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HUMAN RIGHTS COUNCIL BACKGROUND GUIDE 2015

Written By: Sophie Crockett-Chaves, Camille Le Baron, Tassilo Oxenius, Jade Palmer



NATIONAL MODEL UNITED NATIONS





THE 2015 NATIONAL MODEL UNITED NATIONS

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Dear Delegates,

We are pleased to welcome you to the 2015 National Model United Nations Conference in New York (NMUN•NY)! This year's Human Rights Council (HRC) staff is: Directors Sophie Crockett-Chaves (Conference A) and Camille Le Baron (Conference B) with Assistant Directors Tassilo Oxenius (Conference A) and Jade Palmer (Conference B). Sophie is currently pursuing her LL.M. in International Development Law and Human Rights from the University of Warwick. She is excited to return for her fifth year on staff at NMUN•NY. Camille is a Master's candidate at Sciences Po Lille, working on international relations and political economy. This is her third year on staff at NMUN•NY. Tassilo is working as an ensign in the German Navy and is currently pursuing his Master's degree in International Relations and International Law at the German Federal Armed Forces University in Munich. It is his first year on staff at NMUN•NY and he is very grateful for this opportunity. Jade is looking forward to her third year on NMUN staff. She is currently working for Delta Air Lines.

The topics under discussion for HRC are:

- I. Advancing International Human Rights to Protect against Discrimination Based on Sexual Orientation and Gender Identity
- II. Protecting the Rights of Migrant Workers
- III. Protecting and Promoting Human Rights in Post-Conflict Societies

The HRC is a subsidiary body of the General Assembly that plays a unique role as the primary United Nations body tasked with protecting and promoting human rights. The United Nations Charter and subsequent international treaties and laws serve as a basis for HRC's mandate. The HRC is charged with taking proactive measures and fostering international cooperation in order to prevent violations of human rights. In addressing human rights issues, the HRC may initiate studies, call international conferences, submit draft conventions to the General Assembly, and make recommendations.

We hope you will find this Background Guide useful as an introduction to the topics for this committee. It is not meant to replace further research. We highly encourage you to explore your countries' policies in depth and use the Annotated Bibliography and Bibliography to further your knowledge of these topics. In preparation for the Conference, each delegation will submit a [position paper](#). Please take note of all [NMUN policies](#) on the website and in the [Delegate Preparation Guide](#), particularly those regarding plagiarism, conduct, dress code, sexual harassment, and evaluation method. Adherence to all guidelines is mandatory.

The [NMUN Rules of Procedure](#) are available to download from the NMUN website. This document includes the long and short form of the rules, as well as an explanatory narrative and example script of the flow of procedure. It is thus an essential instrument in preparing for the conference, and a reference during committee.

If you have any questions concerning your preparation for the Committee or the Conference itself, feel free to contact the Under-Secretaries-General for Human Rights and Humanitarian Affairs, Andrea Wong (Conference A) and Rubai Aurora (Conference B). You can reach either USG at: usg.hr_ha@nmun.org.

We wish you all the best in your preparations and look forward to seeing you at the Conference!

Sincerely,

Conference A

Sophie Crockett-Chaves, *Director*
Tassilo Oxenius, *Assistant Director*

Conference B

Camille Le Baron, *Director*
Jade Palmer, *Assistant Director*



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Abbreviations

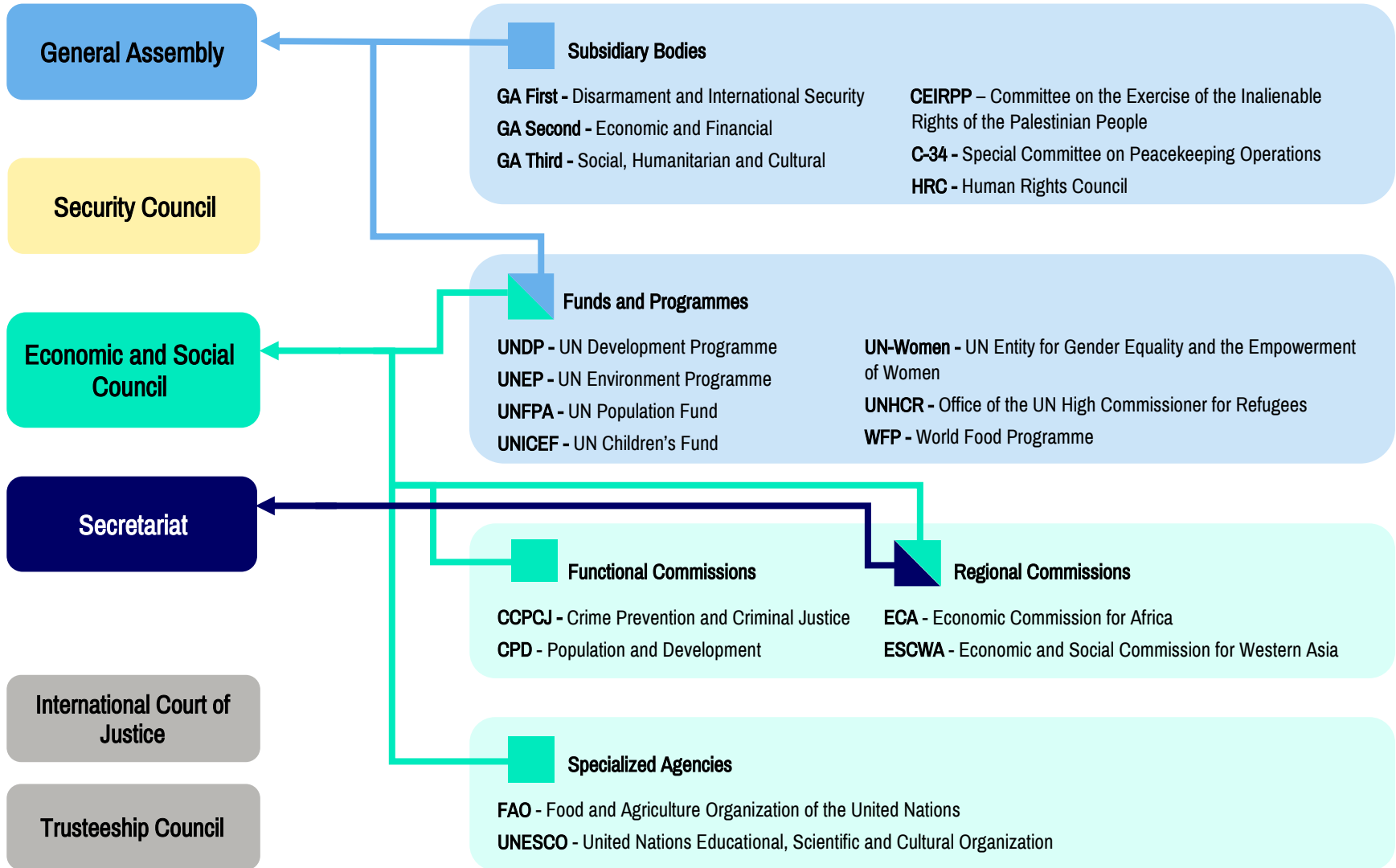
AIHRC	Afghanistan Independent Human Rights Commission
ANDS	Afghanistan National Development Strategy
AU	African Union
AVEN	Asexuality Visibility and Education Network
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
CRC	Convention on the Rights of the Child
CSE	Comprehensive sexuality education
CSO	Civil society organizations
ECOSOC	Economic and Social Council
EU	European Union
EVAW	Elimination of Violence Against Women
GA	General Assembly
GBV	Gender-based violence
GFMD	Global Forum on Migration and Development
GMG	Global Migration Group
GRULAC	Latin American and Caribbean Group
HLD	United Nations High-level Dialogue on International Migration and Development
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMC	International Catholic Migration Commission
ICPD	International Conference on Population and Development
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
IDP	Internally displaced persons
IEC	Independent Electoral Commission
ILO	International Labour Organization
IOM	International Organization for Migration
IPPF	International Planned Parenthood Federation
LGBT	Lesbian, gay, bisexual and transgender
LGBTI	Lesbian, gay, bisexual, transgender, and intersex
MDG	Millennium Development Goals
MESCA	Mediterranean-Scandinavian Group
NGO	Non-governmental organizations
NHRI	National Human Rights Institutions
OHCHR	Office of the High Commissioner for Human Rights
PCRD	Post-Conflict Reconstruction and Development
RWB	Reporters without Borders
SC	Security Council
SGBV	Sexual and gender-based violence
SOGI	Sexual orientation and gender identity
SRI	Sexual Rights Initiative
UDHR	Universal Declaration of Human Rights



UN	United Nations
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNFE	United Nations Free and Equal
UNFPA	United Nations Population Fund
UPR	Universal Periodic Review
WEOG	Western European and Others Group
WHO	World Health Organization

United Nations System at NMUN·NY

This diagram illustrates the UN System simulated at NMUN·NY. It shows where each committee “sits” within the system, to help understand the reportage and relationships between the entities. Examine the diagram alongside the Committee Overview to gain a clear picture of the committee's position, purpose and powers within the UN System.





Committee Overview

“All victims of human rights abuses should be able to look to the Human Rights Council as a forum and a springboard for action.”¹

Introduction

Over the course of 2013, several human rights abuses and themes encompassing violations of human rights drew the attention of the international community.² The situation in Syria elicited global indignation for human rights atrocities, and the plight of civilians in several African countries facing large-scale atrocities, such as the Democratic Republic of the Congo, the Central African Republic, and South Sudan, further contributed to the increased demand for the protection of human rights.³ United Nations (UN) Special Rapporteurs and independent experts have observed that since the terrorist attacks of 11 September 2001, aggressive measures implemented by Member States to combat terrorism have escalated to an extent that infringes upon individual human rights, which has created increased pressure on the UN human rights system to act.⁴

The **United Nations Human Rights Council (HRC)** is a subsidiary body, reporting to the General Assembly.

Having adopted over 456 resolutions on human rights issues since its creation in 2006, the Human Rights Council (HRC) is the main organ of the UN “responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations on them.”⁵ Its duty entails responding to urgent human rights situations around the globe by tackling issues regarding accountability and liability for violations of international human rights and humanitarian law.⁶

History

Since the signing of the *Universal Declaration of Human Rights (UDHR)* in 1948, the human rights agenda has expanded immeasurably.⁷ To facilitate the implementation of the UDHR, the UN Secretariat established a small department within the UN Headquarters in New York that would be responsible for overseeing the UN’s human rights program.⁸ This department expanded in scope in the 1980s, relocated to Geneva, and became known as the Center for Human Rights.⁹ In 1993, at the World Conference on Human Rights, Member States created the Office of the United Nations High Commissioner for Human Rights (OHCHR) with the responsibility of coordinating the human rights agenda among all intergovernmental agencies and departments within the UN.¹⁰ OHCHR is also responsible for catering to the substantive, logical, and administrative needs of all UN human rights mechanisms, including core treaty-based bodies, thematic working groups, and the HRC.¹¹

With the evolution of international human rights law, specialized agencies within the UN emerged as a result of the urgent need to respond to violations of human rights.¹² Among these was the Commission on Human Rights (CHR), an intergovernmental organization of the UN that was developed in 1946 to address human rights challenges and concerns.¹³ The CHR reported to the Economic and Social Council (ECOSOC).¹⁴ Over time, the CHR met with

¹ UN Secretary-General Ban Ki-moon, *Secretary-General's video message for the opening of the Fourth Session of the Human Rights Council*, 2007.

² Human Rights Watch, *World Report: Events of 2013*, 2013, p. 1.

³ *Ibid.*

⁴ OHCHR, *Terrorism*.

⁵ OHCHR, *The 20th Anniversary of OHCHR – 20 human rights achievements*, 2013.

⁶ *Ibid.*

⁷ Trindade, *Universal Declaration of Human Rights*.

⁸ OHCHR, *Who we are: Brief History*.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ OHCHR, *The Human Rights Council and the role of the Office of the High Commissioner for Human Rights*.

¹² OHCHR, *Who we are: Brief History*.

¹³ *Ibid.*

¹⁴ *Ibid.*

increasing criticism from the international community for “excessive politicization.”¹⁵ While it was tasked with evaluating the human rights records of individual states, the CHR could not do so impartially as its Member States manipulated votes to protect themselves from unfavorable reviews.¹⁶ Persistent controversy led to the CHR’s loss of credibility, which severely damaged the UN’s reputation and work in human rights.¹⁷

Reform efforts spearheaded by former Secretary-General Kofi Annan culminated in the creation of the HRC in 2006.¹⁸ Pursuant to resolution 60/251, the General Assembly (GA) reaffirmed its “commitment to strengthen the United Nations human rights machinery” and “decide[d] to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights.”¹⁹ The HRC possessed essentially the same responsibilities as the CHR, but now reported to the GA and possessed an enhanced scope for action under its new mandate.²⁰

As stipulated by the GA at its creation, the HRC submitted to a five-year review in 2011.²¹ All areas of the HRC were subject to scrutiny and critical assessment to ensure mechanisms and frameworks were streamlined and efficient.²² After considering the report of the specially established Intergovernmental Working Group on the Council Review, the HRC adopted resolution 16/21 on the “review of the work and functioning of the Human Rights Council.”²³ Annexed to the resolution was the review’s outcome document, which endorsed a series of efficiencies, including shifting the beginning of the yearly membership cycle from June to January and creating the Office of the President of the HRC.²⁴ Further, the HRC expressed its intention to increase transparency with respect to the selection of Special Procedures mandate-holders, the funding of Special Procedures, and the consultation process with Member States and other stakeholders prior to HRC resolutions and decisions.²⁵ However, the review identified only minor areas for improvement; the HRC’s “strong and largely well-functioning” nature led to its preservation as a subsidiary body of the GA without significant changes to its structure or operations.²⁶

Mandate

The HRC possesses a unique and comprehensive mandate outlined in GA resolution 60/251.²⁷ The GA mandated the HRC to promote universal respect for human rights and fundamental freedoms; to address and provide recommendations on all, particularly grave and systematic, violations of human rights; and to promote an effective system of coordination within the UN system, including mainstreaming mechanisms, with respect to human rights issues.²⁸ Further, the GA designated the HRC as a forum for debate and dialogue on all human rights issues, including addressing violations and responding to emergencies, promoting cooperation and education on human rights, reviewing Member States’ track records, and preventing abuses from occurring.²⁹ The HRC is guided by the underlying principles of “universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.”³⁰

¹⁵ UN Department of Public Information, *General Assembly establishes new Human Rights Council*, 2006.

¹⁶ Spohr, *United Nations Human Rights Council: Between Institution-Building Phase and Review of Status*, 2010, p. 174.

¹⁷ UN General Assembly, *In larger freedom: towards development, security and human rights for all (A/59/2005)*, 2005, p. 45.

¹⁸ Spohr, *United Nations Human Rights Council: Between Institution-Building Phase and Review of Status*, 2010, pp. 174-175.

¹⁹ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

²⁰ *Ibid.*

²¹ UN General Assembly, *Review of the Human Rights Council*.

²² UN Department of Public Information, *Five Years after Creation, General Assembly Maintains Human Rights Council as Subsidiary Body, Concluding Review of Work, Functioning*, 2011.

²³ UN Human Rights Council, *Review of the work and functioning of the Human Rights Council (A/HRC/RES/16/39)*, 2011.

²⁴ UN Department of Public Information, *Five Years after Creation, General Assembly Maintains Human Rights Council as Subsidiary Body, Concluding Review of Work, Functioning*, 2011.

²⁵ UN Human Rights Council, *Review of the work and functioning of the Human Rights Council (A/HRC/RES/16/39)*, 2011, pp. 5-6, 8.

²⁶ UN Department of Public Information, *Five Years after Creation, General Assembly Maintains Human Rights Council as Subsidiary Body, Concluding Review of Work, Functioning*, 2011.

²⁷ OHCHR, *The Human Rights Council and the role of the Office of the High Commissioner for Human Rights*; UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

²⁸ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

²⁹ OHCHR, *The Human Rights Council and the role of the Office of the High Commissioner for Human Rights*.

³⁰ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

Also crucial in informing the mandate and work of the HRC is the *International Bill of Human Rights*, which comprises the UDHR, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (1966), and the *International Covenant on Civil and Political Rights* (ICCPR) (1966) with its two Optional Protocols.³¹ These documents are the pillars that guide the HRC in its recommendations by outlining the fundamental obligations and commitments of Member States in international human rights law.³²

Governance, Structure, and Membership

Through a majority vote, the GA elects the HRC's 47 Member States, each of which serves for a period of three years.³³ While re-election is possible, states cannot serve more than two terms consecutively.³⁴ The 47 Member States are spread out in regional groups as follows: 13 for Africa, 13 for Asia, six for Eastern Europe, eight for Latin America and the Caribbean (GRULAC), and seven for the Western European and Others Group (WEOG).³⁵ The General Assembly Third Committee (Social, Humanitarian & Cultural), which is responsible for evaluating questions related to human rights, considers the annual reports of the HRC and works closely with the 52 HRC-assigned Special Rapporteurs, chairs of working groups, and independent experts.³⁶

Each year in March, June, and September, the HRC holds regular sessions to discuss various issues and, at any time, a special session may be requested by one third of the HRC's Member States "to address human rights violations and emergencies [to human rights]."³⁷ Each annual series of regular sessions is referred to as a "cycle," and every cycle is led by an elected Bureau whose members serve one-year terms.³⁸ According to Rule 9 of the HRC's Rules of Procedure, at the start of each annual organizational meeting, Member States elect "a President and four Vice-Presidents. The President and the Vice-Presidents shall constitute the Bureau."³⁹ The Bureau is responsible for all issues relating to the organization and procedure of the HRC.⁴⁰ The President is responsible for convening and chairing organizational meetings and regular sessions, as well as proposing candidates to serve as Special Procedures mandate-holders.⁴¹

The Advisory Committee acts as a think tank for the HRC's work and direction.⁴² Tasked with providing expert services to Member States, the President, and the Bureau of the HRC, the Advisory Committee focuses primarily on studies and research-based assistance.⁴³ Within the purview of the work of the HRC, the Advisory Committee may propose, for the HRC's consideration, recommendations for thematic issues or for further research.⁴⁴ The functions of the Advisory Committee also include providing expertise on thematic issues concerning the mandate of the HRC, specifically the promotion and protection of all human rights.⁴⁵ The Advisory Committee does not adopt resolutions or provide recommendations to other agencies of the UN.⁴⁶

Functions and Powers

In 2007, the HRC adopted resolution 5/1, which established mechanisms and structures to guide its program of work, rules of procedure, and other operational functions.⁴⁷ The resolution also set up the format for the Special

³¹ OHCHR, *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*, 1996.

³² OHCHR, *Human Rights: a basic handbook for UN staff*, 2002.

³³ UN Human Rights Council, *About the Council*.

³⁴ New Zealand, *United Nations Handbook 2014-15*, 2014, p. 28.

³⁵ *UN Elects New Members of Human Rights Council*, RIA Novosti, 2012.

³⁶ UN General Assembly, *Social, Humanitarian & Cultural – Third Committee*.

³⁷ UN Human Rights Council, *Sessions*.

³⁸ *Ibid.*

³⁹ UN Human Rights Council, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*; Spohr, *United Nations Human Rights Council: Between Institution-Building Phase and Review of Status*, 2010, p. 187.

⁴² UN Human Rights Council, *Background information on the Advisory Committee*.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ New Zealand, *United Nations Handbook 2014-15*, 2014, p. 32.

⁴⁶ *Ibid.*

⁴⁷ OHCHR, *Working with the United Nations Human Rights Programme - A Handbook for Civil Society*, 2008, p. 75.

Procedures, the Universal Periodic Review, and the Complaint Procedure, which encompass the main powers of the HRC.⁴⁸

Special Procedures

Special Procedures are mechanisms that enable independent parties to report, monitor, and advise on country-specific or thematic situations for the HRC.⁴⁹ Each investigation has a mandate, namely the topic under advisement, and a mandate holder, who is typically a Special Rapporteur, an independent expert, or a working group, to carry out the investigation.⁵⁰ Special Procedures are empowered to undertake country or field visits, with the support of OHCHR, and to bring specific cases and concerns to the attention of Member States.⁵¹ They can send communications detailing accusations of violations or abuses of human rights, carry out thematic studies, consult with experts, promote and raise awareness of human rights standards, organize and engage in advocacy efforts, and offer technical assistance.⁵² In June 2007, HRC resolution 5/2 defined a code of conduct for Special Procedures mandate-holders to strengthen their capacity, credibility, and visibility.⁵³

Universal Periodic Review

The Universal Periodic Review (UPR) is also one of the most important functions of the HRC, as it reminds all UN Member States of their responsibility to the human rights agenda and other fundamental freedoms.⁵⁴ Through the HRC, each Member State of the UN submits to a periodic review to assess its fulfillment of its human rights obligations.⁵⁵ As of 2011, all 193 Member States had undergone the UPR process.⁵⁶ As a collaborative process, the UPR mechanism involves an interactive dialogue with the Member States being reviewed.⁵⁷

The cycle of the UPR process takes around four years and comprises several steps.⁵⁸ At the preparation stage, information is gathered that will form the basis of the review, including national reports from the state under review, stakeholder submissions, and information prepared by OHCHR.⁵⁹ At the review stage, documents are presented at the regular sessions of the Working Group on the UPR, which is composed of all 47 Member States of the HRC.⁶⁰ At the adoption and considerations stage, each Member State provides comments; the state under review can also offer reservations on specific issues.⁶¹ Finally, during the follow-up stage, each state under review demonstrates how effectively they have acted upon the recommendations received.⁶² In order to facilitate the process, each review of a state has a group of rapporteurs, known as a “troika,” which presents the relevant information, ensures the interactive dialogue runs smoothly, and monitors the review cycle.⁶³

Partnerships

One of the ways the HRC strengthens its efforts is by forming partnerships with civil society, non-governmental organizations (NGOs), other international organizations, and specialized agencies of the UN.⁶⁴ Partnerships facilitate many of the HRC’s initiatives, including specific programs or frameworks aimed at targeting groups that are deprived of their access to fundamental human rights and freedoms.⁶⁵ This engagement with different sectors of public life allows the HRC to promote and protect human rights more effectively.⁶⁶

⁴⁸ Ibid.

⁴⁹ OHCHR, *Special Procedures of the Human Rights Council*.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ OHCHR, *Working with the United Nations Human Rights Programme - A Handbook for Civil Society*, 2008, p. 83.

⁵⁴ UN Human Rights Council, *Universal Periodic Review*.

⁵⁵ OHCHR, *Working with the United Nations Human Rights Programme - A Handbook for Civil Society*, 2008, p. 80.

⁵⁶ UN Human Rights Council, *Universal Periodic Review*.

⁵⁷ OHCHR, *Working with the United Nations Human Rights Programme - A Handbook for Civil Society*, 2008, p. 80.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid., p. 137.

⁶⁴ OHCHR, *Civil Society*.

⁶⁵ Ibid.

⁶⁶ Ibid.

