



LAGOS MODEL  
UNITED NATIONS **20**

# Background Guide

General Assembly Third Committee



**GA3**

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Background Guide: General Assembly Third Committee.

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LMUN 2020: The Fifth Session.

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## Letter from the USG

Dear Delegates,

It is with great pleasure that I welcome you to the Lagos Model United Nations (LMUN) Conference 2020, the Fifth session. This Conference is a great opportunity for deliberation on contemporaneous world issues and self-discovery. The aim of LMUN is to create a platform for delegates to hone and learn skills in leadership, teamwork, research, public speaking, negotiation and diplomacy. It is a time for delegates to put aside personal idiosyncrasies and embrace diverse worldviews, particularly in this era of globalization. It is our hope that delegates have a great MUN experience as they proffer solutions to the issues before them.

This year's staff for the **General Assembly (GA) Third Committee** are; **Oloyede Agbolarin** (Under-Secretary General), **Zainab Dunmoye** (Chair), **Omorinsola Orelesi** (Vice-Chair), **Nkem Adigwe** (Researcher) and **Olawunmi Bakare** (Researcher).

**Agbolarin** is a 500 level law student at the University of Lagos. He was delegate at LMUN 2016, where he won the Outstanding Position Paper Award, and in LMUN 2017 where he was awarded the Distinguished Delegate. He won the Honourable mention award at GIMUN 2018. He was also part of the NMUN-NY 2019 team that won the Outstanding Delegation Award. In addition to these, he has served in several official capacities, including as Chair of GA3 at LMUN 2019, a researcher for UNICEF at LMUN 2018, Chair of GA3 at GIMUN 2020, and Rapporteur of the IMO at GIMUN 2019. **Zainab** is a 400-level law student at the University of Lagos. She was a delegate at LMUN 2018, receiving the Distinguished Delegate and Outstanding Position Paper Award. She served as a Researcher for General Assembly in LMUN 2019. She is interested in human rights and the attainment of the SDGs. **Omorinsola** is a 500 level law student at the University of Lagos. Her passion for diplomatic policies and human rights is evident in her active involvement in MUNs and other SDG related conferences. She has occupied both delegate and staff roles at LMUN. **Nkem** is a 400 level law student at the University of Lagos. She has been an active participant for two years at the LMUN. Serving as a member of protocol in 2018 and a delegate in 2019 where she got an honorable mention award. She likes to be involved in activities that are socially, culturally and educationally related. **Olawunmi** is a 400 level law student at the University of Lagos who is passionate about human rights and gender equality for a better society. She was a delegate at LMUN 2019.

The General Assembly Third Committee, one of the GA committees that acts as the representative and deliberative body of the UN, has as its mandate, the social, humanitarian and cultural affairs. The committee since its inception has also evolved to the discussion of human rights issues. It is seen as the largest representative body for human rights norm-setting in the UN.

The two topics to be deliberated upon are:

- I. Protecting Economic, Social and Cultural Rights of Refugees
- II. Preventing Violence and Discrimination Based on Sexual Orientation and Gender Identity

Delegates are reminded that this background guide is not to serve as a replacement for your individual research but as an introduction to the topics being discussed. Delegates are encouraged to conduct their research beyond the background guides and make use of the Annotated Bibliography and Bibliography which has been provided for in depth research. In order to prepare for the Conference, each delegate or delegation is to submit a Position Paper on the date communicated after registration and assignment of country and committee, in accordance with the guidelines in the LMUN Position Paper Guide.

Other essential documents which delegates are to download for further Conference preparation are; the LMUN Delegate Prep Guide and the LMUN Rules of Procedure. They are available on the LMUN website – [www.lmun.ng](http://www.lmun.ng).

If you have any questions concerning your preparation for the committee or the Conference itself, please contact me at – [usggeneralassembly@lmun.ng](mailto:usggeneralassembly@lmun.ng) or the committee at – [ga3@lmun.ng](mailto:ga3@lmun.ng).

We look forward to seeing you at the LMUN 2020 Conference!

