concluding observations of the CMW, including the participation of CMW members in consultations and forums organized by the UN Network on Migration, prepared by former CMW member, Ms. María Landázuri de Mora.

The CMW Secretariat has also prepared a background paper on certain provisions of the Global Compact vis-à-vis the Convention and a synopsis of their relevant provisions.

The Committee further decided, at its thirtieth session, to include a standard paragraph in its concluding observations noting positively if the State party had voted in favour of the Global Compact and recommending that the State party work towards its implementation, ensuring full compliance with the Convention.

The current members of the working group are: Mr. Charef (Coordinator), Mr. Babacar, Mr. Corzo Sosa, Ms. Diallo, Mr. Oumaria, Ms. Poussi and Mr. Soualem. In addition to most of the members of the working group, Committee member, Mr. Can Ünver, participated in the extraordinary meeting of the working group and CMW Secretariat members in Agadir, Morocco, 10-11 May 2022, to advance the drafting process of the general comment No. 6.

1. **Background and Goals**

The current global context of migration is marked by increasing reports about serious and repeated violations of the human rights of migrant workers and members of their families due to, among other things, migration governance problems in countries and policies of exclusion and measures of repression; the need to put human rights back at the heart of discussions and actions in the context of international migration; the importance of better taking into account the positive effects of migration on the development of countries, in connection with the Sustainable Development Goals 2030; and the need to deal with migration issues in accordance with the global reality by including all stakeholders concerned, including migrant workers and members of their families, on the basis of a global partnership.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the General Assembly by its resolution 45/158 on 18 December 1990. It is the only binding international Treaty on the human rights of migrant workers and members of their families, in fact it is the only binding international instrument in the field of international migration in general. The Convention provides a comprehensive legal framework for the protection of the human rights of all migrant workers and members of their families. With limited exceptions,[[1]](#footnote-1) it does not confer additional human rights to them, which are not contained in other international human rights instruments with much larger ratification rates, but rather puts these rights as minimum guarantees into a specific context of migration and its inherent vulnerabilities. Migrant workers constitute around 169 million[[2]](#footnote-2) of the total global migrant population of more than 280 million,[[3]](#footnote-3) and no State can address international migration alone due to its very nature.

The Global Compact for Safe, Orderly and Regular Migration is an inter-governmentally negotiated agreement, prepared under the auspices of the United Nations, covering all dimensions of international migration in a holistic and comprehensive manner. It presents a significant opportunity to improve international cooperation on migration, including protecting the human rights of people on the move and making the contributions of migrants and migration to sustainable economic, social and cultural development visible in countries of origin, transit, destination and return. However, the Global Compact is a non-binding international agreement with a menu, as comprehensive as it may be, from which States may select policy options to address perceived pressing issues around international migration.

The Global Compact’s references to human rights could be grouped into four broader dimensions: (i) human rights as guiding principles for the interpretation of the Global Compact; (ii) express or implicit references to human rights, for example, the right to privacy;[[4]](#footnote-4) (iii) interaction with human rights, for example, in relation to commitments for the prevention of human rights violations[[5]](#footnote-5) or making rights more accessible for migrants;[[6]](#footnote-6) and (iv) quotations of documents immersed with human rights principles in Objectives 2, 7, 11 and 15 of the Global Compact.[[7]](#footnote-7)

OP 16 of the Global Compact lays out a cooperative framework for States comprising 23 objectives for safe, orderly and regular migration with commitments and actions considered to be relevant policy instruments and best practices that are fleshed out throughout the Global Compact. They may be clustered into four broader, partly overlapping, categories[[8]](#footnote-8) and correspond to the substantive articles of the Convention as follows:

* Axis No. 1 on ensuring that migration is voluntary, orderly and regular: Objective 2 (articles 42, 43, and 45 of the Convention); Objective 5 (articles 30, 35, 68, and 69 of the Convention); Objective 6 (articles 66 and 25 of the Convention); Objective 12 (articles 29, 24 of the Convention); and Objective 18 (articles 33, 36, and 52 of the Convention).
* Axis No. 2 on improving value-driven and evidence-based policymaking and public debate, and enhancing cooperation on migration: Objective 1 (article 77 of the Convention); Objective 3 (article 33 of the Convention); Objective 7 (articles 8 to 35 of the Convention); Objective 17 (article 7 of the Convention); and Objective 23 (article 64 of the Convention).
* Axis No. 3 on protecting migrants through rights-based border governance measures: Objective 4 (articles 21 and 23 of the Convention); Objective 8 (article 71 of the Convention); Objective 9 (article 68 of the Convention); Objective 10 (article 68 of the Convention); Objective 11 (articles 64 to 70 of the Convention); Objective 13 (articles 16, 17, and 18 of the Convention); and Objective 21 (article 67 of the Convention).
* Axis No. 4 on supporting the integration of migrants and their contribution to development: Objective 14 (article 23 of the Convention); Objective 15 (articles 27, 28, and 30 of the Convention); Objective 16 (articles 7 and 42(2) of the Convention); Objective 19 (article 37 of the Convention); Objective 20 (article 47 of the Convention); and Objective 22 (article 27 of the Convention).