During its five-year review in 2011, the HRC enhanced the participation of National Human Rights Institutions (NHRIs) within its framework, giving them more opportunities to discuss issues during sessions; similar to civil society organizations, NHRIs may now engage in the process of expert nominations for Special Procedures.⁶⁷ In 2008, the OHCHR released a handbook for civil society, entitled *Working with the United Nations Human Rights Programme*, to disseminate important information for outside institutions wishing to engage with the UN process.⁶⁸

Current Priorities

Program 20 of the UN's Strategic Framework for 2014-2015, which focuses on human rights, falls under the overall competence, authority, and decisions of the GA and the HRC.⁶⁹ This framework defines the goals and priorities of the UN human rights program and outlines the strategies and approaches for achieving them.⁷⁰ It includes sub-programs such as "Human rights mainstreaming, right to development, and research and analysis; Supporting human rights treaty bodies; Advisory services, technical cooperation and field activities; and Supporting the Human Rights Council, its subsidiary bodies and mechanisms."⁷¹ The priorities for this biennium include placing human rights on national and international agendas in order to tackle questions of poverty and combat discrimination, as well as advancing women's and children's rights to all levels of education.⁷² The framework also determines that important HRC mechanisms, such as the Universal Periodic Review, Special Procedures, and the Advisory Committee, should and will be strengthened to improve support to the HRC.⁷³

The UN human rights program also falls under the leadership of OHCHR, which in turn reports directly to the Secretary-General.⁷⁴ During his initial address to the HRC on 10 September 2014, the newly appointed High Commissioner for Human Rights, Mr. Zeid Ra'ad Al Hussein, highlighted the escalation of grave human rights violations in the Middle East and North Africa.⁷⁵ He underlined the consequences of the Syrian conflict to the region, as well as the situations in Iraq, the Occupied Palestinian Territories, the Central African Republic, the Democratic Republic of Congo, and South Sudan.⁷⁶ He further highlighted the situation of migrants, who are often forced to endure ill treatment as a result of human trafficking, difficult border crossings, and prolonged detentions.⁷⁷ He noted that the Sustainable Development Goals "should effectively integrate all human rights, including the right to development, and address discrimination and inequalities that hinder peoples' progress."⁷⁸

Recent Sessions

In June 2014, during its 26th regular session, the HRC created a thematic mandate for a Special Rapporteur on the rights of persons with disabilities, underlining the importance of integrating disabled persons in society and in the post-2015 development framework through drafting disability-specific programs and mainstreaming the needs of persons with disabilities.⁷⁹ A country mandate was also created for Côte d'Ivoire, after its Independent Expert highlighted to Member States the need "to undertake broad consultations in the framework of the reform of the Independent Electoral Commission (IEC)."⁸⁰ During that same session, the Working Group on the issue of human rights and transnational corporations and other business enterprises met to discuss the ways to implement the *Guiding Principles on Business and Human Rights* and to reaffirm corporate responsibility and respect for human

⁶⁷ Commonwealth Human Rights Initiative, *Civil Society and National Human Rights Institutions*, 2011.

⁶⁸ OHCHR, *Working with the United Nations Human Rights Programme - A Handbook for Civil Society*, 2008.

⁶⁹ UN General Assembly, *Proposed strategic framework for the period 2014-2015: Programme 20 (A/67/6(Prog.20))*, 2012.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ UN Department of Public Information, *UN Human Rights Chief Zeid addresses the 27th Human Rights Council session*, 2014.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Universal Rights Group, *URG Human Rights Council Session Reports: Report on the 26th Session of the HRC*, 2014.

⁸⁰ UN Department of Public Information, *Côte d'Ivoire: UN expert calls for broad consultations on the reform of the Electoral Commission*, 2014.

rights.⁸¹ In December 2014, the Working Group will hold the 3rd Forum on Business and Human Rights in Geneva.⁸² The HRC's report on its 7th organizational meeting, 22nd session, and 23rd session (A/68/53), which detailed the HRC's activities and adopted resolutions, decisions, and presidential statements from January 2013 to June 2013, was submitted to the GA for review.⁸³

The HRC's 27th regular session concluded on 26 September 2014 with the adoption of resolutions on several subjects, including sexual orientation and gender identity, the human rights and humanitarian situation in Syria, civil society space, and the impact of foreign debt on human rights.⁸⁴ The HRC created a mandate for a Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights.⁸⁵ Recurring themes in the HRC's work included freedom of assembly and association, arbitrary detention, democracy and rule of law, racism, maternal mortality, and violence against women.⁸⁶ On 21 October 2014, the GA elected 15 Member States to serve three-year terms on the HRC beginning in January 2015.⁸⁷ Bolivia, Botswana, Congo, India, and Indonesia were re-elected to serve second consecutive terms.⁸⁸

Conclusion

The HRC addresses human rights on global, regional, and national levels, endeavoring to ensure that all Member States safeguard the fundamental freedoms and rights articulated by international law.⁸⁹ The post-2015 development agenda presents an important opportunity for significant progress to be made in the field of human rights.⁹⁰ Issues such as minority rights are critical to an “inclusive post-2015 development agenda”; the HRC has a crucial role in defining minority development in particular, which it has characterized as multifaceted and extending beyond income and poverty.⁹¹ The HRC will work alongside the United Nations Development Group Mainstreaming Mechanism, which was created in 2009 to “advance human rights mainstreaming efforts within the UN development system” and to ensure that human rights are at the forefront of the development agenda.⁹² In light of the numerous challenges faced by the HRC and the human rights agenda, delegates must utilize all the tools and frameworks available to them in order to devise durable solutions to the problems at hand.

⁸¹ UN Human Rights Council, *Working Group on the issue of human rights and transnational corporations and other business enterprises*.

⁸² Ibid.

⁸³ UN Human Rights Council, *Annual Reports of the Human Rights Council*, 2013.

⁸⁴ UN Department of Public Information, *Human Rights Council concludes twenty-seventh session after adopting 32 resolutions and four presidential statements*, 2014.

⁸⁵ Ibid.

⁸⁶ UN Human Rights Council, *Annual Calendar of Thematic Resolutions*, 2013.

⁸⁷ UN Department of Public Information, *In Single Secret Ballot, General Assembly Elects 15 Member States to Three-Year Terms of Human Rights Council*, 2014.

⁸⁸ Ibid.

⁸⁹ OHCHR, *Working with the United Nations Human Rights Programme - A Handbook for Civil Society*, 2008, pg. 75.

⁹⁰ OHCHR, *Human Rights and Post-2015 Development Agenda*.

⁹¹ OHCHR, *Minority rights key to an inclusive post-2015 development agenda*, 2014.

⁹² OHCHR, *Mainstreaming Human Rights*.

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Office of the United Nations High Commissioner for Human Rights. (2002). *Human Rights: a basic handbook for UN staff*. Retrieved 16 August 2014 from: <http://www.ohchr.org/Documents/Publications/HRhandbooken.pdf>

This handbook provides delegates with a comprehensive view of the human rights system within the context of the UN. Even though some parts may be slightly outdated, the handbook provides a very detailed account of the UN's human rights instruments, the international mechanisms that evolved to monitor the implementation of rights and process complaints, and the strategies engaged to promote and protect human rights within the UN.

Office of the United Nations High Commissioner for Human Rights. (2008). *Working with the United Nations Human Rights Programme - A Handbook for Civil Society*. Retrieved 17 September 2014 from:

http://www.ohchr.org/en/AboutUs/CivilSociety/Documents/Handbook_en.pdf

This handbook, which is designed to explain how civil society can engage with various UN human rights bodies and mechanisms, also provides delegates with a comprehensive view of all human rights instruments within the UN system. It addresses how the UN human rights bodies and mechanisms can be used, provides information on funds and grants, lists key contacts at OHCHR, and includes links to other resources. This is an extremely useful tool for delegates to understand the mechanisms as a whole and also how civil society engages with human rights at the UN.

Rathgeber, T. (2010). *Reviewing the UN Human Rights Council: Perspectives from Civil Society*. Friedrich-Ebert-Stiftung, Department for Global Policy and Development. Retrieved 13 August 2014 from: http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/reviewing_the_un_human_rights_council_perspectives_from_civil_society.pdf

This document provides an interesting analysis of the HRC from another perspective, which allows delegates to enrich their sources for reference in committee. The document also provides a number of recommendations on best practices for the HRC based on existing principles. This includes the Code of Conduct for Special Procedures, the Universal Periodic Review, and Membership.

United Nations, Human Rights Council. (2007). *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*. Retrieved 13 August 2014 from:

<http://unispal.un.org/UNISPAL.NSF/0/325B5DF6ABBFBF268525734100634561>

One of the most important and crucial resolutions of the HRC, resolution 5/1 details an agreed package that established the procedures, mechanisms, and structures to form the basis for its future work. This included the HRC's agenda, program of work, and rules of procedure. The resolution also modified the system of expert advice and the complaint procedure inherited from the Commission. This document is fundamental for delegates to understand how the HRC operates.

United Nations, Human Rights Council. (n.d.). *About the Council* [Website]. Retrieved 13 August 2014 from:

<http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx#ftn1>

This website provides delegates with a basic overview of the history and structure of the HRC. It also includes rules of procedure and key background documents that are crucial to the HRC's mandate and functions. Finally, the page provides information on Commissions of Inquiry and Special Procedures.

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I. Advancing International Human Rights to Protect against Discrimination Based on Sexual Orientation and Gender Identity

“As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity. (...) Where there is a tension between cultural attitudes and universal human rights, rights must carry the day.”⁹³

Introduction

The United Nations (UN) framework expressed concern regarding persistent acts of discrimination and human rights abuses on the grounds of sexual orientation and gender identity (SOGI) taking place around the world in the early 1990s.⁹⁴ Nonetheless, it has been only over the last several years that the question of sexual orientation and gender identity was formally broached within the Human Rights Council (HRC) due to its perception as a controversial and sensitive topic.⁹⁵ Despite progress in the universal promotion of human rights, discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) people remains a prevailing issue at an international and national level.⁹⁶ Stigma and discrimination based on SOGI can take many forms, ranging from psychological harassment to physical assault, violence, and killings.⁹⁷ Homophobic and transphobic attitudes are part of a wider pattern of sexual and gender-based violence (SGBV), and often tied in with misogyny and a fundamental lack of respect for women’s rights.⁹⁸ Persecutions and abuses on the grounds of sexual orientation and gender identity can be hard to identify, as they take place both in the private and public sphere, and are deeply entrenched within prevailing traditional, religious, and cultural values.⁹⁹ To date, over 76 states still retain laws that criminalize same-sex relationships by either fining, or imprisoning the so-called perpetrators, or in some cases, practicing “corrective” rape, and the death penalty.¹⁰⁰ As pointed out by outgoing UN High Commissioner for Human Rights Navi Pillay, “the struggle to protect and promote the rights of [LGBTI] persons is one of the great neglected human rights challenges of our time.”¹⁰¹

Advancing universal human rights to protect against discrimination based on SOGI is at the core of HRC’s mandate, reflecting the principle of non-discrimination, which is a cornerstone of the *Universal Declaration of Human Rights*.¹⁰² Human rights mechanisms advocated by HRC aim at promoting universal rights, including the right to express safely one’s sexual orientation, and to exercise freely one’s sexual rights.¹⁰³ Thus, protecting LGBTI people from violence, stigma, and human rights violations does not specifically require the establishment of new SOGI-oriented rights, but rather the respect and reinforcement of existing fundamental human rights standards.¹⁰⁴ Addressing this topic on the HRC agenda is essential, given that not all voices within the UN agree on the best way to prevent discrimination based on SOGI, and some proposals could be considered a significant setback for LGBTI rights.¹⁰⁵ Several terms essential to understanding this topic are defined below:

- Sexual orientation refers to a person’s sexual identity, in relation to the gender to which the individual is physically and emotionally attracted.¹⁰⁶

⁹³ UN Department of Public Information, *Speech by UN Secretary-General Ban Ki-Moon at Ending Violence and Criminal Sanctions Based on Sexual Orientation and Gender Identity Event*, 10 December 2010.

⁹⁴ OHCHR, *Combating discrimination based on sexual orientation and gender identity*, 2014.

⁹⁵ UNFE, *Factsheet: Equality and Discrimination*, 2013, p. 1.

⁹⁶ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

⁹⁷ UNFE, *Factsheet: Homophobic and Transphobic Violence*, 2013, p. 1.

⁹⁸ Ibid.

⁹⁹ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

¹⁰⁰ UNFE, *Factsheet: Criminalization*, 2013, p. 1.

¹⁰¹ OHCHR, *Statement by Navi Pillay United Nations High Commissioner for Human Rights on the occasion of the presentation of the ILGA “LGBTI Friend of the Year” award and 2014 State-Sponsored Homophobia report and the Panel on International Human Rights Law and Sexual Orientation*, 30 May 2014.

¹⁰² UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

¹⁰³ Girard, *Negotiating Sexual Rights and Sexual Orientation at the UN*, 2008, p. 355.

¹⁰⁴ OHCHR, *Combating discrimination based on sexual orientation and gender identity*, 2014.

¹⁰⁵ ICS, *Human Rights, SOGI in the Commonwealth: Struggles for Decriminalization and Change*, 2013, p. 478.

¹⁰⁶ UNFE, *Factsheet: Frequently Asked Questions*, 2013, p. 1.

- Homosexuals (gay and lesbian) are attracted to individuals of their own sex, while heterosexuals are attracted to individuals of the opposite sex.¹⁰⁷
- Bisexuality refers to individuals who are attracted to both sexes.¹⁰⁸
- Asexuality is a form of sexual orientation that concerns people who do not experience sexual attraction.¹⁰⁹
- The term gender refers to the social roles and attitudes attributed by society to women and men, while the term sex refers to the biological and physiological features that characterize them.¹¹⁰ Thus, gender identity is a person's private experience and own sense of his or her gender.¹¹¹
- Transgender describes a wide range of individuals whose identity is considered as third gender, or more typically people whose appearance and features are considered as gender atypical.¹¹²
- Intersex refers to individuals who are born with sexual anatomy or reproductive organs that do not typically fit into the gender norm.¹¹³ They can identify as woman, man, or third gender.¹¹⁴
- Sexual rights are human rights which aim at protecting individuals' rights to fulfil and express their sexuality free from discrimination; to enjoy sexual health and pleasure, including reproductive rights; and to benefit from bodily integrity and dignity.¹¹⁵
- SGBV refers to violence that is directed against a person on the basis of gender, and entrenched within gender inequalities and power dynamics.¹¹⁶ Women are the most vulnerable to this form of violence, but men can also fall prey to it.¹¹⁷ SGBV reflects on a wide range of abuses including rape, exploitation, domestic violence, involuntary prostitution, torture, female genital mutilation or cutting, and sexual harassment.¹¹⁸

International and Regional Framework

The preexisting international human rights framework is central to any future discussion focused on sexual orientation and gender identity. The principles of equality, universality, and non-discrimination are the foundation of human rights, enshrined in the 1945 *Charter of the United Nations* and the 1948 *Universal Declaration of Human Rights* (UDHR).¹¹⁹ The first article of the UDHR is unequivocal, stating, "all human beings are born free and equal in dignity and rights."¹²⁰ Similarly, the 1966 *International Covenant on Civil and Political Rights* (ICCPR) contends that each state should respect the rights of all individuals recognized within the Covenant, "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹²¹ This particular quote taken from article 2 of the ICCPR is at the core of this topic as exemplified in the historic case *Toonen v. Australia*, in which the United Nations Human Rights Committee held that "other status" and "sex" include sexual orientation and gender identity.¹²² This decision created a precedent within UN human rights agencies, and while very few legal agreements in the UN framework directly reference SOGI, the principles of non-discrimination and equality still apply in any instance of human rights violations based

¹⁰⁷ UNFE, *Factsheet: Frequently Asked Questions*, 2013, p. 1.

¹⁰⁸ *Ibid.*, p. 2.

¹⁰⁹ Asexuality Visibility and Education Network, *Welcome to AVEN*, 2014.

¹¹⁰ WHO, *What do we mean by sex and gender?*, 2014.

¹¹¹ UNFE, *Factsheet: Frequently Asked Questions*, 2013, p. 2.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ International Planned Parenthood Federation, *Sexual Rights: an IPPF declaration*, 2013.

¹¹⁶ UNFE, *Factsheet: Homophobic and Transphobic Violence*, 2013, p. 1.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 4.

¹²⁰ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

¹²¹ UNHCR, *Refworld: Legal Documents Related to Sexual Orientation and Gender Identity*, 2014.

¹²² ICS, *Human Rights, SOGI in The Commonwealth: Struggles for Decriminalization and Change*, 2013, p. 483.

on sexual orientation and gender identity.¹²³ Other essential documents within the international legal framework which highlight non-discrimination include the *Convention relating to the status of refugees* (1951) and its *Protocol* (1967), the *International Labour Organization Convention on Discrimination in Employment or Occupation* (1958), the *Convention on the Elimination of All forms of Discrimination against Women* (1979), the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), the *Convention on the Rights of the Child* (1989), and the *Vienna Declaration and Programme of Action* (1993).¹²⁴ Since the *Toonen v. Australia* case, UN treaty bodies have confirmed repeatedly in decisions or general policy guidance that sexual orientation and gender identity are included under international human rights law as inadmissible causes for discrimination.¹²⁵ Another instrumental covenant is the 1994 *International Conference on Population and Development (ICPD) Programme of Action*, which advocates for the full implementation of reproductive health and reproductive rights, while also recognizing sexual rights as an inalienable part of universal human rights.¹²⁶ The current ICPD Beyond 2014 review process represents a unique opportunity to identify remaining challenges regarding sexual expression and to develop future policies that favor positive sexual experiences.¹²⁷

Two recent international agreements directly refer to human rights and their application to issues of sexual orientation and gender identity. First, the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity were developed in Indonesia in 2006.¹²⁸ These twelve principles address the reinforcement of human rights in relation to matters of sexual orientation and gender identity, including rights to security and safety, rights to non-discrimination, rights to fair employment, rights to health, rights to education, and rights to political participation.¹²⁹ Secondly, in June 2011, the HRC adopted resolution 17/19 on “Human rights, sexual orientation, and gender identity.”¹³⁰ This is the first UN resolution on the topic, in which the HRC Member States express their concern in view of growing acts of persecutions and discriminations based on SOGI.¹³¹ This resolution has paved the way for more action towards the acknowledgement of LGBTI rights within the UN framework, as well as at a regional and national level.¹³² Notably, on 26 September 2014, the HRC adopted its second resolution on “Human rights, sexual orientation, and gender identity” during its 27th session.¹³³ This resolution is considered a major achievement in the highlight the importance of protecting existing rights of those at risk of discrimination because of their sexual orientation or gender identity.¹³⁴

Role of the International System

A number of ongoing UN processes are in place to prevent discrimination based on sexual orientation and gender identity, advance LGBTI persons’ access to human rights, and promote sexual rights.¹³⁵ In particular, HRC bolstered its efforts through the adoption of resolution 17/19 in June 2011, and during the panel discussion on the issue of SOGI in March 2012.¹³⁶ This panel was a landmark event, as it represented the first time an intergovernmental body discussed systematic violence and discrimination around the world on the grounds of SOGI.¹³⁷ It was also an opportunity for concerned actors and Member States to share successes, make recommendations, and review the 2011 report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on violence and

¹²³ ICJ, *SOGI in HR Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System*, 2010, p. 5.

¹²⁴ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 4.

¹²⁵ ICS, *Human Rights, SOGI in The Commonwealth: Struggles for Decriminalization and Change*, 2013, p. 483.

¹²⁶ Center for Reproductive Rights, *ICPD and Human Rights: 20 years of advancing reproductive rights through UN Bodies and legal Reform*, 2013, p. 11.

¹²⁷ *Ibid.*

¹²⁸ *The Yogyakarta Principles on the Application of International Human Rights Law in Relation to SOGI*, 2007.

¹²⁹ ARC International, *Yogyakarta Principles in Action*, 2014.

¹³⁰ UNHRC, *Human rights, sexual orientation and gender identity (A/HRC/RES/17/19)*, 2011.

¹³¹ Amnesty International, *Sexual Orientation and Gender Identity*, 2014.

¹³² UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

¹³³ Human Rights Watch, *UN Landmark Resolution on Anti-Gay Bias*, 2014.

¹³⁴ *Ibid.*

¹³⁵ OHCHR, *Combatting discrimination based on sexual orientation and gender identity*, 2014.

¹³⁶ UNHRC, *HRC panel on ending violence and discrimination against individuals based on SOGI: Summary*, 2012, p. 1.

¹³⁷ *Ibid.*

discrimination based on SOGI.¹³⁸ Both the report and the discussions held during the panel outlined the various ways in which LGBTI persons face discrimination and human rights abuses, and generated debate on advancing human rights, promoting positive attitudes towards sexual orientation and gender identity, and tackling the root causes of bigotry.¹³⁹ Pursuant to the panel, OHCHR released a report titled *Born Free and Equal* in which it reminds all Member States of their core legal obligations regarding the promotion of human rights, and the specific areas in which they are responsible for the safeguard of LGBTI persons' access to human rights.¹⁴⁰ Additionally, the work of the HRC boosted efforts at a national level, as Norway and South Africa coordinated talks in the spring of 2013, inviting 200 experts to participate in cross-regional discussions on SOGI and HRC resolution 17/19.¹⁴¹ This initiative aimed to identify the different gaps and challenges that lay ahead, gathered information on efficient policy responses, and acknowledged the positive or negative impact national frameworks can have on SOGI.¹⁴² On a more global scale, HRC launched in July 2013 the United Nations Free and Equal campaign (UNFE) to raise awareness on violence and abuses linked to homophobia and transphobia.¹⁴³ The forum fosters online open discussion on how to promote fair and equal treatment of LGBTI persons, and how to change the prevailing prejudiced discourse.¹⁴⁴ Furthermore, the UN Economic Commission for Europe (UNECE) and the UN Population Fund (UNFPA) have been trying to advance sexual rights for all during the UNECE Regional Youth Conference Call to Action in May 2013.¹⁴⁵ Their activism, which is intrinsically linked to the ICPD Beyond 2014 review process, aims at advocating for acceptance of comprehensive sexuality education (CSE), as well as the right to privacy and bodily integrity.¹⁴⁶

While discrimination on the grounds of sexual orientation and gender identity does not take similar forms in each country, most regions have shown cases of homophobic and transphobic practices, violence, and abuse.¹⁴⁷ As a result, regional institutions have taken initiative to address this issue.¹⁴⁸ For example, the African Commission on Human and Peoples' Rights passed resolution 275 in May 2014, in a momentous move to protect against violence and human rights violation targeting the LGBTI community, as well as to encourage Member States to enforce the law and prosecute crimes linked to SOGI.¹⁴⁹ In an identical move, the General Assembly of the Organization of American States has achieved progress on this front by passing several cornerstone resolutions on human rights, sexual orientation, and gender identity.¹⁵⁰ The most recent initiative, Resolution AG/RES. 2863 (XLIV-O/14) adopted 5 June 2014, urges States to implement necessary policies preventing, punishing, and eradicating all forms of discrimination on the grounds of SOGI.¹⁵¹ Similarly, the Court of Justice of the European Union (EU) has issued landmark judgments on policies applied by Member States disregarding the non-discrimination clause of the 2000 EU Charter of Fundamental Rights which makes a direct inference to sexual orientation.¹⁵² In 2010, the Committee of Ministers of the Council of Europe adopted a recommendation on measures to combat discrimination on grounds of SOGI, in which it invite EU Member States to implement national legislation prohibiting hate crimes and protecting the LGBTI community in the public and private sphere.¹⁵³

Civil society organizations (CSOs) have also significantly contributed to the advancement of the sexual orientation and gender identity agenda at an international level, working hand in hand with HRC to galvanize progress on the achievements of human rights and sexual rights for all. When HRC adopted resolution 17/19, a statement made by a

¹³⁸ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 1.