**Oloyede Agbolarin**

USG General Assembly, LMUN 2020

## Abbreviations

<b>CESCR</b>	United Nations Committee on Economic, Social and Cultural Rights
<b>CRRF</b>	Comprehensive Refugee Response Framework
<b>CRS</b>	Catholic Relief Services
<b>CRSR</b>	Convention Relating to Status of Refugees
<b>ESC</b>	Economic, Social and Cultural
<b>EU</b>	European Union
<b>FSA</b>	Free Syrian Army
<b>GA</b>	General Assembly
<b>GCR</b>	Global Compact on Refugees
<b>HRC</b>	Human Rights Council
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IDP</b>	Internally Displaced Persons
<b>ILO</b>	International Labour Organization
<b>LAS</b>	League of Arab States
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender, Intersex
<b>NGO</b>	Non-Governmental Organization
<b>OAU</b>	Organization of African Unity
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>PGA</b>	President of the General Assembly
<b>RSD</b>	Refugee Status Determination
<b>SOGI</b>	Sexual Orientation and Gender Identity
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNFE</b>	United Nations Free & Equal
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>WHO</b>	World Health Organisation

## Committee Overview

### Introduction

After the Second World War, the United Nations (UN) was established, replacing the defunct League of Nations as a more stable and cooperative organization with an inclusive effort to bring together Nations under a single international administration to promote international cooperation and achieve peace and security.<sup>1</sup> Following this, the *Charter of the United Nations*<sup>2</sup> was enacted, to govern the activities of the UN, elucidating the goals of the organization stated in *Article 55 of the Charter of the United Nations*.<sup>3</sup> As one of the six main organs of the UN, the General Assembly is the chief deliberative, policymaking and representative organ of the UN.<sup>4</sup> It is the universal forum where member States utilize the unique opportunity to come together to solve common problems.

The General Assembly has six committees, each mandated specifically to oversee specific themes. The Third Committee deals specifically with social, humanitarian and cultural matters all relating to human rights affecting people all over the world. The Committee also interacts with special rapporteurs, independent experts and chairs of the working groups as mandated by the Human Rights Council (HRC).<sup>5</sup> Notably, resolutions passed by the Assembly address pressing human right issues highlighting situation countries with special focus on human rights, upholding the values of the *Charter of the United Nations*.

### Governance, Structure and Membership

The UN is comprised of 193 Member States and two Observers without voting status.<sup>6</sup> Each Member State is represented at annual sessions of the General Assembly with voting status, thus enabling them to accede to draft resolutions of the General Assembly. Observer States of the General Assembly without voting rights are: the Holy See and the State of Palestine. The General Assembly meets from September to December each year to discuss salient issues itemized in an agenda set out by the Secretary-General.<sup>7</sup> The Third Committee Resolutions passed are usually consented to by a simple majority.<sup>8</sup> Other recommendations addressing issues such as the question of human rights and other important aspects require a two-third majority.<sup>9</sup> However, questions are also adopted by consensus upon reaching agreement amongst the Delegates; these require no votes by Member States.<sup>10</sup> An agenda passed by the Secretary-General usually begins each session

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<sup>1</sup> United Nations, *History of the United Nations*.

<sup>2</sup> *Charter of the United Nations*, 1945.

<sup>3</sup> *Charter of the United Nations*, 1945, Article 55-60.

<sup>4</sup> General Assembly, *73<sup>rd</sup> Session Delegates Handbook, Message from the Secretary General*, 2018.

<sup>5</sup> General Assembly, *About the General Assembly*, 2019.

<sup>6</sup> General Assembly, *Member States*, 2019.

<sup>7</sup> General Assembly, *About the General Assembly, Rules of Procedure*, 2019.

<sup>8</sup> General Assembly, *About the General Assembly, The search for consensus*, 2019.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

of the General Assembly.<sup>11</sup> Subsidiary organs of the UN as well as NGOs and other International Organizations, like the International Criminal Court, work together with the Third Committee especially when reports are required.<sup>12</sup>

The President of the General Assembly (PGA) is usually elected three months before the commencement of each session to a one-year, non-renewable term of office with 21 Vice-Presidents from regional groupings who assist with executive duties having little formal power.<sup>13</sup> The current President at the 74<sup>th</sup> session is Tijani Muhammad-Bande of the Federal Republic of Nigeria. The General Assembly's activities are related to other subsidiary bodies such as councils, committees and commissions. The Economic and Social Council (ECOSOC) works with the General Assembly and reports activities of its subsidiaries bodies such as the UN Development Program (UNDP), the World Food Program (WFP), UN Entity for Gender Equality and the Empowerment of Women (UN-Women), the UN Children's Fund (UNICEF), the UN Volunteers program, and the Office of the UN High Commissioner for Refugees (UNHCR) to the General Assembly.<sup>14</sup> The Third Committee has a Secretariat which comprises of a Secretary, Deputy Secretary, and Assistants.<sup>15</sup> Each year ahead of the session, the committee elects a Bureau with a Chairperson, three Vice-Chairs, and a Rapporteur.<sup>16</sup> The Third Committee's chair at the 74<sup>th</sup> Session is H.E. Christian Braun from Luxembourg.<sup>17</sup> The Vice-Chairs are Ms. Gail Ferngalo from Liberia, Mr. Ihor Yaremenko from Ukraine, and Ms. Maria Emilia Eyheralde from Uruguay, while the Rapporteur was Mr. Firas Hassan Jabbar from Iraq.<sup>18</sup>