The proposal for a general comment on the convergence between the Convention and the Global Compact aims to strengthen the protection of the human rights of all migrants globally. The main goal of general comment No. 6 is to provide authoritative guidance to States parties to the Convention for the implementation of their obligations under the Convention. This general comment will also assist States in implementing their commitments contained in the Global Compact, in particular so as to ensure that they do not fall short of the obligations contained in the Convention and other international human rights instruments for their respective States parties, as well as to assist other stakeholders in their advocacy initiatives in these contexts.

The general comment will address, inter alia, the following issues and questions:

* What should be included in the general overview section of general comment No. 6, apart from an overview of the drafting and adoption history of the Convention and the Global Compact, including references to the New York Declaration for Refugees and Migrants,[[9]](#footnote-9) and a brief synopsis of the provisions of the Global Compact, in particular its objectives, and the substantive articles of the Convention?
* What lessons can be drawn from the regional reviews and international migration review forum (IMRF) regarding the implementation, follow-up and review of the Global Compact from an international human rights perspective? To what extent has the Convention been referred to in the regional reviews and the IMRF?
* How does the Global Compact promote the engagement of States’ public authorities in its implementation, follow-up and review, compared to the Convention as interpreted by the Committee?
* How does the Global Compact promote the engagement of United Nations entities in its implementation, follow-up and review, compared to the Convention as interpreted by the Committee?
* How does the Global Compact promote the engagement of national human rights institutions in its implementation, follow-up and review, compared to the Convention as interpreted by the Committee?
* How does the Global Compact promote the engagement of civil society actors, including migrants’ organizations and migrants themselves, in its implementation, follow-up and review, compared to the Convention as interpreted by the Committee?
1. **Scope of the general comment**

This general comment will address the following:

* In what way does the Convention and the Global Compact define the scope of the general comment?
* What are the axes of the human rights vision of the Global Compact: To what extent does the Global Compact, in particular its objectives, reflect the principles of human dignity, equality and non-discrimination and the rights enshrined in the Convention and in international human rights law in general? What are the substantive gaps? What are the procedural gaps, including with a view to individual and inter-State complaints mechanisms?
* What are the strengths and weaknesses of the Global Compact in terms of a human rights based approach to international migration, including promoting the principles of non-discrimination, gender-responsiveness and child-sensitiveness, and in particular as far as the Convention is concerned? For example:
	+ How do the Convention and the Global Compact protect migrants’ right to an effective remedy?
	+ How does the Convention and the Global Compact address the issue of violence against and xenophobia towards migrants and other forms of abuse against migrants?
	+ In what ways does the Convention and the Global Compact approach due process, detention and equality before the courts?
	+ What provisions exist in the Convention and the Global Compact to protect migrants’ right to participate in public affairs and vote and to be elected in their State of origin?
	+ What is the Convention and the Global Compact’s approach to family reunification?
	+ How does the Convention and the Global Compact approach the issue of remittances?
	+ In what ways does the Convention and the Global Compact address work and residence permits?
	+ What provisions are taken in the Global Compact to promote sound, equitable, and humane migration policies compared to the Convention?
	+ In what ways does the Global Compact protect the human rights of migrant children compared to the Convention?
	+ In what ways does the Global Compact protect the human rights of migrant women compared to the Convention?
	+ What measures are taken in the Convention and the Global Compact to protect specific categories of migrant workers?
	+ How does the Convention and the Global Compacts approach to recruitment agencies compare?
	+ What measures does the Global Compact take regarding the orderly return and reintegration of migrants, including durable and cultural integration, in comparison with the Convention?
	+ What measures do the Convention and the Global Compact take to prevent irregular or clandestine migration movements and employment of migrant workers in an irregular situation?
* In general, how does the Global Compact tackle the issue of migrants in an irregular situation compared to the Convention as interpreted by the Committee?
* Conversely, does the Global Compact cover aspects of international migration, which are not addressed in the Convention as interpreted by the Committee in its concluding observations following the reviews of States parties reports to the Committee and its general comments?
* What will be the limitations of the general comment? Does the exclusion clause in article 3 of the Convention have any bearing on the scope of general comment No. 6?