¹³⁹ OHCHR, *Combatting discrimination based on sexual orientation and gender identity*, 2014.

¹⁴⁰ OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 2.

¹⁴¹ South Africa & Norway, *International Conference on HR, SOGI*, 2013, p. 3.

¹⁴² *Ibid.*, p. 5.

¹⁴³ OHCHR, *United Nations Free & Equal*, 2014.

¹⁴⁴ *Ibid.*

¹⁴⁵ UNECE, *UNECE Regional Youth Conference: Call to Action*, 2013, p. 1.

¹⁴⁶ *Ibid.*

¹⁴⁷ UNFE, *Factsheet: Homophobic and Transphobic Violence*, 2013, p. 1.

¹⁴⁸ UNHCR, *Refworld: Legal Documents Related to Sexual Orientation and Gender Identity*, 2014.

¹⁴⁹ African Commission on Human and Peoples' Rights, *Resolution 275 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, 2014.

¹⁵⁰ UNHCR, *Refworld: Legal Documents Related to Sexual Orientation and Gender Identity*, 2014.

¹⁵¹ OAS, *Resolution AG/RES. 2807 (XLIII-O/13) on HR, Sexual Orientation, and Gender Identity and Expression*, 2014.

¹⁵² ICJ, *SOGI in HR Law: References to Jurisprudence and Doctrine of the United Nations Human Rights System*, 2010, p. 19.

¹⁵³ Council of Europe, *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, 2010.

coalition of LGBTI-oriented CSOs stated that “now, our work is just beginning.”¹⁵⁴ CSOs have an essential role within the UN framework, as they review and monitor the compliance of international human rights standards, and contribute to UN initiatives and analysis on best practices.¹⁵⁵ For example, the Sexual Rights Initiative (SRI) is a coalition of human rights organizations primarily focused on gender and sexuality which have allied to advance sexual rights on the HRC’s agenda and create political space at a national level on these issues.¹⁵⁶ SRI is currently the only advocacy group working to influence the HRC that calls attention to a broad range of sexual rights, including SOGI, and sexual and reproductive rights.¹⁵⁷ SRI also tracks each UN Member State’s attitude towards sexual rights and expression, by using HRC’s Universal Periodic Review as a database tool.¹⁵⁸ One of the major achievements of SRI is that it has brought together different perspectives that in the past have co-existed but not collaborated, such as SOGI-oriented associations with women’s rights associations, in an attempt to gain visibility on the importance of adopting an open-minded attitude towards sexuality, gender identity, and sexual preference.¹⁵⁹

Understanding Discrimination Based on Sexual Orientation and Gender Identity

In order to address this topic efficiently, it is essential to comprehend where discrimination based on SOGI stems from. While it is hard to ascertain the precise origins of homophobic and transphobic attitudes, consistent research indicates that they are generally articulated within underlying cultural, religious, and traditional moral values.¹⁶⁰ LGBTI persons are often perceived as transgressing socially accepted values of gender roles, sexuality, nationalism, and family, which underpins discrimination based on SOGI.¹⁶¹ In some countries, it is considered an act of betrayal and disloyalty to express a non-heterosexual sentiment, as it goes against the unity portrayed by the nation and the moral order instated by the government.¹⁶² For example, following an lesbian, gay, bisexual and transgender (LGBT) pride parade in Russia, the Moscow Patriarchate Department of External Church Relations stated: “If people refuse to procreate, the nation degrades. So the gay propaganda ultimately aims at ruining our nation.”¹⁶³ Additionally, negative attitudes towards the LGBTI community often arise from religious beliefs, the act of homosexuality being categorized as “sinful” in most historic accounts of major religions.¹⁶⁴ This notion of “immorality” is strongly reinforced with the impression that varied form of sexual orientation and gender identity defy conventional concepts of gender and family.¹⁶⁵ Traditional gender roles outline typical characteristics of what it entails to be a “man” or a “woman”, often within a patriarchal paradigm.¹⁶⁶ By disturbing this established moral order, LGBTI persons are considered as acting provocatively and unacceptably, and are even at times accused of threatening the archetypal heterosexual family model.¹⁶⁷

These negative cultural perceptions are bolstered by several factors, including the public discourse within the media, which at times serves as a destructive force by simplifying, sensationalizing, or stereotyping LGBTI persons and the issues they face.¹⁶⁸ Similarly, the legacy of criminalization of same-sex relationships in certain countries has contributed to the persistence of historical homophobic or transphobic attitudes, long after the repeal of such laws.¹⁶⁹ Another external influence to take into account is the medical field, which in the past regarded LGBTI persons as suffering from diseases. Until 1990, the World Health Organization (WHO) classified homosexuality in its *International Statistical Classification of Diseases and Related Health Problems*.¹⁷⁰ To this date, WHO still defines

¹⁵⁴ ILGA, *International Lesbian, Gay, Bisexual, Trans and Intersex Association*, 2014.

¹⁵⁵ IGLHRC, *International Gay & Lesbian Human Rights Commission*, 2014.

¹⁵⁶ Sexual Rights Initiative, *Sexual Rights Initiative*, 2014.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Sexual Rights Initiative, *Human Rights and Sexuality in the Context of Development*, 2013.

¹⁶⁰ Council of Europe, *Discrimination on the grounds of sexual orientation and gender identity in Europe*, 2011, p. 29.

¹⁶¹ Ibid., p. 30.

¹⁶² Ibid., p. 29.

¹⁶³ CAL, *Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa*, 2013, p. 33.

¹⁶⁴ Council of Europe, *Discrimination on the grounds of sexual orientation and gender identity in Europe*, 2011, p. 30.

¹⁶⁵ UNFE, *Factsheet: Frequently Asked Questions*, 2013, p. 2.

¹⁶⁶ CAL, *Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa*, 2013, p. 36.

¹⁶⁷ Council of Europe, *Discrimination on the grounds of sexual orientation and gender identity in Europe*, 2011, p. 30.

¹⁶⁸ Ibid., p. 32.

¹⁶⁹ CAL, *Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa*, 2013, p. 37.

¹⁷⁰ Council of Europe, *Discrimination on the grounds of sexual orientation and gender identity in Europe*, 2011, p. 23.

transsexualism as a mental and behavioral disorder.¹⁷¹ Using medical terminology when dealing with issues of SOGI complicates the ongoing debate and contributes to the idea that LGBTI people can be “cured.”¹⁷² Due to these detrimental values and perceptions, the LGBTI community often faces stigma, ridicule, and outright rejection, without any public outcry given that these harmful attitudes are perceived as socially acceptable.¹⁷³ Persistent stigmatization and marginalization has forced the LGBTI community to act invisible, and issues of human rights in relation to SOGI remain controversial.¹⁷⁴

Discriminatory laws, practices, and acts of violence on the grounds of sexual orientation and gender identity
Prevalent LGBTI prejudices can lead to a specific set of discriminatory practices and human rights abuses. In particular, different types of national laws contribute to the continued normalization of discrimination on the basis of SOGI.¹⁷⁵ Seventy-six countries currently implement laws that criminalize people on the grounds of their sexual expression, prohibiting sexual activities between persons of the same-sex.¹⁷⁶ The penalty for these so-called crimes varies, ranging from short-term imprisonment sentences to permanent ones, and even to the death penalty in five States.¹⁷⁷ Moreover, fourteen countries consider that the legal age for consent is different in homosexual and heterosexual relationships, which is a form of stigmatization in itself. These discriminatory laws are particularly pervasive in nature, because they have a long-term social impact and sanction prejudice.¹⁷⁸

Discriminatory laws on the grounds of SOGI are often accompanied by discriminatory practices, affecting access to employment, education and health care significantly.¹⁷⁹ They are the result of direct discriminatory policies applied by state governments, or simply due to the lack of laws condemning homophobic and transphobic acts.¹⁸⁰ The areas of concern include unequal access to justice, social welfare, education, employment, housing, and health care.¹⁸¹ For example, in the absence of laws safeguarding the right to work, employers can hire, fire, or promote people based on their SOGI.¹⁸² Similarly, homosexual or transgender employees are more vulnerable to verbal harassment within the workplace, and their access to benefits such as paid family leave or health care insurance is more likely to be denied.¹⁸³ Regarding health services, national health plans do not necessarily cover specific physical and psychological needs required of LGBTI persons, which can deter them from accessing basic medical care.¹⁸⁴ Education is another public area in which LGBTI youth experience stigma and harassment, often in the form of bullying, and at times at the risk of academic expulsion.¹⁸⁵ Discriminatory practices are part of most societies’ everyday life, and are not necessarily identified as such.¹⁸⁶ For example, in many countries, transgender persons are unable to obtain identity documents respecting their chosen gender, rather than the one assigned at birth.¹⁸⁷ Similarly, lack of official recognition of same-sex relationships can cause denial of benefits for homosexual couples, particularly by private businesses such as health care and insurance providers.¹⁸⁸

¹⁷¹ UNFE, *Factsheet: Frequently Asked Questions*, 2013, p. 1.

¹⁷² Council of Europe, *Discrimination on the grounds of sexual orientation and gender identity in Europe*, 2011, p. 23.

¹⁷³ UNFE, *Factsheet: Frequently Asked Questions*, 2013, p. 2.

¹⁷⁴ Council of Europe, *Discrimination on the grounds of sexual orientation and gender identity in Europe*, 2011, p. 31.

¹⁷⁵ UNFE, *Factsheet: Equality and Discrimination*, 2013, p. 1.

¹⁷⁶ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 15.

¹⁷⁷ UNFE, *Factsheet: Equality and Discrimination*, 2013, p. 1.

¹⁷⁸ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 15.

¹⁷⁹ *Ibid.*, p. 16.

¹⁸⁰ *Ibid.*, p. 16.

¹⁸¹ UNFE, *Factsheet: Equality and Discrimination*, 2013, p. 1.

¹⁸² UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 17.

¹⁸³ CAL, *Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa*, 2013, p. 25.

¹⁸⁴ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 17.

¹⁸⁵ *Ibid.*, p. 19.

¹⁸⁶ CAL, *Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa*, 2013, p. 33.

¹⁸⁷ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 22.

¹⁸⁸ UNFE, *Factsheet: Homophobic and Transphobic Violence*, 2013, p. 2.

While discriminatory practices and laws are more widespread, LGBTI persons can be at the receiving end of acts of violence, and at times they face hate crimes such as murder, beatings, torture, or rape in all regions of the world.¹⁸⁹ This type of violence is often physical, but can also take the form of psychological violence through the use of threats, intimidation, coercion, harassment, and arbitrary deprivations of liberty.¹⁹⁰ Typically, acts of violence on the grounds of SOGI are included within the classification of SGBV, seeing as the act of violence in itself is driven by the need to punish those who transgress traditional gender norms.¹⁹¹ Compared to other hate-motivated crimes, lethal violence towards LGBTI persons is generally particularly brutal, involving physical mutilation such as stoning, torture, and sexual assault.¹⁹² When violence is not deadly, it remains cause for concern due to the vicious nature of the act, as perpetrators use cruel methods, including “corrective” rape or castration.¹⁹³ LGBTI persons are at risk from the community at large, but the violence can also originate from the private sphere, like relatives, who might feel compelled to carry out “honor” killings in order to save their family’s integrity.¹⁹⁴ Lesbian and transgender women are at a very high risk of falling prey to acts of violence, due to continuing gender inequalities and power relations.¹⁹⁵ Acts of violence on the grounds of SOGI are hard to track and monitor, given that few States have mechanisms in place to record these incidents, and survivors are reluctant to register themselves as LGBTI.¹⁹⁶

Human Rights at Stake When Dealing with Discrimination Based on Sexual Orientation and Gender Identity

At the core of the debate is the need to protect fundamental human rights rather than create specific SOGI-oriented rights.¹⁹⁷ The international human rights standards that are at stake when dealing with discrimination based on sexual orientation and gender identity can be broken down into three categories: civil and political rights; social and economic rights; and sexual rights.

Individuals are denied basic civil and political rights on the grounds of their sexual orientation and gender identity.¹⁹⁸ For example, the concept of equality in rights and before the law does not apply worldwide, given that matrimonial laws for homosexuals differ around the world.¹⁹⁹ The principle of non-discrimination is obstructed by the absence of anti-discriminatory policies which refer to SOGI.²⁰⁰ Further, the right to life and safety is infringed upon by States that retain the death penalty for acts of homosexuality.²⁰¹ Freedom from violence, harassment, torture, or cruel, inhuman, and degrading treatment is violated by practices that encourage “corrective” or “punitive” rape, as well as arbitrary detention.²⁰² Transgender persons are also denied freedom of movement, given that in certain countries their gender identity is not legally recognized.²⁰³ The right to free expression and free association is also breached, considering the fact that LGBTI pride parades and other forms of expression are frowned upon across the world.²⁰⁴ In certain cases, the rights to practice religion or the right to a fair trial will also be affected by the prevailing religious or judicial prejudices.²⁰⁵ Nonetheless, one of the most fundamental human rights which is denied is the right to privacy, as SOGI issues are often considered a matter of public opinion, despite their private nature.²⁰⁶

¹⁸⁹ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 8.

¹⁹⁰ UNFE, *Factsheet: Homophobic and Transphobic Violence*, 2013, p. 1.

¹⁹¹ CAL, *Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa*, 2013, p. 36.

¹⁹² *Ibid.*, p. 38.

¹⁹³ *Ibid.*, p. 34.

¹⁹⁴ *Ibid.*, p. 33.

¹⁹⁵ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 10.

¹⁹⁶ UNFE, *Factsheet: Homophobic and Transphobic Violence*, 2013, p. 1.

¹⁹⁷ OHCHR, *Combatting discrimination based on sexual orientation and gender identity*, 2014.

¹⁹⁸ UNFE, *Factsheet: Criminalization*, 2013, p. 1.

¹⁹⁹ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

²⁰⁰ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 4.

²⁰¹ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

²⁰² Ettlbrick & Trabucco Zeran, *Impact of the Yogyakarta Principles on International HR Law Development*, 2010, p. 11.

²⁰³ *Ibid.*, p. 12.

²⁰⁴ Council of the EU, *Toolkit to Promote and Protect the Enjoyment of all Human Rights by LGBT People*, 2010, p. 7.

²⁰⁵ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

²⁰⁶ Pan American Health Organization, *The Right of Young People to Health and Gender Identities*, 2011, p. 20.

Social and economic rights are often in the balance as well, when considering discrimination on the basis of SOGI.²⁰⁷ These rights include the right to social security, assistance, and benefits as well as the right to fair employment and work, which are all affected by unlawful workplace practices, and unequal access to social welfare.²⁰⁸ The rights to physical and mental health are also challenged, in view of the fact that some health care institutions portray homosexuality and transgenderism as an illness or disease, and do not train appropriately their staff to respond to the unique needs of LGBTI patients.²⁰⁹ The right to universal education can also be violated by either unsafe educational environment for LGBTI youth, or with the use of sexist, transphobic, and homophobic curricula.²¹⁰ Finally, the rights to form a family are denied by governments who refuse to recognize same-sex relationships, or reject the rights to adopt a child for these same couples.²¹¹

Finally, discrimination based on SOGI restrains basic sexual rights. Sexual rights embrace the various human rights that have been mentioned above, in addition to the right to marry and found a family with the full consent of both spouses, and the right to equality in marriage.²¹² These two specific rights can be challenged by pervasive discriminatory practices, laws, and acts of violence in relation to SOGI.²¹³ Sexual rights entitle individuals to a life in dignity and respect, no matter their sexual orientation, gender identity, or sexual expression.²¹⁴ This requires the establishment of a safe environment in which individuals can decide freely on their sexuality, without any form of pressure, coercion or intimidation, and with full access to sexual and reproductive health care information and education services.²¹⁵ More importantly, the full realization of sexual rights can occur only when individuals are safeguarded from discrimination based on the exercise of their sexuality, and when they have control and autonomy over their own bodies and desires.²¹⁶

Emerging Responses and Best Practices

There is a clear consensus about the alarming pattern of violence and discrimination targeted directly at people because they are, or are perceived as belonging to the LGBTI community.²¹⁷ Since this pattern has often been overlooked by governments, whether in practice, or in law, there is no clear guideline as to the prevention of discrimination based on sexual orientation and gender identity.²¹⁸ Recent emerging responses aimed at bridging the gap between international legal standards and national policies have been suggested as comprehensive solutions.

HRC has specified that Member States have a common shared responsibility to uphold international binding human rights standards.²¹⁹ This implies a direct obligation to protect the human rights of LGBTI people through five core legal obligations: (1) protect individuals from violence rooted in homophobia and transphobia; (2) prevent any forms of torture and cruel, inhuman and degrading treatment targeted at LGBTI persons; (3) rescind any legislation that criminalizes homosexuality; (4) prohibit any forms of discrimination on the grounds of SOGI; and (5) safeguard LGBTI people's rights to freedom of expression, association, and peaceful assembly.²²⁰ Further, CSOs suggest that States should take a more proactive role in mainstreaming these issues within their national institutions.²²¹ Specifically, the repeal of detrimental national laws criminalizing and targeting the LGBTI community is indispensable.²²² Additionally, the omission of these issues within national policies that influence access to health

²⁰⁷ Council of the EU, *Toolkit to Promote and Protect the Enjoyment of all Human Rights by LGBT People*, 2010, p. 13.

²⁰⁸ Council of the EU, *Toolkit to Promote and Protect the Enjoyment of all Human Rights by LGBT People*, 2010, p. 13.

²⁰⁹ Ettlbrick & Trabucco Zeran, *Impact of the Yogyakarta Principles on International HR Law Development*, 2010, p. 11.

²¹⁰ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 19.

²¹¹ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

²¹² Youth Coalition, *Including Youth in the Post-2015 Development Agenda: Youth SRR and the ICPD*, 2014.

²¹³ Youth Coalition, *Resource Map on SOGI for Young Sexual and Reproductive Rights Activists*, 2013, p. 67.

²¹⁴ Sexual Rights Initiative, *Human Rights and Sexuality in the Context of Development*, 2013, p. 3.

²¹⁵ UNECE, *UNECE Regional Youth Conference: Call to Action*, 2013, p. 1.

²¹⁶ Sexual Rights Initiative, *Human Rights and Sexuality in the Context of Development*, 2013, p. 3.

²¹⁷ OHCHR, *Combatting discrimination based on sexual orientation and gender identity*, 2014

²¹⁸ Council of the EU, *Toolkit to Promote and Protect the Enjoyment of all Human Rights by LGBT People*, 2010, p. 7.

²¹⁹ OHCHR, *Combatting discrimination based on sexual orientation and gender identity*, 2014

²²⁰ OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 4.

²²¹ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

²²² UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 74.

care, education, housing, welfare, and justice can lead to unlawful discrepancies in everyday life.²²³ Emerging responses have shown that countries who include trade unions in combating LGBTI employment discrimination and train public officials on these matters have managed to bolster more positive and tolerant attitudes within society.²²⁴ Another key recommendation to take into account is the need to respect the right of asylum, so as to protect any individual fleeing persecutions on grounds of SOGI.²²⁵ Similarly, countries should be encouraged to provide documentation that reflects each person's gender identity.²²⁶

While progress is directly articulated at a national level, reports stress that an intergovernmental organization such as the UN should take leadership on this issue, to prevent further violence and prohibit harassment based on homophobia and transphobia.²²⁷ In particular, creating accountability measures and effective monitoring mechanisms focused specifically on sexual orientation and gender identity to record and reduce the widespread pattern of violence is critical.²²⁸ UN leadership would also allow Member States to share best practices more efficiently, encourage standardized legal reform, and safeguard the preexisting legal framework already grounded within UN institutions.²²⁹ This is particularly important considering the upcoming post-2015 development agenda of the UN, which should be used as an opportunity to create an enabling environment in which sexual orientation, gender identity, and sexual rights are ensured.²³⁰ SOGI should be considered as a crosscutting thematic of the future development program, so as to ensure that all areas of the forthcoming agenda promote non-discrimination and encourage a healthy outlook on sexual expression.²³¹ The ICPD Beyond 2014 review process, spearheaded by the UNFPA, is another international mechanism which can help advance sexual rights at the UN and national level.²³²

Combating LGBTI prejudices requires the promotion of social change, and cultural awareness, as well as the implementation of education programs targeting different groups, including law enforcement and educators.²³³ Public awareness campaigns can help individuals identify, register, and respond to hate crimes and everyday discrimination in an appropriate and healthy manner.²³⁴ For example, British transportation systems carried billboards promoting LGBTI acceptance and the government of Brazil launched the national "Brazil without Homophobia" campaign.²³⁵ Additionally, the adoption of CSE is advocated for in order to foster a greater understanding of sexual orientation and gender identity.²³⁶ CSE can also help root out discrimination and help young individuals make responsible, safe, and healthy decisions in relationships.²³⁷ CSE's ambitions are to provide the youth with inclusive, accurate, and age-sensitive sex education.²³⁸ However, these programs can also be targeted at a wider audience, as all individuals are concerned by health rights, and should be kept informed on the risks of HIV/AIDS contraction, or other sexually transmitted infections, in addition to reproductive health issues relating to pregnancy.²³⁹ Further, education programs and curricula are efficient methods to address discrimination, and counter homophobic and transphobic attitudes.²⁴⁰ Recent education initiatives include Hong Kong's Boys and Girls Clubs

²²³ South Africa & Norway, *International Conference on HR, SOGI*, 2013, p. 8.

²²⁴ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 78.

²²⁵ South Africa & Norway, *International Conference on HR, SOGI*, 2013, p. 7.

²²⁶ Australian HR Commission, *Addressing sexual orientation and sex and/or gender identity and discrimination*, 2011, p. 37.

²²⁷ South Africa & Norway, *International Conference on HR, SOGI*, 2013, p. 7.

²²⁸ *Ibid.*, p. 10.

²²⁹ *Ibid.*, p. 9.

²³⁰ OHCHR, *Combating discrimination based on sexual orientation and gender identity*, 2014.

²³¹ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

²³² Center for Reproductive Rights, *ICPD and Human Rights: 20 years of advancing reproductive rights through UN Bodies and legal Reform*, 2013, p. 11.

²³³ Ettlbrick & Trabucco Zeran, *Impact of the Yogyakarta Principles on International HR Law Development*, 2010, p. 37.

