**ITUC Submission for General Comment on the Convention on Migrant Workers and the Global Compact for Migration**

**ITUC Submission for General Comment on the Convention on Migrant Workers and the Global Compact for Migration**

**(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)**

**Introduction**

While the Global Compact for Safe, Orderly and Regular Migration (hereinafter, the Global Compact) acknowledges that it rests on core international human rights treaties as well as relevant ILO conventions[[1]](#footnote-2) and is based on international human rights law,[[2]](#footnote-3) as the Compact itself is a non-binding instrument, it is important and necessary to clarify and specify the existing international obligations,[[3]](#footnote-4) States must respect, protect and fulfil when implementing their commitments under the Global Compact. As such, ITUC welcomes the opportunity to contribute to the preparation of a new general comment that aims to assist States in complying with their international “obligations contained in the Convention and other international human rights instruments for their respective States parties.”[[4]](#footnote-5)

In this regard, ITUC would like to highlight the centrality of international labour standards and the role of ILO in providing tools for both countries of origin and of destination to design and implement migration policies which ensure that rights of all migrant workers are upheld, which is also one of Global Compact’s guiding principles.

**Centrality of ILO Conventions, Standards and Supervisory Mechanisms**

The Convention can play an important role in providing a normative framework to the implementation of the Global Compact. In addition to the Convention, it is important, however, to mention the centrality of ILO fundamental Conventions and Protocols (Conventions 29 + Protocol, 105, 87, 98, 100, 111, 138 and 182), ILO standards concerning migrant workers (Conventions 97 and 143 and accompanying Recommendations) and other relevant standards and guidelines[[5]](#footnote-6) to ensure a rights-based implementation of the Global Compact.

ITUC would call the CMW to reference these standards throughout the new general comment and in particular in parts concerning fundamental rights of migrant workers, which should include freedom of association and collective bargaining, non-discrimination in recruitment and employment, freedom from forced or compulsory labour and freedom from child labour. We recall that application of 8 ILO fundamental Conventions to all migrant workers, regardless of status, has been reaffirmed in the resolution adopted by the ILO Conference at its 92nd Session (2004) (para 12).

ILO’s Committee of Experts on the Application of Conventions and Recommendations (ILO CEACR) recalled on many occasions that international labour standards and the provisions of related United Nations human rights treaties are complementary and mutually reinforcing. Continuing close cooperation between the ILO and the CMW to supervise the application of the respective instruments is therefore essential.

The Concept Note lists “increasing attention to other international human rights mechanisms” as one of the proposed themes for the new general comment. In this vein, the role of ILO’s supervisory mechanisms, including the General Surveys, should be highlighted so that the core competencies and expertise of the ILO in relation to labour migration and related aspects, both at normative and operational levels, can be utilised.

We would also advise to review the sentence in the introduction of the Draft Outline, which reads “The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Convention) – the only global legally binding instrument on migration […]”[[6]](#footnote-7) to include reference to the ILO instruments on migrant workers and their global legally binding character. A revision should also be made to the similar wording in the Concept Note.[[7]](#footnote-8)

**Importance of Social Dialogue and Role of Social Partners**

One of the guiding principles of the Global Compact is the “whole-of-society approach” according to which “the Global Compact promotes broad multistakeholder partnerships […] including migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, national human rights institutions, the media and other relevant stakeholders in migration governance.” [[8]](#footnote-9)In keeping with the Compact’s whole-of-society principle, trade unions and other civil society organisations should be given clear roles in the implementation, follow-up and review of the Global Compact at global, regional and national levels.

Meaningful involvement of social partners, i.e. workers’ and employers’ organizations, in all stages of the Compact’s implementation would enable development of sound and sustainable labour migration policies based on actual experiences and needs.

**Decent Work**

In relation to decent work aspects, the Draft Outline mentions Articles 17 and 70 of the Convention and Objective 17 of the Global Compact. ITUC considers it important here to also highlight the ILO definition of “decent work”, which builds on 4 pillars: (a) respect of standards and rights at work, including fundamental labour standards of freedom of association and collective bargaining, non-discrimination, freedom from forced or compulsory labour and from child labour; (b) employment creation; (c) social protection and (d) social dialogue.

In addition, ITUC highlights States parties’ obligations to ensure that “migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration” and other conditions of work and other terms of employment as elaborated under Article 25 of the Convention. The Article’s sub-paragraph (3) is particularly noteworthy as it obligates States parties to ensure this principle of equal treatment regardless of any irregularity in the stay or employment of the migrant worker. This principle should inform all activities States carry out to implement the Global Compact, and in particular, its objective 6 to “facilitate fair and ethical recruitment and safeguard conditions that ensure decent work” and objective 15 to “provide access to basic services for migrants”.

**The right to freedom of association and collective bargaining**

International human rights law and international labour standards obligate States to protect and fulfil the rights of workers to freedom of association and collective bargaing.[[9]](#footnote-10) Article 26 of the Convention itself requires States parties to recognize the right of migrant workers and members of their families to take part in meetings and activities of trade unions and of any other associations; to join freely any trade union; and to seek the aid and assistance of any trade union. The Convention, further, recognizes the right to form associations and trade unions in the State of employment in the case of migrant workers who are documented or in a regular situation (Article 40). Similarly, the Global Compact’s objective 6 to facilitate fair and ethical recruitment and safeguard conditions that ensure decent work lists freedom of peaceful assembly and association, including through social dialogue and membership in trade unions, amongst the labour rights and protections extended to migrant workers engaged in remunerated and contractual labour.

ITUC observes that, despite the presence of these rights in both instruments, the Draft Outline of the general comment does not make any reference to migrant workers’ right to freedom of association and collective bargaining, even though these are indispensable pillars to protect migrant workers’ rights and to ensure decent work.

As the Global Compact’s approach to labour rights and protections, including freedom of peaceful assembly and association, suggests a two-tiered approach making a distinction between migrant workers with contracts versus those without contracts, it would be particularly important for the general comment to highlight that international labour standards, most notably, ILO’s Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) ratified by 157 States, and Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ratified by 168 States extend these rights to all workers regardless of their migratory status and place of employment. Migrant workers’ trade union rights, including the right to freely join and form trade unions and to be represented by trade unions, including coverage by collective bargaining agreements, has been repeatedly reaffirmed by the ILO supervisory bodies, ILO CEACR as well as ILO Committee on Freedom of Association.

1. Global Compact on Migration, para. 2. [↑](#footnote-ref-2)
2. Global Compact on Migration, para. 15(f) [↑](#footnote-ref-3)
3. Concept Note, Guiding Questions and Call for Submissions for General Comment No. 6, page 6. [↑](#footnote-ref-4)
4. Concept Note, Guiding Questions and Call for Submissions for General Comment No. 6, page 4. [↑](#footnote-ref-5)
5. These include, for example, the Convention on Social Security (No. 102), the 1997 Private Employment Agencies Convention (No. 181), the Domestic Workers Convention (No. 189) and the Violence and Harassment Convention (No. 190) and their accompanying recommendations; the ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs; and the ILO Multilateral Framework on Labour Migration. [↑](#footnote-ref-6)
6. Draft Outline, page 1. [↑](#footnote-ref-7)
7. Concept Note, Guiding Questions and Call for Submissions for General Comment No. 6, page 2. [↑](#footnote-ref-8)
8. Global Compact on Migration, para 15(j). [↑](#footnote-ref-9)
9. See, for example, UDHR Arts 20 and 23(4), ICCPR Art. 12. [↑](#footnote-ref-10)