

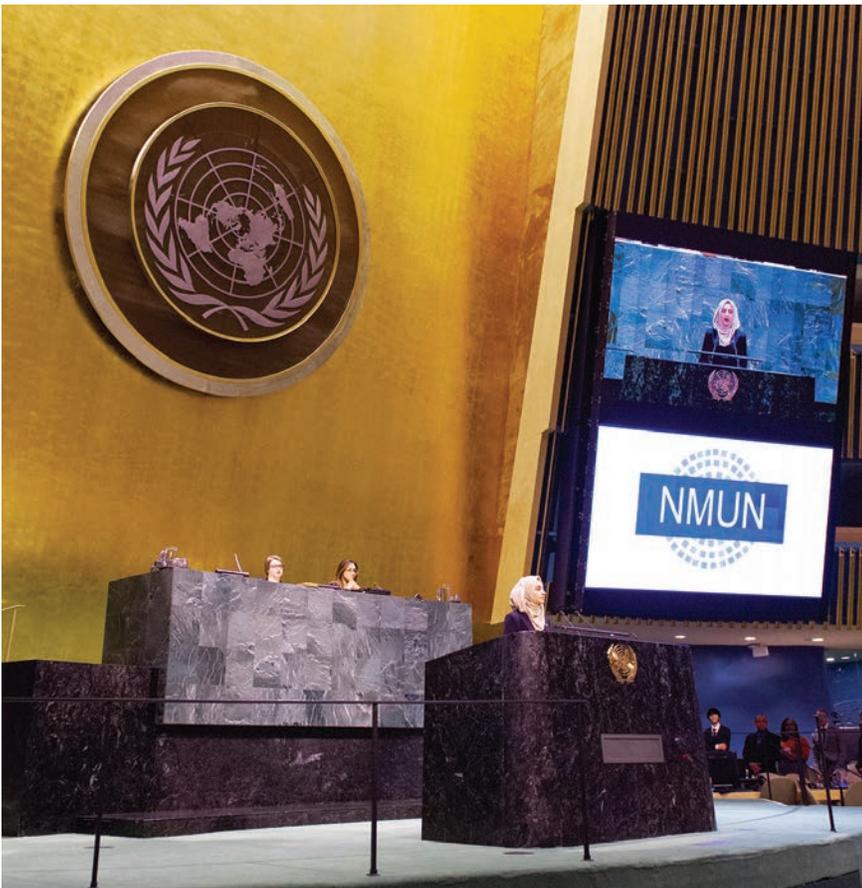


New York City, NY, USA
28 March - 1 April (Conf. A) / 5-9 April (Conf. B)



Human Rights Council Background Guide 2021

Written and updated by: Danielle Erica Curtis and Anna Rickert, Directors
Alexandre MacIsaac and Karla Paola Chávez, Assistant Directors



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Dear Delegates,

Welcome to the 2021 National Model United Nations New York Conference (NMUN•NY)! We are pleased to introduce you to our committee, the Human Right Council (HRC). This year's staff is: Directors Danielle Erica Curtis BL (Conference A) and Anna Rickert (Conference B), and Assistant Directors Alexandre Maclsaac (Conference A) and Paola Chávez (Conference B). Danielle is a Barrister at Law from Ireland, practicing in the area of human rights and public interest law. She holds a Masters in Law specialising in Immigration & Asylum Law. Anna is currently finishing her MA in Peace and Conflict Studies at the University of Tübingen and will be working as a Carlo-Schmid-Fellow at the UN Chief Executives Board in New York. Alexandre is an election officer for Elections Canada and holds a Master's degree in International Affairs from Norman Paterson School of International Affairs. Paola holds a Bachelor of International Relations. Currently, she is taking a diploma course on Equality and Empowerment of Women and pursuing a Master focused on Sustainable Development.

The topics under discussion for the Human Rights Council are:

- I. The Right to Privacy in the Digital Age
- II. Combatting Racism, Racial Discrimination, Xenophobia, and Related Intolerance
- III. Business and Human Rights

HRC has a unique role as the primary inter-governmental body within the UN system responsible for the promotion and protection of human rights as defined within the Charter of the United Nations. HRC provides a forum for dialogue on all human rights issues for its 47 Member States and plays a critical role in the monitoring and implementation of the Universal Declaration of Human Rights and other human rights instruments. It is a subsidiary body of the General Assembly and possesses a comprehensive mandate which allows it to take proactive measures to address and provide recommendations on all human rights violations, and to foster international cooperation and coordination within the UN human rights system.

This Background Guide serves as an introduction to the topics for this committee. However, it is not intended to replace individual research. We encourage you to explore your Member State's policies in depth and use the Annotated Bibliography and Bibliography to further your knowledge on these topics. In preparation for the Conference, each delegation will submit a Position Paper by 11:59 p.m. (Eastern) on 1 March 2021 in accordance with the guidelines in the [Position Paper Guide](#) and the [NMUN•NY Position Papers](#) website.

Two resources, available to download from the [NMUN website](#), that serve as essential instruments in preparing for the Conference and as a reference during committee sessions are the:

1. [NMUN Delegate Preparation Guide](#) - explains each step in the delegate process, from pre-Conference research to the committee debate and resolution drafting processes. Please take note of the information on plagiarism, and the prohibition on pre-written working papers and resolutions. Delegates should not start discussion on the topics with other members of their committee until the first committee session.
2. [NMUN Rules of Procedure](#) - include the long and short form of the rules, as well as an explanatory narrative and example script of the flow of procedure.

In addition, please review the mandatory [NMUN Conduct Expectations](#) on the NMUN website. They include the Conference dress code and other expectations of all attendees. We want to emphasize that any instances of sexual harassment or discrimination based on race, gender, sexual orientation, national origin, religion, age, or disability will not be tolerated. If you have any questions concerning your preparation for the committee or the Conference itself, please contact the Under-Secretaries-General for the HRHA Department, Ismail Dogar (Conference A) and Tobias Dietrich (Conference B), at usg.hrha@nmun.org.

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

Sincerely,

Conference A

Danielle E. Curtis BL, *Director*
Alexandre Maclsaac, *Assistant Director*

Conference B

Anna Rickert, *Director*
Paola Chávez, *Assistant Director*

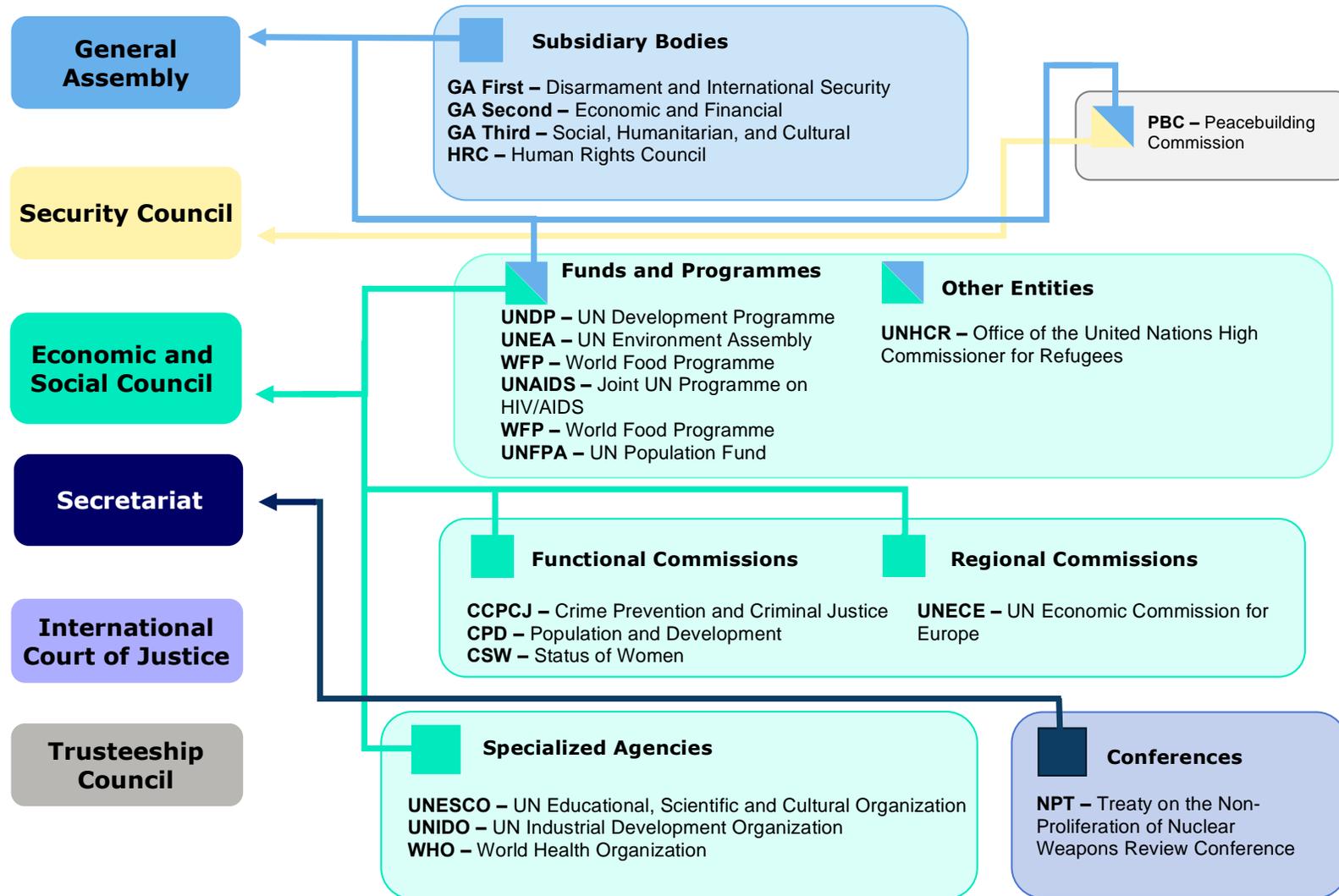


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United Nations System at NMUN•NY

This diagram illustrates the UN system simulated at NMUN•NY and demonstrates the reportage and relationships between 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

Introduction

Within the United Nations (UN), the Human Rights Council (HRC) is the body “responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations regarding them.”¹ Since its establishment in 2006, the HRC “has responded to urgent human rights situations [through] special sessions; has taken measures to address the accountability for the grave violation of international human rights and humanitarian law by establishing commissions of inquiry or dispatching fact-[finding] missions.”² The HRC extends its purview to several regions of Africa, Asia, Latin America, Eastern Europe and the Middle East, with special attention placed on the situation in Palestine and other occupied Arab territories.³

The international human rights agenda has been shaped by two important documents: the *Universal Declaration of Human Rights* (UDHR) adopted in 1948 and the *Vienna Declaration and Programme of Action* adopted in 1993.⁴ The adoption of the UDHR led to the Centre for Human Rights, formed by the UN Secretariat to oversee the UN’s human rights program, located at the UN Headquarters in New York.⁵ As international human rights law has evolved and multifarious human rights violation plague the world, specialized agencies within the UN system have emerged.⁶ One of these was the Commission on Human Rights, or the Commission, which functioned as an intergovernmental organization of the UN.⁷ In 1946 the Commission was to address human rights challenges and concerns.⁸ After receiving critique for “excessive politicization”, recommendations were made to the General Assembly to replace the Commission with a new Human Rights Council.⁹ Resolution 60/251, confirmed this recommendation and the Commission was replaced by what is now the Human Rights Council.¹⁰

The newly established HRC holds the same responsibilities as the Commission once did, but its mandate was expanded upon.¹¹ The OHCHR provides logistical, administrative and substantive support to the work of all UN human rights mechanisms, while the work of the HRC is supported by OHCHR and reports to the General Assembly.¹² Five years after its foundations, the HRC’s work was reviewed by an open-ended intergovernmental working group and the General Assembly decided it would remain as subsidiary body without substantial changes to its governance.¹³

In the 1980s, the office was relocated from New York City to Geneva, Switzerland.¹⁴ In 1993, the World Conference on Human Rights, in its *Vienna Declaration and Programme of Action*, recommended the

¹ UN OHCHR, *Welcome to the Human Rights Council*, 2020.

² UN OHCHR, *The 20th Anniversary of OHCHR – 20 Human Rights Achievements*, 2018.

³ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006; UN HRC, *Agenda and Annotations (A/HRC/41/1)*, 2019; UN OHCHR, *41th Session of the Human Rights Council (24 June 2019 - 12 July 2019)*, 2019.

⁴ UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948; UN World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 1993.

⁵ UN OHCHR, *Who we are: Brief History*, 2020.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ UN DGC, *General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, with 3 Abstentions (GA/10449)*, 2006; UN General Assembly, *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General (A/59/2005)*, 2005, p.45.

¹⁰ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.; UN HRC, *Report of the Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council (A/HRC/WG.8/2/1)*, 2011.

¹⁴ UN OHCHR, *Who we are: Brief History*, 2020.

General Assembly establish the UN Office of the High Commissioner for Human Rights (OHCHR), which was done so through General Assembly resolution 48/141.¹⁵ This resolution states that OHCHR's main responsibilities are to coordinate the human rights agenda across all intergovernmental agencies and all departments within the UN itself.¹⁶ OHCHR is responsible for the substantive, logistical, and administrative needs of all UN human rights mechanisms, including core treaty-based bodies, thematic working groups, and for HRC.¹⁷ Michelle Bachelet of Chile is the current High Commissioner for Human Rights.¹⁸ Ms. Bachelet is the seventh High Commissioner and has prioritized the advancement of gender equality within the OHCHR.¹⁹

Governance, Structure, and Membership

The Council consists of 47 Member States, who are elected by a majority of the General Assembly through direct and secret ballot.²⁰ Upon electing, the General Assembly also takes into consideration the candidate Member States' contribution to promotion and protection of human rights.²¹ Membership is based on "equitable geographical distribution", seats are distributed as: African States – 13 seats; Asia-Pacific States – 13 seats; Latin American and Caribbean States – 8 seats; Western European and other States – 7 seats; and Eastern European States – 6 seats.²² Each Member serves for a period of three years and upon serving two consecutive terms the Member State is not eligible for immediate re-election. The most recent election took place on 17 October 2019, during the General Assembly's 74th session.²³

In March, June, and September, HRC holds regular sessions to discuss issues under its purview and last a minimum of 10 weeks combined.²⁴ HRC is currently in the 45th regular session which is due to end on the 6 October 2020.²⁵ There must be a total of three regular sessions per annum and, if necessary, one third of the HRC's member can request a special session to address any pressing human rights issues.²⁶ There have been a total of 28 special sessions.²⁷ The latest special session was held on 18 May 2018 to address the "Deteriorating Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem."²⁸ During the first regular session of each year, Member States elect a President and four Vice Presidents to serve on its Bureau, who are responsible for the organization and procedural function of the HRC.²⁹ The President is to summon and preside over organizational meetings and regular sessions, as well as propose candidates to serve as special procedures mandate holders.³⁰ The current President for the fourteenth cycle of the HRC is Austrian diplomat Elisabeth Tichy-Fisslberger.³¹

¹⁵ UN General Assembly, *High Commissioner for the Promotion and Protection of all Human Rights (A/RES/48/141)*, 1994; UN World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 1993.

¹⁶ UN General Assembly, *High Commissioner for the Promotion and Protection of all Human Rights (A/RES/48/141)*, 1994.

¹⁷ UN OHCHR, *The Human Rights Council and the Role of the Office of the High Commissioner for Human Rights*.

¹⁸ UN DGC, *Secretary-General Appoints Michelle Bachelet of Chile United Nations High Commissioner for Human Rights (SG/A/1824)*, 2018.

¹⁹ UN OHCHR, *About us: High Commissioner – Michelle Bachelet Jeria*, 2020.

²⁰ UN OHCHR, *Membership of the Human Rights Council*, 2020.

²¹ Ibid.

²² Ibid.

²³ UN General Assembly, *Election of the Human Rights Council (17 October 2019)*, 2019.

²⁴ UN OHCHR, *Sessions*, 2020.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ UN OHCHR, *28th Special Session of the Human Rights Council on the Deteriorating Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem - 18 May 2018*, 2018.

²⁹ UN HRC, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

³⁰ Ibid.

³¹ UN OHCHR, *President of the 14th Cycle*, 2020.