²³⁴ South Africa & Norway, *International Conference on HR, SOGI*, 2013, p. 10.

²³⁵ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 23.

²³⁶ Youth Coalition, *Resource Map on SOGI for Young Sexual and Reproductive Rights Activists*, 2013, p. 67.

²³⁷ *Ibid.*

²³⁸ International Planned Parenthood Federation, *Sexual Rights: an IPPF declaration*, 2013, p. 20.

²³⁹ *Ibid.*, p. 9.

²⁴⁰ Australian HR Commission, *Addressing sexual orientation and sex and/or gender identity and discrimination*, 2011, p. 11.

Association and Australian's Safe Schools Coalition, which offer counseling in schools and youth centers, and promote a safe space to discuss SOGI.²⁴¹

Conclusion

Preventing discrimination based on sexual orientation and gender identity is at the heart of HRC's mandate and the UN agenda. While few countries purposely discriminate based on sexual orientation and gender identity, many do not proactively participate in the fight against it, thus condoning involuntarily intolerant values.²⁴² As outgoing UN High Commissioner for Human Rights Navi Pillay stated during the International Day against Homophobia and Transphobia on 17 May 2014, "I have yet to come across a government that says it supports violence and discrimination against LGBT people. Yet very few take action to protect people against such violations."²⁴³

Further Research

It is important to keep the formation of these goals in mind during debate post-2015 debate as it outlines outline the future perceptions on sexual orientation and gender identity. Additionally, while researching this topic, delegates should consider the following questions: How can human rights be reinforced to prevent discrimination based on SOGI? What are the key lessons learned – either best practices or shortcomings – from current policies? In what ways and in which direction can the Council influence discriminatory laws and practices in relation to sexual orientation and gender identity? What are the priority areas that are not necessarily addressed by the universal human rights standard and which should be included in the post-2015 development agenda discussion? How can sexual orientation and gender identity be mainstreamed within future development programs at the UN?

²⁴¹ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 23.

²⁴² UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2.

²⁴³ IDAHO Committee, *International Day Against Homophobia and Transphobia*, 2013.

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Girard, F. (2008). *Negotiating Sexual Rights and Sexual Orientation at the UN*. Retrieved 11 July 2014 from: http://www.sxpolitics.org/frontlines/book/pdf/capitulo9_united_nations.pdf

This document written by Françoise Girard, President of the International Women's Health Coalition, explores the links between human rights, sexual rights, and sexual orientation. In particular, the article takes a theoretical approach as to how the sensitive topic of sexuality is discussed within the United Nations institution. Girard insists that sexual rights and sexual orientation should be addressed within the United Nations framework to allow for the universal application of sexual reproductive health and rights. This paper provides delegates with a better understanding of the overall scope of our topic by demonstrating how the issues of human rights, sexual reproductive health and rights, and SOGI are interwoven.

Republic of South Africa Ministry of Foreign Affairs & Kingdom of Norway Ministry of Foreign Affairs. (2013). *International Conference on Human Rights, Sexual Orientation and Gender Identity*. Retrieved 11 July 2014 from: <http://geneva.usmission.gov/wp-content/uploads/2013/06/SOGI-conference-summary-and-toolkit.pdf>

In April 2013, the governments of Norway and South Africa co-organized an international conference on human rights, sexual orientation, and gender identity in Oslo, inviting more than 200 participants from all over the world to take part in the global discussion. Before the actual conference, regional seminars were held in Paris, Kathmandu, and Brasilia, giving each region the opportunity to reflect on their own regional attitudes and behaviors relating to sexual orientation and gender identity. During the global conference held in Oslo, further discussion allowed for cross-regional input, shared experience on best practices and know-hows, as well as a review of the key challenges and implementation gaps. The following document is a summary and a toolkit for delegates, encompassing reports on the regional seminars, and the conference debates, in addition to recommendations for future action.

United Nations, Economic Commission for Europe. (2013). *UNECE Regional Youth Conference: Call to Action*. Retrieved 11 July 2014 from: <http://eeca.unfpa.org/sites/default/files/pub-pdf/UNECERegionalYouthForumCalltoAction.pdf>

More than 300 participants, human rights advocates, and civil society activists, were invited to take part in the Regional Youth Conference held by the UN Population Fund and the UNECE in May 2013. During this conference, specialist were asked to intervene on demographic and population concerns, including ageing population and population growth, universal access to sexual and reproductive health, comprehensive sexuality education, gender equality, migration patterns, and family trends. The core goal of the conference was to identify the areas in which the 1994 International Conference on Population and Development (ICPD) Programme of Action had not been successful, and the areas in which it could still be improved. During this Call for Action, the UNECE asked for a full implementation of a human rights-based approach in the upcoming ICPD beyond 2014 and the post-2015 agenda. Within the following document which summarizes the key recommendation of the conference, delegates will be given an overview of the importance of sexual rights, what they entail, and how they are linked to SOGI.

United Nations, High Commissioner for Refugees. (2014). *Refworld: Legal Documents Related to Sexual Orientation and Gender Identity* [Website]. Retrieved 10 August 2014 from: <http://www.refworld.org/sogi.html>

Refworld is a website mandated by the UN agency on refugee issues, UNHCR, which keeps track of legislation, country information, and international jurisprudence on human rights issues, and refugee rights. The following page is a compilation of all documents relating to sexual orientation and gender identity, comprising legal, policy and background information made by Refworld. This page is regularly maintained, and as such contains up-to-date legal information on policy and programs that are SOGI-oriented. These include regional documents adopted by the European Union, the Organization of American States, and the African Union, as well as legal reports and cross-regional statements made on the topic. This is a good source for delegates to find all key relevant legal information on our topic, and observe the collaborative work between two UN sister agencies, HRC and HCR.

United Nations, Human Rights Council, Seventeenth session. (2011). *Human rights, sexual orientation and gender identity (A/HRC/RES/17/19)* [Resolution]. Retrieved 11 July 2014 from: http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/RES/17/19

In 2011, the Human Rights Council passed a resolution focused on the links between human rights, sexual orientation, and gender identity. Adopted by a vote of 23 in favor to 19 against, with three abstentions, this resolution is the first document voted on by the Human Rights Council that specifically discusses the topic at hand. This resolution is essential to understanding the efforts and conclusions taken by the Human Rights Council on how to promote equality for all. This resolution will allow delegates to familiarize themselves with HRC's mandate and help them better understand how the Council's work can be formally articulated through resolutions.

United Nations, Human Rights Council, Nineteenth session. (2011). *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights (A/HRC/19/41)*. Retrieved 11 July 2014 from: http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf

In resolution 17/19 of 14 July 2011, the Human Rights Council called for a study on homophobic and transphobic discriminatory laws, practices, and acts of violence. This report written by the United Nations High Commissioner for Human Rights is the result of this request. It discusses the various discriminatory practices that disregard human rights, including discrimination in employment, health care, and education, as well as acts of violence such as rape, death penalty, and arbitrary arrest. The report promotes international human rights laws as a tool to prevent human rights abuses in relation to sexual orientation and gender identity. As this is an official report written by the High Commissioner for Human Rights, this document grounds our topic into reality and underlines its importance in HRC's agenda.

United Nations, Human Rights Council. (2012). *Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity: Summary Discussion*. Retrieved 11 July 2014 from: <http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/SummaryHRC19Panel.pdf>

In March 2012, the Human Rights Council organized its first panel discussion on the topic of ending violence and discrimination against individuals based on their sexual orientation and gender identity. The document is a summary of the dialogue that was held during this panel, including an overview of the different points of views shared by the panelists, the civil society organizations, and the state delegations. This summary provides a perfect introduction to the Human Rights Council mandate on this topic, the practices it can put forth to promote equality for all, and the direction the Council has taken to pursue this issue. In addition, as the panel was planned pursuant to the adoption of resolution 17/19 of 14 July 2011, there is a clear focus throughout the document, which seeks to determine the most efficient and effective policies and practices to end homophobic and transphobic discrimination.

United Nations, Office of the High Commissioner for Human Rights. (2012). *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* [Report]. Retrieved 11 July 2014 from: <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

This booklet published by OHCHR outlines the current existing legal framework which protects the rights of lesbian, gay, bisexual, and transgender people. This document was initially written as a reminder for governments of their different obligations towards the promotion of human rights, and to help civil societies, human rights defenders, and other activists hold these States accountable. Thus, this booklet provides delegates with a good overview of their responsibilities as state's representatives and orients them towards good and efficient policies and practices. The five core commitments of the States in regards to LGBT rights are outlined as follows: protect individuals from homophobic and transphobic violence; prevent torture and cruel, inhuman, and degrading treatment of LGBT persons; decriminalize homosexuality; prohibit discrimination based on sexual orientation and gender identity; and respect freedom of expression, association, and peaceful assembly.

United Nations, Office of the High Commissioner for Human Rights. (2014). *Combatting discrimination based on sexual orientation and gender identity - Speeches and statements* [Website]. Retrieved 11 July 2014 from: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTSpeechesandstatements.aspx>

The Office of the High Commissioner for Human Rights has taken a keen interest in combating discrimination based on sexual orientation and gender identity. In the past couple of years it has participated in the efforts by launching the United Nations Free & Equal campaign, issuing a report to the General Assembly on SOGI and human rights (A/HRC/19/41), and working hand in hand with States, and civil society to achieve progress across the world on acceptance of homosexuality and transgenderism. Part of the work of the OHCHR includes monitoring and keeping track of the different actions taken at an international level. This website page is a compilation of all the key speeches and statements made by UN officials and human rights activist on SOGI. Delegates will be able to gain a better understanding of the global progress achieved on this topic, as well as the discourse and terminology adopted by the UN when dealing with SOGI.

United Nations, Office of the High Commissioner for Human Rights. (2014). *United Nations Free & Equal* [Website]. Retrieved 11 July 2014 from: <https://unfe.org/en>

This is the official website of the universal Free & Equal campaign launched by the United Nations Human Rights Office and the Purpose Foundation. The Free & Equal campaign is a unique United Nations initiative that sets out to educate on lesbian, gay, bisexual and transgender (LGBT) rights and promote equality for all. Through this campaign, the Human Rights Office wishes to raise awareness on the discrimination, violence, and other human rights abuse often aimed at the LGBT community. Various resources including factsheets, speeches, and personally shared stories are available on this interactive website for all those who wish to discuss and support LGBT rights. The United Nations Free & Equal website is dedicated specifically to this topic; therefore, delegates exploring this website will get a firsthand understanding of the various practical actions set up by the Human Rights Council and can even join the online discussion.

United States of America, Department of State, Bureau of Democracy, Human Rights, and Labor. (2014). *Country Reports on Human Rights Practices for 2013* [Website]. Retrieved 10 August 2014 from: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

The United States Department of State publishes a series of reports entitled “Country Reports on Human Rights Practices,” which encompasses more than 200 reports covering various countries across the world, and the human rights practices within these territories. The reports highlight efforts by governments in the continued pursuit of universal human rights by giving facts and figures on the state of these human rights standard globally. These reports draw attention to the growing challenges and implementation gaps between governments and regions that at times fail to uphold the legal binding international standards. Delegates will not only be able to find the human rights condition in the country they represent on the topic of sexual orientation and gender identity, but will also be able to inform themselves on their countries situation regarding the Universal Declaration of Human Rights. This is a primary resource to help delegates prepare for the conference.

The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. (2007). Retrieved 11 July 2014 from: http://www.yogyakartaprinciples.org/principles_en.pdf

The Yogyakarta Principles were written during an expert group meeting that took place in Yogyakarta, Indonesia in November 2006. This meeting assembled a distinguished set of human rights experts and activists, including former UN High Commissioner for Human Rights, Mary Robinson, and several United Nations Special Rapporteurs. As the official name of the Yogyakarta Principles indicates, this set of principles charts the way towards a binding legal standard for the universal reach of human rights. The 29 principles set out legal requirements with which all States should comply and address human rights in relation to sexual orientation and gender identity discrimination. While the Yogyakarta Principles are not formally recognized by the United Nations, they remain at the core of the current legal international framework in relation to sexual orientation and gender identity.

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II. Protecting the Rights of Migrant Workers

Introduction

Human migration is an omnipresent phenomenon in human history driven by a variety of motives, ranging from the search for economic opportunities to family reunification and involuntary displacement.²⁴⁴ In 2013, the United Nations Department of Economic and Social Affairs (UN DESA) announced that approximately 232 million people worldwide are currently residing outside of their country of origin.²⁴⁵ A 2014 report of the Director-General of the International Labour Organization (ILO) indicated that the major driving force for migration is income opportunities, and a 2010 ILO report on labor migration estimated that migrant workers and their families account for almost 90% of all international migrants.²⁴⁶ The assumption of an income-driven migration dynamic is supported by the fact that most migrants originate from low- or middle-income countries of the global South.²⁴⁷ Still, labor migration is more than a purely economic phenomenon; it is global and multicultural; it is young, with almost half of all migrants from the global South younger than 35 years; and it is not gender-neutral, with a total of 48% female migrants worldwide.²⁴⁸ All migrant groups experience a different degree of vulnerability due to various natural, personal, or cultural characteristics that are either left unaddressed or targeted adversely by receiving states and host populations.²⁴⁹ Accordingly, in 2008, the Global Migration Group (GMG) deplored the fact that not enough attention has been paid to the human rights implications and issues arising from this phenomenon.²⁵⁰

This guide provides an overview of the international legal regime governing the human rights of migrants, followed by an outline of the existing international institutions engaged in this issue and their mandates. The subsequent section addresses the central human rights that are subject to frequent violations in the countries of destination. Specifically vulnerable groups of migrant workers and potential fields for collaborative efforts are presented. The guide closes with an outlook on migration and development, a conclusion, and suggestions for further research.

International and Regional Framework

In order to approach the issue of migrant workers' human rights from a legal perspective, it is necessary to understand its position at the intersection of international labor law and international human rights law.²⁵¹

Universality of core human rights documents

One of the cornerstones of human rights law is its claim to universality.²⁵² This principle, which states that human rights are inherent to all human beings, has been enshrined in the preamble of the *Universal Declaration of Human Rights* (UDHR) (1948).²⁵³ Thus, a migrant worker, as a human being, falls under the protection of all core human rights documents, provided his or her state of residence has ratified the respective treaty. Documents such as the *International Covenant on Civil and Political Rights* (ICCPR) (1966) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (1966) have a ratification rate of almost 90%, which means that almost all United Nations (UN) Member States have formally pledged to adhere to the provisions set out in these conventions and are thus obliged to protect the civil and political as well as the economic, social, and cultural human rights of all persons under their jurisdiction.²⁵⁴

ILO conventions specific to migrant workers

²⁴⁴ IOM, *World Migration Report 2013: Migrant Well-Being and Development*, 2013, p. 50.

²⁴⁵ UN Department of Public Information, *Number of International Migrants Rises Above 232 Million*, UN Reports, 2013.

²⁴⁶ ILO, *Fair Migration: Setting an ILO Agenda*, 2014, p. 6.

²⁴⁷ IOM, *World Migration Report 2013: Migrant Well-Being and Development*, 2013, p. 58.

²⁴⁸ IOM, *World Migration Report 2013: Migrant Well-Being and Development*, 2013, p. 67; ILO, *Fair Migration: Setting an ILO Agenda*, 2014, p. 10.

²⁴⁹ ECOSOC, *Report of the Special Rapporteur on the human rights of migrants (E/CN.4/2000/82)*, 2000, paras. 70-74.

²⁵⁰ UN Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, 2008, p. 5.

²⁵¹ UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/68/283)*, 2013, para. 27.

²⁵² OHCHR, *What Are Human Rights?*, 2014.

²⁵³ UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A(III))*, 1948, Preamble, art. 1.

²⁵⁴ OHCHR, *View the Verification Status By Country or By Treaty*, 2014.

Alongside the development of international human rights law, international labor law has evolved under the auspices of the ILO.²⁵⁵ The ILO broadened its scope to include the specific needs and protection issues of migrant workers as early as 1949, by adopting the *Migration for Employment Convention (Revised), 1949* (No. 97).²⁵⁶ It was the first document to include the principle of equal treatment for migrant workers with respect to certain regulations for recruitment and employment, such as remuneration, trade union membership, collective bargaining, and social security.²⁵⁷ Yet, it has to be noted that the provisions of ILO Convention No. 97 do not apply to migrants who reside in a country without a permit.²⁵⁸ The regulation of increasing numbers of these so-called “irregular migrants” is the central concern of the ILO *Migrant Workers (Supplementary Provisions) Convention, 1975* (No. 143), adopted in 1975.²⁵⁹ ILO Convention No. 143 also widens the application of the concept of equal treatment to include the notion of “equality of opportunity” for regular migrants as well as the extension of their individual and collective freedoms.²⁶⁰ Furthermore, article 8 provides that the loss of employment shall not automatically result in the loss of residence permit.²⁶¹ Particularly noteworthy is the fact that it is the first legal document to include specific rights for irregular migrant workers.²⁶² Thus, according to article 9, all migrant workers should “enjoy equality in respect of rights arising out of past employment as regards remuneration, social security and other benefits.”²⁶³

Background, provisions, and performance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The ILO conventions, which in principle declare respect for human rights of migrant workers, are fundamentally instruments of labor law that focus primarily on questions of economics and labor, rather than on the complex nature of migration and differentiated vulnerabilities of migrant workers.²⁶⁴ Realizing the lack of progress in promoting migrant workers' human rights through the ILO system, a number of key developing countries successfully pushed for a redirection of the process to the UN.²⁶⁵ In 1979, a working group was established with the aim of formulating what later became known as the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW).²⁶⁶ The Group of 77 (G77) proved to be particularly powerful during the negotiations and, even though its own draft proposal failed to be accepted, it exerted significant influence on the process.²⁶⁷ A small coalition of major destination countries opposed the G77 and tried to minimize the real or perceived costs any outcome document might inflict on them.²⁶⁸ Between these polarizing positions formed the Mediterranean-Scandinavian Group (MESCA), consisting mainly of wealthy European countries, whose governments had a strong focus on workers' rights.²⁶⁹ Eventually, it was MESCA's “compromise draft” that was adopted as the ICRMW in 1990.²⁷⁰

Few regulations in the ICRMW were genuinely new at the time of its adoption, as the majority of the rights included in the ICRMW were adopted from the earlier human rights treaties and ILO conventions.²⁷¹ However, the ICRMW can be understood as a “more precise interpretation of human rights in the case of migrant workers.”²⁷² The ICRMW distances itself from the notion of minimum standards, and instead builds upon the principle of equality of treatment between nationals and non-nationals.²⁷³ Consequently, articles 8 to 35 of the ICRMW outline the human rights to

²⁵⁵ Vucetic, *Democracies and International Human Rights: Why Is There No Place for Migrant Workers?*, 2007, p. 410.

²⁵⁶ ILO, *Migration for Employment Convention (Revised), 1949* (No. 97), 1949.

²⁵⁷ Ruhs, *The Human Rights of Migrant Workers: Why Do So Few Countries Care?*, 2012, p. 1279.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ ILO, *Migrant Workers (Supplementary Provisions) Convention, 1975* (No. 143), 1975, art. 8.

²⁶² Ruhs, *The Human Rights of Migrant Workers: Why Do So Few Countries Care?*, 2012, p. 1279.

²⁶³ ILO, *Migrant Workers (Supplementary Provisions) Convention, 1975* (No. 143), 1975, art. 9.

²⁶⁴ Ruhs, *The Human Rights of Migrant Workers: Why Do So Few Countries Care?*, 2012, pp. 1279-1281.

²⁶⁵ Vucetic, *Democracies and International Human Rights: Why Is There No Place for Migrant Workers?*, 2007, p. 418.

²⁶⁶ Ruhs, *The Human Rights of Migrant Workers: Why Do So Few Countries Care?*, 2012, p. 1285.

²⁶⁷ Vucetic, *Democracies and International Human Rights: Why Is There No Place for Migrant Workers?*, 2007, p. 418.

²⁶⁸ *Ibid.*, pp. 418-419.

²⁶⁹ *Ibid.*, 2007, p. 418.

²⁷⁰ *Ibid.*, p. 1285.

²⁷¹ UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/68/283)*, 2013, para. 29.

²⁷² Ruhs, *The Human Rights of Migrant Workers: Why Do So Few Countries Care?*, 2012, p. 1281.

²⁷³ *Ibid.*, p. 1281.

which all migrant workers and their families are entitled, regardless of their status.²⁷⁴ A further 20 articles supplement the general provisions with specific rights of migrant workers in a regular migration situation.²⁷⁵ While the ICRMW is primarily concerned with the rights to life, liberty, due process, and non-discrimination, especially in regards to employment opportunities, it also deals with social and cultural rights and even carefully touches on the issue of family reunification in article 44.²⁷⁶

Since its adoption in 1990, only 47 countries have ratified the ICRMW, which makes it the least ratified major human rights treaty in history.²⁷⁷ This situation is aggravated by the fact that none of the major labor-receiving countries has acceded to the treaty.²⁷⁸ There are various arguments attempting to explain the rather modest performance of the treaty in quantitative terms. One central explanation seems to be a lack of promotion and awareness among UN Member States as well as a widespread misinterpretation of the ICRMW as an infringement upon national sovereignty over immigration policy.²⁷⁹ This may be caused by the extended scope and technical complexity of the document, which preclude a quick ratification and implementation process.²⁸⁰ Some countries also highlight the fact that most of the ICRMW's provisions have already been covered by earlier international human rights documents.²⁸¹ Ultimately, the core of the poor ratification history may be the result of a negative cost-benefit calculation by destination countries.²⁸²

Regional framework

Regulation of migration at the regional level generally tends towards one of two approaches: either migration-related agreements in the context of economic communities or other regional organizations, or informal, consultative processes shared between neighboring countries.²⁸³ Of the various existing economic communities worldwide, the European Union (EU) has developed the deepest and most extensive regime of cross-border labor migration and general free movement of people.²⁸⁴ The EU has also established a common external border and specific directions dealing with the treatment of third-party nationals, skilled labor immigration, and family reunification.²⁸⁵ The Special Rapporteur on the human rights of migrants, Mr. François Crépeau, describes the EU as an illustrative example of facilitating common governance over migration, while maintaining a certain degree of sovereignty over third-country immigration.²⁸⁶ In contrast, the consultative process as it is present in Latin America in the form of the Puebla Process and the South American Conference on Migration, or in Africa as the Migration Dialogue for West Africa and the Migration Dialogue for South Africa, differs from the organizational approach significantly.²⁸⁷ Instead of adopting enforceable legislation on a supra-national level, the consultative approach provides a platform for discreet and informal dialogue and exchange of information.²⁸⁸ Consultative mechanisms feature strong involvement of external actors in the form of international organizations or influential sponsors from the global North, while offering only little representation from civil society.²⁸⁹ This composition and a lack of oversight often result in a weak or even absent normative basis, along with a primary focus on migration control.²⁹⁰ The Special Rapporteur on the human rights of migrants advocates to ensure that agreements related to migrants are transparent, accountable, and guarantee migrants' human rights.²⁹¹

²⁷⁴ UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (A/RES/45/158)*, 1990.