**4. Proposed Themes**

* How will the framework of the Convention enable States to fulfil their pledges under the Global Compact?
* Strengths and weaknesses of the Global Compact and how these can be supported or remedied by the Convention and the Committee.
* Cross-cutting and interdependent guiding principles between the Convention and the Global Compact, for example, the management of irregular migration, international protection of all migrants, family reunification, facilitating the return and reintegration of migrants and their children and the principle of non-discrimination.
* Increasing the visibility of the Convention and its Committee, of its concluding observations, general comments, press releases, statements, campaigns, etc..
* Increasing attention to other international human rights mechanisms, including the treaty bodies, the Special Procedures and the Universal Periodic Review Mechanisms of the Human Rights Council, as well as regional human rights mechanisms.
* Importance and necessity for clarifying and specifying the existing obligations of States parties to the Convention and States parties to other relevant international human rights instruments.
1. **Call for Submissions**

All stakeholders (States, United Nations agencies and entities, national human rights institutions, civil society organizations, academia and others) are invited to provide inputs to this initiative on the basis of a **draft outline for the general comment No. 6** that the working group and present members of the Committee have elaborated at its extraordinary meeting in Agadir, Morocco, in May 2022.

Input by stakeholders should be sent electronically in Word format to the email: ohchr-cmw@un.org indicating “Submission for General Comment on the Convention on Migrant Workers and the Global Compact for Migration” in the subject heading. **Submissions should not exceed 5,000 words and should be received by 12 September 2022 at the latest.** The name of the stakeholder making the submission should be clearly indicated on the first page of the submission. Written contributions will not be translated and should preferably be submitted in English, French, or Spanish. **All submissions will be posted on the webpage of the Committee (https://www.ohchr.org/en/treaty-bodies/cmw) unless explicitly indicated to the contrary in the submission.**

1. **Methodology**

The working group will and coordinate the drafting of the general comment with relevant international and regional human rights mechanisms, in particular the Special Rapporteur on the human rights of migrants of the United Nations Human Rights Council, and other stakeholders, including national human rights institutions, civil society organizations, in particular migrants’ organizations, academia, etc.

Following the call for inputs, the Committee will hold a **half-day of general discussion on Tuesday, 27 September 2022, from 3-6pm (CET – Geneva time)**, during its thirty-fifth session to be held in Geneva from 19 to 30 September 2022 for additional input by all stakeholders. Depending upon funding, expert and regional consultations may also be held. The working group will then develop a draft of the general comment that will be published on the website of the Committee for comments by stakeholders.

END

1. The right not to lose residence or work permit for not fulfilling a contractual obligation (Article 20 (1) of the Convention), the right not to have identity papers confiscated or destroyed (Article 21), the right to consular protection and assistance (Article 23), the right to transfer savings and earnings (Article 32), and the right to information (Article 33). [↑](#footnote-ref-1)
2. In 2019, according to ILO statistics: <https://www.migrationdataportal.org/themes/labour-migration#:~:text=In%202019%2C%20there%20were%20169,countries%20(ILO%2C%202021)> [↑](#footnote-ref-2)
3. In 2020, according to UN DESA statistics: <https://www.migrationdataportal.org/international-data?i=stock_abs_&t=2020> [↑](#footnote-ref-3)
4. General Assembly resolution 73/195, paras. 17, 19(b), 20(a) and (b), 24(d), 27(b), 30(e), and 37(c). [↑](#footnote-ref-4)
5. General Assembly resolution 73/195, paras. 22(c), (e), (f), and (h), 25, 27 (e), 32(i). [↑](#footnote-ref-5)
6. General Assembly resolution 73/195, paras. 19 and 20. [↑](#footnote-ref-6)
7. For example, General Assembly resolution 73/195, para. 27(g). [↑](#footnote-ref-7)
8. Cf. <https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/survey_gcm_review_e.pdf> [↑](#footnote-ref-8)
9. General Assembly resolution 71/1 of 19 September 2016. [↑](#footnote-ref-9)