In addition to the bureau, HRC established the Advisory Committee as a subsidiary body.³² The main function of the Advisory Committee is to provide policy advice and expertise to the HRC.³³ It meets biannually and is composed of 18 human rights experts, who are elected by the HRC in proportion to the regional composition of the Council.³⁴ The Advisory Committee regularly publishes reports at the request of the HRC and discusses research proposals and studies in the field of human rights.³⁵ Moreover, As the committee allotted to address agenda items of social, humanitarian affairs and human rights issues, the Third Committee of the General Assembly is responsible for evaluating human rights questions and hears annual reports made by the HRC.³⁶

HRC strengthens its efforts in upholding human rights by forming partnerships with non-governmental organizations (NGOs), National Human Rights Institutions (NHRIs), and other civil society actors.³⁷ Partnerships facilitate many of HRC's initiatives, including specific programs or frameworks targeting groups deprived of their access to fundamental human rights and freedoms.³⁸ NGOs that have received Economic and Social Council (ECOSOC) consultative status and NHRIs can directly address HRC during discussions and debates and inform the Council of situations occurring in their home states.³⁹ Groups and NGOs without ECOSOC consultative status can still provide written documents on a Member State as part of the Universal Periodic Review (UPR) process.⁴⁰

Mandate, Functions, and Powers

General Assembly resolution 60/251 established the HRC's mandate.⁴¹ The HRC serves to promote universal respect for all human rights and fundamental freedoms and effective governance within the UN system in regards to human rights issues, and if necessary, can provide recommendations on all human rights violations.⁴² HRC is "guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue, and cooperation."⁴³ The General Assembly also designated the HRC as a forum for discussing all human rights issues, including violations, emergency response, education and matters of prevention.⁴⁴ Also crucial to enforcing the mandate and work of the HRC is the *International Bill of Human Rights*, a framework which encompasses the *UDHR*, the *International Covenant on Economic, Social and Cultural Rights* (1966), and the *International Covenant on Civil and Political Rights* (1966) with its two optional protocols.⁴⁵ These documents are the pillars that guide HRC in its recommendations by outlining the fundamental obligations and commitments of Member States in international human rights law.⁴⁶ Additionally, the *2030 Agenda for Sustainable Development* (2030 Agenda) adopted in 2015, and its 17 Sustainable Development Goals (SDGs) guide the work of the HRC, and inform its current priorities.⁴⁷

The HRC's mandate has not been changed since its establishment in 2006, but HRC resolution 5/1 on "institution building" was adopted in 2007 to put in place mechanisms and structures to guide HRC's

³² UN HRC, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

³³ UN OHCHR, *Background Information on the Advisory Committee*, 2020.

³⁴ UN HRC, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

³⁵ UN HRC, *Report of the Advisory Committee on its Twentieth Session (A/HRC/AC/20/2)*, 2018.

³⁶ UN General Assembly, *Social, Humanitarian & Cultural Issues (Third Committee)*.

³⁷ UN OHCHR, *NGO and NHRI Information*, 2020.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ UN OHCHR, *The Human Rights Council and the Role of the Office of the High Commissioner for Human Rights*, 2020.

⁴⁵ UN OHCHR, *Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights*, 1996.

⁴⁶ UN OHCHR, *Human Rights: A Basic Handbook for UN Staff*, 2000.

⁴⁷ UN General Assembly, *Transforming our world: The 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015; UN OHCHR, *Sustainable Development Goals - Related Human Rights*, 2020.

program of work, as well as rules of procedure, and other operational functions.⁴⁸ The resolution also established the format for Special Procedures, the UPR and Complaint Procedure.⁴⁹ Special Procedures are mechanisms that enable independent parties to report, monitor, and advise on country-specific or thematic situations of the HRC.⁵⁰ Each investigation has a mandate and a mandate holder, who is typically a Special Rapporteur, an independent expert, or a working group, to carry out the investigation.⁵¹ Special Procedures can take country or field visits endorsed by the OHCHR, and bring specific cases and concerns to the attention of Member States.⁵² They can send communications detailing accusations of violations or abuses of human rights, engage in advocacy efforts, and offer technical assistance.⁵³

The UPR is one of the most important functions of the HRC.⁵⁴ Each Member State of the UN submits to a periodic review to assess the fulfillment of its human rights obligations.⁵⁵ The full cycle of the UPR process takes around four years and includes several steps.⁵⁶ The UPR is unique in both its approach and its universality.⁵⁷ 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.⁵⁸ At the review stage, documents are presented at the regular sessions of the working group on the UPR, which is also composed of all 47 Member States.⁵⁹ At the stage of adoption and consideration, each Member State provides comments and the state under review can offer reservations on specific issues.⁶⁰ Finally, during the follow-up stage, each state under review shows how effectively it has acted upon the recommendations received.⁶¹ The UPR has entered its third cycle (2017-2021).⁶² The most recent HRC meeting held on 15 June 2020 highlighted the importance of the UPR procedures as it is the “only intergovernmental mechanism that dealt with the human rights situations of countries on an equal footing”.⁶³ The 37th UPR which was due to take place on 4 to 15 May was postponed to 2 to 13 November 2020 due to Covid-19.⁶⁴ Furthermore, the 25th session of the HRC Advisory Committee which was due to take place from 17 to 21 August was postponed until 15 to 19 February 2021.⁶⁵

Recent Sessions and Current Priorities

Since the outbreak of COVID-19 and the suspension of the 43rd session on 13 March, HRC has conducted its business virtually, holding Bureau meetings with States and NGO’s, and three “virtual informal conversations”, including with the High Commissioner and Special Procedures who have issued more than 90 press releases and statements addressing COVID-19.⁶⁶ On 29 May 2020 the

⁴⁸ UN HRC, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

⁴⁹ Ibid.

⁵⁰ UN OHCHR, *Special Procedures of the Human Rights Council*, 2020.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ UN OHCHR, *Universal Periodic Review*, 2020.

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

⁵⁶ Ibid.

⁵⁷ UN OHCHR, *Universal Periodic Review*, 2020.

⁵⁸ UN OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, 2008, p. 81.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ U Ibid.

⁶² UN OHCHR, *Human Rights Council Universal Periodic Review (Third Cycle)*.

⁶³ UN OHCHR, *Human Rights Council begins General Debate on the Human Rights Situation in Palestine and other Occupied Arab Territories*, 15 June 2020.

⁶⁴ UN OHCHR, *Human Rights Council’s Universal Periodic Review Working Group May 2020 Session Postponed*, 20 March 2020.

⁶⁵ UN OHCHR, *25th session of the Advisory Committee*, 2020.

⁶⁶ UN OHCHR, *Human Rights Council adopts President’s statement on Human Rights implications of COVID-19*, 2020.

HRC President, issued a statement calling upon “all States to ensure that all human rights are respected, protected and fulfilled while combatting the pandemic and that their responses to the COVID-19 pandemic are in full compliance with their human rights obligations and commitments.”⁶⁷The 44th regular session of the HRC took place on 30 June to 17 July 2020. As part of this session, the HRC held a number of panel discussions. The first annual full-day meeting focused on the rights of the child, in particular realising the rights of the child through a healthy environment.⁶⁸ The second annual full-day discussion focused the human rights of women and covered a number of pertinent topics such as COVID-19 and women's rights.⁶⁹ The discussion centred on the number of gender inequalities the COVID-19 pandemic has exposed as well as the new opportunities it has presented for women and gender rights.⁷⁰ At the 44th session, Michelle Bachelet, also noted how COVID-19 has illustrated how the world is not connected but yet we are facing one of the most serious health crisis in living memory. Bachelet continues to call upon Member States to ensure steps and procedures to protect those whom are most vulnerable and to mitigate the spread and effect of COVID-19 in our society. ⁷¹

Despite COVID-19, on 17 July 2020, the HRC concluded its 44th session, adopting 23 resolutions.⁷² During this session, the Council held 29 meetings, seven debates and 35 interactive dialogues.⁷³ It was clear, despite current constraints, that the HRC continues to work to address human rights violations within the international community. This includes the Commission of Inquiry conducted on the Syrian Arab Republic, Myanmar, South Sudan and Yemen. The Commission on Human Rights was alarmed by the recent escalation of violence in six of the ten states in South Sudan.⁷⁴ Since June 2020, the violence and ongoing hostilities has resulted in the displacement of over 80,000 individuals.⁷⁵ The Commission on Human Rights in South Sudan, established in March 2016, was extended in June 2020 in light of the current circumstances and continues to collect and preserve evidence of human rights violations and abuses.⁷⁶ On 7 July 2020 a 29 page report was released by the Commission of Inquiry for the Syrian Arab Republic in response to the most recent escalation of violence within the region.⁷⁷ A further Commission of Inquiry on Libya on 22 June 2020, to investigate and document alleged violations and abuses of international human rights law and international humanitarian law in Libya since the beginning of 2016.⁷⁸

Sexual and gender-based violence continues to be a pervasive and ongoing issue within the aforementioned regions. Natalia Kanem, Director for United Nations Population Fund (UNFPA) notes that the current pandemic is further exacerbating gender inequality and in turn gender-based violence. Girls no longer attending school are more vulnerable to child marriage and female genital mutilation.⁷⁹ At the 44th session, the HRC decided to convene a high-level panel discussion on the multi-sectoral prevention of and response to female genital mutilation at its 47th session.⁸⁰ Regarding discrimination against women and females, the HRC called upon all States to repeal all laws and policies which disproportionately affect, discriminate and criminalise the actions or behaviours of females.⁸¹

⁶⁷ Ibid.

⁶⁸ UN OHCHR, *44th regular session of the Human Rights Council*, 2020.

⁶⁹ Ibid.

⁷⁰ UN OHCHR, *Annual full-day discussion on the human rights of women*, 2020, p.1.

⁷¹ UN OHCHR, *COVID-19 and its human rights dimensions*, 2020.

⁷² UN OHCHR, *Human Rights Council concludes forty-fourth regular session after adopting 23 resolutions*, 2020.

⁷³ Ibid.

⁷⁴ UN OHCHR, *Renewed violence and delayed implementation of the peace agreement severely threaten peace and stability in South Sudan, UN experts note*, 2020.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ UN OHCHR, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 2020.

⁷⁸ UN OHCHR, *Libya: Bachelet appoints Independent Fact-Finding Mission experts*, 2020.

⁷⁹ UNCHR, *Women most affect by COVID-19, should participate in recovery efforts*, 2020.

⁸⁰ UN OHCHR, *44th regular session of the Human Rights Council*, 2020.

⁸¹ Ibid.

Conclusion

The HRC addresses human rights on global, regional, and national levels to ensure all Member States safeguard the fundamental freedoms and rights articulated by international law.⁸² As it continues to invest in knowledge sharing and be informed by its various Mechanism, the HRC aims to always be abreast of the facts in its recommendation and decisions.⁸² As human rights issues are multidimensional and at times relative, the HRC will always encourage desegregated dialogue in its forums.⁸³ As the right to health, adequate living and security are fundamental human rights, the HRC has ensured its guidance is still accessible to Member States, allowing them to take advantage of appropriate resources and the means to adapt during times of crisis.⁸⁴ The HRC will continue to remain steadfast in its mandate and work with NGOs, civil societies, working groups, inter-agency mechanisms, and coalitions as international human rights and its complexity evolve.⁸⁵ The 45th session is scheduled to take place in Geneva from 14 September to 2 October 2020. The 25th session of the Advisory Committee which was originally scheduled for 17 – 21 August 2020 has now been postponed to 15 – 19 February 2021 due to COVID-19.⁸⁶

Annotated Bibliography

Office of the United Nations High Commissioner for Human Rights (n.d.) *COVID-19 and its human rights dimensions*. Retrieved 19 July 2020 from:

<https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>

This website provides all updates from the UN High Commissioner for Human Rights including COVID-19 guidance; press releases; press briefings; stories; videos; events; infographics and other COVID-29 human rights material. Review of this page is essential for delegates to understand the correlation between COVID-19 and human rights, and the impact of the pandemic upon human rights in particular for those who are most vulnerable in our society. This page is regularly updated, providing concise and comprehensive updates about the effects of COVID-19 on minorities; businesses; human rights etc. Therefore, it is advisable that delegates should use this page as a starting point to understand the impact of COVID-19 on the work of the Human Rights Council.

Office of the United Nations High Commissioner for Human Rights. (n.d.). *Sustainable Development Goals - Related Human Rights*. Retrieved 19 July 2020 from:

https://www.ohchr.org/Documents/Publications/Session5_OHCHR_SDG_HR_Table.pdf

The work of the HRC is strongly supported by the UN OHCHR, and this info sheet was published by OHCHR as a guide to connect the SDGs to human rights. This guide gives an overview of all SDGs, and a list of human rights which correspond with each SDG. Besides that, it also describes which human right can be found in which document, also explaining what the different human rights frameworks are. This source provides a very comprehensive overview of how HRC is connected to all the SDGs.

United Nations, Human Rights Council, Fifth session. (2007). *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*. Retrieved 19 July 2020 from:

https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc

HRC resolution 5/1 represents a package that established the procedures, mechanisms, and governance that is now the HRC today. The resolution details HRC's mandate and its rules of procedure. The resolution also modified the system of expertise for human rights issues and the adopted the Complaint Procedure from the old human rights

⁸² UN HRC, *Agenda and annotations (A/HRC/42/1)*, 2019.

⁸³ UN HRC, *Summary of the Intersessional Meeting for Dialogue and Cooperation on Human Rights and the 2030 Agenda for Sustainable Development (A/HRC/40/34)*, 2019.

⁸⁴ UN OHCHR, *Human Rights Council discusses human rights implications of the COVID-19 crisis with its special procedures mandate holders*, 2020.

⁸⁵ UN OHCHR, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

⁸⁶ UN OHCHR, *25th session of the Advisory Committee*, 2020.

council, the Commission. HRC resolution 5/2 helps delegates gain foundational knowledge of the HRC.

United Nations Human Rights Council. (2020). *44th regular session of the Human Rights Council: Documentation*. Retrieved 19 July 2020 from:

<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Pages/Documentation.aspx>

This page provides links to all the documentation for the 44th regular session of the Human Rights Council which was held on 30 June – 17 July 2020. Delegates will find easily accessible lists of all reports, communications from governments; NGO written statements; communications from NHRIs; adopted resolutions, decisions and president's statements and draft proposals.

United Nations, Human Rights Council. (2020). *44th regular session of the Human Rights Council: Resolutions, decisions and President's statements*. Retrieved 19 July 2020 from:

<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Pages/ResDecStat.aspx>

Despite COVID-19, on 17 July 2020, the HRC concluded its 44th session, adopting 23 resolutions. During this session, the Council held 29 meetings, seven debates and 35 interactive dialogues. It was clear, despite current constraints, that the HRC continues to work to address human rights violations within the international community. In order to fully understand the impact of COVID-19 on the United Nations Human Rights agenda it is advisable that delegates conduct an in depth review of all resolutions and reports stemming from the 44th session.

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Office of the United Nations High Commissioner for Human Rights. (n.d.). *Human Rights Council Universal Periodic Review (Third Cycle)*. Retrieved 18 July 2020 from:

https://www.ohchr.org/Documents/HRBodies/UPR/UPR_3rd_cycle.pdf

Office of the United Nations High Commissioner for Human Rights (n.d.) *COVID-19 and its human rights dimensions*. Retrieved 19 July 2020 from: <https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspxhis>

Office of the United Nations High Commissioner for Human Rights. (n.d.). *The Human Rights Council and the Role of the Office of the High Commissioner for Human Rights*. Retrieved 19 July 2020 from:

http://www2.ohchr.org/english/press/hrc/kit/hrcs_fs2.pdf

Office of the United Nations High Commissioner for Human Rights. (1996). *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*. Retrieved 19 July 2020 from:

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I. The Right to Privacy in the Digital Age

“[...] no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, and recognizing that the exercise of the right to privacy is important for the realization of the right to freedom of expression and to hold opinions without interference, and is one of the foundations of a democratic society.”⁸⁷

Introduction

With information and communication technologies (ICTs) used by roughly 40% of the world's population, individuals share and receive data without being constrained by location and time.⁸⁸ Through information sharing and open debate online, these technologies foster the enjoyment and respect for human rights.⁸⁹ However, significant advancements lead to new challenges and risks to fundamental civil liberties, such as the right to privacy or freedom of association and assembly.⁹⁰ Technological advancements and the broad application of ICTs have allowed for the possibilities of electronic mass surveillance and communication interception by national governments and the private sector.⁹¹

Mass surveillance and communication interception include the “collecting, storing, and analyzing [of] data of all users relating to a broad range of means of communication.”⁹² Electronic communication tools, such as email, mail groups, chat rooms, texting, video calls, and social media, produce Meta-Data, which are digital traces that contain additional information about collected data, such as date or author.⁹³ Users are often unaware of the collection of Meta-Data.⁹⁴ When analyzed, it can reveal information about people’s habits.⁹⁵ This form of data collection and evaluation and its vulnerability for mass surveillance and communication interception therefore pose a risk to the right to privacy in the digital age.⁹⁶ This risk is even higher for certain groups, such as children.⁹⁷ Children are exceptionally vulnerable when using the internet because of their lack of knowledge about personal data processing and online surveillance.⁹⁸

The Human Rights Council (HRC) continues to encourage discussion and information sharing to tackle privacy challenges in the digital age.⁹⁹ Member States have voiced their concerns that certain policies or practices can exploit digital communication technologies’ vulnerabilities.¹⁰⁰ For instance, governments have continued to pressure telecommunication service providers to disclose private information by various sanctions, including threats of terminating their licenses.¹⁰¹ They also raised concerns that unlawful mass surveillance by private entities will increase.¹⁰² Therefore, it is crucial to promote data protection and foster education about the risks of sharing personal data.¹⁰³

⁸⁷ UN General Assembly, *The Right to Privacy in the Digital Age (A/RES/68/167)*, 2014.

⁸⁸ Internet Live Stats, *Internet Users*.

⁸⁹ UN OHCHR, *The Right to Privacy in the Digital Age*, 2020.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² UN HRC, *The Right to Privacy in the Digital Age (A/HRC/RES/37/2)*, 2018.

⁹³ European Parliamentary Research Service, *Mass Surveillance: Part I – Risks, Opportunities and Mitigation Strategies*, 2015.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ UN HRC, *The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/27/37)*, 2014, pp. 3-5.

⁹⁷ UNICEF, *Child Privacy in the Age of Web 2.0 and 3.0: Challenges and Opportunities for Policy*, 2017.

⁹⁸ Ibid.

⁹⁹ UN OHCHR, *The Right to Privacy in the Digital Age*, 2020.

¹⁰⁰ Ibid.