²⁷⁵ *Ibid.*

²⁷⁶ OHCHR, *The International Convention on Migrant Workers and its Committee: Fact Sheet No. 24 (Rev.1)*, 2005, p. 8.

²⁷⁷ OHCHR, *View the Verification Status By Country or By Treaty*, 2014.

²⁷⁸ *Ibid.*

²⁷⁹ Ruhs, *The Human Rights of Migrant Workers: Why Do So Few Countries Care?*, 2012, p. 1283.

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² *Ibid.*, p. 1287.

²⁸³ UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/68/283)*, 2013, para. 62.

²⁸⁴ *Ibid.*, para. 63.

²⁸⁵ *Ibid.*, paras. 65-66.

²⁸⁶ *Ibid.*, paras. 67-68.

²⁸⁷ *Ibid.*, paras. 69-70.

²⁸⁸ *Ibid.*, paras. 69-70.

²⁸⁹ *Ibid.*, paras. 71-72.

²⁹⁰ *Ibid.*, paras. 73-74.

²⁹¹ *Ibid.*, para. 128.

Role of the International System

The multidimensionality and complexity of international migration are reflected by a similarly diverse structure of institutions and stakeholder organizations.²⁹² Migration as a human phenomenon cuts across a variety of political fields and ultimately everything related to migration becomes a question of human rights.²⁹³ In consequence, there is not one single, unified body endowed with a comprehensive mandate to address this issue fully.²⁹⁴ And with the exception of singular efforts under the auspices of the ILO and the International Organization for Migration (IOM), the decades leading up to the adoption of the ICRMW were relatively silent on the question of migrant workers' human rights.²⁹⁵ This changed rather suddenly around the turn of the millennium.²⁹⁶ Some attribute this change to the intensified advocacy for workers' rights undertaken by non-governmental organizations (NGOs) since the mid-1990s.²⁹⁷ Others put greater emphasis on the outcome documents of summits during this time that specifically addressed the issue of migrants' human rights.²⁹⁸

The attention devoted to this issue led to the creation of the mandate of the UN Special Rapporteur on the human rights of migrants in 1999.²⁹⁹ The mandate of the Special Rapporteur encompasses: collection of information and data on the situation of migrants from all appropriate sources; communication with UN Member States on alleged violations of migrants' human rights, for which an inquiry and an urgent appeal procedure have been established; formulation of recommendations for the improvement of migrants' human rights situation; research on the situation in individual Member States by conducting country visits; and cooperation with other UN entities, such as the Human Rights Council (HRC) with its periodic review mechanism, the Committee on Migrant Workers, and other Special Rapporteurs with intersecting mandates.³⁰⁰ Furthermore, the Special Rapporteur seeks to promote a wider ratification of the ICRMW; Mr Crépeau, who has served as the Special Rapporteur since August 2011, has recently achieved success in this regard.³⁰¹

In 2003, the ICRMW drew the last ratification required to enter into force; accordingly, the HRC established the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), an expert body charged with examining and monitoring the implementation process of the ICRMW.³⁰² States Parties to the ICRMW are obliged to submit regular reports on their progress.³⁰³ However, the complaint mechanism, as outlined in article 77 of the ICRMW, is not yet in force, as it has been recognized by only three Member States.³⁰⁴ The CMW also cooperates closely with international agencies, particularly the ILO.³⁰⁵

The HRC is further engaged in the matter by passing annual resolutions on the human rights of migrants.³⁰⁶ In these resolutions, the Council calls for deepened international cooperation and exchange of best practices, but also addresses individual state responsibility.³⁰⁷ It encourages the ratification of human rights and labor law conventions related to the issue, it calls upon Member States to implement the norm-based approach of migration control and combating of transnational crime, and it frames the issue in the context of the post-2015 development agenda by referring to the High-level Dialogue on International Migration and Development and other relevant forums.³⁰⁸ Still,

²⁹² OHCHR, *Migration and Human Rights: Improving Human Rights-Based Governance of International Migration*, 2013, p. 22.

²⁹³ *Ibid.*

²⁹⁴ *Ibid.*

²⁹⁵ GCIM, *The Governance of International Migration: Mechanisms, Processes and Institutions*, 2005, pp. 1-2.

²⁹⁶ *Ibid.*, p. 2.

²⁹⁷ UN Human Rights Council, *Written statement submitted by December 18 vzm (A/HRC/8/NGO/24)*, 2008, p. 2.

²⁹⁸ ECOSOC, *Report of the Special Rapporteur on the human rights of migrants (E/CN.4/2000/82)*, 2000, para. 13.

²⁹⁹ UN Human Rights Council, *Written statement submitted by Amnesty International (AI) (A/HRC/8/NGO/10)*, 2008, p. 2.

³⁰⁰ ECOSOC, *Report of the Special Rapporteur on the human rights of migrants (E/CN.4/2005/85)*, 2004, paras. 49-73; OHCHR, *Annual Reports of the Special Rapporteur on the Human Rights of Migrants*, 2014.

³⁰¹ UN Human Rights Council, *Written statement submitted by December 18 vzm (A/HRC/8/NGO/24)*, 2008, p. 3.

³⁰² GCIM, *The Governance of International Migration: Mechanisms, Processes and Institutions*, 2005, p. 2.

³⁰³ OHCHR, *The International Convention on Migrant Workers and its Committee: Fact Sheet No. 24 (Rev.1)*, 2005, p. 10.

³⁰⁴ UN General Assembly, *Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (A/68/48)*, 2013, p. 10.

³⁰⁵ OHCHR, *The International Convention on Migrant Workers and its Committee: Fact Sheet No. 24 (Rev.1)*, 2005, p. 10.

³⁰⁶ UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/68/283)*, 2013, para. 43.

³⁰⁷ UN Human Rights Council, *Human rights of migrants (A/HRC/RES/23/20)*, 2013.

³⁰⁸ *Ibid.*

in his 2013 report to the General Assembly, Mr. Crépeau underscored that he saw potential for greater engagement of the HRC in the issue, by, inter alia, mainstreaming the question of migrants' human rights into the work of the Council and holding annual panel discussions.³⁰⁹

The UN High-level Dialogue on International Migration and Development (HLD) was first held in 2006 and took place for a second time in 2013.³¹⁰ The intention for setting up this forum was to increase and utilize the positive contributions of diaspora and migrant communities for progress in human development in line with the Millennium Development Goals (MDGs).³¹¹ The HLD of 2006 also sparked the idea for the Global Forum on Migration and Development (GFMD).³¹² This forum was independently established outside the UN system, where states can discuss migration in an informal setting, allowing them to focus more on economic aspects and avoid frequently divisive norm-based discussions.³¹³ In 2013, Mr. Crépeau called for a closer link between the HLD and the GFMD and a shared normative basis for discussion.³¹⁴ Secretary-General Ban Ki-moon described the creation of the GFMD as a historic step that “annually attracts more than 150 states and fosters a common understanding of migration.”³¹⁵ Parallel to the GFMD, former Secretary-General Kofi Annan created the GMG, an inter-agency group bringing together 15 UN entities and the IOM to coordinate their work and approach the issue of international migration from various angles.³¹⁶ However, Mr. Crépeau noted that the overlapping mandates of the agencies result in a diffusion of accountability, and he subsequently voiced the need for a clear vision and policy coherence.³¹⁷

The IOM has 151 Member States and operates largely as a service provider in migration management outside the UN system.³¹⁸ The IOM holds the conviction that only properly regulated migration can benefit countries of destination and guarantee migrants' human rights.³¹⁹ The organization addresses operational questions related to migration, such as capacity building in migration legislation, and is also active in promoting a comprehensive approach to migration governance.³²⁰ According to the 2013 report of the Secretary-General on “international migration and development,” the IOM has, through the GMG, built strong partnerships with UN entities.³²¹ However, Mr. Crépeau has noted that the mandate of the IOM is not grounded in human rights and that reorientation of the organization would be necessary prior to any further integration into the UN system.³²²

OHCHR considers civil society organizations (CSOs) as partners of strategic importance in furthering the human rights of migrants worldwide.³²³ As representative parts of society, these organizations have political legitimacy and can positively influence the conditions of migration and development.³²⁴ CSOs inform public opinion and mobilize political support for human rights concerns of migrants.³²⁵ Because of the complex nature of migration and the great variety of actors involved, the challenge of facilitating a human rights-based approach to migration cannot be met by states alone; their efforts require support from civil society and the private sector, which often have better access to migrant communities, allowing them to contribute grassroots information on the living and working conditions of migrants, assist in the formulation of guiding principles for policymaking, and help monitor the implementation process.³²⁶ Coleen Thouez distinguishes between three groups of CSOs engaged in furthering the human rights of

³⁰⁹ UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/68/283)*, 2013, paras. 44-45.

³¹⁰ *Ibid.*, paras. 39-42.

³¹¹ UN General Assembly, *International Migration and Development: Report of the Secretary-General (A/68/190)*, 2013, paras. 1-17.

³¹² UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/68/283)*, 2013, para. 49.

³¹³ *Ibid.*, paras. 49-51.

³¹⁴ *Ibid.*, para. 57.

³¹⁵ UN General Assembly, *International Migration and Development: Report of the Secretary-General (A/68/190)*, 2013, para. 5.

³¹⁶ *Ibid.*, para. 46.

³¹⁷ *Ibid.*, para. 48.

³¹⁸ *Ibid.*, paras. 58-61.

³¹⁹ IOM, *IOM Snapshot*, 2014, p. 1.

³²⁰ *Ibid.*

³²¹ UN General Assembly, *International Migration and Development: Report of the Secretary-General (A/68/190)*, 2013, para. 7.

³²² UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/68/283)*, 2013, para. 112.

³²³ OHCHR, *Civil Society*, 2014.

³²⁴ Kerwin, *Human Security, Civil Society and Migration*, 2013, p. 2.

³²⁵ *Ibid.*

³²⁶ Banulescu-Bogdan, *The Role of Civil Society in EU Migration Policy: Perspectives on the European Union's Engagement in its Neighborhood*, 2011, p. 6.

migrants.³²⁷ The first group has a strong operational focus, whereas the second is more engaged in advocacy work.³²⁸ An example of an operational NGO is the International Catholic Migration Commission (ICMC), which coordinates assistance activities for migrants, while examples of traditional advocacy NGOs are Human Rights Watch and Amnesty International.³²⁹ The third category comprises networks of civil society stakeholders, which are also referred to as umbrella organizations.³³⁰ A representative of this category is the Migrants' Rights Network, a national NGO working in the United Kingdom since 2006.³³¹ This organization uses its network for the dissemination of information amongst stakeholders and society, as well as for political campaigning and raising awareness.³³² CSOs are actively engaged in state-led forums such as the GFMD and the HLD.³³³ In 2013, the engagement of CSOs at the GFMD in Sweden contributed to the formulation of the Stockholm Agenda on migrant and migration-related goals and targets in post-2015 global and national development agendas.³³⁴ Civil society leaders underlined the need to embed the Stockholm Agenda within a sustainable development framework that targets root causes and regards migrants as both agents and subjects of development.³³⁵ Besides the improvement of economic opportunities, the Stockholm Agenda addresses gender equality, education, health, good governance, environmental protection, and human security.³³⁶

Human Rights Questions and Fields of Action in States of Employment

States Parties to the ICCPR and ICESCR are legally bound to guarantee all people under their jurisdiction, including migrant workers, the full enjoyment of their rights as outlined in these covenants.³³⁷

The rights to health, food, and housing

Because of its highly interrelated nature, the right to health is one of the focal points in discussing migrant workers' human rights.³³⁸ Article 12 of the ICESCR states that everyone has the right to “the enjoyment of the highest attainable standard of physical and mental health.”³³⁹ In General Comment No. 14 (E/C.12/2000/4), the Committee on Economic, Social and Cultural Rights (CESCR) underlined governments' obligation to guarantee that “health facilities, goods and services are accessible to all, especially the most vulnerable and marginalized sections of the population.”³⁴⁰ Besides the provision of services, the right to health also encompasses underlying determinants of health such as the rights to food, shelter, water, and safe and healthy occupational conditions.³⁴¹ The infringement of migrant workers' right to food has, for example, been reported in the context of domestic workers, irregular migrant workers in detention, and migrant workers in forced labor, where food deprivation resulted in adverse health consequences.³⁴² The right to adequate housing should be interpreted as the right to live in security, peace, and dignity.³⁴³ Poor housing conditions with the danger of accidents, exposure to pollutants, or temperature stress are detrimental to the mental and physical wellbeing of individuals.³⁴⁴ In the context of labor migration, it is often the case that the employer in the country of destination provides accommodation for foreign employees.³⁴⁵ In a 2010

³²⁷ Thouez, *The Role of Civil Society in Shaping International Migration Policy*, 2003, p. 7.

³²⁸ *Ibid.*

³²⁹ *Ibid.*, pp. 7-8.

³³⁰ *Ibid.*, p. 9.

³³¹ Migrants' Rights Network, *Who are we?*, 2014.

³³² *Ibid.*

³³³ UN High-level Dialogue on International Migration and Development, *Organization*, 2014; GFMD Civil Society, *About*, 2014.

³³⁴ UN High-level Dialogue on International Migration and Development, *The 5-year Action Plan for Collaboration*, 2013.

³³⁵ GFMD Civil Society, “*Stockholm Agenda*” on migrant and migration-related goals and targets, 2014, p. 1.

³³⁶ *Ibid.*, p. 2.

³³⁷ UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/61/324)*, 2006, para. 31.

³³⁸ IOM, *International Migration, Health and Human Rights*, 2013, p. 15.

³³⁹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (A/RES/2200 (XXI))*, 1966, art. 12.

³⁴⁰ CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (E/C.12/2000/4)*, 2000, para. 12.

³⁴¹ *Ibid.*

³⁴² UN Human Rights Council, *Mission to Saudi Arabia: Addendum to the report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/11/6/Add.3)*, 2009, para. 59; ECOSOC, *Report of the Special Rapporteur on the human rights of migrants (E/CN.4/2003/85)*, 2002, para. 53.

³⁴³ UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants (A/HRC/14/30)*, 2010, para. 41.

³⁴⁴ IOM, *International Migration, Health and Human Rights*, 2013, p. 23.

³⁴⁵ UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants (A/HRC/14/30)*, 2010, para. 49.

report, OHCHR deplored not only the fact that oftentimes the quality of accommodation was inadequate, but also that migrants were forced to pay an unjustifiably high share of their salary as rent.³⁴⁶ The situation for irregular migrants is even worse as their status forces them to accept any housing available, especially in countries that criminalize landlords who accommodate irregulars.³⁴⁷

The right to work, labor rights, and social security

Of central importance to migrant workers is their claim to work and labor rights. Article 7 of the ICESCR outlines everyone's right to just and favorable working conditions.³⁴⁸ Migrant workers are often subject to discrimination, abuse, and exploitation.³⁴⁹ They have no access to complaint mechanisms and constantly face the risk of deportation.³⁵⁰ Even though all Member States of the ILO agreed to the principles laid out in the eight ILO core conventions, human rights abuses against migrant workers still occur.³⁵¹ Further, the ICESCR provides in article 9 that States Parties "recognize the right of everyone to social security, including social insurance."³⁵² This encompasses the right to access and maintain benefits for protection from unemployment caused by health deficiencies, age, insufficient funds to access health care, or lack of family support.³⁵³ CESCR stipulates that the principle of non-discrimination needs to find application also in the case of social security.³⁵⁴ As migrant workers contribute to a country's economy and state budget, they should be eligible for health benefits and allowed to retrieve their contribution when returning to their country of origin.³⁵⁵

The rights to life, liberty, access to justice, and protection from torture

The lives of migrant workers can be in danger at any point in the migration process, but they are particularly at risk when approaching land or sea borders, especially in the context of irregular migration, smuggling, and trafficking.³⁵⁶ Further, both adverse working conditions and ill treatment in detention pose a threat to migrants' lives and violate the provisions of article 9 of the ICCPR.³⁵⁷ Aside from the state, it is primarily private actors who violate migrants' liberty through forced labor, exploitation, debt bondage, or prostitution.³⁵⁸ Some of these crimes amount to degrading treatment or torture, which is prohibited by article 7 of the ICCPR and the provisions of the 1984 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).³⁵⁹ The effective realization of conventional rights and judicial redress against abusive employers is often hindered by the lack of access to justice and complaint mechanisms, resulting from migratory status, lack of information, or lack of affordable legal aid.³⁶⁰

Particularly Vulnerable Groups of Migrant Workers

Irregular migrants

An irregular migrant, as defined by the IOM, is any individual who lacks legal status as a result of undocumented entry or visa expiration.³⁶¹ The United Nations Development Programme (UNDP) has noted that in all countries, a migrant's legal status is the key determinant of their wellbeing.³⁶² It can impair their full participation in terms of

³⁴⁶ ECOSOC, *Report of the United Nations High Commissioner for Human Rights (E/2010/89)*, 2010, paras. 36-40.

³⁴⁷ UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants (A/HRC/14/30)*, 2010, para. 47.

³⁴⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (A/RES/2200 (XXI))*, 1966, art. 7.

³⁴⁹ UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants (A/HRC/26/35)*, 2014, para. 18.

³⁵⁰ *Ibid.*, para. 19.

³⁵¹ ILO, *Handbook on Establishing Effective Labor Migration Policies in Countries of Origin and Destination*, 2006, pp. 27-37.

³⁵² UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (A/RES/2200 (XXI))*, 1966, art. 9.

³⁵³ CESCR, *General Comment No. 20 (E/C.12/GC/20)*, 2009, para. 2.

³⁵⁴ *Ibid.*, para. 4.

³⁵⁵ *Ibid.*, para. 36.

³⁵⁶ IOM, *International Migration, Health and Human Rights*, 2013, p. 36.

³⁵⁷ UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 (XXI))*, 1966, art. 9.

³⁵⁸ UN Global Migration Group, *Exploitation and abuse of international migrants, particularly those in an irregular situation: A human rights approach*, 2013, pp. 9-22.

³⁵⁹ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/RES/39/46)*, 1984.

³⁶⁰ UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants (A/HRC/26/35)*, paras. 60-61.

³⁶¹ IOM, *International Migration Law: Glossary on Migration*, 2004, p. 3.

³⁶² UNDP, *Precarious Residents: Migrant Control, Membership and the Rights of Non-Citizens*, 2009, p. 2.

health care, education, and access to job opportunities.³⁶³ The last decades have seen an intensification of policing and repressive measures, which often lead to human rights abuses against irregular migrants in all stages of migration.³⁶⁴ They are particularly vulnerable to arbitrary detention and violations arising from substandard detention conditions.³⁶⁵ The GMG has asserted that immigration control alone is not sufficient to tackle the issue.³⁶⁶ A comprehensive approach must include the protection of migrant workers' rights regardless of legal status, the engagement of the informal labor market, the opening of more regular avenues for migration to meet labor demand in all sectors, and the regularization of immigrants with illegal status.³⁶⁷ Furthermore, the Working Group on Arbitrary Detention has expressed the view that states' legitimate claim to govern immigration does not legitimize the criminalization of irregular entry.³⁶⁸ Viable alternative means may include measures such as registration requirements, regular reporting, or financial deposits.³⁶⁹ Detention should be a last resort, and it should significantly differ in quality, restrictiveness, and intrusiveness when compared to criminal detention.³⁷⁰

Domestic workers

The number of migrant workers in domestic service is hard if not impossible to quantify in statistical terms, as many are irregular and work unregistered.³⁷¹ A 2013 ILO report estimated that there are a total of 53 million domestic workers employed worldwide (nationals and migrants), 83% of whom are assumed to be female.³⁷² The increasing demand for household aid in wealthy countries is seen as a major driver behind the feminization of labor migration in recent decades.³⁷³ Domestic workers, particularly migrants, suffer a great level of vulnerability due to their often unclear legal status under national law, which excludes them from access to legal protection and makes them more vulnerable to abuse and exploitation by their employers.³⁷⁴ Moreover, they are faced with discrimination in terms of employment conditions and remuneration, as well as marginalization on the basis of ethnicity or gender.³⁷⁵ In 2011, the ILO responded to the needs of domestic workers by adopting the *Convention concerning Decent Work For Domestic Workers* (No. 189), which not only demands respect for the basic human rights and fundamental principles of international labor law for all domestic workers, but also offers specific regulations with regard to minimum standards for living conditions, remuneration, social security, and hours of work for migrant and child domestic workers.³⁷⁶

Women and girls

The number of female migrant workers is almost equal to that of male migrant workers, but their migration experiences differ significantly.³⁷⁷ There is a difference in migratory behaviors; in factors leading to irregular migration; and in the opportunities, challenges and risks faced by men and women.³⁷⁸ Women experience heightened vulnerability to abuse, exploitation, gender-based violence, and gender-based discrimination in areas such as access to appropriate health care.³⁷⁹ Despite the provisions laid out in the widely ratified *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) (1979) and the *Declaration on the Elimination of Violence against Women* (1993), many female migrant workers and girls have reported experiencing sexual abuse and

³⁶³ Ibid.

³⁶⁴ UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/65/222)*, 2010, paras. 7-9.

³⁶⁵ Ibid., paras. 14-17.

³⁶⁶ UN Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, 2008, pp. 43-44.

³⁶⁷ Ibid.

³⁶⁸ Ibid., p. 72.

³⁶⁹ UN Human Rights Council, *Mission to Saudi Arabia: Addendum to the report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/11/6/Add.3)*, 2009, para. 53; UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/65/222)*, 2010, para. 94.

³⁷⁰ UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/65/222)*, 2010, paras. 85-88.

³⁷¹ ILO, *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, 2013, pp. 23-24.

³⁷² Ibid., pp. 20-21.

³⁷³ ILO, *Migrant Domestic Workers*, 2014.

³⁷⁴ ILO, *Decent work for domestic workers*, 2010, p. 11.

³⁷⁵ Ibid., pp. 17-18.

³⁷⁶ ILO, *C189 & R201 at a Glance*, 2011, pp. 19-21.

³⁷⁷ ECOSOC, *Report of the Special Rapporteur on the human rights of migrants (E/CN.4/2005/85)*, 2004, paras. 34-43.

³⁷⁸ Ibid., paras. 34-43.

