**MEMORANDUM**

To: Committee on the Rights of Migrant Workers

From: Lindsey Greising, Nathan Madson, and Verónica Cadavid González, Staff Attorneys and Legal Fellow at The Advocates for Human Rights

Date: September 12, 2022

Re: Call for input on the concept paper and outline of the general comment No. 6 on the convergence of the Convention and the Global Compact.

**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact-finding, direct legal representation, education and training, and publications. The Advocates is also the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States, and numerous survivors of human rights abuses have requested legal assistance from The Advocates.

Since 2017, we have provided pro bono legal services to low-income victims of trafficking.  We also provide outreach and training on trafficking to raise awareness and help identify and support victims.  In 2020, we also started work with the Minnesota Bureau of Criminal Apprehension to develop a labor trafficking protocol for law enforcement investigation.

We have studied the draft and provided recommendations through the lens of the work of our direct legal representation of clients who have experienced trafficking to and in the United States and by presenting the trends related to trafficking among agricultural migrant workers.

**Observations about the outline of *General Comment No. 6 on the Convergence between the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Global Compact for Safe, Orderly and Regular Migration.***

1. About the Convergence of the Convention and the Global Compact in terms of human rights principles

* The Advocates suggest that the Committee on the Rights of Migrant Workers (“the Committee”) expand on the State obligation of *due diligence.[[1]](#footnote-2)* In addition, The Advocates presents the necessity of strengthening efforts by different stakeholders to provide spaces and initiatives for migrants to know and exercise their rights.
* The Advocates has provided legal counsel for numerous groups of H-2 visa (migrant visa) workers who did not know their rights, never receiving—or, understanding-- information from consular or other United States (U.S) government officials on their rights and how to enforce them. Migrant workers’ lack of knowledge of their rights or connection to any trusted government support leaves significant leeway for employers to threaten deportation or other harms, which makes many workers vulnerable to trafficking.
* The US government has undertaken insufficient investigations and monitoring of employers at all stages of the process—from application by prospective sponsors to follow-up with offending employers.
* A human rights-based approach to the protection of migrants and migrant workers is central to the State obligation of due diligence and must ensure that migrants’ rights such as their right to health and well-being are being fulfilled, respected, and protected. Therefore, the general comment must further connect the convergence between the Compact and the Convention with the obligations to fulfill, respect, and protect economic, social, and cultural rights as those rights are at particular risk for migrant workers.
* At least two of The Advocates’ clients suffered serious workplace injuries and were prevented from obtaining medical care until their situation either became emergent or they interacted with a civil society group that helped get them to care and explain their rights. The Advocates have had several clients who were housed in inadequate housing locations—trailers fit for one family housing thirty people, housing locations lacking heat in cold locations or air conditioning in hot locations, inadequate bathroom facilities, or insufficient cooking facilities where an employer promised to provide kitchens in lieu of food.
* Employers keep employees in trafficking and exploitative situations by threatening deportation—a threat that workers take seriously because they have not received information on their rights and opportunities under visa programs. The Advocates suggest the Committee address threats of deportation and other coercive tactics that migrants can be subject to by employers and other actors when discussing the protection of vulnerable categories of migrants/humane treatment (p.3)

1. **Regarding filling the human rights and legal gaps in the Global Compact through a concomitant interpretation of the Convention and the Global Compact,**

* The Advocates has found that in the United States’ systemic gaps also produce hierarchical systems that exploit workers by involving numerous contractors and recruiters who change at each stage of the migration process. The Advocates worked with two trafficked clients who were recruited for H-2 visas on a blueberry farm by one person, transferred to another person for visa processing, another met them to travel within the home country, another met them in the U.S., and then numerous others interacted with them at the farm—none providing sufficient contacts or time to have knowledge of their names, contact information or identities, leading law enforcement to conclude it was unable to investigate and prosecute the trafficking.

***Cisgender, heterosexual male migrant workers represent the largest group of victims in our caseload, but women and LGBTQIA+ individuals face unique harms***

* It is impossible to know precisely the number and gendered make-up of victims of trafficking in agriculture in the U.S. The Advocates is aware that male migrant workers represent the largest group of victims in agricultural work, but that women and LGBTQIA+ individuals face nuanced challenges and harms that cisgender, heterosexual men do not experience. Based on our caseload, a majority of agricultural workers on H-2 visas identify as male. Of the more than 100 cases we have had, only two have involved women in agricultural work.
* LGBTQIA+ individuals also face other harms and threats. The Advocates had an LGBTQIA+ client on a J-1 visa for an agricultural exchange whose trafficker used threats of revealing the victim’s LGBTQIA+ status to people in his home country—a place that carries serious criminal penalties for such—as a means of exerting control and threatening him to remain in the trafficking situation.
* The Advocates suggest to The Committee to address the unique harms that women and LGTBQIA+ individuals

***Children are particularly vulnerable to trafficking, but some promising protection strategies exist***

* Children, and unaccompanied minors (UACs) in particular, are vulnerable to trafficking in agriculture and meatpacking. Many UACs are placed in foster homes or short-term care in remote or rural areas, often with sponsors that may not be adequately vetted or have a strong connection to the child.
* Distant relatives brought one of our minor clients to the U.S., promising the child could attend school and make lots of money. Upon arrival, however, the family member refused to let the child attend school and forced him to work at a nearby pig farm. The family member took the child’s paycheck and told the child he was unable to get a bank account without status in the U.S. The child never received his wages and eventually escaped due to severe physical and emotional harm.
* Educators who have been trained in how to identify trafficking of minors play a key role in helping link minor students with attorneys and support systems that can protect and guide them. Their ability to assist, however, is limited due to children’s fears of immigration consequences and the lack of robust government responses and resources in that regard.

1. **Access to justice for migrants**

* Even when an employer does face investigation, penalties and follow-up fall short and allow for ongoing exploitation. The Advocates had a client who was trafficked from 2011-2013 and reported the harm they experienced. A Freedom of Information Act (FOIA) request revealed the employer had been investigated and cited by the U.S. Department of Labor (DOL) for fraud in foreign labor contracting and similar harms often associated with trafficking. DOL only cited and issued a warning to the employer, yet they were permitted to continue filing H-2 applications, allowing them to continue such abuses as recently as 2021.

1. **What can the Convention bring to the Global Compact in terms of human rights protection of migrants, and vice-versa, what can the Global Compact bring to the Convention in terms of operationalizing the provisions of the Convention and contribute to migration governance?**

* The Advocates suggests the Committee acknowledging the importance of stakeholders such as the trade unions, workers’ rights organizations, and civil society in filling gaps in government monitoring and support of migrant workers such as agricultural workers. A local workers’ rights organization in rural South Dakota has provided KYR trainings to agricultural workers through which they have referred trafficking victims to our office. The organization visits known H-2 worksites, builds trust with workers, provides information in languages the workers understand, and reports to trusted partners like The Advocates, who can then report issues to law enforcement and provide legal services to those in need.

**Conclusion**

We welcome this important contribution to the international standards of migrants’ rights and look forward to further engagement with the Committee about additional drafting and the eventual implementation.

1. United Nations Office of the High Commissioner of Human Rights, Guiding Principles on Business and Human Rights, 2011, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\_en.pdf [↑](#footnote-ref-2)