¹⁰¹ UN HRC, *The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/27/37)*, 2014, pp. 3-41.

¹⁰² Ibid.

¹⁰³ Ibid., pp. 15-27.

Effective legal frameworks are essential to guarantee the protection of the right to privacy.¹⁰⁴ These frameworks need to be updated to match the developments of communication technologies (CTs) and surveillance measures.¹⁰⁵ CTs can lead to “a blurring of lines between the public and private sphere.”¹⁰⁶ While CTs may improve the fulfillment of human rights, they can also limit their enjoyment.¹⁰⁷ That is why the right to privacy requires special attention in the digital age.¹⁰⁸

International and Regional Framework

The *Universal Declaration of Human Rights* (UDHR) (1948) defines the right to privacy in Article 12: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”¹⁰⁹ Article 17 of the *International Covenant on Civil and Political Rights* further reaffirms the need to protect privacy.¹¹⁰ Articles 16 and 40 of the *Convention on the Rights of the Child* (CRC) extend on the UDHR by stressing that “the child has the right to the protection of the law against such interference or attacks.”¹¹¹

In 2008, the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, introduced the “*Protect Respect and Remedy*” Framework to the Human Rights Council.¹¹² It assigns states and businesses shared responsibility to protect privacy.¹¹³ The framework rests on three pillars: safeguarding human rights from third party abuses, corporate responsibility, and adequate access to remedies for victims of human rights violations in online settings.¹¹⁴ In this regard, it encourages states to work toward more vital legislation.¹¹⁵ HRC adopted the framework in resolution 17/31.¹¹⁶

The General Assembly first adopted resolution 68/167 on “The Right to Privacy in the Digital Age” in 2013.¹¹⁷ The resolution focuses on the protection and enjoyment of human rights on the internet and privacy in digital communication.¹¹⁸ The resolution urges Member States to take measures to protect the right to privacy and “to review their procedures, practices, and legislation regarding the surveillance of communication, their interception, and the collection of personal data.”¹¹⁹ In this resolution, the General

¹⁰⁴ UN OHCHR, *Opening Remarks by Ms. Navi Pillay, United Nations High Commissioner for Human Rights to the Side-Event at the 24th Session of the UN Human Rights Council How to Safeguard the Right to Privacy in the Digital Age?*, 2013; UN OHCHR, *Opening Remarks by Ms. Navi Pillay United Nations High Commissioner for Human Rights to the Expert Seminar: The Right to Privacy in the Digital Age*, 24 February 2014, Room XXI, Palais des Nations, Geneva, 2014.

¹⁰⁵ UN OHCHR, *Opening Remarks by Ms. Navi Pillay, United Nations High Commissioner for Human Rights to the Side-Event at the 24th Session of the UN Human Rights Council How to Safeguard the Right to Privacy in the Digital Age?*, 2013.

¹⁰⁶ *Ibid.*

¹⁰⁷ UN OHCHR, *The Right to Privacy in the Digital Age*, 2020.

¹⁰⁸ UN OHCHR, *Opening Remarks by Ms. Navi Pillay, United Nations High Commissioner for Human Rights to the Side-Event at the 24th Session of the UN Human Rights Council How to Safeguard the Right to Privacy in the Digital Age?*, 2013.

¹⁰⁹ UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

¹¹⁰ UN General Assembly, *International Covenant on Civil and Political Rights*, 1966.

¹¹¹ UN General Assembly, *Convention on the Rights of a Child (A/RES/44/25)*, 1989.

¹¹² UN OHCHR, *Business and Human Rights*, 2020.

¹¹³ *Ibid.*

¹¹⁴ UN HRC, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie (A/HRC/17/31)*, 2011.

¹¹⁵ UN OHCHR, *Guiding Principles on Businesses and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework*, 2011.

¹¹⁶ UN HRC, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie (A/HRC/17/31)*, 2011.

¹¹⁷ UN General Assembly, *The Right to Privacy in the Digital Age (A/RES/68/167)*, 2014.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

Assembly also requests the Office of the United Nations High Commissioner for Human Rights (OHCHR) to report on the topic.¹²⁰ The General Assembly has subsequently dealt with the topic in biennial resolutions.¹²¹

Digital communication also plays a crucial role in achieving the Sustainable Development Goals (SDGs).¹²² The United Nations Development Programme released a guidance note emphasizing the influence that big data will have on achieving the *2030 Agenda on Sustainable Development*.¹²³ The document sets out principles for “operational use of big data for achievement of the SDGs” and lays out principles for the “use and quality control for data from the private sector.”¹²⁴

Regional actors have continued to develop guiding frameworks and legislation to protect consumer privacy in the digital space.¹²⁵ The Council of Europe drafted the *European Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data* (Convention 108), which entered into force in 1985.¹²⁶ Article 1 of the convention stresses the importance of protecting people against unlawful interference and data collection.¹²⁷ The convention binds states to take necessary data quality, data storage, data processing, and data security measures.¹²⁸ In 2018, a protocol amending and modernizing Convention 108 was opened for signature.¹²⁹ The modernized convention has not entered into force yet, but modernization is regarded necessary to deal with new challenges that come with new ICTs and to strengthen the convention’s effective implementation.¹³⁰

In 2016, the European Union adopted regulation 2016/679 on “The Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data” (General Data Protection Regulation - GDPR).¹³¹ This regulation serves as a reform package, which updates and modernizes the 1995 *Data Protection Directive* principles.¹³² It establishes the rights and obligations of individuals and those responsible for processing data, methods for compliance, and the scope of sanctions for those that breach the rules laid out in this regulation.¹³³

The Asia Pacific Economic Cooperation (APEC), a forum conceived in 1989 to foster cooperation among countries in the Asia-Pacific region, established the *APEC Privacy Framework* in 2005.¹³⁴ This framework

¹²⁰ Ibid.

¹²¹ UN General Assembly, *The Right to Privacy in the Digital Age (A/RES/69/166)*, 2015; UN General Assembly, *The Right to Privacy in the Digital Age (A/RES/71/199)*, 2017; UN General Assembly, *The Right to Privacy in the Digital Age (A/RES/73/179)*, 2019.

¹²² UN Development Group, *Data Privacy, Ethics and Protection: Guidance Note on Big Data for Achievement of the 2030 Agenda*, 2017.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Asia Pacific Economic Cooperation, *APEC Privacy Framework*, 2015; Council of Europe, *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*, 1981; European Union, *Regulation (EU) 2016/679 of the European Parliament and of the Council*, 2016; State of California Department of Justice, *California Consumer Privacy Act of 2018*, 2018.

¹²⁶ Council of Europe, *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*, 1981.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Council of Europe, *Modernisation of Convention 108*, 2020.

¹³¹ European Commission, *Questions and Answers – Data Protection Reform Package*, 2017; European Union, *Regulation (EU) 2016/679 of the European Parliament and of the Council*, 2016; European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Data Protection Law*, 2018.

¹³² European Commission, *Questions and Answers – Data Protection Reform Package*, 2017; European Union, *Regulation (EU) 2016/679 of the European Parliament and of the Council*, 2016.

¹³³ Ibid.

¹³⁴ Asia Pacific Economic Cooperation, *About APEC*, 2020; Asia Pacific Economic Cooperation, *What is the Cross-Border Privacy Rules System?*, 2019.

sets out such principles as collection limitation, security safeguards, and uses of personal information.¹³⁵ Based on this framework, APEC members created a certification on data protection “The APEC Cross-Border Privacy Rules (CBPR) System” in 2011 to protect personal data when shared across borders, to ensure alignment between individual laws and jurisdiction, and to safeguard their citizens’ and corporations’ privacy.¹³⁶ The CBPR also engages the private sector in terms of data protection standards and innovation for data sharing.¹³⁷

The U.S. state of California enacted the California Consumer Privacy Act (CCPA) in 2018.¹³⁸ The act establishes guidelines for identifying, managing, securing, tracking, producing, and deleting consumer privacy information, including a person's name, residence information, and biometrics.¹³⁹ According to the CCPA, consumers own their private information and are appointed to this information's rights.¹⁴⁰ The act also restricts dealing with children's data, such as selling information of minors under 13 without prior consent from their guardians.¹⁴¹ The legislation is unique, as it does not require the users to declare consent as in the case of the GDPR.¹⁴² However, the CCPA requires that consumers be served with privacy notices and given an option to withdraw consent from other usages of their personal data.¹⁴³ Further, the law states that consumers may not be victimized by their choice to opt-out of their data's sales and use.¹⁴⁴ This initiative holds special significance as headquarters of the world's substantial technology companies are located in California.¹⁴⁵ Some of these platforms are among the largest messaging networks, such as Facebook that concentrates over 1.8 billion users, WhatsApp with 2 billion users, and Instagram with 1.4 billion users.¹⁴⁶ The CCPA represents a significant change in privacy regulations by providing effective legislation on technology companies’ privacy practices and policies.¹⁴⁷

Role of the International System

The Human Rights Council adopted resolution 28/16 on “The Right to Privacy in the Digital Age” (2015) at its twenty-eighth session, creating the mandate of a Special Rapporteur on the right to privacy.¹⁴⁸ The Special Rapporteur reports annually to HRC and the General Assembly.¹⁴⁹ In his 2018 report, he outlined five thematic action streams of his work, which are security and surveillance, big data and open data, health data, use of personal data by corporations, and privacy and personality.¹⁵⁰ Further, the Special Rapporteur makes country visits and consultations.¹⁵¹ Achievements of the Special Rapporteur’s work are thematic reports such as most recently HRC report 43/52, and General Assembly report 74/277.¹⁵²

HRC is aware of the difficulties of improving ICTs and works to create frameworks and best practices to use these technologies to ensure privacy in the digital age.¹⁵³ In 2012, HRC adopted resolution 20/8 as the first of its kind on “The Promotion, Protection and Enjoyment of Human Rights on the Internet,” which

¹³⁵ Asia Pacific Economic Cooperation, *APEC Privacy Framework*, 2015.

¹³⁶ Asia Pacific Economic Cooperation, *What is the Cross-Border Privacy Rules System?*, 2019.

¹³⁷ Cross Border Privacy Rules System, *About CBPRS*, 2020.

¹³⁸ Diamond, *Quick Overview: Understanding the California Consumer Privacy Act (CCPA)*, 2019.

¹³⁹ *Ibid.*

¹⁴⁰ State of California Department of Justice, *California Consumer Privacy Act of 2018*, 2018.

¹⁴¹ Diamond, *Quick Overview: Understanding the California Consumer Privacy Act (CCPA)*, 2019.

¹⁴² *Ibid.*

¹⁴³ State of California Department of Justice, *California Consumer Privacy Act of 2018*, 2018.

¹⁴⁴ Diamond, *Quick Overview: Understanding the California Consumer Privacy Act (CCPA)*, 2019.

¹⁴⁵ MIT Technology Review, *California’s New Online Privacy Law Could be Huge for the US*, 2018.

¹⁴⁶ U.S. House of Representatives, *Investigation of Competition in Digital Markets*, 2020, p. 92.

¹⁴⁷ MIT Technology Review, *California’s New Online Privacy Law Could be Huge for the US*, 2018.

¹⁴⁸ UN HRC, *The Right to Privacy in the Digital Age (A/HRC/RES/28/16)*, 2015.

¹⁴⁹ UN HRC, *Report of the Special Rapporteur on the Right to Privacy (A/HRC/37/62)*, 2018.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² UN General Assembly, *Right to Privacy (A/74/277)*, 2019; UN HRC, *Report of the Special Rapporteur on the Right to Privacy (A/HRC/43/52)*, 2020.

¹⁵³ UN OHCHR, *The Right to Privacy in the Digital Age*, 2020.

affirms that rights offline also need protection online.¹⁵⁴ In 2019, HRC adopted resolution 42/15 on “The Right to Privacy in the Digital Age,” focusing on preventing privacy violations through mass surveillance and strengthening legislation to comply with international law.¹⁵⁵ Accordingly, it recommends businesses to ensure the security and protection of digital communications data, work on technical solutions such as encryption, and follow the “*Protect, Respect and Remedy*” Framework.¹⁵⁶ It also requests OHCHR to convene an experts seminar to discuss significant implications of Artificial Intelligence (AI) to human rights.¹⁵⁷ This seminar took place in May 2020 with experts considering how AI can affect legal and regulatory approaches, and the preservation of the right to privacy.¹⁵⁸

Working closely with HRC, the General Assembly adopted resolution 73/179 on “The Right to Privacy in the Digital Age” in 2018.¹⁵⁹ The resolution recommends Member States to establish measures to prevent violations of the right to privacy of marginalized groups, as they are at a higher risk of unlawful interference.¹⁶⁰ Women, for example, may be subjected to gender bias online, and children might require assistance to understand dimensions of privacy and data protection.¹⁶¹ Moreover, the resolution calls for Member States to create mechanisms that ensure transparency of data sharing, expand informal dialogues with civil society organizations (CSOs), and promote education to protect privacy.¹⁶²

As misinformation campaigns pose a risk to health and livelihoods, the High-level Panel on Digital Cooperation submitted “The Age of Digital Interdependence” report in 2018.¹⁶³ The report recognizes that emerging technologies can support the achievement of the SDGs.¹⁶⁴ It also urges the Secretary-General to incorporate and implement meaningful insights from key stakeholders, such as governments, the private sector, civil society, international organizations, academic institutions, and the technical community to consider the implications of gaps which come with ICT’s further developments.¹⁶⁵ Based on this report, the Secretary-General presented in 2020 a set of recommended actions as a roadmap to ensure individuals are connected and respected while still being protected in the digital age.¹⁶⁶ This “Roadmap for Digital Cooperation” notes that data protection has fallen behind on ICT developments.¹⁶⁷ It expresses the need to strengthen digital capacity-building and ensure human rights protection in the digital era.¹⁶⁸ The report also notes the need for the internet to address “legitimate concerns underlying the need for encryption without undermining legitimate law enforcement.”¹⁶⁹

Non-governmental organizations (NGOs), such as Privacy International, argue that the right to privacy remains largely unaddressed within the United Nations’ (UN) human rights monitoring mechanisms.¹⁷⁰ They also led the CSO campaign for the creation of the UN Special Rapporteur on the right to privacy in the digital age.¹⁷¹ Besides supporting campaigns about the issue, the NGO provides HRC with country reports that document concerns about “state surveillance, protection of personal data, exploitation, and vulnerability of data by governments and companies.”¹⁷²

¹⁵⁴ UN HRC, *The Promotion, Protection and Enjoyment of Human Rights on the Internet (A/HRC/RES/20/8)*, 2012.

¹⁵⁵ UN HRC, *The Right to Privacy in the Digital Age (A/RES/42/15)*, 2019.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ UN OHCHR, *Expert Seminar on Artificial Intelligence and the Right to Privacy*, 2020.

¹⁵⁹ UN General Assembly, *The Right to Privacy in the Digital Age (A/RES/73/179)*, 2019.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ UN, *Secretary-General’s High-level Panel on Digital Cooperation*, 2020.

¹⁶⁴ High-Level Panel on Digital Cooperation, *The Age of Digital Interdependence*, 2019.

¹⁶⁵ *Ibid.*

¹⁶⁶ UN, *Secretary-General’s High-level Panel on Digital Cooperation*, 2020.

¹⁶⁷ UN, *Report of the Secretary-General: Roadmap for Digital Cooperation*, 2020.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ Privacy International, *United Nations Recognition of Privacy*, 2018.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

The Internet Democracy Project is an NGO that promotes free speech, democracy, and social justice online.¹⁷³ The project focuses on issues that threaten freedom of expression and privacy in the digital age, such as censorship, online hate speech, and data collection.¹⁷⁴ In this context, the internet Democracy Project also raises the issue of private business ownership of most of the internet infrastructure.¹⁷⁵

Mass Surveillance, Data Collection, and the Question of Privacy

The 2014 OHCHR report on the right to privacy in the digital age highlights several issues, including mass surveillance and data collection.¹⁷⁶ Concerns are that global mass surveillance can affect the enjoyment of human rights, including the right to privacy.¹⁷⁷ Furthermore, it is unclear to what extent users are aware of the data they share when using the internet.¹⁷⁸ Data collection can interfere with privacy and lead to human rights violations, such as censorship of information and targeted vigilance of government opposition.¹⁷⁹ When a person notices an invasion of their privacy, measures are needed to report such violations.¹⁸⁰ To heighten the awareness that data is shared while using the internet, the European Court of Justice decided that an active consent to the use of cookies is necessary.¹⁸¹ While cookies, which are small files created when using websites, are needed for many online services to work correctly, they can also be used to identify a user's habits when moving from one website to another.¹⁸²

HRC resolution 34/7 on "The Right to Privacy in the Digital Age" recognizes the need to evaluate the lawfulness of surveillance practices.¹⁸³ A Council of Europe report from 2015 on mass surveillance states concerns about the effects of mass surveillance on fundamental human rights, including privacy.¹⁸⁴ The main concern is that intelligence services create back doors to exploit weaknesses in security standards.¹⁸⁵ Terrorists and other criminals can also exploit these weaknesses.¹⁸⁶ Additionally, the report states that governments should only use surveillance when necessary and legitimate and that Member States have extraterritorial duties since the internet has no boundaries.¹⁸⁷ Further, the report points out the importance of transparency and accountability of data collection, and it emphasizes that technology companies are essential to maintain and uphold the right to privacy.¹⁸⁸

The NGO Access Now defends and extends the digital rights of users at risk, such as children.¹⁸⁹ It gives recommendations to OHCHR about surveillance and communication interception.¹⁹⁰ Access Now recommends that vulnerable groups should not be targeted by surveillance, that governments should use

¹⁷³ Internet Democracy Project, *About*, 2020.