³⁷⁹ IOM, *International Migration, Health and Human Rights*, 2013, p. 45.

violence in the workplace and in the context of smuggling or trafficking.³⁸⁰ In 2013, Secretary-General Ban Ki-moon compiled a report on violence against women migrant workers, in which he encouraged national governments to intensify their efforts in the protection of women's human rights and the provision of basic services to female migrant workers.³⁸¹ The 2008 OHCHR report on international migration and human rights underlined the notion of a “life cycle approach” to assess the situation of women and girls at all stages of migration, from their preparation for departure until their return to the homeland of origin.³⁸² An early account of an application of this approach can be seen in the circular migration project run by Unión de Pagesos in Spain.³⁸³ This program not only facilitates circular migratory movement for seasonal laborers from Morocco, but also makes special provisions available to meet the needs of female migrants, such as assistance through social workers.³⁸⁴ Beyond offering migrants the chance of an increased income, the program also includes training activities.³⁸⁵ Thus, not only is a brain drain avoided, but also higher skilled workers can transfer newly gained knowledge to their home communities.³⁸⁶

Children

According to the IOM's “World Migration Report 2013,” children under the age of 18 constitute almost 20% of all international migrants originating in the global South.³⁸⁷ These children are especially vulnerable to exploitation and trafficking, especially when travelling unaccompanied or separated from their parents.³⁸⁸ In host societies, migrant workers' children are highly marginalized, often lacking access to education, health care, and other basic services.³⁸⁹ Migrant children born in a host country, especially those in an irregular situation, sometimes face insurmountable obstacles as regards their rights to registration at birth, a name, and a nationality as laid out in the *Convention on the Rights of the Child* (CRC) (1990).³⁹⁰ The CRC has the best interest of the child as its defining principle; therefore, States Parties must ensure that labor, migration, health care, education, and social policies are in line with this requirement.³⁹¹

Areas for Collaborative Efforts between Sending State, Transit State, and State of Employment

Transnational organized crime

The increase of labor demand in host countries and the growing push factors in labor-sending economies have not been accompanied by the development of a flexible, multilateral migration regime responsive to the changing migrant flows.³⁹² The consequence is that a significant part of international migration has shifted to irregular migration channels, benefiting criminal organizations engaged in human smuggling and trafficking.³⁹³ Forced labor as a result of human trafficking generates an estimated \$150 billion in illegal revenue annually.³⁹⁴ In a statement made in 2013, the UN Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo, underscored the obligation of States Parties to effectively enforce the *United Nations Convention against Transnational Organized Crime* (2000) and the protocols thereto, and emphasized the need for international cooperation in this task.³⁹⁵ The ILO, which has been a norm-setter on forced labor since 1946, has adopted eight conventions that address the issue; in 2002, the organization launched the “Special Action Programme to Combat

³⁸⁰ *Ibid.*, p. 39.

³⁸¹ UN General Assembly, *Violence against women migrant workers: Report of the Secretary-General (A/68/178)*, 2013, pp. 2-5.

³⁸² UN Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, 2008, p. 50.

³⁸³ UNFPA, *Female Migrants: Bridging the Gaps Throughout the Life Cycle*, 2006, p. 126.

³⁸⁴ *Ibid.*

³⁸⁵ *Ibid.*

³⁸⁶ *Ibid.*, p. 127.

³⁸⁷ IOM, *World Migration Report 2013: Migrant Well-Being and Development*, 2013, p. 67.

³⁸⁸ ECOSOC, *Report of the Special Rapporteur on the human rights of migrants (E/CN.4/2005/85)*, 2004, paras. 45-48.

³⁸⁹ UN Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, 2008, pp. 50-51.

³⁹⁰ *Ibid.*, pp. 51-52.

³⁹¹ *Ibid.*, p. 54.

³⁹² UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/61/324)*, 2006, paras. 43-48.

³⁹³ *Ibid.*, para. 49; ILO, *Getting at the Roots: Stopping Exploitation of Migrant Workers by Organized Crime*, 2003.

³⁹⁴ ILO, *Profits and Poverty: The Economics of Forced Labor*, 2014, p. 4.

³⁹⁵ CSW, *Statement by Ms Joy Ngozi Ezeilo, Special Rapporteur on Trafficking in Persons, Especially Women and Children*, 2013, p. 6.

Forced Labour.”³⁹⁶ The Programme aims to raise awareness on a global scale, to assist governments in policy formulation and implementation, and to disseminate guidance and training materials for government officials.³⁹⁷

Exchange of data, statistics and research results

A lack of qualitatively sufficient and reliable data is one of the many barriers encountered by policymakers on all levels when attempting to assess the issue of human rights violations against migrants.³⁹⁸ However, the regular and scientifically accurate gathering and processing of migration data is not the only essential element.³⁹⁹ There is also a specific need for detailed and disaggregated data according to age, sex, origin, or other characteristics so as to understand and address the individual barriers faced by certain marginalized groups of migrant workers.⁴⁰⁰ The situation of undocumented migrants is particularly difficult to assess.⁴⁰¹ In response to the demand of the HLD in 2006, UN DESA created the UN Global Migration Database, which is currently being tested but will provide disaggregated information on worldwide migration flows in the future.⁴⁰² The UN Statistics Division promotes the dissemination of statistical know-how on the gathering and analysis of migration specific data.⁴⁰³

Harmonizing policies, procedures, and legal instruments

A further issue of international labor migration is the lack of consistency and interstate compatibility in various labor- and migration-related policy fields.⁴⁰⁴ This is exemplified in the failure to acknowledge existing labor demand and to provide legal migration channels for labor surplus from sending economies, the lack of joint and norm-based border management, the lack of accreditation of foreign workers’ professional qualifications, and the incomplete portability of contributions to social security systems.⁴⁰⁵ Concerted efforts of the international community are necessary to harmonize these fields, simplify labor migration, and minimize the loss in welfare and developmental benefits.⁴⁰⁶ Even though regional and bilateral arrangements to regulate these questions are a common occurrence, comprehensive global initiatives are still missing.⁴⁰⁷

Private sector as a transnational actor

In a significant number of cases of regular labor migration from countries of the global South, private recruitment agencies in sending countries facilitate contact between the employer in the host country and the potential migrant worker.⁴⁰⁸ The agencies’ profit consists of either a commission the employer pays or recruitment fees to be paid by the worker.⁴⁰⁹ Even though such fees are usually forbidden, they are often charged secretly and the employer passes costs on to the migrant worker upon arrival, thus bonding him or her in debt.⁴¹⁰ Nullification of remuneration agreements made before arrival constitutes a further potential grievance.⁴¹¹ Migrants often refrain from reporting such practices to state authorities because of language barriers, lack of alternatives, or precarious legal status.⁴¹² In order to overcome this abusive practice, Mr. Crépeau proposed that states should seek support from international entities like OHCHR and the ILO, formalize the recruitment process in cooperation with sending states, and

³⁹⁶ ILO, *Special Action Programme to Combat Forced Labour*, 2013.

³⁹⁷ Ibid.

³⁹⁸ UN Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, 2008, pp. 107-108.

³⁹⁹ Ibid., pp. 93-95.

⁴⁰⁰ UN General Assembly, *International Migration and Development: Report of the Secretary-General (A/68/190)*, 2013, paras. 81-82.

⁴⁰¹ UN Global Migration Group, *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, 2008, pp. 93-95.

⁴⁰² UN DESA, *International Migrant Stock by Age and Sex*, 2014.

⁴⁰³ UN Statistics Division, *Handbooks, Guidelines and Training Manuals*, 2014.

⁴⁰⁴ UN General Assembly, *International Migration and Development: Report of the Secretary-General (A/68/190)*, 2013, paras. 90-91; IOM, *International Migration, Health and Human Rights*, 2013, p. 26.

⁴⁰⁵ Ibid.

⁴⁰⁶ UN General Assembly, *International Migration and Development: Report of the Secretary-General (A/68/190)*, 2013, paras. 120-121.

⁴⁰⁷ UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/68/283)*, 2013, paras. 36-37.

⁴⁰⁸ ILO, *Recruitment Practices of Employment Agencies Recruiting Migrant Workers*, 2013, p. 12.

⁴⁰⁹ UN Global Migration Group, *Exploitation and abuse of international migrants, particularly those in an irregular situation*, 2013, p. 12.

⁴¹⁰ Ibid.

⁴¹¹ Ibid., p. 13.

⁴¹² UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants (A/HRC/26/35)*, 2014, pp. 8-9.

consider requesting the Ministry of Labor in sending countries to conduct information campaigns and positively influence recruitment practices on the ground.⁴¹³

Outlook: The Human Right to Development and Workers' Rights in the Post-2015 Development Framework

In 2006, then-ILO Director-General Juan Somavía stated, “Gains from migration and protection of migrant rights are indeed inseparable. Migrant workers can make their best contribution to economic and social development in host and source countries when they enjoy decent working conditions, and when their fundamental human and labor rights are respected.”⁴¹⁴ He directly connected the positive development impact of labor migration to the need for better human rights protection and underlined the multidimensional nature of migration.⁴¹⁵ This link had already been codified in the 1986 *Declaration on the Right to Development*, which outlines governments’ responsibility to eliminate obstacles to development originating from human rights violations and promotes the principle of equality of opportunity.⁴¹⁶ The 2014 “Migration and Development Brief” of the World Bank estimated that in 2013, global remittances, which represent the sum of all money sent by migrant laborers to their countries of origin, amounted to \$404 billion.⁴¹⁷ Further, Secretary-General Ban Ki-moon noted in a 2013 report on “international migration and development” that migration “reduces poverty on an extraordinary scale” while significantly increasing migrants’ incomes and the school enrolment rates of their children.⁴¹⁸ Remittances also enable families at home to access medical care and improve their living conditions.⁴¹⁹ Aside from the financial benefits, countries of origin as well as countries of destination profit from social remittances in the form of knowledge transfer and cultural exchange.⁴²⁰ The declaration of the 2013 HLD holds countries of origin, transit, and destination equally accountable for protecting migrant workers’ rights through international, regional, and bilateral cooperation and for safeguarding the development benefits of migration for all parties involved.⁴²¹

Conclusion

International labor migration, though driven by economic push and pull factors, must be understood as a multidimensional phenomenon.⁴²² It involves highly diverse human rights issues arising from the vulnerability of migrants in general and specific risks suffered by individual groups of labor migrants due to their gender, age, legal status, or form of employment. The international legal framework provides a solid foundation for the protection of the fundamental rights of migrant workers in the form of the widely ratified general human rights conventions and the mandatory provisions of the eight ILO core conventions. But the specific international legal instruments for the protection of migrant workers, such as the ICRMW as well as the relevant ILO conventions, have yet to reach universal ratification, which will remain out of reach without greater awareness among Member States and technical support in the implementation of their legal provisions.⁴²³ Labor migration, as a human phenomenon, is accompanied by human rights issues related to more established human rights norms.⁴²⁴ Migrants’ right to health takes a particularly central role, because of its reliance and conditional character in relation to the enjoyment of many other rights.⁴²⁵ Different rights have individual importance relating to the particular situation of a migrant and the specific vulnerabilities arising therefrom. The list of potential fields for collaboration to approach this issue is non-exhaustive and the potential developmental benefits arising from improved cooperation for all societies involved must be reflected in the formulation of policy solutions.⁴²⁶

⁴¹³ Ibid., pp. 18-19.

⁴¹⁴ ILO, *Statement by the Director-General of the International Labour Office*, 2006, p. 1.

⁴¹⁵ World Bank, *Migration and Remittances: Recent Developments and Outlook*, 2014, pp. 1-2.

⁴¹⁶ UN General Assembly, *Declaration on the Right to Development (A/RES/41/128)*, 1986, arts. 6, 8.

⁴¹⁷ World Bank, *Migration and Remittances: Recent Developments and Outlook*, 2014, p. 3.

⁴¹⁸ UN General Assembly, *International Migration and Development: Report of the Secretary-General (A/68/190)*, 2013, para. 2.

⁴¹⁹ Ibid.

⁴²⁰ Ibid., paras. 54-59.

⁴²¹ UN General Assembly, *Declaration of the High-level Dialogue on International Migration and Development (A/RES/68/4)*, 2013, para. 10.

⁴²² IOM, *World Migration Report 2013: Migrant Well-Being and Development*, 2013, p. 67; ILO, *Fair Migration: Setting an ILO Agenda*, 2014, p. 10.

⁴²³ Ruhs, *The Human Rights of Migrant Workers: Why Do So Few Countries Care?*, 2012, p. 1283.

⁴²⁴ OHCHR, *Migration and Human Rights: Improving Human Rights-Based Governance of International Migration*, 2013, p. 9.

⁴²⁵ IOM, *International Migration, Health and Human Rights*, 2013, p. 15.

⁴²⁶ UN General Assembly, *International Migration and Development: Report of the Secretary-General (A/68/190)*, 2013, paras. 11, 71.

Further Research

In trying to advance the topic of migrant workers human rights, delegates can approach the issue from various angles. When focusing on the existing legal and institutional regime, they may want to explore ways to further the ratification of existing human rights treaties or pick up on the suggestions of the current Special Rapporteur on the human rights of migrants, Mr. Crépeau, and consider ways in which the HRC can contribute to the debate about reorientation of the institutional system. Another option is to address the criminalization of irregular migration, which results from a failure to acknowledge the demand for migrant workers and the lack of legal migration channels. Delegates can address arbitrary detention conditions of migrants or explore ways in which the HRC can voice its recommendations for the development of a more flexible international legal system for migration. This could be complemented by an analysis of negative push factors, the mitigation of which would decrease migratory pressures. Others may want to research the situation of a marginalized group in detail and try to devise means for answering its particular needs and vulnerabilities in different migratory contexts.

Delegates are also encouraged to explore the topic beyond the scope of this text and identify further human rights issues that may be adversely affected by current practices and how such violations would need to be addressed. Likewise, the presented list of areas for multilateral cooperation is non-exhaustive and delegates are welcome to research further possibilities, including how to best integrate the realization of migrant workers' human rights into the post-2015 development agenda.

Annotated Bibliography

International Organization for Migration. (2013). *International Migration, Health and Human Rights*. Retrieved 10 July 2014 from: http://www.ohchr.org/Documents/Issues/Migration/WHO_IOM_UNOHCHRPublication.pdf

This report was jointly compiled by WHO, IOM, and OHCHR. It aims to contribute to the understanding of multifaceted health and human rights challenges with which migrants are faced. By outlining the interrelation between the right to health with the enjoyment of various other human rights in a concise and understandable manner, it enables students of this topic to find an easy access to a highly complicated issue. The core human rights that are amongst others addressed in this report are the rights to food, housing, and health. The report outlines the difficulties in accessing these rights and the detrimental consequences arising from this. But it also presents a vast number of best practices to approach the issue and can be a valuable source of inspiration for delegates seeking to formulate feasible policy solutions.

International Organization for Migration. (2013). *World Migration Report 2013: Migrant Well-being and Development*. Retrieved 13 July 2014 from: http://publications.iom.int/bookstore/free/WMR2013_EN.pdf

The results of this IOM report are based on the Gallup World Poll – a worldwide survey with a base of almost half a million individuals from 150 countries. The report draws a multifaceted and detailed picture of migration in the 21st century. A particular strength and novel approach of this report is that it specifically targets the question of migrant wellbeing in all stages of the migratory process. This is exceptional as none of the earlier reports applied a research method aimed at scientifically assessing the individual and collective wellbeing of migrants to gain insights on the level of migrants' enjoyment of human rights.

Office of the United Nations High Commissioner for Human Rights. (2005). *The International Convention on Migrant Workers and its Committee: Fact Sheet No. 24 (Rev.1)*. Retrieved 10 July 2014 from:

<http://www.ohchr.org/Documents/Publications/FactSheet24rev.1en.pdf>

As a fact sheet, this document is intended to give a brief but concise overview of the ICRMW. It offers an insight into the drafting history and the legal background of this document. However, its greatest value is an abstract on the scope, key definitions, and provisions of the ICRMW, which makes for a perfect entry point for students trying to engage and understand this central document for the rights of migrant workers. The first annex also contains the full version of the ICRMW.

Office of the United Nations High Commissioner for Human Rights. (2013). *Migration and Human Rights: Improving Human Rights-Based Governance of International Migration* [Report]. Retrieved 9 July 2014 from:

http://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf

This report was published in the lead-up to the 2013 HLD. It emphasizes the roles that governance of migration and human rights play in the legal and institutional framework of the UN. Four central fields of action are identified and recommendations formulated. With easily comprehensible language, the use of info-graphics, and practical examples, this report offers delegates a smooth entry into the usually highly technical matter of international governance.

Office of the United Nations High Commissioner for Human Rights. (2014). *Annual Reports of the Special Rapporteur on the Human Rights of Migrants* [Website]. Retrieved 12 July 2014 from:

<http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx>

This webpage provides all annual reports presented to the HRC and the General Assembly by the Special Rapporteur on the human rights of migrants since 2000. The reports listed include summaries of country visits of the Special Rapporteur as well as communications with respective governments. The website also provides topic-specific reports, such as “forced labor” or “migrants’ right to health”. As this page lists many of the primary sources used for drafting this section of the background guide, delegates who want to get a deeper understanding of the issue cannot dismiss it.

Ruhs, M. (2012). The Human Rights of Migrant Workers: Why Do So Few Countries Care?. *American Behavioral Scientist*, 56 (9): 1277-1293.

This article explores the drafting and ratification history of the ICRMW. It offers an abstract on the negotiations preceding the adoption of the document and explores different explanations for the fact that the ICRMW is today the least ratified major international human rights document. A student wishing to understand the positions of major labor-receiving countries will find this article very helpful.

United Nations, General Assembly, Sixty-eighth session. (2013). *Report of the Special Rapporteur on the human rights of migrants, François Crépeau (A/68/283)*. Retrieved 10 August 2014 from: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/68/283>

This report was prepared by the current Special Rapporteur on the human rights of migrants, Mr. François Crépeau, and it attempts to give a comprehensive overview of the international legal and institutional framework governing the human rights of migrants. It starts out with a very concise historical abstract of relevant events in the development of the international system. This is followed by a brief overview of the legal framework, divided into thematic subsections relevant to global migration. The section on the institutional framework categorizes approaches to the governance of migration according to their level— international or regional — and their formalization as either a norm-based organizational system or loose consultative process. This report is particularly appealing because of the density of information that is structured in an easily comprehensible manner. It allows delegates to quickly get a sufficient overview of existing legal documents, stakeholder organizations, and their influence and mandates. Additionally, it offers insight into the visions of the current Special Rapporteur and his ambitions for adapting the institutional system.

United Nations, General Assembly, Sixty-eighth session. (2013). *International Migration and Development: Report of the Secretary-General (A/68/190)*. Retrieved 10 August 2014 from: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/68/190>

This report has been drafted in preparation for the HLD. It is highly valuable for research, as it presents an overview of current migration challenges and future key issues. Furthermore, it provides insights into the multidimensional interplay of migration and development. Finally, it proposes concrete measures for integrating migration into a development framework.

United Nations, General Assembly, Sixty-eighth session. (2013). *Violence against women migrant workers: Report of the Secretary-General (A/68/178)*. Retrieved 10 August 2014 from: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/68/178>

This report was compiled as a follow-up to General Assembly resolution 68/137 on “Violence against migrant workers.” It provides a concise introduction to the issues faced by female migrant workers as one of the most vulnerable groups, which is followed by a thorough account of various fields of action and initiatives undertaken at different levels of governance. The report serves as a great source of information and a pool from which to draw best practices.

United Nations, Global Migration Group. (2008). *International Migration and Human Rights: Challenges and Opportunities on the threshold of the 60th Anniversary of the Universal Declaration of Human Rights* [Report]. Retrieved 9 July 2014 from: http://www.globalmigrationgroup.org/sites/default/files/uploads/documents/Int_Migration_Human_Rights.pdf

This report, written in anticipation of the 60th anniversary of the UDHR, covers the relation of human rights and migration with a broad scope. It not only elaborates on the legal framework, but also identifies a set of specific challenges ranging from the problems of irregular migrants to human trafficking. Furthermore, a section on the nexus between migration, globalization, and development provides valuable insights into future pathways for successful policies in this field.

United Nations, International Labour Organization. (2003). *Getting at the Roots: Stopping Exploitation of Migrant Workers by Organized Crime* [Research Paper]. Retrieved 10 August 2014 from: http://www.crmsv.org/documentos/migrant_exploitation.pdf

Despite being slightly outdated, this paper makes a good entry point for further research on the crimes of smuggling, trafficking in persons, and labor exploitation. Key terms for understanding are defined and the underlying dynamics of various push and pull factors that contribute to the

occurrence of organized crime are presented. Finally, the aggravating effects of restrictive migration policy are assessed.

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III. Promoting and Protecting Human Rights in Post-Conflict Societies

“The recognition of victims as individuals and holders of rights is essential in any attempts to redress massive human rights violations and prevent their recurrence.”⁴²⁷

Introduction

More than 44 million people are currently experiencing human rights violations due to conflicts and disasters.⁴²⁸ Today, it is imperative to find new and innovative ways to promote and protect human rights in post-conflict societies.⁴²⁹ Simply defined, post-conflict societies are populations belonging to countries that have recently emerged from war or large-scale violence.⁴³⁰ Generally, the end of conflict is associated with a historical event, such as the deposition of a corrupt leader or the fall of a capital city.⁴³¹ However, the indication of a society entering a post-conflict period does not mean that all conflict has ceased; typically, conflict lessens greatly, but is still present in society and every day life.⁴³² Therefore, it is important to ensure that the work carried out by the Office of the High Commissioner for Human Rights (OHCHR) and mandated by the Human Rights Council (HRC) in post-conflict societies supports initiatives led by other UN agencies.⁴³³ Human rights mainstreaming efforts in relief, recovery, and reconstruction activities are essential to the successful implementation of new policies and principles.⁴³⁴ Human rights mainstreaming is not limited to adopting a human rights frameworks or laws, but rather ensures that the knowledge of human rights is available during any discussion relating to post-conflict reconstruction as well as guaranteeing its place at the forefront of the political agenda.⁴³⁵ Additionally, introducing sound policies into international reconstruction efforts can create a standard for use in future post-conflict reconstruction efforts.⁴³⁶

When dealing with this topic, it is important to note that specific groups of people may be more susceptible to human rights violations in post-conflict situations; these groups include: women, children, internally displaced persons (IDPs), and ethnic or religious minorities.⁴³⁷ Inclusion of these groups in post-conflict reconstruction is crucial to avoiding marginalization and underrepresentation in development and stabilization efforts.⁴³⁸ Other aspects of the advancement of human rights in post-conflict societies include: women’s role in political participation, governance and fair elections, economic, social, and cultural rights, and transitional justice. Transitional justice is a term used to describe the sum of efforts in place to help a post-conflict society to come to terms with past large-scale atrocities and to build a state with accountable institutions that fosters a climate for reconciliation.⁴³⁹ Post-conflict societies face a formidable task in restoring faith in government and protecting human rights, but it is possible to achieve success with the proper implementation of strategies specific to the country or region.⁴⁴⁰ This issue is particularly important because countries like Afghanistan that have faced many years of conflict and are currently in post-conflict status are in critical need of strong human rights frameworks and protection efforts. Finally, peacebuilding, which can be defined as the active cessation of conflict and targeted efforts to restore all aspects of society, holds also a vital place in handling human rights in post-conflict societies.⁴⁴¹

International and Regional Framework

International and regional human rights frameworks

⁴²⁷ UN DPI, *Transitional justice is key to preventing human rights violations, says UN expert*, 2012.

⁴²⁸ Al Faihani, *HR in post-disaster/post-conflict situations*, 2014, p. 2.

⁴²⁹ Ibid.