¹⁷⁴ Internet Democracy Project, *Issues*, 2020.

¹⁷⁵ *Ibid.*

¹⁷⁶ UN HRC, *The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/27/37)*, 2014.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ Ekblom, Internet Users Must Actively Consent to Use of Cookies, EU Court Rules, *Reuters*, 2019.

¹⁸² Mozilla, *HTTP Cookies*, 2020.

¹⁸³ UN HRC, *The Right to Privacy in the Digital Age (A/HRC/RES/34/7)*, 2017.

¹⁸⁴ Council of Europe, *Mass Surveillance*, 2015.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*; Human Rights Watch, *United Nations: Rein in Mass Surveillance*, 2014.

¹⁸⁸ Council of Europe, *Mass Surveillance*, 2015; Human Rights Watch, *United Nations: Rein in Mass Surveillance*, 2014.

¹⁸⁹ Access Now, *Submission to Report on the Right to Privacy in the Digital Age by the Office of the UN High Commissioner for Human Rights*, 2018.

¹⁹⁰ *Ibid.*

surveillance responsibly, and that hacking by governments should be banned.¹⁹¹ According to Access Now, the growing reliance on data-driven technology and biometric data requires regulatory frameworks that concern governments and private businesses.¹⁹²

With the rapid spread of COVID-19, ICTs and AI have become vital resources to tackle the pandemic, e.g. through information sharing and data analysis.¹⁹³ However, CTs may become a powerful tool to infringe on human rights, including the right to privacy.¹⁹⁴ In a recent appeal from March 2020, UN human rights experts pointed out possible threats from misusing COVID-19 emergency declarations to cover repressive action against individuals, particular groups, or minorities.¹⁹⁵ Moreover, the Secretary-General remarked the importance of protecting human rights in the time of crisis, noting how it “can provide a pretext to adopt repressive measures” against vulnerable groups.¹⁹⁶ He recommended paying particular attention to surveillance through COVID-19 related measures and safeguarding user privacy.¹⁹⁷

Child Privacy in the Digital Age

In 2017, the United Nations Children’s Fund (UNICEF) released a report presenting opportunities and challenges for children in the digital world.¹⁹⁸ The report highlights the gravity of overlooking the risks to children’s privacy in the digital age.¹⁹⁹ It emphasizes the dangers for children on the internet, such as sexual abuse and extortion, cyberbullying, reputational risk, and loss of privacy.²⁰⁰ Furthermore, the report notes the role of parents putting children at risk by oversharing their children’s information.²⁰¹ In 2019, UNICEF published the Innocenti Research Brief, which shows that most children aged 9 to 17 have internet access and undertake various internet activities.²⁰² This exposure to a new environment holds challenges to the right to privacy and access to information unsuitable for children.²⁰³ Threats to children’s privacy in the digital age can be children’s lack of knowledge in collecting and processing personal data, online surveillance, and biometrics.²⁰⁴ There are also pre-existing risks gaining new dimensions online, such as “cyberbullying, online stalking, identity theft, and exposure to unwanted or inappropriate advertising content.”²⁰⁵ In 2018, UNICEF launched the “Industry Toolkit” on children’s online privacy and freedom of expression, which provides five principles to respect, protect, and realize children’s rights.²⁰⁶ This initiative includes the right to privacy, the protection of children’s data, and their access to information.²⁰⁷

The Child Rights International Network (CRIN), a think tank focusing on children’s rights, submitted a paper towards OHCHR’s report on the right to privacy in the digital age in 2018.²⁰⁸ In this paper, CRIN gives recommendations, including that terms and conditions of websites should be written in clear

¹⁹¹ Access Now, *Submission to Report on the Right to Privacy in the Digital Age by the Office of the UN High Commissioner for Human Rights*, 2018.

¹⁹² Ibid.

¹⁹³ UN Global Pulse, *Mapping the Landscape of Artificial Intelligence Applications Against COVID-19*, 2020.

¹⁹⁴ UN OHCHR, *We Are All in this Together: UNSG Delivers Policy Brief on COVID-19 and Human Rights*, 2020.

¹⁹⁵ UN OHCHR, *COVID-19: States Should Not Abuse Emergency Measures to Suppress Human Rights – UN Experts*, 2020.

¹⁹⁶ UN OHCHR, *We Are All in this Together: UNSG Delivers Policy Brief on COVID-19 and Human Rights*, 2020.

¹⁹⁷ Ibid.

¹⁹⁸ UNICEF, *The State of the World’s Children 2017: Children in a Digital World*, 2017.

¹⁹⁹ Ibid., pp. 91-93.

²⁰⁰ Ibid., p. 128.

²⁰¹ Ibid.

²⁰² UNICEF, *Innocenti Research Brief: Is there a Ladder of Children’s Online Participation?*, 2019.

²⁰³ UNICEF, *Child Privacy in the Age of Web 2.0 and 3.0: Challenges and Opportunities for Policy*, 2017.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ UNICEF, *Industry Toolkit: Children’s Online Privacy and Freedom of Expression*, 2018.

²⁰⁷ Ibid.

²⁰⁸ Child Right International Network, *CRIN’s Submission for OHCHR’s Report on the Right to Privacy in the Digital Age*, 2018.

language to ensure that children understand them.²⁰⁹ Further, the collection of children’s data while using the internet should be minimal, and there should be an option for children and adults to request data deletion.²¹⁰ Article 17 of the GDPR addresses the right to erasure upon request.²¹¹ However, the erasure of personal information on the internet can be difficult to assert.²¹² In the context of collecting and using children’s data, CRIN gives recommendations and best practices to parents, caregivers, and Member States.²¹³ Children’s use of digital communication tools should never be monitored without their knowledge; the scope and nature of the information accessible to children should be appropriate without interfering with their decision-making.²¹⁴ According to CRIN, personal information should not be sold for profit, and targeted advertisements should be clearly marked as such.²¹⁵ Furthermore, CRIN recommends that children learn about their rights in the digital world to ensure privacy protection in the digital age.²¹⁶ Digital literacy education should occur from an early age, keeping in mind further technological growth.²¹⁷

There are many challenges for the international community to ensure children’s right to privacy in the digital age.²¹⁸ For instance, the way information on data collection, storage, and processing is presented, makes it difficult for children to understand what this might entail.²¹⁹ Children’s restricted access to information that influences their ability to make independent decisions is another challenge.²²⁰ Children might not be aware of how sharing personal information online can influence their offline reputation and further influence, for instance, their chance of employment as they enter adulthood.²²¹ In 2019, reaffirming privacy concerns, HRC, through resolution 42/15, requested further preventive safeguards and remedies for human rights violations with particular attention to those that harm vulnerable groups, such as children.²²²

As the COVID-19 pandemic expands, quarantine regulations have restrained social gatherings, compelling society to adapt to conditions such as remote learning and working.²²³ These changes represent an unprecedented increase in ICT use.²²⁴ UNICEF notes that while ICTs are imperative for containing the outbreak, they should have a responsible and monitored use.²²⁵ In addition, UNICEF found that “data sources [including] mobile phone location data, call record tracking, CCTV footage, and border control travel histories” are used by governments to track those with the virus and trace their contacts to understand human movements further.²²⁶ In some cases, governments publicly volunteer personal information of COVID-19 patients, publishing online information, such as age and gender, therefore posing privacy violations.²²⁷ Based on these findings, UNICEF is “concerned about the need to protect children’s digital footprints.”²²⁸ UNICEF moreover recommends implementing tracing (as a recollection of insights) rather than tracking (gathering real-time data) apps.²²⁹ It also encourages following human rights

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Data Protection Law*, 2018.

²¹² Ibid.

²¹³ Child Rights International Network, *CRIN’s Submission for OHCHR’s Report on the Right to Privacy in the Digital Age*, 2018.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ UNICEF, *Industry Toolkit: Children’s Online Privacy and Freedom of Expression*, 2018.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² UN HRC, *The Right to Privacy in the Digital Age (A/RES/42/15)*, 2019.

²²³ UNICEF, *COVID-19 and Children’s Digital Privacy*, 2020.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

standards, rapid adaptation of ICTs' development, and setting guidelines that are easy to follow and accessible to children.²³⁰

Conclusion

The right to privacy in the digital age is an increasingly important topic. One of the main concerns is that mass surveillance is used more by private entities, which can be unlawful.²³¹ Member States are especially worried that CTs can be exploited by certain policies or practices because these new technologies are vulnerable to unlawful exploitation.²³²

Effective legal frameworks are crucial to guarantee the protection of the right to privacy.²³³ Existing frameworks need to be updated by legislative, administrative, or judicial authorities to match developments of ICTs and surveillance measures.²³⁴ General Assembly resolution 73/179 on "The Right to Privacy in the Digital Age" of 2019 asks Member States to work closely with CSOs to promote ICT education.²³⁵ Business enterprises are called upon to provide transparent information about their use of data.²³⁶

Children are specifically at risk for violations of their privacy, partly caused by their lack of knowledge about data collection and processing, or pre-existing risks such as bullying, stalking, or adverse effects on their future.²³⁷ Member States are called upon to uphold the five principles of the UNICEF "Industry Toolkit."²³⁸ Children's personal data should be protected while ensuring access to various information sources for children on the internet.²³⁹ It should be easy, especially for children, to find remedies for the violation of their rights.²⁴⁰ However, the right to erasure for children and adults is challenging to put into practice.²⁴¹ Further work of all stakeholders, including NGOs, the business sector, and Member States, is necessary to enjoy and maintain the right to privacy in the digital age.²⁴²

Further Research

As delegates begin researching this topic they should consider: How can the same access for all children to the same information on the internet be ensured? How can education regarding personal data be assured? How can the lawful use of mass surveillance be ensured by Member States? How can illegal use of mass surveillance or other communication technology be prevented? How can the private use of mass surveillance be regulated? What regulatory frameworks are needed to ensure the right to privacy in the digital age?

²³⁰ Ibid.

²³¹ UN HRC, *The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/27/37)*, 2014.

²³² Ibid.

²³³ UN OHCHR, *Opening Remarks by Ms. Navi Pillay, United Nations High Commissioner for Human Rights to the Side-Event at the 24th Session of the UN Human Rights Council How to Safeguard the Right to Privacy in the Digital Age?*, 2013; UN OHCHR, *Opening Remarks by Ms. Navi Pillay United Nations High Commissioner for Human Rights to the Expert Seminar: The Right to Privacy in the Digital Age, 24 February 2014, Room XXI, Palais des Nations, Geneva*, 2014.

²³⁴ Ibid.

²³⁵ UN General Assembly, *The Right to Privacy in the Digital Age (A/RES/73/179)*, 2019.

²³⁶ Ibid.

²³⁷ UNICEF, *Child Privacy in the Age of Web 2.0 and 3.0: Challenges and Opportunities for Policy*, 2017.

²³⁸ UNICEF, *Industry Toolkit: Children's Online Privacy and Freedom of Expression*, 2018.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Data Protection Law*, 2018.

²⁴² Ibid.

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This discussion paper describes challenges and risks to children’s right to privacy online. Challenges can be children’s lack of knowledge, online surveillance, use of biometrics, and pre-existing risks that get accelerated by new technologies. Further, the document explains national, regional and international regulatory mechanisms, providing best practices from Member States. Also, the application of children’s rights online is explained in the document. This source is helpful to delegates to explore the challenges and opportunities that internet access bears for children.

Council of Europe. (2020). *COVID-19 Data Protection: Resources*. Retrieved 28 August 2020 from: <https://www.coe.int/en/web/data-protection/covid-19-data-protection-resources>

With COVID-19 reaching a global scale, this source provides insights on COVID-19 impact on livelihoods. It should be reviewed as a reference for regional and international concerns on human rights violations through tracking and tracing measures taken during the pandemic. The Council of Europe gives insights on relevant instruments and work achieved from several stakeholders during the COVID-19 pandemic. This source can help delegates in understanding how COVID-19 and measures taken to contain it may threaten the right to privacy in a digital age.

United Nations. (2020). *Report of the Secretary-General: Roadmap for Digital Cooperation*. Retrieved 27 August 2020 from: https://www.un.org/en/content/digital-cooperation-roadmap/assets/pdf/Roadmap_for_Digital_Cooperation_EN.pdf

This report of the Secretary-General is a compilation of recommendations based on “The Age of Digital Interdependence” report by the High-level Panel on Digital Cooperation. It outlines the impact of Information technologies in the achievement of SDGs and challenges posed by COVID-19 in the digital age. This report lays out a roadmap for a safer digital world for all. Delegates should especially pay attention to the data protection and privacy section.

United Nations, Human Rights Council, Twenty-seventh session. (2014). *The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/27/37)*. Retrieved 19 September 2020 from: <https://undocs.org/A/HRC/27/37>

The Report of the Office of the United Nations High Commissioner for Human Rights on the Right to Privacy in the Digital Age provides background information to the topic and explains issues in various areas in regard to the right to privacy in the digital age. Further, the report recognizes that to address the challenges for privacy in the digital age, a multi-stakeholder engagement is necessary, including Member States, civil society, NGOs, academia, technical communities and the business sector. Finally, the report notes recommendations to Member States, businesses, and CSOs in how to ensure the right to privacy in the digital age. This source may help delegates to understand the role of private businesses and how Member States should act to ensure the right to privacy in the digital age.

United Nations, Human Rights Council, Twenty-eighth session. (2015). *The Right to Privacy in the Digital Age (A/HRC/RES/28/16)*. Retrieved 19 September 2020 from: <https://undocs.org/A/HRC/RES/28/16>

In this resolution, the Human Rights Council decided to appoint a Special Rapporteur on the right to privacy for a period of three years. The Special Rapporteur’s task is “to gather relevant information, including on international and national frameworks, national practices and experience, to study trends, developments and challenges in relation to the right to privacy and to make recommendations to ensure its promotion and protection, including in connection with the challenges arising from new technologies.” This source may help delegates to familiarize themselves with the mandate of the Special

Rapporteur, as well as relevant issue areas in the context of privacy in the digital age such as the unlawful use or sharing of data.

United Nations, Human Rights Council, Thirty-fourth session. (2017). *The Right to Privacy in the Digital Age (A/HRC/RES/34/7)*. Retrieved 28 August 2020 from: <https://undocs.org/A/HRC/RES/34/7>

This HRC resolution was adopted in 2017 and asks Member States, CSOs, national human rights institutions, and business entities to share their best practices, principles and standards regarding the right to privacy in the digital age. It encourages stakeholders to take part in dialogs that promote the right to privacy in the digital age. Delegates may use this source to better understand possibilities for council action and stakeholder cooperation on the topic.

United Nations, Human Rights Council, Thirty-seventh session. (2018). *Report of the Special Rapporteur on the Right to Privacy (A/HRC/37/62)*. Retrieved 26 August 2020 from: <https://undocs.org/A/HRC/37/62>

The Special Rapporteur is an expert appointed by HRC to examine and report back on the right to privacy. The Special Rapporteur gathers information and creates thematic action streams to further point out areas of interest in his field to work on. Finally, the report gives recommendations to Member States, such as develop standards, promote principles, best practices, and implement human right norms. This source is helpful to delegates to become familiar with the work of the Special Rapporteur and different issue areas in his portfolio.

United Nations, Human Rights Council, Forty-second session. (2019). *The Right to Privacy in the Digital Age (A/HRC/RES/42/15)*. Retrieved 26 August 2020 from: <https://undocs.org/A/HRC/RES/42/15>

This is the most recent HRC resolution, adopted in 2019, on the promotion and protection of the right to privacy. It focuses on the prevention of privacy violations through mass surveillance, and the strengthening of legislation to protect data. It asks business to endorse the Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework and foster standards regarding the right to privacy in the digital age. Delegates should thoroughly review this resolution to understand current concerns and international efforts to fight human rights violations online.

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II. Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance

*“The United Nations has a duty to respond to the anguish that has been felt by so many for so long. This cause is at the heart of our Organization’s identity. Equal rights are enshrined in our founding Charter. Just as we fought apartheid years ago, so must we fight the hatred, oppression and humiliation today.”*²⁴³

Introduction

Varied forms of racism, racial discrimination, xenophobia and related intolerance are prevalent in every society and happen on a daily basis.²⁴⁴ They sustain inequality and thus impede development, peace, and the universal fulfillment of human rights and fundamental freedoms.²⁴⁵ Rising nationalism and the spread of populist ideologies only aggravate these phenomena and bring about a resurgence of violent manifestations.²⁴⁶ Even though there are no universal standards for measuring and monitoring racism, racial discrimination, xenophobia and related intolerance and their impact, Member States have seen an increase in the number of reported incidents, such as hate crimes.²⁴⁷ The COVID-19 pandemic and its consequences have disproportionately affected groups that are already suffering from racism, racial discrimination, xenophobia, and related intolerance, thus exacerbating these phenomena.²⁴⁸

Although they often coincide, racism, racial discrimination, xenophobia and related intolerance are distinct phenomena.²⁴⁹ While racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”, racism is the underlying ideology that presupposes the existence of different races and constructs a causal relation with race as the primary factor determining a group’s characteristics and capabilities.²⁵⁰ Xenophobia is hate or dislike based on a group’s “presumed or real descent, national, ethnic or social origin, race, color, religion, gender, sexual orientation or other grounds.”²⁵¹ The Council of Europe (CoE) has defined intolerance as “a lack of respect for practices or beliefs other than one’s own.”²⁵²

The Human Rights Council (HRC) holds an annual general debate on the topic and adopts thematic resolutions through which it inter alia appoints the Special Rapporteur on contemporary forms of racism.²⁵³ The Special Rapporteur prepares annual reports on specific issues, undertakes country visits, and submits urgent appeals to Member States violating human rights related to her mandate.²⁵⁴ The

²⁴³ UN DGC, *United Nations Stands with Those Fighting ‘Today’s Sacred Battle’ against Systemic Racism, Deputy-Secretary-General Tells Human Rights Council (DSG/SM/1421)*, 2020.