⁴³⁰ Nkurunziza, *Civil War and Post-Conflict Reconstruction in Africa*, 2008, p. 4.

⁴³¹ Ibid., p. 4.

⁴³² Ibid., pp. 4-5.

⁴³³ Al Faihani, *HR in post-disaster/post-conflict situations*, 2014, p. 2.

⁴³⁴ UN OHCHR, *Human Rights in post-conflict and post-disaster situations*, 2014.

⁴³⁵ Ibid.

⁴³⁶ Al Faihani, *HR in post-disaster/post-conflict situations*, 2014, p. 2.

⁴³⁷ Chinkin, *The Protection of Economic, Social, and Cultural Rights Post-Conflict*, 2007, p. 10.

⁴³⁸ Ibid.

⁴³⁹ UN Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General (S/2004/616)*, 2004.

⁴⁴⁰ Chinkin, *The Protection of Economic, Social, and Cultural Rights Post-Conflict*, 2007, p. 10.

⁴⁴¹ UN Peacebuilding Support Office, *Peacebuilding and the United Nations*.

The “International Bill of Human Rights” provides the foundation for human rights in post-conflict situations.⁴⁴² The “International Bill of Human Rights” refers to a body of human rights standards, namely the *Universal Declaration of Human Rights* (1946), the *International Covenant on Economic, Social, and Cultural Rights* (1966), and the *International Covenant on Civil and Political Rights* (1966) as well as the Optional Protocols to the two Covenants.⁴⁴³ The *Universal Declaration of Human Rights* lists all human rights that should be available to every human being.⁴⁴⁴ For example, Article 21 states that everyone has the right to vote, participate in government in his or her country, and do public service.⁴⁴⁵ This specific article is aligned with the subtopic of governance and elections in post-conflict societies.⁴⁴⁶

Regional frameworks are equally important to the cause of human rights. Regional frameworks allow for social and cultural particularities to be respected.⁴⁴⁷ In the Americas, the adoption of the *American Convention on Human Rights* was preceded by the *American Declaration of the Rights and Duties of Man*, and various specific human rights treaties exist, such as the *Inter-American Convention against torture*.⁴⁴⁸ The member states of the African Union are bound by the standards set forth in the *African Charter on Human and Peoples' Rights*.⁴⁴⁹ In addition, the Commission of the African Union (AU) adopted the *Policy on Post-Conflict Reconstruction and Development* (2006). This policy is a guide for post-conflict societies to successfully complete reconstruction and restoration.⁴⁵⁰ Topics that are discussed include security, women and gender, and political governance and transition.⁴⁵¹ With post-conflict societies such as Kenya, Uganda, and Côte d’Ivoire, Africa has many different challenges to the promotion and protection of human rights. The *Policy on Post-Conflict Reconstruction and Development* gives these countries a foundation for addressing those challenges.⁴⁵²

Human Rights Council work on human rights in post-conflict societies

The HRC has done a considerable amount of work on human rights in post-conflict societies. On 10 April 2013, the Council adopted resolution 22/16 on the “promotion and protection of human rights in post-conflict and post-disaster situations.”⁴⁵³ In this resolution, the HRC requested its Advisory Committee to conduct research and report on successful experiences and remaining challenges regarding the advancement of human rights in post-conflict societies. The resolution calls special attention to mainstreaming human rights in all relief, recovery and reconstruction efforts, as well as promoting a rights-based approach in all humanitarian initiatives, focused on principles of humanity, impartiality, neutrality, independence, and self-sufficiency.⁴⁵⁴ The progress report on this research (A/HRC/27/57) was published on 11 August 2014.⁴⁵⁵ This progress report details the outcome of questionnaires sent to Member States on the subject of human rights in post-disaster and post-conflict situations.⁴⁵⁶ The progress report also lists regional frameworks and current implementation, based on the results of the questionnaires.⁴⁵⁷ The main challenges outlined in this report include the lack of consideration for vulnerable populations, focus on reconstruction efforts, and access to water.⁴⁵⁸ The report also highlights inadequate funding and programming for the promotion of transitional justice and peacebuilding efforts, as well as the prevention of

⁴⁴² United Nations, *International Bill of Human Rights*, 2008.

⁴⁴³ *Ibid.*

⁴⁴⁴ UN GA, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

⁴⁴⁵ *Ibid.*, Art. 21.

⁴⁴⁶ *Ibid.*

⁴⁴⁷ African Union, *Policy on Post-Conflict Reconstruction and Development*, 2006, p. v.

⁴⁴⁸ Inter-American Commission on Human Rights, *Basic Documents in the Inter-American System: Introduction*.

⁴⁴⁹ *African Charter on Human and Peoples' Rights*, 1981.

⁴⁵⁰ African Union, *Policy on Post-Conflict Reconstruction and Development*, 2006, p. vi.

⁴⁵¹ *Ibid.*, p. 9.

⁴⁵² *Ibid.*, p. vi.

⁴⁵³ UN HRC, *Promotion and protection of human rights in post-disaster and post-conflict situations (A/HRC/RES/22/16)*, 2013.

⁴⁵⁴ *Ibid.*

⁴⁵⁵ UN HRC, *Progress report on the research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations (A/HRC/27/57)*, 2014.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Ibid.*

⁴⁵⁸ *Ibid.*

domestic and gender-based violence. With these challenges, the Advisory Committee has concluded thus far that a human rights-based approach requires intention, participation, attention, and transparency.⁴⁵⁹

Role of the International System

Encouraging the respect for human rights is one of the main pillars of the UN system and at the heart of HRC's mandate.⁴⁶⁰ As highlighted in Article 1 of the *Charter of the United Nations* (1945), the promotion and protection of human rights is a central purpose of the UN.⁴⁶¹ The UN Secretary-General's seminal 2005 report "In larger freedom: towards development, security, and human rights for all" (A/59/2005) provided for a renewed vision on how the UN could get closer to achieving its main purposes, including the realization of human rights.⁴⁶² In addition to creating the foundation for stronger implementation of human rights, democracy, and rule of law, the Secretary-General charged the Office of the High Commissioner for Human Rights (OHCHR) with creating a plan of action.⁴⁶³ This plan of action is part of a larger strategy to strengthen the UN system.⁴⁶⁴ The *OHCHR Plan of Action: Protection and Empowerment* lists six challenges to human rights: poverty and global inequalities, discrimination, armed conflict and violence, impunity, democracy deficits, and weak institutions.⁴⁶⁵ All of these challenges have an effect on post-conflict societies, such as the issue of impunity opposing the stability of newly created security and policing measures.⁴⁶⁶ The *OHCHR Plan of Action* also identifies four challenges to implementation: knowledge, capacity, commitment and security.⁴⁶⁷ Understanding how these challenges affect the promotion and protection of human rights in post-conflict societies is crucial to making progress and being successful.⁴⁶⁸ The *OHCHR Plan of Action: Protection and Empowerment* provides a detailed outline as to how OHCHR interacts with and supports UN human rights bodies, treaty bodies, partners, agencies, and civil society. Engaging cooperation through all of these avenues gives OHCHR the tools to aid HRC and other bodies in effectively handling post-conflict societies.⁴⁶⁹ Today, OHCHR is the Secretariat for HRC and also works with a number of UN and other government organizations to promote and protect human rights worldwide.⁴⁷⁰

The General Assembly Third Committee is the main committee that focuses on social, humanitarian, and cultural affairs, and as a result, works very closely with HRC, interacting with its various special rapporteurs and working groups.⁴⁷¹ Based on the report of Third Committee, the UN General Assembly adopted resolution 66/130 on 19 December 2011 on the role of women in political participation, an important facet to rebuilding post-conflict societies.⁴⁷² The UN Security Council (SC) has also been instrumental in the promotion and protection of human rights in post-conflict societies. The SC adopted resolution 1325 on "Women, Peace and Security" on 31 October 2000 on increasing the representation of women in decision-making roles during and after conflicts, as a means to achieve gender equality, as well as reinforcing the need to particularly ensure women's rights are protected and promoted in post-conflict situations.⁴⁷³ Finally, one of the priority topics for the Economic and Social Council (ECOSOC) is peacebuilding and post-conflict recovery.⁴⁷⁴ ECOSOC notes that human rights protection is an important part of peacebuilding and post-conflict recovery.⁴⁷⁵

⁴⁵⁹ UN HRC, *Progress report on the research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations* (A/HRC/27/57), 2014.

⁴⁶⁰ UN OHCHR, *Welcome to the Human Rights Council*, 2014.

⁴⁶¹ *Charter of the United Nations*, 1945, Art. 1.

⁴⁶² UN GA, *In larger freedom: towards development, security, and human rights for all* (A/59/2005), 2005.

⁴⁶³ *Ibid.*

⁴⁶⁴ *Ibid.*

⁴⁶⁵ UN OHCHR, *The OHCHR Plan of Action: Protection and Empowerment*, 2005, pp. 7-9.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ *Ibid.*, pp. 10-11.

⁴⁶⁸ *Ibid.*

⁴⁶⁹ *Ibid.*, pp. 21-26.

⁴⁷⁰ UN OHCHR, *What we do*, 2014.

⁴⁷¹ UN GA, *UN General Assembly – Third Committee – Social, Humanitarian & Cultural*, 2014.

⁴⁷² UN GA, *Women and political participation* (A/RES/66/130), 2011.

⁴⁷³ UN Security Council, *Women and peace and security* (S/RES/1325), 2000.

⁴⁷⁴ UN ECOSOC, *Peacebuilding and Post-Conflict Recovery*, 2014.

⁴⁷⁵ *Ibid.*

Using the various efforts of these UN organizations, HRC has a wealth of resources at its disposal for the promotion and protection of human rights in post-conflict societies. For example, the United Nations Development Programme (UNDP) lists democratic governance as one of its main goals.⁴⁷⁶ It works with Member States and civil society to develop and monitor elections and provides support to build other governance and legislative systems and building capacity to increase access to justice delivery and social services.⁴⁷⁷ In addition to these resources, HRC benefits from the work of its Special Rapporteurs who are independent experts in the field of human rights (in particular, the work of the Special Rapporteurs on adequate housing, cultural rights, democratic and international order, truth, justice, reparation, and guarantee of non-recurrence, violence against women, discrimination against women in law and in practice as well as on those countries that are in a stage of transition).⁴⁷⁸ These experts have mandates that require them to investigate, report on, and advise HRC on human rights issues within their theme or region.⁴⁷⁹

The work of international non-governmental organizations (NGOs) and civil society is essential to restore human rights in post-conflict societies, as they tend to be the instruments used to help enforce and monitor international policy.⁴⁸⁰ Amnesty International is one such NGO; its mission is to “campaign to end grave abuses of human rights.”⁴⁸¹ It fulfills its mission by engaging volunteers, researching human rights violations, publishing reports, and notifying the media.⁴⁸² On the topic of post-conflict societies, Amnesty International calls for the termination of impunity and the observation of international humanitarian law and human rights in peacekeeping operations.⁴⁸³ Also, Amnesty International has a campaign to help put human rights at the center of the UN.⁴⁸⁴ Another example of an international NGO in the field of human rights is the International Center for Transitional Justice (ICTJ). ICTJ aids post-conflict governments and civil service organizations in tackling human rights violations and building trust in order to protect human rights in the future.⁴⁸⁵ It works through researching transitional justice strategies, advising officials at all levels of governments, and aiding civil service organizations.⁴⁸⁶

Transitional Justice and the Rule of Law

Transitional justice is imperative to forming a successful democratic government following conflict. In the Secretary-General’s 2004 report (S/2004/616), transitional justice is defined as, “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”⁴⁸⁷ It is concerned with pursuing justice for human rights violations in the past administration, as well as creating a new administration that supports and promotes human rights.⁴⁸⁸ The history of transitional justice starts with post-conflict reconstruction in Eastern Europe and post-authoritarian regime recovery in Latin America.⁴⁸⁹ Examples of transitional justice strategies can be found in these countries; however, differing cultures and social customs should be taken into account when considering strategies for today’s post-conflict societies.⁴⁹⁰ While transitional justice cannot be limited to ending impunity through criminal tribunals, criminal justice can and does play an important role many transitional justice strategies.⁴⁹¹ One such example is that of the International Criminal Tribunal for Rwanda (ICTR).⁴⁹² The ICTR aims

⁴⁷⁶ UNDP, *Overview United Nations Development Programme*, 2014.

⁴⁷⁷ *Ibid.*

⁴⁷⁸ UN OHCHR, *Special Procedures of the Human Rights Council*, 2014.

⁴⁷⁹ *Ibid.*

⁴⁸⁰ UN News Centre, *UN and Civil Society*.

⁴⁸¹ Amnesty International, *Who We Are*, Amnesty International, 2014.

⁴⁸² Amnesty International, *Frequently asked questions*, 2014.

⁴⁸³ Amnesty International, *Armed Conflict*, 2014.

⁴⁸⁴ Amnesty International, *United Nations*, 2014.

⁴⁸⁵ International Center for Transitional Justice, *About Us: International Center for Transitional Justice*, 2014.

⁴⁸⁶ *Ibid.*

⁴⁸⁷ UN Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General (S/2004/616)*, 2004.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ Peacebuilding Support Office, *What is transitional justice? A Background*, 2008, p. 2.

⁴⁹⁰ *Ibid.*

⁴⁹¹ UN Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General (S/2004/616)*, 2004, p. 17.

⁴⁹² International Criminal Tribunal for Rwanda, *General Information*.

to bring high-ranking war criminals to justice for their actions during the 1994 Rwandan Genocide.⁴⁹³ Pablo de Greiff, Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, stated in his 2012 report to HRC that societies in conflict often see human rights violations rise when there is widespread social unrest.⁴⁹⁴

Transitional justice works in tandem with the rule of law. The Secretary-General defined the rule of law as, “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”⁴⁹⁵ The rule of law is an integral component of the *Charter of the United Nations* (1945) and the *Universal Declaration of Human Rights* (1946).⁴⁹⁶ It sets the standard for justice nationally and internationally.⁴⁹⁷ Post-conflict societies have typically experienced some form of disregard for the rule of law throughout the conflict, which is why it is important to reestablish its significance from the start of the peacebuilding process.⁴⁹⁸

Executing transitional justice strategies requires a holistic approach.⁴⁹⁹ In 2010, the Secretary-General published a guidance note on the subject, which articulates the manner by which the United Nations addresses transitional justice situations and strategies, as well as ways for these measures to improve.⁵⁰⁰ The transitional justice components that the UN considers important are: “prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform, and national consultations.”⁵⁰¹ Implementing these components wholly, while fostering peace in a post-conflict society, is a complicated process; it requires that UN agencies work together collaboratively and in coordination.⁵⁰²

Governance and Elections

The installation and/or protection of democratic activity in post-conflict societies can serve as a test to assess the willingness of the state to change or adapt its political system.⁵⁰³ Even if it is burgeoning or limited, the protection of democracy and the freedom of expression can lead to increased transparency in the political process and to empowered citizens.⁵⁰⁴ International law provides for the freedom of expression with Article 19 of the *Universal Declaration of Human Rights* and Article 25 of the *International Covenant on Civil and Political Rights*.⁵⁰⁵ Fair and free elections and freedom of the press are also important to the UN system and should be protected in post-conflict societies.⁵⁰⁶

Elections are a vital part of the democratization of post-conflict societies; however, elections are not the sole indicator of a successful democratic political system.⁵⁰⁷ Because elections are essentially a competition for political power, post-conflict societies can be vulnerable to violence after elections occur.⁵⁰⁸ This is why it is important for post-conflict societies to apply and maintain well-defined and fair rules and procedures, so that all candidates are aware of the processes taking place.⁵⁰⁹ Free and fair elections can lead to successful democracies being built out of

⁴⁹³ Ibid.

⁴⁹⁴ UN HRC, *Report of the Special Rapporteur on truth, justice, reparation, and guarantee of non-recurrence Pablo de Greiff* (A/HRC/21/46), 2012.

⁴⁹⁵ UN Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General* (S/2004/616), 2004.

⁴⁹⁶ UN Rule of Law Unit, *What is the rule of law?*, 2014.

⁴⁹⁷ Ibid.

⁴⁹⁸ UN Rule of Law Unit, *Transitional Justice*.

⁴⁹⁹ Peacebuilding Support Office, *What is transitional justice? A Backgrounder*, 2008, p.3.

⁵⁰⁰ UN Secretary-General, *United Nations Approach to Transitional Justice*, 2010, p. 2.

⁵⁰¹ Ibid.

⁵⁰² Ibid.

⁵⁰³ UN OHCHR, *United Nations Human Rights Appeal*, 2014, p. 30.

⁵⁰⁴ Ibid.

⁵⁰⁵ UN GA, *International Bill of Human Rights*, 1966.

⁵⁰⁶ Ibid.

⁵⁰⁷ Ndulo & Lulo, *Free and Fair Elections, Violence and Conflict*, 2010, p. 157.

⁵⁰⁸ Ibid.

⁵⁰⁹ Ibid.

post-conflict societies.⁵¹⁰ For example, the UN supervised elections in Mozambique in 1994; since then, all elections have been freely and fairly run, with all parties understanding the rules and procedures.⁵¹¹ The UN Secretary-General's 2007 report entitled "Support by the United Nations system of the efforts of Governments to promote or consolidate new or restored democracies" (A/62/296) provides guidance to the UN system for aiding new or fledgling democracies to grow, as well as interacting with other national and international actors in the democracy process.⁵¹² Several recommendations on how the UN system should intervene in new and restored democracies are explored, which include maintaining a democracy database and website and cooperating with regional organizations.⁵¹³

The protection of the right to free press is a critical issue in today's post-conflict societies. According to outgoing UN High Commissioner for Human Rights Navi Pillay, "more than 1,000 journalists had been killed since 1992 as a direct result of their profession."⁵¹⁴ The criminals are not often apprehended or prosecuted, perpetuating the vicious cycle of impunity and crime against journalists.⁵¹⁵ Preventative, protective, and punitive measures should be in place and implemented fully to protect journalists against these crimes.⁵¹⁶ HRC has a Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue.⁵¹⁷ At a recent panel discussion on the safety of journalists, La Rue commented that even though everyone has the same human rights, certain people need special protection of those rights. He also commented that the UN and its Member States should have measures in place to protect journalists.⁵¹⁸ The role of NGOs in post-conflict societies is important to consider, as they are not attached to the face of a government and can spur change at the grassroots level.⁵¹⁹ NGOs have easy access to affected populations and can bring the concerns of these people to government actors.⁵²⁰ For example, Reporters without Borders (RWB) is an NGO which has consultant status at the UN and is concerned with the safety of journalists worldwide.⁵²¹ RWB provides monetary and material assistance to journalists working in unstable situations, as well as protection and resources to exiled journalists, and is involved in national and international discussions about the safety of journalists in war or disaster-stricken areas.⁵²²

Economic, Social, and Cultural Rights

Both the Preambles to the *International Covenant on Economic, Social and Cultural Rights* as well as to the *International Covenant on Civil and Political Rights* (1966) state that "the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."⁵²³ Post-conflict societies pose a challenge to the maintaining of economic, social, and cultural rights due to their fragile political state.⁵²⁴ Implementing new measures in protecting these rights must be carefully considered and introduced. The right to adequate housing is often significantly affected in post-conflict societies.⁵²⁵ Former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, explained in her annual report to HRC that there are no institutions in place to provide displaced persons with proper land for housing or create more legal rights for them.⁵²⁶ Rolnik insisted on the need to create and implement an efficient assessment mechanism, which can track preexisting tenure, land, and property

⁵¹⁰ Ibid.

⁵¹¹ Ndulo & Lulo, *Free and Fair Elections, Violence and Conflict*, 2010, p. 158.

⁵¹² UN GA, *Support by the United Nations system of the efforts of governments to promote or consolidate new or restored democracies* (A/62/296), 2007.

⁵¹³ Ibid.

⁵¹⁴ UN OHCHR, *Human Rights Council holds panel discussion on the safety of journalists*, 2014.

⁵¹⁵ Ibid.

⁵¹⁶ Ibid.

⁵¹⁷ UN OHCHR, *Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 2014.

⁵¹⁸ UN OHCHR, *Human Rights Council holds panel discussion on the safety of journalists*, 2014.

⁵¹⁹ UN Department of Public Information, *Non-Governmental Organizations: About Us*, 2014.

⁵²⁰ Ibid.

⁵²¹ Reporters Without Borders, *Who we are – Reporters Without Borders*, 2014.

⁵²² Reporters Without Borders, *Supporting and Protecting Journalists*, 2013.

⁵²³ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* (A/RES/2200 (XXI)), 1966, p. 1.

⁵²⁴ Chinkin, *The Protection of Economic, Social, and Cultural Rights Post-Conflict*, 2007, p. 10.

⁵²⁵ Ibid.

⁵²⁶ UN DPI, *Vital to ensure human rights in post-conflict, post-disaster rebuilding – UN expert*, 2011.

rights following conflict and/or disaster. This system would be a first step in the protection and promotion of the right to adequate housing and tenure security of all, especially for those particularly vulnerable in post-conflict situations, such as the poor or the marginalized.⁵²⁷ The UN *Principles on Housing and Property Restitution*, also known as the *Pinheiro Principles*, provide the UN system with guidelines concerning the right to adequate housing and governmental/legal framework surrounding that topic.⁵²⁸

An example of the right to adequate housing being practiced in a post-conflict society is illustrated in Timor-Leste. Around 150,000 people were displaced during the conflict with thousands of houses being damaged in the capital of Dili.⁵²⁹ The success of returning these IDPs to adequate housing was heavily dependent on properly addressing property rights and rebuilding housing.⁵³⁰ After various failures to alleviate the problem of IDPs in temporary camps, the government devised a solution: the National Recovery Strategy.⁵³¹ Through working with an internal housing strategy, using cash payments as persuasion, and providing government-created housing, IDPs were largely removed from temporary camps.⁵³² However, this strategy was not completely realized to its full potential.⁵³³ Waning political desire to tackle the complex problem of providing adequate housing to IDPs is one reason why this strategy was not wholly effective.⁵³⁴ The will of a political system to fully address these issues and see them to completion is paramount in handling the right to adequate housing.⁵³⁵

Education is another right that is particularly vulnerable in the context of post-conflict society. In 2005, the World Bank published a book regarding the relationship between education and conflict. In this book, various aspects of conflict and how they affected education in certain regions is explored.⁵³⁶ For example, the World Bank explains that shorter, more intense conflicts (like those in Timor-Leste and Kosovo) had different effects on education than those conflicts that lasted decades (such as those in Lebanon and Guatemala).⁵³⁷ Longer conflicts tend to affect a certain part of a region, whereas shorter, more intense conflicts tend to be more widespread across the region.⁵³⁸ The World Bank also notes that particular drivers of conflict such as racial or religious identity, political upheaval, and lack of resources have specific effects on education in those areas.⁵³⁹ When considering measures to improve education in post-conflict societies, the reasons for the conflict should be taken into consideration.⁵⁴⁰ The World Bank concluded that schools are reflective of the dominant groups in society; if these groups are driving the conflict, then schools are adding tensions involuntarily to the conflict.⁵⁴¹ The World Bank recommends four areas of focus for post-conflict education reform: firm policies and committed country leaders, sufficient capacity for operation and participation, adequate financial resources, and a focus on results.⁵⁴²

Women's Rights and Political Participation

In post-conflict societies, the relationship between women's rights and the government has proven to be a sensitive one.⁵⁴³ Certain post-conflict societies have yet to see improvement in the representation and participation of women in politics, while other societies have actively engaged their female population to participate.⁵⁴⁴ Deputy Chairperson of the South African Human Rights Commission Pregalxmi Govender once remarked that the inclusion of women in

⁵²⁷ Ibid.