²⁴⁴ UN OHCHR, *Combating Racial Discrimination*, 2020; World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration and Programme of Action*, 2001, p. 3.

²⁴⁵ World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12)*, 2001, p. 18.

²⁴⁶ UN HRC, *From Rhetoric to Reality: A Global Call for Concrete Action Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/HRC/RES/42/29)*, 2019.

²⁴⁷ OSCE, *Hate Crime Data-Collection and Monitoring Mechanisms*, 2014, p. 1.

²⁴⁸ UN OHCHR, *Racial Discrimination in the Context of the COVID-19 Crisis*, 2020.

²⁴⁹ UN OHCHR & UNESCO, *Dimensions of Racism*, 2005, p. 112.

²⁵⁰ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/2106 (XX))*, 1965; OAS, *Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance (A-68)*, 2013.

²⁵¹ UN OHCHR, *Xenophobia*, 2013, p. 1.

²⁵² CoE, *Discrimination and Intolerance*, 2017.

²⁵³ UN HRC, *Mandate of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/HRC/RES/43/36)*, 2020; UN HRC, *Human Rights Council Concludes General Debate on Racism, Racial Discrimination, Xenophobia and Related Intolerance*, 2020.

²⁵⁴ UN OHCHR, *About the Mandate: The Special Rapporteur on Contemporary Forms of Racism*, 2020.

Office of the High Commissioner for Human Rights (OHCHR) supports the Special Rapporteur in her work as well as other relevant subsidiary bodies.²⁵⁵

In response to the killing of African American U.S. citizen George Floyd through police brutality and the subsequent global wave of protests, HRC held an urgent debate on systemic racism in June 2020.²⁵⁶ Speakers condemned the incident and emphasized its institutionalized nature.²⁵⁷ The High Commissioner for Human Rights along with some Member States explored colonialism and slavery as root causes of racial discrimination, acknowledged the necessity for historical revision and reparations in various forms, and demanded decisive action against systemic racism.²⁵⁸

International and Regional Framework

The *Charter of the United Nations* proclaims the importance of promoting and encouraging respect for human rights and fundamental freedoms for all – without any discrimination.²⁵⁹ The 1948 *Universal Declaration of Human Rights* (UDHR) reaffirms this non-discrimination principle in Article 7 along with the principle of equality by proclaiming equality before the law and entitlement to equal protection under the law without discrimination.²⁶⁰ These fundamental principles are further outlined in Article 26 and 27 of the 1966 *International Covenant on Civil and Political Rights* (ICCPR), stipulating anti-discrimination and minority rights legislation.²⁶¹

The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) is the most important legal instrument related to the fight against and prevention of racial discrimination.²⁶² It has 182 parties and condemns any superiority doctrine founded on racial differentiation, including racial segregation and apartheid.²⁶³ While requiring States parties to refrain from racial discrimination, the convention also commits signatories to protect individuals from racial discrimination, prosecute racist crimes effectively, and create and enforce laws that prohibit and eradicate racial discrimination.²⁶⁴ It is mandatory for all signatories to submit reports detailing action taken to combat racial discrimination.²⁶⁵ The Committee on the Elimination of Racial Discrimination (CERD), which supervises the implementation of the convention, provides recommendations for each Member State based on their reports.²⁶⁶ In addition, the Committee also considers reports submitted by Non-Governmental Organizations (NGOs) when making recommendations.²⁶⁷ The convention also includes an individual complaint mechanism.²⁶⁸

Beyond ICERD, the 1990 *International Convention on the Protection of the Rights of All Migrant Workers* (ICRMW) seeks to promote migrant workers' human rights and protect them from discriminatory

²⁵⁵ UN OHCHR, *Special Procedures of the Human Rights Council*, 2020.

²⁵⁶ UN HRC, *Human Rights Council Holds an Urgent Debate on Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality and Violence Against Peaceful Protests*, 2020.

²⁵⁷ UN HRC, *Human Rights Council Holds an Urgent Debate on Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality and Violence Against Peaceful Protests*, 2020.

²⁵⁸ UN HRC, *43rd Session of the Human Rights Council Urgent Debate on Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality Against People of African Descent and Violence Against Peaceful Protests: Statement by Michelle Bachelet, UN High Commissioner for Human Rights 17 June 2020*, 2020; UN HRC, *Human Rights Council Concludes Urgent Debate on Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality and Violence Against Peaceful Protests*, 2020.

²⁵⁹ *Charter of the United Nations*, 1945.

²⁶⁰ UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

²⁶¹ UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 (XXI))*, 1966.

²⁶² UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/2106 (XX))*, 1965.

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ UN General Assembly, *Report of the Committee on the Elimination of Racial Discrimination (A/61/18)*, 2006, p. 7.

²⁶⁸ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/2106 (XX))*, 1965.

treatment.²⁶⁹ Migrant workers and their families often face xenophobia by employers, society, and authorities.²⁷⁰ The convention recognizes that expressions of national, racial, or religious hatred incite acts of violence or discrimination. The Committee on Migrant Workers (CMW) oversees the implementation of ICRMW.²⁷¹

Following the 2001 World Conference against Racism in Durban, South Africa, attending Member States adopted the *Durban Declaration and Programme of Action* (DDPA).²⁷² The DDPA expands on the ICERD, e.g. by promoting a victim-centered approach and recognizing the often-aggravated nature of racial discrimination.²⁷³ It proposes specific measures to counteract the problems of racism, racial discrimination, xenophobia and related intolerance.²⁷⁴ This includes creating national action plans, setting up programs that prevent citizens from inciting hatred on the basis of racial discrimination, and adopting affirmative action.²⁷⁵ Strengthening and promoting the effective implementation of both DDPA and ICERD is one of the main objectives of the *International Decade for People of African Descent* (2015-2024), which was proclaimed by General Assembly resolution 68/237.²⁷⁶ The *International Decade for People of African Descent* represents an important action-oriented framework for tackling issues such as racial profiling, economic marginalization, or equal access to quality education.²⁷⁷ To assess the effectiveness of this framework and evaluate the implementation progress of the *International Decade for People of African Descent*, OHCHR conducted a mid-term review in 2020, with results yet to be published.²⁷⁸

In 2015, the UN adopted the *2030 Agenda for Sustainable Development*.²⁷⁹ Its 17 indivisible and interdependent Sustainable Development Goals (SDGs) provide a strategic framework for global collective action.²⁸⁰ The efforts to eliminate racism, racial discrimination, xenophobia and related intolerance are necessary for the achievement of SDG 10 (reduced inequalities) and SDG 16 (peace, justice and strong institutions).²⁸¹

Regional bodies have implemented the fundamental principles of the UDHR and ICCPR and some of the provisions of ICERD and DDPA in regional legislative frameworks. The 1950 *European Convention on Human Rights* (ECHR) prohibits discrimination and establishes general non-discriminatory validity of the rights and freedoms outlined in the convention.²⁸² In 2013, the Organization of American States (OAS) adopted the *Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance*, which, inter alia, obliges States parties to adopt legislation defining and prohibiting acts of racism and racial discrimination and ensure due process and just reparations for victims of racism.²⁸³

²⁶⁹ 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.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration and Programme of Action*, 2001.

²⁷³ Ibid.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ United Nations, *International Decade for People of African Descent 2015-2024*.

²⁷⁷ Ibid.

²⁷⁸ UN OHCHR, *Mid-term Review of the International Decade for People of African Descent (Deadline: 30 April 2020)*, 2020.

²⁷⁹ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development* (A/RES/70/1), 2015.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² CoE, *European Convention on Human Rights*, 1950.

²⁸³ OAS, *Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance* (A-68), 2013.

Role of the International System

In the effort to eliminate racism, racial discrimination, xenophobia and related intolerance, HRC is the UN's foremost subsidiary organ to promote and protect the fundamental principles of equality and non-discrimination.²⁸⁴ In 1993, its predecessor, the Commission on Human Rights (CHR), created a mandate for a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to oversee progress in tackling these issues.²⁸⁵ HRC integrated the function in its special procedures and subsequently renewed the mandate.²⁸⁶ The Special Rapporteur's duties include communicating urgent appeals to Member States concerning alleged violations of human rights, undertaking country visits, and reporting to HRC and the General Assembly.²⁸⁷ Her communications, country visits and thematic reports provide input for HRC's resolutions and general debates on the issue.²⁸⁸ Member States can also request urgent debates to address situations of human rights violations and make recommendations.²⁸⁹

OHCHR assists the Special Rapporteur on contemporary forms of racism as well as the Special Rapporteur on minority issues, as minorities are widely exposed to various overlapping forms of racial discrimination and xenophobia.²⁹⁰ It furthermore supports CERD and its 18 independent experts in their work. OHCHR also provides technical assistance to Member States that are building, implementing or planning to implement national action plans to combat racial discrimination.²⁹¹ Through its Anti-Discrimination Unit, OHCHR conducts research, raises awareness, and builds national capacity through advisory services.²⁹² The Anti-Discrimination Unit also supports governments and other stakeholders in implementing the DDPA.²⁹³ Furthermore, OHCHR assists the Working Group of Experts on People of African Descent, which was requested in the DDPA, established through CHR resolution 2002/68, and subsequently incorporated as a Special Procedure of the HRC.²⁹⁴ The Working Group consists of five experts who meet biannually.²⁹⁵ They examine problems of racial discrimination against afro-descendants, undertake country visits, and make recommendations.²⁹⁶

As a subsidiary organ of the General Assembly, HRC interact closely with the General Assembly on the issue: While the HRC and its special procedures report to the General Assembly, its Third Committee on Social, Humanitarian and Cultural Issues also considers and adopts resolutions on questions related to the elimination of racism and racial discrimination.²⁹⁷ In its resolution 73/262 entitled "A Global Call for Concrete Action for the Total Elimination of Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Comprehensive Implementation of and Follow-up to the Durban Declaration and Programme of Action", the General Assembly requested HRC to carry out an investigation on evaluating the *International Convention on the Elimination of All Forms of Racial Discrimination*, and at the same time identify gaps in the convention that need to be addressed.²⁹⁸ In its subsequent resolution 74/137 on

²⁸⁴ UN HRC, *About HRC*.

²⁸⁵ UN OHCHR, *Special Rapporteur on Contemporary Forms of Racism*, 2020.

²⁸⁶ UN OHCHR, *About the Mandate: The Special Rapporteur on Contemporary Forms of Racism*, 2020.

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

²⁸⁹ UN OHCHR, *Human Rights Council Holds an Urgent Debate on Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality and Violence Against Peaceful Protests*, 2020.

²⁹⁰ UN OHCHR, *Combating Racial Discrimination*, 2009.

²⁹¹ UN OHCHR, *National Action Plans Against Racial Discrimination*, 2013, p. 2.

²⁹² UN OHCHR, *Combating Racial Discrimination*, 2009.

²⁹³ UNHCR, *Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance Through a Strategic Approach*, 2009, p. 4.

²⁹⁴ UN OHCHR, *Working Group of Experts on People of African Descent*, 2020.

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ UN General Assembly, *Social, Humanitarian & Cultural Issues (Third Committee)*.

²⁹⁸ UN General Assembly, *A Global Call for Concrete Action for the Total Elimination of Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Comprehensive Implementation of and Follow-up to the Durban Declaration and Programme of Action (A/RES/73/262)*, 2018.

the same topic, the General Assembly also requested HRC to examine the possibility of creating a multi-year program in support of the *Durban Declaration and Programme of Action*.²⁹⁹ Moreover, the General Assembly requested OHCHR to intensify awareness on its contribution to address racism, racial discrimination, xenophobia and related intolerance, in collaboration with Member States, national human rights institutions, relevant civil society organizations, and United Nations agencies, funds and programs.³⁰⁰

On the regional level, OAS created a Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination in 2005.³⁰¹ The rapporteur is mandated to protect human rights of afro-descendants, support OAS Member States in their effort to overcome racial discrimination, and monitor their progress.³⁰² The European Union (EU) covers the problem of racism in its *Framework Decision on Combating Certain Forms of Expressions of Racism and Xenophobia by Virtue of Criminal Law*.³⁰³ This framework decision requires EU states to penalize practices of racism and xenophobia.³⁰⁴ Additionally, the CoE established the European Commission against Racism and Intolerance (ECRI) in 1994.³⁰⁵ ECRI is an independent monitoring body consisting of 47 experts from each CoE Member State. On the basis of on-site visits and their analysis of each Member State's situation and policies, they pen a report with identified problems of racism and intolerance and subsequent recommendations.³⁰⁶ Besides these country reports, ECRI also addresses all Member States with its general policy recommendations, which provide guidelines on topics such as hate speech, racism and racial discrimination in policing, or xenophobia against Muslims.³⁰⁷

NGOs also play an important role in monitoring the implementation of measures to defeat racial discrimination.³⁰⁸ Global actors such as Human Rights Watch (HRW) or Amnesty International (AI) monitor country situations, organize campaigns, and provide research on topics related to racism and racial discrimination.³⁰⁹ The International Movement Against All Forms of Discrimination and Racism (IMADR) focuses on carrying out activities that involve grassroots community empowerment, sensitization, action-oriented research, sharing information and experiences, and other methods.³¹⁰ IMADR also disseminates information on mechanisms to address racial discrimination, such as the promotion of human rights in school curricula.³¹¹ Others, such as the European Network Against Racism (ENAR) facilitate coordination between anti-racism activists in EU Member States.³¹² The Coalition of Latin American and Caribbean Cities against Racism, Discrimination and Xenophobia (LAC) is a city-level platform engaged in fighting racism and racial discrimination against Latin America's vast indigenous and afro-descendent population on the municipal level.³¹³ Parallel chapters exist in Africa, Asia and the Pacific, the Arab world, Europe, and the U.S.³¹⁴

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ OAS, *Rights of Persons of African Descent and against Racial Discrimination*.

³⁰² International Justice Resource Center, *Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination*.

³⁰³ European Commission, *Combating Racism and Xenophobia*.

³⁰⁴ Official Journal of the European Union, *Acts Adopted Under Title VI of The EU Treaty*, 2008, p. 2.

³⁰⁵ CoE, *ECRI: European Commission Against Racism and Intolerance*, 2019, p. 2.

³⁰⁶ Ibid.

³⁰⁷ Ibid., p. 4.

³⁰⁸ Ibid., p. 3.

³⁰⁹ AI, *Discrimination*; HRW, *Racial Discrimination*.

³¹⁰ IMADR, *About IMADR*.

³¹¹ Ibid.

³¹² ENAR, *About us*.

³¹³ LAC, *Regional Perspective Paper*, 2016.

³¹⁴ UNESCO, *International Coalition of Inclusive and Sustainable Cities – ICCAR*.

Combating Racism, Xenophobia, and Related Intolerance on Online Platforms

Live streamed on Facebook, a large social media platform that hosts 2.7 billion users monthly, the whole world was able to witness the tragic mass shooting in New Zealand in March 2019 that targeted Christchurch's Muslim population.³¹⁵ In addition to it being livestreamed on Facebook, a feature which allows for videos to be viewed by other Facebook members in real time, the event was also reposted on YouTube and other online platforms including Twitter and Instagram.³¹⁶ The event highlighted the way how extremist groups and individuals misuse online platforms to not only spread hate speech and incite violence and abuse, but to propagate racism, racial discrimination, xenophobia and related intolerance.³¹⁷

In his thematic report on manifestations of racism on the internet and social media, the Special Rapporteur on contemporary forms of racism explores the consequences of the growing and increasingly sophisticated spread of racist and xenophobic content on online platforms.³¹⁸ He expresses his concerns on how this wide dissemination normalizes hateful content, incites hatred and violence, and how extremist groups use racist and xenophobic content to recruit members.³¹⁹ Due to the lack of adequate data on racist and xenophobic practices online, the Special Rapporteur recommended to Member States and human rights institutions to implement effective measures to identify, investigate, and register information on such practices that incite hate or violent crimes.³²⁰ What is additionally challenging about combating racism, xenophobia, and related intolerance on online platforms is the creation and enforcement of laws and regulations.³²¹ Legal terms remain vague, content creators remain relatively anonymous, and many states have different laws for hate content and racist content.³²² Furthermore, jurisdiction for prosecution is not always clear as the creation of racist or xenophobic content and the manifestations of hate and violence they prompt often transcend borders.³²³ While online platforms have allowed for wider dissemination of racist and xenophobic content, the Special Rapporteur highlights that internet platforms are an important tool in combating racism, racial discrimination, xenophobia and related intolerance.³²⁴

Several UN Agencies and other international actors have also addressed the issue.³²⁵ The United Nations Educational, Scientific and Cultural Organization (UNESCO), for example, has built a strategy against racism, discrimination, xenophobia and related intolerance, which also addresses racist and xenophobic content on online platforms.³²⁶ Furthermore, the UN has launched a strategy and plan of action on hate speech, promoting coordinated data collection and investigation of the principal motives behind hate speech.³²⁷

The *Convention on Cybercrime*, adopted by the CoE in 2001, was the first international treaty addressing and penalizing crimes committed on the internet.³²⁸ Its Additional Protocol specifically deals with the criminalization of online racism and xenophobia and fostered coordination among Member States and

³¹⁵ Macklin, *The Christchurch Attacks: Livestream Terror in the Viral Video Age*, 2019; Statista, *Number of Monthly Active Facebook Users Worldwide as of 2nd Quarter 2020*, 2020.