⁵²⁸ Pinheiro, P., *The Pinheiro Principles: United Nations principles on housing and property restitution for refugees and displaced persons*, 2006.

⁵²⁹ Bugalski, *Post-Conflict Housing and Reconstruction and the Right to Adequate Housing in Timor-Leste*, 2009, p. 13.

⁵³⁰ Ibid., p. 14.

⁵³¹ Ibid., p. 16.

⁵³² Ibid.

⁵³³ Ibid., p. 18.

⁵³⁴ Ibid., p. 17.

⁵³⁵ Ibid., p. 18.

⁵³⁶ Ibid., p. 2.

⁵³⁷ World Bank. *Reshaping The Future*, 2005, p. 3.

⁵³⁸ Ibid.

⁵³⁹ Ibid., p. 4.

⁵⁴⁰ Ibid., pp. 3-4.

⁵⁴¹ Ibid., p. xv.

⁵⁴² Ibid., p. xvi.

⁵⁴³ Sorensen, *Women and Post-Conflict Reconstruction: Issues and Sources*, 1998, p. ii.

⁵⁴⁴ UN-Women, *In Focus: Women in Power and Decision-making*, 2014.

political transitions could positively impact universal human rights.⁵⁴⁵ The role of women in elections and the representation of women in places of power are two of the issues that need to be addressed when promoting human rights in post-conflict societies.⁵⁴⁶

The Committee on the Elimination of Discrimination against Women (CEDAW) is “the body of independent experts that monitors implementation of the *Convention on the Elimination of All Forms of Discrimination against Women*.”⁵⁴⁷ The Convention, adopted in 1979 by the United Nations General Assembly, outlines all forms of discrimination against women, encourages Member States to rectify issues with discrimination against women, and calls for the creation of a committee to monitor implementation of the treaty on an ongoing basis.⁵⁴⁸ Since its inception, CEDAW has monitored the ratification of the Convention by most Member States; just a few Member States have yet to ratify the Convention. Part II, Article 7 of the Convention states that women should have the equal right as men to participate in politics, both in holding public office and electing officials to office.⁵⁴⁹ Regardless of the situation of the country – conflict, post-conflict or free from conflict – the Convention is to be upheld by the Member State who ratified it.⁵⁵⁰ CEDAW makes general recommendations periodically on issues that the Committee believes are in need of proper attention.⁵⁵¹ *General Recommendation 30*, adopted in 2013, is on the subject of women in conflict prevention, conflict and post-conflict situations.⁵⁵² Paragraph 43 of *General Recommendation 30* states that “the immediate aftermath of conflict can provide a strategic opportunity for States parties to adopt legislative and policy measures to eliminate discrimination against women in the political and public life of the country and to ensure that women have equal opportunities to participate in the new, post-conflict structures of governance.”⁵⁵³ It is important for societies emerging out of conflict to recognize the opportunity to positively affect culture by implementing inclusive political strategies. The General Recommendation continues to defend that more often than not, women’s participation in the political process is often ignored in favor of other post-conflict issues.⁵⁵⁴ The General Recommendation encourages Member States to pay attention to this topic and ensure complete application of the Convention.⁵⁵⁵

The *Beijing Platform for Action* is the resulting resolution adopted at the Fourth World Conference on Women in Beijing in September 1995. With its 20-year anniversary approaching, the UN system is reflecting on its importance, relevance, and practical application. According to the Beijing +20 website, “women in power and decision-making is one of 12 critical areas of concern.”⁵⁵⁶ In addition, there are two strategic objectives given in the Platform for Action that need to be ensured: equal access for women and men to political decision-making and political participation, as well as an increased role of women in leadership and decision-making roles.⁵⁵⁷ The Platform for Action outlines measures that should be taken by the UN system, governments, and non-governmental organizations (NGOs) in order to achieve these objectives.⁵⁵⁸ In an article published in June 2014, Chilean President Michelle Bachelet notes that the results from 20 years of the Beijing Plan of Action are not satisfactory.⁵⁵⁹ The former Executive Director of UN-Women points out that there are only nine female Heads of State and 15 Heads of Government.⁵⁶⁰ Also, she states that only 21% of parliamentarians worldwide are women.⁵⁶¹ Bachelet recognizes the challenges within the Beijing Platform of Action that have yet to be accomplished, and notes that women in equal power and decision-making position is just a dream until the Platform for Action is entirely accomplished.⁵⁶²

⁵⁴⁵ UN OHCHR, *Women’s rights in political transitions*, 2013.

⁵⁴⁶ *Ibid.*

⁵⁴⁷ UN OHCHR, *Committee on the Elimination of Discrimination Against Women*, 2014.

⁵⁴⁸ UN GA, *Convention on the Elimination of All Forms of Discrimination against Women (A/RES/34/180)*, 1979.

⁵⁴⁹ *Ibid.*

⁵⁵⁰ UN CEDAW, *General Recommendation 30*, 2013.

⁵⁵¹ UN CEDAW, *General Recommendations*, 2014.

⁵⁵² *Ibid.*

⁵⁵³ UN CEDAW, *General Recommendation 30*, 2013.

⁵⁵⁴ *Ibid.*

⁵⁵⁵ *Ibid.*

⁵⁵⁶ UN-Women, *In Focus: Women in Power and Decision-making*, 2014.

⁵⁵⁷ UN GA, *Report on the Fourth World Conference on Women (A/CONF.177/20/Rev.1)*, 1995.

⁵⁵⁸ *Ibid.*

⁵⁵⁹ Bachelet, *Once we make this dream a reality...*, 2014.

⁵⁶⁰ *Ibid.*

⁵⁶¹ *Ibid.*

⁵⁶² *Ibid.*

Women are often targets of gender-based violence (GBV) and sexual violence in conflict and post-conflict societies.⁵⁶³ Specifically, domestic violence, sex trafficking, and forced prostitution tend to be prevalent in these contexts.⁵⁶⁴ In post-conflict reconstruction, GBV offenders and GBV survivors are often ignored or insufficiently addressed, which leads to a cycle of violence and impunity.⁵⁶⁵ To combat this widespread issue, it is important to work with community leaders, much like the United Nations Population Fund (UNFPA), which has collaborated with religious and cultural leaders on this issue.⁵⁶⁶ Implementing change at this level requires cultural knowledge of the region, as sexual rights and practices can vary between different countries and cultures.⁵⁶⁷ Another way to bring change to GBV and sexual violence is to involve men in the dialogue; the MenEngage Alliance is a group of NGOs working to end GBV by engaging men and boys.⁵⁶⁸ The MenEngage Alliance aims to accomplish this task by educating men and boys on human rights, encouraging men and boys to speak up when they witness an act of violence and empowering men and boys to support action against GBV and sexual violence.⁵⁶⁹ Overall, there has been a considerable amount of progress in this field, yet there remains a great deal of work to be done. The key areas of focus on this subject included adequate representation of women in public office, women's equal right to participate in politics, and the pursuit of justice for perpetrators of GBV and domestic violence.

Case Study: Afghanistan

Afghanistan is a post-conflict society that offers a wealth of examples in handling human rights issues. In 2001, top Afghan officials met with world leaders to create the *Bonn Agreement*, a document that established the interim government of Afghanistan.⁵⁷⁰ After the process of setting up the interim government was completed, the High Commissioner for Human Rights produced a report (E/CN.4/2006/108) on the human rights situation in Afghanistan, noting concern for a variety of human rights issues.⁵⁷¹ The Afghanistan Independent Human Rights Commission (AIHRC) was also created in accordance with the *Bonn Agreement*, and was charged with the task of monitoring the human rights situation and investigating any violations.⁵⁷² Even though AIHRC is a functioning part of the Afghan government, its true political influence is undetermined.⁵⁷³ For example, President Karzai left vacancies in AIHRC for almost two years; eventually, he filled those seats with officials of uncertain human rights experience.⁵⁷⁴ In addition, AIHRC lacks adequate State funding, relying instead on international donations.⁵⁷⁵

In 2008, the Afghanistan National Development Strategy (ANDS) was published. The ANDS provides a vision of the country in 2020, as well as an outline of three main goals to help attain that vision.⁵⁷⁶ These goals are: a stabilized and strengthened security system, the strengthening of democracy and accountability of national leaders, and achieving sustainable development and reduction of poverty.⁵⁷⁷ The first chapter contains Afghanistan's various accomplishments since 2001, such as: the adoption of a new constitution, women obtaining seats in the National Assembly, and increased enrolment in schools.⁵⁷⁸ The long list of accomplishments shows that Afghanistan has made significant gains in human rights and political stability since 2001.⁵⁷⁹ However, the country has its challenges to face. The ANDS cites corruption and weak governance, the narcotics industry, and threatened security as a few of

⁵⁶³ Manjoo & McRaith, *Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*, 2011, p. 11.

⁵⁶⁴ *Ibid.*

⁵⁶⁵ Manjoo & McRaith, *Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*, 2011, p. 12.

⁵⁶⁶ UNFPA, *Addressing Gender-Based Violence*, 2012.

⁵⁶⁷ *Ibid.*

⁵⁶⁸ MenEngage Alliance, *Sexual Violence in Conflict and Post-Conflict: Engaging Men and Boys*, 2012.

⁵⁶⁹ *Ibid.*

⁵⁷⁰ Afghanistan, *Bonn Agreement*.

⁵⁷¹ UN ECOSOC, *Report of the High Commissioner of Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights (E/CN.4/2006/108)*, 2006.

⁵⁷² Afghanistan, *Bonn Agreement*.

⁵⁷³ Amnesty International, *Too many missed opportunities: human rights in Afghanistan under the Karzai administration*, 2014.

⁵⁷⁴ Human Rights Watch, *World Report 2014: Afghanistan*, 2014.

⁵⁷⁵ Afghanistan Independent Human Rights Commission, *1389-1392 (2010-2013) Strategic Plan and Action Plan*, 2010, p. 3.

⁵⁷⁶ Afghanistan, National Development Strategy Oversight Committee, *Afghanistan National Development Strategy*, 2008, p. i.

⁵⁷⁷ *Ibid.*, p. i.

⁵⁷⁸ *Ibid.*, pp. 2-3.

⁵⁷⁹ *Ibid.*

its longstanding issues.⁵⁸⁰ In terms of governance and human rights, the ANDS lists eleven specific issues that required attention.⁵⁸¹ In order to address these issues, the ANDS states that, “functional institutions with trained staff will be established in each province to implement appropriate legal frameworks and appointment procedures.”⁵⁸² The ANDS provides specifics on the creation of these institutions; it also provides a table of crosscutting issues within the topic of human rights and governance.⁵⁸³

Women’s rights in Afghanistan face a longstanding religious and cultural challenge. For example, increasing the number of women who participated in elections was faced with the issue of voting via proxy, usually a male relative.⁵⁸⁴ An increasing number of women have campaigned for public office in recent years, although barriers, ranging from logistics to economic challenges to physical threats against their person, often prevent women from continuing as candidates and standing for election.⁵⁸⁵ In its recent annual report of Afghanistan, Human Rights Watch notes that since global interest in Afghanistan has declined, progress in the field of women’s rights are reverting back to the state they were in pre-2001.⁵⁸⁶ There has been a call to repeal the Elimination of Violence Against Women (EVAW) Law, in addition to attacks on high-ranking women and a reduction in the number of parliament seats allotted to women.⁵⁸⁷ According to the United States Institute of Peace, Afghan women’s rights activists are worried that the status of women’s rights will continue to decline after the departure of international troops at the end of 2014.⁵⁸⁸

Transitional justice is another crucial human rights topic in Afghanistan. Amnesty International notes that impunity is still an issue, seeing as the government has not held criminals accountable for their actions.⁵⁸⁹ Amnesty International urges Afghanistan to implement proper measures to control impunity.⁵⁹⁰ The prevalence of impunity coupled with the inefficiency and undermining of AIHRC creates a challenge to human rights in Afghanistan.⁵⁹¹ In an effort to continue the growth of democracy, Afghanistan held largely peaceful democratic elections for President in June 2014.⁵⁹²

Today, Afghanistan is in an uncertain state as international military presence is being significantly reduced until the end of 2014.⁵⁹³ The United States Institute of Peace expressed that Afghanistan is dependent upon the international community for donations of resources, aid, and money.⁵⁹⁴ The country has made progress in terms of governance and human rights since 2001, but there are still major human rights violations that occur regularly.⁵⁹⁵ The topic of security is of high importance in Afghanistan; Afghan security forces face the threat of insurgents, who they have not been able to contain.⁵⁹⁶ The lack of wholly enforced security allows human rights violations to continue with impunity being the result.⁵⁹⁷ The three goals of the ANDS give Afghanistan an outline to continue improvements in human rights after 2014.⁵⁹⁸ A strengthened security system can lead to the reduction or elimination of impunity of

⁵⁸⁰ Ibid., p. 3.

⁵⁸¹ Afghanistan, National Development Strategy Oversight Committee, *Afghanistan National Development Strategy*, 2008, p. 6..

⁵⁸² Ibid., p. 61.

⁵⁸³ Afghanistan, *Afghanistan National Development Strategy*, 2008, p. 61, 70.

⁵⁸⁴ UN ECOSOC, *Report of the High Commissioner of Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights (E/CN.4/2006/108)*, 2006.

⁵⁸⁵ Ibid.

⁵⁸⁶ Human Rights Watch, *World Report 2014: Afghanistan*, 2014.

⁵⁸⁷ Ibid.

⁵⁸⁸ Hozyainova, *Sharia and Women’s Rights in Afghanistan*, 2014.

⁵⁸⁹ Amnesty International, *Too many missed opportunities: human rights in Afghanistan under the Karzai administration*, 2014, p. 4.

⁵⁹⁰ Ibid.

⁵⁹¹ Ibid., pp. 5-6.

⁵⁹² BBC, *Afghan elections: what is at stake in presidential vote*, 2014.

⁵⁹³ Human Rights Watch, *World Report 2014: Afghanistan*, 2014.

⁵⁹⁴ United States Institute for Peace, *Report on an International Symposium on Monitoring and Management in Insecure Environments: Applying Best Practices to Afghanistan*, 2014, p. 7.

⁵⁹⁵ Ibid.

⁵⁹⁶ Human Rights Watch, *World Report 2014: Afghanistan*, 2014.

⁵⁹⁷ Ibid.

⁵⁹⁸ Afghanistan, National Development Strategy Oversight Committee, *Afghanistan National Development Strategy*, 2008, p. i.

crimes.⁵⁹⁹ A more accountable and transparent government can lead to more free and fair elections with equal participation among men and women.⁶⁰⁰ Sustainable development can lead to more locally available resources.⁶⁰¹

Conclusion

Outgoing High Commissioner for Human Rights Navi Pillay noted that conflicts will always be a main concern to human rights, and that impunity must be fought at all levels of governance.⁶⁰² There will always be challenges to human rights protection, some of which will be prolonged and some of which will be abrupt.⁶⁰³ It is important for HRC and other UN human rights bodies to be prepared for such challenges in the future. This preparation requires the cooperation and synergy of the UN system with affected regions and their governments, civil service organizations, and other NGOs. With international cooperation, issues such as impunity, unfair elections, and the underrepresentation of women in politics could become issues of the past.

Further Research

Given the example of Afghanistan, what is the future of transitional justice in post-conflict societies? How can Afghanistan and other countries emerging from conflict successfully rebuild their societies? Do legacies of gross violations of human rights pose an insurmountable threat to post-conflict reconciliation? How can post-conflict societies effectively lessen international aid over time without threatening a collapse of a new democracy? What are some cultural aspects to be taken into consideration when restoring a post-conflict society? How can post-conflict societies effectively involve women in political processes and public office? How can change be solidified in a transitional democracy?

⁵⁹⁹ Afghanistan, National Development Strategy Oversight Committee, *Afghanistan National Development Strategy*, 2008, p. i.

⁶⁰⁰ Ibid.

⁶⁰¹ Ibid.

⁶⁰² UN OHCHR, *Speech by High Commissioner for Human Rights Navi Pillay on the Future of OHCHR and the UN Human Rights System on 13 May 2014*, in *Glion*, 13 May 2014.

⁶⁰³ Ibid.

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This policy is a framework for post-conflict reconstruction in Africa. It outlines how the African Union should handle aspects of post-conflict reconstruction. Special attention is given to issues that are rampant in Africa, such as HIV/AIDS, food security, and malaria. This policy cites many documents and strategies originating in Africa, reinforcing the regional framework for post-conflict reconstruction. Every level of government is considered in this policy – from local to national to international. For delegates, this policy is a great example of regional framework for promoting and protecting human rights in post-conflict societies.

Islamic Republic of Afghanistan, National Development Strategy Oversight Committee. (2008). *Afghanistan National Development Strategy*. Retrieved 2 August 2014 from: http://www.undp.org.af/publications/KeyDocuments/ANDS_Full_Eng.pdf

This document gives the vision for the future of Afghanistan, particularly to the year 2020. Listed are goals that the country's leaders would like to attain by 2020; these goals include: a stable security system, a stronger democracy, and an increase in sustainable development. This strategy gives a very detailed look into specifics of the goals listed. This strategy is an essential resource for delegates, allowing them to see in practice how post-conflict societies handle past legacies of human rights violations.

United Nations, General Assembly. (1996). *Report on the Fourth World Conference on Women (A/CONF.177/20/Rev.1)*. Retrieved 23 July 2014 from: <http://beijing20.unwomen.org/~media/Field%20Office%20Beijing%20Plus/Attachments/BeijingDeclarationAndPlatformForAction-en.pdf>

In 1995, the Fourth World Conference on Women produced the Beijing Declaration and Platform for Action, which is an all-encompassing plan for equal rights and treatment of women and girls in society. The Platform of Action has twelve areas of focus where women's and girls' rights have been violated or ignored. For each area of focus, a strategy to resolve the violation is given. The twentieth anniversary of the adoption of the Platform of Action is fast approaching, providing for an opportunity to examine its effectiveness. This resource is useful to show how international bodies plan to address human rights violations. Delegates can use this resource as an example of international action on human rights.

United Nations, General Assembly, Fifty-ninth session. (2005). *In larger freedom: towards development, security, and human rights for all: Report of the Secretary-General (A/59/2005)*. Retrieved 6 August 2014 from: <http://undocs.org/a/59/2005>

Following the Millennium Summit and the creation of the Millennium Development Goals, the UN Secretary-General published this report. The UN Secretary-General outlines three freedoms that every human being should experience: freedom from want, freedom from fear, and freedom to live in dignity. In this report, the UN Secretary-General challenges Member States to face these issues. The UN system and related bodies are also challenged to strengthen their approaches to these issues. For example, this report contains the request for the OHCHR Plan of Action, which was published two months later. This report provides delegates with a vision of the UN Secretary-General's view on human rights and its relationship to the UN system.

United Nations, Human Rights Council, Twenty-first session. (2012). *Report of the Special Rapporteur on truth, justice, reparation, and guarantee of non-recurrence Pablo de Greiff (A/HRC/21/46)*. Retrieved 7 August 2014 from: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46_en.pdf

This report gives an overview of the Special Rapporteur on truth, justice, reparation, and guarantee of non-recurrence's work within his mandate. In this report, de Greiff notes that the four elements of his mandate should be implemented together when managing post-conflict societies. This report also presents all work done by the Special Rapporteur – from participating in workshops and meetings to visiting various countries for research purposes. This report is

important to show how HRC uses its Special Rapporteurs, what the mandate states, and what information is gleaned from their research.

United Nations, Human Rights Council, Twenty-second session. (2013). *Promotion and protection of human rights in post-disaster and post-conflict situations (A/HRC/RES/22/16)* [Resolution]. Retrieved 6 August 2014 from: <http://undocs.org/a/hrc/res/22/16>

In its twenty-second session, HRC requested the Advisory Committee to conduct research and publish a report on ways to safeguard human rights in post-conflict and post-disaster societies. Earlier this year, the Advisory Committee adopted resolution 26/40, which states the need for more time to complete research collection for report. Resolution 26/40 states that the progress report will be ready in time for the twenty-seventh session of HRC later this year. These sources are useful because they contain current information on the topic and how HRC is approaching this topic.

United Nations, Secretary-General. (2010). *Guidance Note of the Secretary-General: UN Approach to Transitional Justice*. Retrieved 7 August 2014 from: http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf

This document shows how the UN system handles transitional justice strategies. Each of the ten guiding principles are explained in detail, giving a well-rounded picture of the UN's relationship with transitional justice worldwide. Ways to strengthen the UN processes are also outlined in this document. Since transitional justice is a fairly new concept in international governance, it is important to see that the UN system is always looking to improve its approach. Delegates can use this document to better understand how the UN views transitional justice and how it plans to implement it.

United Nations, Office of the High Commissioner for Human Rights. (2014). *United Nations Human Rights Appeal 2014*. Retrieved 24 July 2014 from: <http://www.ohchr.org/Documents/AboutUs/UNHumanRightsAppeal2014.pdf>

This annual report outlines OHCHR's thematic elements for the next four years. These elements include impunity, the rule of law, and democracy. Each of these themes are followed by a specific program to combat human rights violation. Also, this report lists key achievements in each thematic element as well as ongoing efforts by OHCHR and the UN system. This report is useful to gauge OHCHR's current work and focus in these areas.

United Nations, Office of the High Commissioner for Human Rights. (2005). *The OHCHR Plan of Action: Protection and Empowerment*. Retrieved 6 August 2014 from: <http://www2.ohchr.org/english/planaction.pdf>

This plan of action gives OHCHR direction as to streamlining the Commission on Human Rights (now the Human Rights Council) and UN response to human rights violations. It also details certain challenges to human rights, such as impunity, armed conflict, and violence. This program of action explains how OHCHR works with other UN bodies to combat human rights violations by setting attainable goals. Delegates will find this document helpful in understanding the role of HRC in protecting human rights and preventing international human rights violations.

United Nations, Peacebuilding Support Office. (2008). *What is Transitional Justice? – A Backgrounder*. Retrieved 7 August 2014 from:

http://www.un.org/en/peacebuilding/pdf/doc_wgll/justice_times_transition/26_02_2008_background_note.pdf

This document provides an overview of transitional justice. A history of transitional justice is given, as well as what transitional justice looks like today. The author explains that transitional justice requires a holistic approach, incorporating all facets of it. The authors also explains how these facets theoretically work together to provide stable democracies in post-conflict societies. Delegates will find this resource useful for gathering background information on transitional justice and understanding its components.

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