³¹⁶ Macklin, *The Christchurch Attacks: Livestream Terror in the Viral Video Age*, 2019.

³¹⁷ UN HRC, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance* (A/HRC/26/49), 2014, p. 3.

³¹⁸ *Ibid.*

³¹⁹ *Ibid.*

³²⁰ *Ibid.*, p. 19.

³²¹ *Ibid.*, p. 3.

³²² *Ibid.*

³²³ *Ibid.*

³²⁴ *Ibid.*, p. 1.

³²⁵ *Ibid.*, pp. 8-9.

³²⁶ *Ibid.*, p. 8.

³²⁷ Special Advisor on the Prevention of Genocide, *United Nations Strategy and Plan of Action on Hate Speech*, 2019.

³²⁸ CoE, *Budapest Convention and Related Standards*.

harmonization of jurisdictions.³²⁹ The CoE also sponsored a "No Hate Speech" campaign between 2012 and 2017, which aimed at eliminating online hate speech while fostering freedom of expression.³³⁰ It also intended to reduce the acceptance and spread of hate speech both online and offline.³³¹ In addition, the campaign hosted "Hate Speech Watch", which is a tool to report, monitor and educate the public about hate speech online.³³²

Several countries already implemented legislative measures to regulate racism and xenophobia in online platforms.³³³ For example, France and Germany passed laws against online hate speech, which include giving online platforms 24 hours to remove any type of hate speech, otherwise there will be financial penalties.³³⁴ Internet and social media providers have also addressed racial or xenophobic content by either regulating, censoring, or self-censoring based on community submissions.³³⁵ Governments and online platforms gathered for a summit on online extremism in 2019 in Paris.³³⁶ Participants agreed on measures such as increasing media education and funding for law enforcement to better monitor online extremism.³³⁷ Social media companies furthermore agreed on coordinated efforts to find new tools or mechanisms to identify and quickly remove extremist content from their platforms.³³⁸

Combating Xenophobia against Migrants

From 2000 to 2017, there has been an increase of almost 50% in the number of migrants, with an estimated total number of 258 million migrants around the world.³³⁹ Migrants often experience violent attacks, which can be motivated by xenophobia.³⁴⁰ Xenophobia towards migrants affects civil, cultural, economic, political, and the social rights of migrants negatively.³⁴¹ In addition, any type of discrimination against migrants can contribute to jeopardizing democratic values, social stability, and peace.³⁴²

In September 2016, the General Assembly adopted the *New York Declaration for Refugees and Migrants*.³⁴³ Through this declaration, Member States reiterated their commitment to protect the human rights of all migrants, irrespective of their status.³⁴⁴ The General Assembly also endorsed the 2018 "Global Compact for Safe, Regular and Orderly Migration: Towards Realizing the 2030 Agenda for Sustainable Development and Achieving Full Respect for the Human Rights of Migrants".³⁴⁵ The Global Compact advocates for the principles of non-discrimination, aiming at fulfilment, protection and respect for

³²⁹ Ibid.

³³⁰ CoE, *About the Campaign(s)*.

³³¹ Ibid.

³³² Ibid.

³³³ Rosemain & Pineau, *French Lawmakers Vote to Target Online Hate Speech in Draft Bill*, 2019.

³³⁴ *France Online Hate Speech Law to Force Social Media Sites to act Quickly*, The Guardian, 2019; Rosemain & Pineau, *French Lawmakers Vote to Target Online Hate Speech in Draft Bill*, 2019.

³³⁵ UN HRC, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/HRC/26/49)*, 2014, p. 11.

³³⁶ *France Online Hate Speech Law to Force Social Media Sites to act Quickly*, The Guardian, 2019.

³³⁷ Ibid.

³³⁸ *Macron and Ardern Announce Measures Against Online Extremism*, France 24, 2019.

³³⁹ UN DESA, *The World Counted 258 Million International Migrants in 2017, Representing 3.4 per Cent of Global Population*, 2017, p. 1.

³⁴⁰ Human Right First, *Combating Xenophobic Violence -- A Framework for Action*, 2011, p. 3.

³⁴¹ UN DGC, *Let's Fight Racism!*.

³⁴² UN General Assembly, *Commemorative Meeting on the Occasion of the International Day for the Elimination of Racial Discrimination (A/73/PV.71)*, 2018, p. 2.

³⁴³ UN OHCHR, *In Search of Dignity*, 2017, p.13.

³⁴⁴ Ibid.

³⁴⁵ UN HRC, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related intolerance (A/HRC/ 35/41)*, 2017, p. 3; UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195)*, 2018, p. 1.

human rights of all migrants.³⁴⁶ In addition, it reiterates the commitment to eliminate all forms of discrimination, including xenophobia against migrants.³⁴⁷

The 2017 Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance highlights the importance of collecting data and statistics to combat racism, racial discrimination and xenophobia.³⁴⁸ In addition, the Special Rapporteur demonstrates how the general absence of information on migrants and the lack of specific data on discriminatory practices results in information gaps hindering effective policy making.³⁴⁹

In the fight against discrimination towards migrants, OHCHR also works closely with the Special Rapporteur on the human rights of migrants and its treaty bodies, including the Committee on Migrant Workers, the Committee on the Elimination of Racial Discrimination, and the Committee on the Rights of the Child.³⁵⁰ OHCHR assists Member States in building national capacities by providing advisory services and supporting anti-discrimination policies and programs.³⁵¹ OHCHR moreover raises awareness and contributes to facilitating expert meetings discussing violations of human rights of migrants in relation to discrimination, racism, and xenophobia.³⁵² Furthermore, OHCHR is part of the UN Network on Migration, a UN inter-agency coordination mechanism for migration-related activities which also publishes reports and data on related issues and assists Member States in implementing the Global Compact.³⁵³

Within the UN System, both the International Organization for Migration (IOM) and the International Labour Organization (ILO) are engaged in advocating for implementing core principles and effective commitment to combat racism and xenophobia against migrants.³⁵⁴ Those core principles include supporting measures to make any type of behavior triggering racist and xenophobic actions against migrants unacceptable, promote positive facts about diversity, eradicate negative stereotypes, incorporate multi-cultural subjects in schools, increase civil society cooperation, and implement and monitor anti-discrimination standards.³⁵⁵

Some Member States have already implemented measures to fight against xenophobia towards migrants.³⁵⁶ Belgium introduced educational measures to counter racism, as well as a community policing model with special training to better respond to hate crimes against migrants.³⁵⁷ Spain passed legislation focusing on social integration, establishing a Racism and Xenophobia Observatory, and amending criminal law.³⁵⁸ France created an anti-discrimination initiative that focuses on identifying discriminatory actions and responses and on developing adequate measures to raise awareness.³⁵⁹ The European Court of Human Rights requires Member States to investigate and enact sanctions that are related to crimes rooted in racism or xenophobia.³⁶⁰

³⁴⁶ UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195)*, 2018, p. 4.

³⁴⁷ Ibid.

³⁴⁸ UN HRC, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/HRC/35/41)*, 2017, p. 10.

³⁴⁹ Ibid., p. 10.

³⁵⁰ UN OHCHR, *Combating Discrimination Against Migrants*, 2009; UN OHCHR, *Special Rapporteur on the Human Rights of Migrants*, 2020.

³⁵¹ UN OHCHR, *Combating Discrimination Against Migrants*, 2009.

³⁵² UN OHCHR, *Background Paper by The Office of The United Nations High Commissioner for Human Rights to The Eighth Coordination Meeting on International Migration*, p. 2.

³⁵³ UN Network on Migration, *About Us*; UN OHCHR, *Combating Discrimination Against Migrants*, 2009.

³⁵⁴ ILO et al., *International Migration, Racism, Discrimination and Xenophobia*, 2001, p. 7.

³⁵⁵ Ibid.

³⁵⁶ OSCE, *Challenges and Perspectives on Hate Crime Against Migrants*, 2018.

³⁵⁷ Ibid., p. 4

³⁵⁸ Ibid., p. 9

³⁵⁹ ILO et al., *International Migration, Racism, Discrimination and Xenophobia*, 2001, p. 16.

³⁶⁰ OSCE, *Prosecuting Hate Crimes: A Practical Guide*, 2014, pp. 40-54.

Conclusion

Coordinated efforts from all involved parties, including the UN system, Member States, NGOs as well as international and regional organizations, and civil society, are necessary to combat racism, racial discrimination, xenophobia, and related intolerance.³⁶¹ The OHCHR and its partners have developed a strategy to combat this issue which include key elements such as monitoring racial discrimination, xenophobia and related intolerance indicators; reporting and registering hate crimes; establishing legal obligations to protect people from any type of discrimination, and various others.³⁶² However, this problem cannot be tackled just by building or running campaigns, strategies, and programs; a follow-up process is required to assess the effectiveness of implementing those programs, laws and campaigns.³⁶³ Combatting racism, racial discrimination, xenophobia and related intolerance is important as it jeopardizes the overall enjoyment of every human right.³⁶⁴

Further research

With these issues in mind, delegates should further research the following: What can HRC do to encourage the universal implementation of the ICERD? How can Member States implement effective measures to combat racism? What are the challenges for a legal framework that will severely punish racism and xenophobia on online platforms? How can HRC guide Member States to combat racism, racial discrimination, xenophobia and related intolerance, particularly against marginalized groups? What specific actions can HRC request from Member States to address xenophobia that might be targeting migrants? How can Member States and the international community collect data to help with effective policy making that combats racism, racial discrimination, xenophobia, and related intolerance?

Annotated Bibliography

International Labour Organization et al. (2001). *International Migration, Racism, Discrimination and Xenophobia*. Retrieved 19 August 2020 from:

<https://www2.ohchr.org/english/issues/migration/taskforce/docs/wcar.pdf>

This document contains important information about migrants, racism, racial discrimination and xenophobia. It includes forecasts on this matter, as well as a human rights approach to international migration. It includes anti-discrimination measures, mechanisms, and policies. In addition, it makes a comprehensive comparison between xenophobia and diversity. Delegates will find this report useful as it provides examples about countries that have already implemented measures to combat racism, discrimination and xenophobia in the context of migration.

Office of the United Nations High Commissioner for Human Rights. (2020). *Racial Discrimination in the Context of the COVID-19 Crisis*. Retrieved 20 July 2020 from:

https://www.ohchr.org/Documents/Issues/Racism/COVID-19_and_Racial_Discrimination.pdf

This document focuses on the connection between the COVID-19 crisis and racial discrimination. In this context, it compiles information on the dimensions of the rights to health for marginalized groups, racial discrimination through law enforcement, access to education, the right to adequate housing, as well as effects of COVID-19 on access to water and food security. Beyond, this overview also outlines recommendations and best practices. It is thus useful in understanding dimensions of racial discrimination in the context of COVID-19 from a practical as well as a system-level perspective.

³⁶¹ UNHCR, *Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance Through a Strategic Approach*, 2009, p. 4.

³⁶² Ibid.

³⁶³ Ibid.

³⁶⁴ Ibid., p. 13.

Office of the United Nations High Commissioner for Human Rights. (2013). *Discrimination*. Retrieved 16 August 2020 from:

https://www2.ohchr.org/english/OHCHRReport2013/WEB_version/allegati/3_Discrimination.pdf

This document reflects the role of OHCHR in the fight against racism. It also provides concrete information about various countries on how they are progressing on eliminating racism. It covers topics such as discrimination against indigenous peoples and minorities. It also recognizes challenges and underlying issues related to discrimination and inequality. This document also references other important documents that delegates might find useful in furthering their research.

Office of the United Nations High Commissioner for Human Rights & United Nations Educational, Scientific and Cultural Organization. (2003). *Dimensions of Racism*. Retrieved 20 July 2020 from:

<https://www.ohchr.org/documents/publications/dimensionsracismen.pdf>

This document presents the outcome of a workshop organized by OHCHR and UNESCO held to commemorate the end of the United Nations Third Decade to Combat Racism and Racial Discrimination. It provides an in-depth overview about a wide variation on aspects of racism and carves out common themes. As contributions are authored by civil society, UN staff, academia and state officials alike, the document illustrates dimensions of racism from various perspectives. Delegates will find this document helpful to explore how racism permeates diverse topics from education over unemployment to gender.

United Nations, General Assembly, Seventy-third session. (2018). *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/73/305)*. Retrieved 20 July 2020 from: <https://undocs.org/en/A/73/305>

This report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance examines how populism impedes the full enjoyment of the principles of equality and non-discrimination. It brings analytical clarity to the debate on populism and racism and provides an overview of the different parameters of the interplay between both. This report presents delegates with an in-depth understanding of the dangers of populism from a racial equality perspective while the recommendations of the Special Rapporteur outline a possible course of action for Member States.

United Nations High Commissioner for Refugees. (2009). *Combating Racism, Racial Discrimination, Xenophobia and Related Intolerance Through a Strategic Approach*. Retrieved 19 August 2020 from: <https://www.refworld.org/pdfid/4b30931d2.pdf>

This document not only provides background information on racial discrimination and related intolerance, but also compiles concrete measures to tackle this issue through a comprehensive approach. It outlines seven key elements and addresses the role and responsibilities of other UN bodies, governments, the private sector and civil society. It highlights the importance of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference. This document will be useful for delegates to have a better understanding on how to develop effective strategies to combat racism, racial discrimination, xenophobia and related intolerance.

United Nations, Human Rights Council, Twenty-sixth session. (2014). *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/HRC/26/49)*. Retrieved 19 August 2020 from: <https://undocs.org/A/HRC/26/49>

This report presents trends and manifestations of racism on online platforms. It mentions legal measures taken at international and national levels. The report provides examples about measures to combat racism on online platforms. Furthermore, it outlines positive contributions of social media, as online platforms can be used as effective tool in the fight against racism, discrimination, xenophobia and related intolerance.

United Nations, Human Rights Council, Thirty-eighth session. (2018). *The Incompatibility Between Democracy and Racism (A/HRC/RES/38/19)*. Retrieved 16 August 2020 from: <https://undocs.org/A/HRC/RES/38/19>

This resolution highlights the importance of establishing a comprehensive strategy with a solid legal framework to address racial discrimination. It recalls efforts made by the international community and proposes to convene an intersessional high-level panel discussion with relevant stakeholders. It may be helpful for delegates in demonstrating possible HRC action as well as the interplay between HRC, OHCHR, the High Commissioner, UN treaty bodies, special procedures, as well as other relevant actors.

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III. Business and Human Rights

“Businesses already have a framework in the form of the UN Guiding Principles on Business and Human Rights, and a timetable in the form of the 2030 Agenda for Sustainable Development. There is no more crucial way for businesses to contribute than to ensure respect for human rights throughout their supply chains at every step of their business operations.”³⁶⁵

Introduction

The Human Rights Council (HRC) has addressed human rights abuses conducted by businesses on various matters since its establishment in 2006.³⁶⁶ Among other forms of human rights abuses, the HRC has been at the forefront against forced labor, which is regarded as a form of modern slavery. Modern slavery is defined as any form of work or service that is exacted from a person through the use of any threat and which the said person has not undertaken voluntarily.³⁶⁷ The International Labour Organization (ILO) estimates that approximately 16 million people are currently forced by private businesses to work as domestic workers, on construction sites, in factories, or agriculture.³⁶⁸ 58% of the victims of forced labor are women and 18% are children.³⁶⁹ The ILO further estimates that across all economic sectors, 2.3 million workers die each year because of work-related injuries and diseases, with another 473 million employees suffering from non-fatal work-related injuries or diseases per year.³⁷⁰ Drastic variations in employment, work hours and labor standards have emerged or have been further exacerbated as a result of the COVID-19 outbreak.³⁷¹ The global pandemic has had devastating effects across businesses, resulting in an increase of human rights violations as businesses restrain budgets and workers compete for limited employment opportunities.³⁷² Women, in particular, have borne the greater portion of the burden from employment and work hour losses across the globe.³⁷³ Business activities are known to be linked to multiple forms of human rights abuses such as gender discrimination; equality and freedom from discrimination in the work place; infringement on the right to form associations, bargain collectively for fair wage and the right to adequate working conditions. Businesses are also responsible for ensuring that their activities do not harm the human rights of wider society, including property and privacy rights of private individuals.³⁷⁴ Furthermore, the HRC has recognized that the protection of the environment, including ecosystems, contributes to the enjoyment of human rights.³⁷⁵ The HRC therefore called upon Member States to adopt laws that prevent businesses from violating human rights by engaging in activities that pollute the environment.³⁷⁶ This is especially in the case of transnational corporations (TNCs), which operate in many different countries and have complex supply chains involving multiple other companies.

The HRC is mandated to lead the business and human rights agenda within the UN system and serve as a forum for the international community to develop norms that set out the human rights responsibilities of businesses.³⁷⁷ This work is synthesized in the *Guiding Principles on Business and Human Rights*, which were unanimously endorsed by the HRC in 2011.³⁷⁸ The Guiding Principles were developed by the UN’s

³⁶⁵ UN Global Compact, *Human Rights: The Foundation of Sustainable Business*, 2018, p. 4.

³⁶⁶ *Ibid.*

³⁶⁷ ILO, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, 2017, p. 16.

³⁶⁸ *Ibid.*, p. 9.

³⁶⁹ *Ibid.*, p. 10.

³⁷⁰ ILO, *Health and Safety at the Workplace*, 2020.

³⁷¹ Blundell, Costa, Joyce, and Xu, *COVID-19 and Inequalities*, 2020, pp. 292-293 & 314.

³⁷² Blundell *et al.*, *COVID-19 and Inequalities*, 2020, p. 299.

³⁷³ *Ibid.*, pp. 303 & 307.

³⁷⁴ UN HRC, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31)*, 2011, p. 8.

³⁷⁵ UN HRC, *Human rights and the environment (A/HRC/RES/37/8)*, 2018, p. 2.

³⁷⁶ UN HRC, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31)*, 2011, p. 8.

³⁷⁷ UN OHCHR, *Business and Human Rights*, 2020.

³⁷⁸ *Ibid.*

Special Representative on business and human rights between 2005 and 2011, were endorsed by the UN Security Council in its June 2011 session, and have been critical in the Human Rights Council's development of international standards for the protection of human rights in business activities.³⁷⁹ The business sector is also indispensable in achieving the Sustainable Development Goals (SDGs), which were adopted in 2015 by the UN General Assembly in the *2030 Agenda for Sustainable Development* (2030 Agenda).³⁸⁰ Business and human rights specifically affect SDG 3 (good health and well-being), SDG 5 (gender equality), and SDG 8 (decent work and economic growth).³⁸¹ Other SDGs are also linked to the issue of human rights in business, and include SDG 9 (industry, innovation and infrastructure), SDG 11 (sustainable cities and communities) and SDG 12 (responsible consumption and production).³⁸² It is therefore paramount to understand that addressing the issue of human rights in business will require a multifaceted and innovative approach, and international cooperation from not only members of the HRC, but across the entire international community.³⁸³

International and Regional Framework

The *Universal Declaration of Human Rights* (UDHR) was adopted in 1948 and set out the most fundamental human rights to be universally protected.³⁸⁴ Article 23 of the UDHR recognizes the rights to equal pay for equal work and the right to form and join trade unions.³⁸⁵ Article 24 states that everyone has the right to rest and leisure.³⁸⁶ In 1966, the international community built upon the UDHR by adopting the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).³⁸⁷ Article 7 reiterates the rights linking business and human rights set out in the UDHR and adds the right to safe and healthy working conditions, the right to periodic paid holidays, and the right of women to being guaranteed conditions of work not inferior to those enjoyed by men.³⁸⁸ Furthermore, the UN General Assembly adopted the *International Covenant on Civil and Political Rights*, which explicitly bans any form of forced or compulsory labor.³⁸⁹ In 1979, the UN General Assembly adopted the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) (1979), whose Article 11 clearly states that women have the right to equal remuneration, equal treatment at the workplace, and social security.³⁹⁰

In 1977, the ILO developed the *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, which provides clear guidance on how businesses can contribute to the realization of human rights and good labor standards.³⁹¹ In 1998, the ILO adopted the *ILO Declaration on Fundamental Principles and Rights at Work*, which commits the 187 Member States of the ILO to respect and promote the freedom of association and the right to collective bargaining, the abolition of forced labor, the elimination of child labor, and the end of discrimination at the workplace.³⁹² The Organisation for Economic Co-operation and Development (OECD) has adopted the *OECD Declaration on International Investment and Multinational Enterprises* in 1976.³⁹³ The *OECD Guidelines for Multinational*

³⁷⁹ Rivero, *Keeping the momentum one year in the life of the UN Human Rights Council*, 2011, pp. 27-28.

³⁸⁰ UN General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015, p. 29.

³⁸¹ *Ibid.*, pp. 16-19, 29.

³⁸² UN Sustainable Development Goals, *Sustainable Development*. 2020.

³⁸³ UN OHCHR, *Revised Draft Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*, 2019, p. 2.

³⁸⁴ UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

³⁸⁵ *Ibid.*

³⁸⁶ *Ibid.*

³⁸⁷ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (A/RES/2200 (XXI))*, 1966, p. 49.

³⁸⁸ *Ibid.*

³⁸⁹ UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/2200 (XXI))*, 1966, p. 50.

³⁹⁰ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women (A/RES/34/180)*, 1979, p. 195.

³⁹¹ ILO, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, 2017, p. V.

³⁹² ILO, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up*, 2010, p. 7.

³⁹³ OECD, *Text of the OECD Declaration on International Investment and Multinational Enterprises*, 2019.

Enterprises are annexed to the this declaration and include a chapter with recommendations on how businesses should act to adhere to all human rights.³⁹⁴

In 2005, the UN Commission on Human Rights (the predecessor of the HRC) requested the appointment of a Special Representative of the Secretary-General on human rights and transnational corporations, and other business enterprises.³⁹⁵ The Special Representative formulated the *Protect, Respect and Remedy Framework*, which was welcomed by the HRC in its resolution 8/7 of 2008.³⁹⁶ Based on this framework, the Special Representative developed the *Guiding Principles on Business and Human Rights* during six years of research and extensive consultations, which involved governments, companies, business associations, and civil society.³⁹⁷ Five of the 31 Guiding Principles fall under “Human Rights and Due Diligence”.³⁹⁸ The due diligence standard of conduct is required to discharge an obligation (as defined by human rights lawyers), although it can also be understood as a process to manage business risks by both domestic and international businesses.³⁹⁹ Article 13 of the Guiding Principles requires that businesses avoid causing or contributing to adverse human rights impacts through their own activities and requires that they seek to prevent adverse human rights impacts resulting from their activities, even if, they have not contributed to these impacts.⁴⁰⁰ The HRC unanimously endorsed the *Guiding Principles* in its resolution 17/4 of 2011 and thus concluded the mandate of the Special Representative.⁴⁰¹ The *Guiding Principles* framework is the first global standard for preventing business activity from having adverse impacts on human rights and is the core document used by the HRC.⁴⁰² The *Guiding Principles* consist of three pillars, which address the duty of states to protect human rights by regulating business activities in National Action Plans (NAPs), the responsibility of business corporations to avoid infringing on the human rights of others by applying due diligence in their activities, and the improvement of access to remedy for victims.⁴⁰³

Role of the International System

Within the UN system, the HRC is the body responsible for setting the agenda on business and human rights.⁴⁰⁴ In practice, this means the HRC serves as a forum for the international community to develop non-binding guidelines and to discuss the creation of binding legal requirements that set out the responsibilities businesses have to respect and observe human rights.⁴⁰⁵ With the outbreak of COVID-19, new challenges have arisen such as issues with supply chains, working conditions, product demand, and market resilience, which will significantly transform the activities of businesses..⁴⁰⁶ The HRC remains at the forefront of the international response to human rights abuses and has represented the UN platform’s collaboration with the ILO.⁴⁰⁷ On 18 July 2018, the HRC adopted resolution 38/13 titled “Business and

³⁹⁴ OECD, *OECD Guidelines for Multinational Enterprises*, 2011, p. 32.

³⁹⁵ UN OHCHR, *Business and Human Rights*, 2020.

³⁹⁶ *Ibid.*

³⁹⁷ UN OHCHR, *Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises*, 2020.

³⁹⁸ Bonnitcha and McCorquodale, *The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights*, 2017, pp. 889-890.

³⁹⁹ *Ibid.*, p. 892.

⁴⁰⁰ UN HRC, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31)*, 2011, p. 14.

⁴⁰¹ UN HCR, *Human Rights and Transnational Corporations and Other Business Enterprises (A/HRC/17/4)*, 2011, p. 2.

⁴⁰² UN OHCHR, *Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises*, 2020.

⁴⁰³ UN HRC, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31)*, 2011.

⁴⁰⁴ UN OHCHR, *Business and Human Rights*, 2020.

⁴⁰⁵ *Ibid.*

⁴⁰⁶ ILO, *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up*, 2010, p. 7.

⁴⁰⁷ *Ibid.* p. 7; UN Global Compact, *Human Rights: The Foundation of Sustainable Business*, 2018.

Human Rights: Improving Accountability and Access to Remedy”.⁴⁰⁸ In this latest resolution on the topic of business and human rights, the HRC emphasized the need to develop access to remedy for business-related human rights abuses.⁴⁰⁹ It welcomed the report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on improving accountability and access to non-judicial remedy for business-related human rights abuses and recommended that Member States and businesses implement the recommendations of the report.⁴¹⁰ OHCHR also conducts on the ground missions.⁴¹¹ These missions have, *inter alia*, provided technical assistance to a mediation process between the SOCFIN Company and the Bunong Indigenous Peoples in Cambodia in a land dispute, or advised Mexico’s largest mining company Grupo México on the incorporation of a human rights-based approach into their community involvement policies.⁴¹²

In 2011, the HRC established in resolution 17/4 the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (WGBHR).⁴¹³ The Working Group is composed of five independent experts and holds the mandate to promote the implementation of the *Guiding Principles on Business and Human Rights*, identifying best practices, and support capacity-building.⁴¹⁴ It also guides the work of the Forum on Business and Human Rights, which was also established by HRC in resolution 17/4 (2011).⁴¹⁵ The Forum is organized annually and assembles over 2,000 representatives from governments, businesses, non-governmental organizations, academia, and international organizations.⁴¹⁶ It serves as an opportunity for participants to share experiences and learn about the latest initiatives to promote corporate respect for human rights.⁴¹⁷ On 1 May 2019, the WGBHR released the report on the seventh Forum on Business and Human Rights, whose main focus was on the requirement that companies exercise due diligence in human rights to prevent adverse impacts on people.⁴¹⁸

In 2014, the HRC created the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (OEIGWG) in resolution 26/9, which consists of representatives of Member States, international organizations, and non-governmental organizations.⁴¹⁹ It convenes annually and is mandated to create an “international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”⁴²⁰ On 2 January 2019, the OEIGWG released the report on its fourth session, which centered upon the debate of the recently released draft legally binding instrument on business activities and human rights.⁴²¹ On 16 July 2019, the Chairmanship of the OEIGWG released a revised draft legally binding instrument on business activities and human rights, which was debated during intergovernmental negotiations at the fifth session of the OEIGWG in October

⁴⁰⁸ UN HCR, *Business and Human Rights: Improving Accountability and Access to Remedy (A/HRC/RES/38/13)*, 2018.

⁴⁰⁹ *Ibid.*, pp. 1-2.

⁴¹⁰ *Ibid.*, p.3.

⁴¹¹ UN OHCHR, *Human Rights Report 2018*, 2018, p. 24.

⁴¹² *Ibid.*

⁴¹³ UN OHCHR, *Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, 2017.

⁴¹⁴ UN OHCHR, *Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, 2017.

⁴¹⁵ UN OHCHR, *About the UN Forum on Business and Human Rights*, 2020.

⁴¹⁶ *Ibid.*

⁴¹⁷ *Ibid.*

⁴¹⁸ UN HCR, *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises on the Seventh Forum on Business and Human Rights (A/HRC/41/49)*, 2019, p. 1.

⁴¹⁹ UN OHCHR, *Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises With Respect to Human Rights*, 2020.

⁴²⁰ UN HCR, *Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises With Respect to Human Rights (A/HRC/RES/26/9)*, 2014, p. 2.

⁴²¹ UN HCR, *Report on the Fourth Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises With Respect to Human Rights (A/HRC/40/48)*, 2019, p. 1.

2019.⁴²² The revised draft covers the rights of victims of human rights violations, the responsibilities of states to regulate business activities to prevent human rights violations, and the legal liability for human rights violations.⁴²³

The UN Global Compact was launched in 2000 as a non-binding pact between the UN system and nearly 10,000 private businesses, which commit themselves to incorporate labor standards, environmental protection, human rights, and anti-corruption actions.⁴²⁴ The Global Compact promotes tools and resources based on the *UN Guiding Principles on Business and Human Rights* and the first two principles of the Global Compact state that “Businesses should support and respect the protection of internationally proclaimed human rights” and that “businesses should make sure that they are not complicit in human rights abuses.”⁴²⁵ The Global Compact offers online courses providing simple guidelines for companies to apply the *Guiding Principles*, human rights training projects, templates for human rights risk assessments, and capacity training for businesses to comply with the NAPs of their respective governments.⁴²⁶

Other international organizations such as ILO and OECD and regional organizations such as the European Union (EU) are also active in promoting responsible business activities like the EU-ILO-OECD Programme on Promoting Responsible Supply Chains in Asia.⁴²⁷ The Programme hosted a session in which Japanese companies were supported in restructuring their supply chains according to the *Guiding Principles*, and organized a technical seminar to raise awareness about key responsible business concepts among Chinese companies.⁴²⁸ National human rights organizations play a key role in supporting their governments in setting up NAPs and helping companies implementing the *Guiding Principles*.⁴²⁹ The Danish Institute for Human Rights (DIHR) has developed the *Human Rights Compliance Assessment (HRCA)* to assist businesses to identify and address human rights risks in business units.⁴³⁰ For example, the DIHR has been working with the oil and gas producer Total to implement the HRCA and Total now assesses the human rights impact of its operations in regards to gender issues in the South Pacific as well as on land acquisition from indigenous people in Africa.⁴³¹

Civil society organizations (CSOs) such as the International Corporate Accountability Roundtable (ICAR), which is composed of multiple human rights groups such as Amnesty International and Human Rights Watch, play an important role in monitoring the observance of human rights.⁴³² ICAR has collaborated with the DIHR to develop a *Toolkit for the Development, Implementation and Review of State Commitments to Business and Human Rights Frameworks*.⁴³³ The toolkit provides criteria to assess the existing regulation, outlines ways to develop a NAP based on the prior assessment, and involves monitoring the efforts made.⁴³⁴ The Business & Human Rights Resource Centre is a CSO that tracks the human rights impact of companies and provides news about key developments in the process of creating legally binding regulations for business activities.⁴³⁵

⁴²² UN OHCHR, *Revised Draft Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*, 2019.

⁴²³ UN OHCHR, *Revised Draft Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*, 2019.

⁴²⁴ UN Global Compact, *Human Rights*.

⁴²⁵ UN Global Compact, *Human Rights: The Foundation of Sustainable Business*, 2018, p. 24.

⁴²⁶ *Ibid.*, p. 10.

⁴²⁷ OECD, *Annual Report on the OECD Guidelines for Multinational Enterprises 2018*, 2018, p. 70.

⁴²⁸ *Ibid.*

⁴²⁹ UN Global Compact, *Human Rights: The Foundation of Sustainable Business*, 2018, p. 15.

⁴³⁰ *Ibid.*

⁴³¹ *Ibid.*

⁴³² ICAR, *Partners*, 2020.

⁴³³ ICAR, *National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation and Review of State Commitments to Business and Human Rights Frameworks*, 2017.

⁴³⁴ *Ibid.*

⁴³⁵ Business & Human Rights Resource Centre, *About us*, 2020.

Transnational Corporations and Human Rights Violations

The proliferation of multinational and transnational corporations (MNCs and TNCs) with the aim of global trade is critical to evaluating human rights in business.⁴³⁶ MNCs and TNCs are the main actors of globalization and are complex entities, which usually have their headquarters in industrialized countries but have set up multiple subsidiary companies to produce and sell their products around the world.⁴³⁷ Given their vast size, complex structure, and financial resources, TNCs can often circumvent the weak legislation in the countries in which they have set up their subsidiaries.⁴³⁸ Because there is no international law regulating TNCs and because individual states cannot exercise total control over the TNC's subsidiaries in other countries, human rights violations by TNCs are often not punished.⁴³⁹ A number of TNCs are currently accused of committing human rights violations, including using child labor and modern forms of slavery, expropriating land, preventing their workers from forming associations to uphold labor standards, as well as polluting drinking water and agricultural land.⁴⁴⁰ Various human rights efforts have aimed to commit states to enforcing internationally-developed standards of conduct for businesses.⁴⁴¹ However, ascribing responsibility for human rights abuses committed by MNCs and TNCs is more complex due to their cross-boundary operations and tendency to be located in areas where enforcement is weakest while continuing to be linked to markets that are deemed non-exploitative through their transnational supply chains.⁴⁴² The oil and petroleum producer Shell, for example, was accused of supporting the Nigerian military regime and being complicit in human rights violations against the Ogoni people, which involved summary execution, crimes against humanity, and torture.⁴⁴³ Shell was also accused of having contaminated the local water supply, the agricultural land, and the air in the Ogoni ecosystem.⁴⁴⁴ This section is very closely tied to establishing accountability and remedy mechanisms for MNCs and TNCs but extends beyond these through a focus on the structure that assigns responsibilities to different entities for business activities.⁴⁴⁵ ⁴⁴⁶ For example, while the repercussions of MNCs and TNCs affect multiple areas, there are externalities produced by other business activities like those of state-owned enterprises or domestic corporations; moreover, the impacts of private activities can be more complex when examining the issue of financial market regulations, a topic which cannot be separated from the investment and incentive side of the effects of business on human rights.⁴⁴⁷

In 2013, 1,138 workers were killed in the collapse of a garment factory in Bangladesh that had been producing apparel for several international companies.⁴⁴⁸ The global supply chains of TNCs, such as the one involving this garment factory, consist of multiple companies in various countries and often directly affect the lives of millions of people.⁴⁴⁹ In 2017, the Working Group on Business and Human Rights made recommendations on how to regulate supply chains and prevent human rights violations.⁴⁵⁰ Specifically, the Working Group called upon Member States to lead by example in their role as economic actors, for example by ensuring that all State-owned Enterprises (SOEs) respect human rights and by controlling all

⁴³⁶ Currie, *Public International Law*, International Legal Personality: The Subjects of International Law, 2008, p. 75.

⁴³⁷ Weilert, *Taming the Untamable? Transnational Corporations in United Nations Law and Practice*, 2010, p. 447.

⁴³⁸ Ibid.

⁴³⁹ Ibid.

⁴⁴⁰ Ibid., pp. 450-453.

⁴⁴¹ Currie, *Public International Law*, International Legal Personality: The Subjects of International Law, 2008, pp. 75-77.

⁴⁴² Ibid.

⁴⁴³ Weilert, *Taming the Untamable? Transnational Corporations in United Nations Law and Practice*, 2010, p. 451.

⁴⁴⁴ Ibid. p. 452.

⁴⁴⁵ Currie, *Public International Law*, International Legal Personality: The Subjects of International Law, 2008, p. 75.

⁴⁴⁶ Bonnitcha and McCorquodale, *The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights*, 2017, p. 890.

⁴⁴⁷ de Felice, *Banks and human rights due diligence: A critical analysis of the Thun Group's discussion paper on the UN Guiding Principles on Business and Human Rights*, 2015, p. 320.

⁴⁴⁸ Burke, Rana Plaza: One Year on From the Bangladesh Factory Disaster, *The Guardian*, 2014.

⁴⁴⁹ OHCHR, *UN Experts Call on G20 Leaders to Protect Human Rights in Global Supply Chains*, 2017.

⁴⁵⁰ OHCHR, *To the Members of the G20 Employment Working Group*, 2017, p. 1.

activities of their SOEs.⁴⁵¹ Governments should also award public procurement contracts only to companies that adhere to all human rights.⁴⁵² The working group also suggests that Member States should require that all companies headquartered in their territory exercise due diligence on human rights across their supply chain, to ensure that none of their suppliers or subsidiaries is engaged in human rights violations.⁴⁵³

In 2014, the HRC created the Open-Ended Intergovernmental Working Group on Transnational Corporations (OEIGWG in resolution 29/9 tasked it to develop a legally binding treaty to regulate TNC activities that go beyond the *Guiding Principles*, which are a voluntary framework intending to entice TNCs to self-regulate their activities.⁴⁵⁴ It is important to note that there is major disagreement within the international community and HRC resolution 26/9 was not adopted by acclamation as most other HRC resolutions, but passed with 20 votes in favor, 14 against, and 13 abstentions.⁴⁵⁵ In July 2019, the Chairmanship of the OEIGWG presented the revised draft of this treaty, which, if adopted, would provide far-reaching rights for victims of human rights violations committed by TNCs as well as create new responsibilities for Member States to prevent, investigate, and punish such violations.⁴⁵⁶ The draft treaty would commit all businesses regardless of their size to adhere to human rights and would require Member States to introduce legislation to make human rights observance mandatory and would require businesses to take appropriate actions to prevent human rights violations.⁴⁵⁷

Accountability and Access to Remedy

Victims of human rights violations committed by or resulting from business activities often struggle to access effective remedies for the harm they have suffered and face significant obstacles to hold the responsible businesses accountable.⁴⁵⁸ Among the most common obstacles to accountability are fragmented, poorly designed, or incomplete laws, lack of funding and knowledge of the victim to submit private legal claims, as well as a lack of law enforcement by local authorities. Additionally, financial compensation is often sought by victims as a form of remedy, but national mechanisms are often either absent or lacking the capacity to compensate for losses.⁴⁵⁹

The case of the Bunong Indigenous Peoples in Cambodia depicts one of the many obstacles faced by victims of human rights abuses related to businesses activities, whose traditional tribal lands were granted by the Cambodian government to the French rubber company SOCFIN.⁴⁶⁰ The Bunong community not only lost their farmland but also lost sacred places without warning or financial compensation.⁴⁶¹ In this instance, the Bunong community lacked both the financial resources and the legal knowledge to seek remedy, which prevented them from getting compensation for the human rights violations they already suffered and also made it difficult for them to stop SOCFIN from further violating their human rights.⁴⁶² Moreover, local authorities and courts ignored their complaints.⁴⁶³ In 2015, the OHCHR began to support a non-judicial mediation process between SOCFIN and the Bunong

⁴⁵¹ Ibid., pp. 5-6.

⁴⁵² OHCHR, *To the Members of the G20 Employment Working Group*, 2017, p. 6.

⁴⁵³ Ibid., p. 7.

⁴⁵⁴ UN HRC, *Elaboration of an International Legally binding Instrument on Transnational Corporations and Other Business Enterprises With Respect to Human Rights (A/HRC/RES/26/9)*, 2014, p. 2.

⁴⁵⁵ Ibid., p. 3.

⁴⁵⁶ UN OHCHR, *Revised Draft Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*, 2019, p. 5.

⁴⁵⁷ Hood, *UN Working Group Publishes Revised Draft of Business and Human Rights Treaty: Commentary on Scope, Prevention and Legal Liability*, 2020.

⁴⁵⁸ UN HRC, *Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse Through State-Based non-Judicial Mechanisms (A/HRC/38/20)*, 2018, p. 3.

⁴⁵⁹ Ibid.; Zerk, *Corporate Liability for Gross Human Rights Abuses*, 2014, p. 57.

⁴⁶⁰ UN OHCHR, *Human Rights Report 2018*, 2018, p. 24.

⁴⁶¹ Foster & Gray, *Cambodia's Land Concessions Are Harming Indigenous People*, *The Huffington Post*, 2016.

⁴⁶² Ibid.

⁴⁶³ Ibid.

community, where the OHCHR provided financial support and legal training to Bunong representatives to remove the power imbalance.⁴⁶⁴ However, this mediation process failed and a group of Bunong representatives filed a complaint against SOCFIN at a French court, but they were unable to receive visas to present their case.⁴⁶⁵

In addition to being a major component of various SDGs, access to an effective remedy is one of the three pillars of the *Guiding Principles*, based on the *International Covenant on Civil and Political Rights* and the *Universal Declaration of Human Rights*, which promote three different types of mechanisms to implement this access: state-based judicial mechanisms, state-based non-judicial grievance mechanisms, and non-state-based grievance mechanisms.⁴⁶⁶ In 2014, OHCHR and the Working Group on Business and Human Rights launched the Accountability and Remedy Project in which UN officials, academics, business representatives, and civil society experts developed credible and workable recommendations to enhance the access to remedy through the three types of mechanisms mentioned above.⁴⁶⁷ In 2016, the project published nineteen recommendations on how to enhance the effectiveness of state-based judicial mechanisms.⁴⁶⁸ These recommendations included enhancing the resources of law enforcement authorities, increasing the penalties for human rights violations, and ramping up cooperation in cross-border cases.⁴⁶⁹ In 2018, the Accountability and Remedy Project published 13 recommendations to improve the effectiveness of state-based, non-judicial mechanisms such as state ombudsman services, labor inspectorates, employment tribunals, environmental tribunals, and national human rights institutions.⁴⁷⁰ This guidance also depicts these mechanisms as more accessible, predictable, equitable, and transparent.⁴⁷¹ Furthermore, it was recommended that Member States adopt laws that guarantee the effective implementation of outcomes of non-judicial mechanisms.⁴⁷² The Accountability and Remedy Project is still developing its recommendations for a strengthening of non-state-based grievance mechanisms, including but not limited to those based at companies or multi-stakeholder approaches.⁴⁷³

Ending Gender Discrimination within the Workplace

Human rights violations committed by businesses disproportionately affect women, and 58% of victims of forced labor are women.⁴⁷⁴ Women also suffer from gender discrimination at the workplace, and they hold only 27% of managerial positions despite constituting 39% of the global workforce.⁴⁷⁵ Article 11 of CEDAW clearly states that women have the right to equal remuneration, equal treatment at the workplace, and social security.⁴⁷⁶ It also calls upon Member States to prohibit dismissal on the grounds of pregnancy or maternity leave, in addition to discrimination due to marital status.⁴⁷⁷ The *Guiding Principles* call upon States and businesses to implement the principles with due regard to the different risks faced by

⁴⁶⁴ UN OHCHR, *Human Rights Report 2018*, 2018, p. 24.

⁴⁶⁵ Foster & Gray, Cambodia's Land Concessions Are Harming Indigenous People, *The Huffington Post*, 2016.

⁴⁶⁶ OHCHR, *Access to Remedy*, 2020; UN Sustainable Development Goals, *Sustainable Development. 2020*; UN General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015, p. 29.

⁴⁶⁷ OHCHR, *OHCHR Access to Remedy Project*, 2020.

⁴⁶⁸ UN HCR, *Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse*, 2016.

⁴⁶⁹ UN HCR, *Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse*, 2016, pp. 12-21.

⁴⁷⁰ UN HRC, *Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse Through State-Based non-Judicial Mechanisms (A/HRC/38/20)*, 2018, p. 3.

⁴⁷¹ *Ibid.*, p. 14.

⁴⁷² *Ibid.*, p. 11.

⁴⁷³ UN OHCHR, *OHCHR Access to Remedy Project III: Enhancing Effectiveness of non-State-Based Grievance Mechanisms in Cases of Business-Related Human Rights Abuse*, 2019.

⁴⁷⁴ ILO, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, 2017, p. 10.

⁴⁷⁵ UN-Women, *Progress on the Sustainable Development Goals: The Gender Snapshot 2019*, 2019, p. 11.

⁴⁷⁶ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women (A/RES/34/180)*, 1979, p. 195.

⁴⁷⁷ *Ibid.*

women.⁴⁷⁸ In 2018, the HRC underlined in resolution 37/16 that women are disproportionately exposed to the most precarious working conditions, have lower levels of representation in decision-making positions, and lower levels of remunerations.⁴⁷⁹ In resolution 28/1 (2018), the HRC called upon Member States to adopt legislation that ensures equal pay for equal work and prohibits all forms of discrimination against women in the workplace.⁴⁸⁰

In 2010, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) published the *Women's Empowerment Principles*, which provide guidance for businesses in reaching gender equality goals.⁴⁸¹ The *Women's Empowerment Principles* call upon businesses to establish positions within their leadership structure that are responsible for gender equality, respect human rights and the non-discrimination of women, and measure and publicly report on progress to achieve gender equality.⁴⁸²

The COVID-19 outbreak has had particularly devastating effects on women – studies have shown that in dual-earner heterosexual partnerships, mothers tend to bear the greater burden in reduced work time due to homecare needs, particularly in households with primary school-age or younger children.⁴⁸³ The challenges of COVID economic responses and business changes thus disproportionately affect women in terms of work hours and employment.⁴⁸⁴

Conclusion

The SDGs include a total of 169 targets, and 90% of them are linked to international human rights and labor standards.⁴⁸⁵ Business activities touch upon nearly every aspect of human life and are consequently extremely important in fulfilling the *2030 Agenda*.⁴⁸⁶ The existing frameworks such as the *UN Guiding Principles on Business and Human Rights* need to be implemented into concrete actions and put human rights at the center of every business decision.⁴⁸⁷ The HRC is uniquely positioned to take on a leadership role in facilitating the global discussion about the most effective ways to move forward.⁴⁸⁸

Further Research

When researching the topic at hand, delegates should focus on the following questions: What are the most effective policies Member States can implement to better regulate business activities and ensure that they always adhere to human rights? How can businesses, nation states, or international organizations be further encouraged to protect persons from different forms of discrimination afforded by business practices? How can the international community address the unique challenge of TNCs, which operate globally and have subsidiaries in multiple countries? What are the best strategies to improve accountability and access to remedy for victims of human rights violations by businesses? How can the international community prevent that women suffer disproportionately from human rights violations by businesses and end gender discrimination at the workplace? How has the outbreak of COVID-19 affected human rights and business around the globe, and what can the international community do to address it through international bodies like the HRC?

⁴⁷⁸ UN HRC, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31)*, 2011, p. 6.

⁴⁷⁹ UN HRC, *Right to Work (A/HRC/RES/37/16)*, 2018, p. 3.

⁴⁸⁰ UN HRC, *Elimination of all Forms of Discrimination Against Women and Girls (A/HRC/RES/38/1)*, 2018, p. 4.

⁴⁸¹ UN-Women, *Women's Empowerment Principles*, 2010, p. 1.

⁴⁸² Ibid.

⁴⁸³ Blundell *et al.*, *COVID-19 and Inequalities*, 2020, p. 299; Collins, Landivar, Ruppner, and Scarborough, *COVID-19 and the gender gap in working hours*, 2020, p. 10.

⁴⁸⁴ Blundell *et al.*, *COVID-19 and Inequalities*, 2020, p. 307; Collins, Landivar, Ruppner, and Scarborough, *COVID-19 and the gender gap in working hours*, 2020, pp. 1 & 3.

⁴⁸⁵ UN Global Compact, *Human Rights: The Foundation of Sustainable Business*, 2018, p. 2.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid., p. 23.

⁴⁸⁸ UN OHCHR, *Business and Human Rights*, 2020.

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Bonnitcha, Jonathan and McCorquodale, Robert. 2017. *The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights*. Retrieved 23 August 2020 from https://ocul-crl.primo.exlibrisgroup.com/permalink/01OCUL_CRL/1vru3a1/cdi_crossref_primary_10_1093_ejil_chx042

This source provides details with regards to the concept of 'due diligence' and its conflicting interpretations in the international setting. It reflects the critical importance of diverging views on the Guiding Principle by businesses and human rights lawyers, and describes how these differences affect the establishment of international standards for businesses and protecting human rights. Delegates may find this source useful in discussions on the theoretical framework of the UN in addressing systemic issues or exploring the relationship between legal and political views behind business and human rights.

Office of the United Nations High Commissioner for Human Rights. (2018). *Human Rights Report 2018*. Retrieved 23 August 2020 from: <https://www.ohchr.org/Documents/Publications/OHCHRreport2018.pdf>

The most recent human rights report published by the OHCHR includes a global overview and various country reports. The topic of business and human rights is mentioned very often and includes both examples of how the OHCHR supports human rights activists in their fight against human rights violations committed by businesses. The report also contains examples of how businesses can positively contribute to the universal fulfillment of the human rights by implementing the UN Guiding Principles on Business and Human Rights.

Office of the United Nations High Commissioner for Human Rights. (2020). *Business and Human Rights*. Retrieved 24 August 2020 from: <https://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>

This website contains a short overview of the topic of business and human rights. It also provides information on the activities of the HRC and OHCHR and links to the websites of the various working groups. Delegates will find this page useful as starting point for their research into the mandate and activities of HRC. Delegates might want to explore the OHCHR Accountability and Remedy Project or the information on the fifth session of the OEIGWG on the draft legally binding instrument to regulate the activities of TNCs. These webpages provide frequently updated overviews of ongoing processes within the topic and will allow delegates to create action plans that are linked to the current international discussion.

Office of the United Nations High Commissioner for Human Rights. (2019). *Revised Draft Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*. Retrieved 23 August 2020 from:

https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf

This document is the revised draft legally binding instrument published by the OEIGWG in July 2019. This draft is not adopted by the OEIGWG and is subject to an ongoing debate within the OEIGWG. Nevertheless, this process has the potential to result in a legally binding international treaty regulating business activities of transnational corporations. Its scope is far-reaching and especially the proposed legal rights of victims of human rights violations are noteworthy. This resource will allow delegates insight into possible future developments of the norms regulating business activities and what is potentially achievable in HRC.

Rivero, Juliette de. 2011. *Keeping the momentum one year in the life of the UN Human Rights Council*. Retrieved 23 August 2020 from: https://ocul-crl.primo.exlibrisgroup.com/permalink/01OCUL_CRL/1gorbd6/alma991014890109705153

This source provides a brief summary of the main activities and positions of several key Member States in the HRC with respect to setting the international agenda on business and human rights as well as other thematic developments relevant to the committee. The document will be helpful for delegates in the research of the topic as well as their

positions on key issues in the HRC over the past decade. By consulting this source, delegates may learn more about the stances that Members have had throughout the brief history of the HRC.

United Nations, Human Rights Council, Seventeenth session. (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31)*. Retrieved 23 August 2020 from: <https://undocs.org/A/HRC/17/31>

The Guiding Principles are the core document of HRC on this topic and are widely referenced by other international organizations, governments, and businesses. They are the result of the work of the Special Rapporteur and constitute the baseline of internationally agreed responsibilities of states to regulate business activities as well as business responsibilities. Although they are not legally binding and not nearly as far-reaching as the draft legal instrument, the Guiding Principles are a good example for the norm-developing work done by HRC. This is a crucial resource for delegates as it represents the status-quo of the norms governing business activities.

United Nations, Human Rights Council, Thirty-eighth session. (2018). *Business and Human Rights: Improving Accountability and Access to Remedy (A/HRC/RES/38/13)*. Retrieved 23 August 2020 from: <https://undocs.org/A/HRC/RES/38/13>

This is the most recent resolution adopted by HRC on the topic at hand. The resolution focuses on ways to improve accountability and access to remedy for human rights violations, It therefore welcomes the respective report written by the UN High Commissioner for Human Rights (A/HRC/38/20) and recommends to both Member States and businesses to implement the recommendations of the report. This resolution exemplifies the mandate and work of HRC and can provide delegates with important insights both into current priorities of the committee and the style in which HRC resolutions are written.

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