The Third Committee adopts a considerable number of resolutions based on reports received from subsidiary bodies in line with its agenda and priorities.<sup>19</sup> These resolutions address pressing issues relating to the topics to be discussed at the session. The UN Human Rights Council (HRC) as a subsidiary body of the UN also undertakes report and findings submitted to the General Assembly together with that of other relevant subsidiary bodies.<sup>20</sup>

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<sup>11</sup> General Assembly, *About the General Assembly, Rules of procedure, Rule 12*, 2019.

<sup>12</sup> International Service for Human Rights, *Third Committee of the General Assembly: A Practical Guide for NGOs*, 2017, p.18.

<sup>13</sup> The GA Handbook, *A Practical Guide to the United Nations General Assembly*, p.17.

<sup>14</sup> General Assembly, *About the General Assembly*, 2019.

<sup>15</sup> General Assembly, *Social, Humanitarian & Cultural Issues (Third Committee): Bureau of the 74th Session*, 2019.

<sup>16</sup> International Service for Human Rights, *Third Committee of the General Assembly: A Practical Guide for NGOs*, 2017, p. 12.

<sup>17</sup> General Assembly, *Social, Humanitarian & Cultural Issues (Third Committee): Bureau of the 74th Session*, 2019.

<sup>18</sup> *Ibid.*

<sup>19</sup> General Assembly, *Documents, Resolutions of the 73<sup>rd</sup> Session*, 2019.

<sup>20</sup> International Service for Human Rights, *Third Committee of the General Assembly: A Practical Guide for NGOs*, 2017, p. 16.

## Mandate, Functions and Powers

The Third Committee's functions are directed by UN instruments specifically targeted at human rights. The *Charter of the United Nations* in Article 10-17, highlights the role of the General Assembly. The Charter emphasizes the distinctive nature of the General Assembly's function as the main deliberative organ in maintaining international peace and security. Human rights instruments such as the *Universal Declaration of Human Rights* (UDHR) (1948), emphasizes the role to be played by member States in ensuring the realization and protection of human rights contained in the declaration.

The International Bill on Human Rights which consists of the *International Covenant on Civil and Political Rights* (ICCPR),<sup>21</sup> *International Covenant on Economic, Social and Cultural Rights* (ICESCR)<sup>22</sup> and the two optional protocols form the basis of the Third Committee's work as one in charge of Social, Humanitarian and Cultural issues. These international frameworks and conventions help to shape debate and recurring decisions on issues affecting human rights. Draft resolutions and resolutions adopted often meet the guidelines contained first in the *Charter of the United Nations* and other relevant documents.

In a bid to ensure inclusivity and all-round output, the General Assembly in its 73<sup>rd</sup> session adopted resolutions identifying further ways to enhance the role and effectiveness of the General Assembly. In response to the General Assembly's effort, an ad-hoc committee was created to further implement and assist the decision-making process in achieving this. The Third Committee considers vital, the unique importance of safeguarding rights through preventive strategies and frameworks to be adopted by member States through Resolutions proposed by the General Assembly.

## Recent Sessions and Current Priorities

The 74<sup>th</sup> session of the General Assembly began on the 17 September 2019. Its priorities being Poverty Eradication, Zero Hunger, Quality Education, Climate Action and Inclusion. The theme for the session was; "Galvanizing multilateral efforts for poverty eradication, quality education, climate action and inclusion". Special attention was also given to country configurations affected by violence and instability in the protection of human rights. Such were Palestine,<sup>23</sup> Afghanistan<sup>24</sup> and Syria.<sup>25</sup> The session addressed issues relating to sustainable development and persons living in vulnerable conditions around the world, gender equality and international migration as a multidimensional reality of major relevance to the development of countries. Issues relating to the human rights violation

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<sup>21</sup> General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS vol. 999, p. 171.

<sup>22</sup> General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, UNTS vol. 993, p. 3.

<sup>23</sup> General Assembly, *Peaceful Settlement of the question of Palestine* (A/RES/74/12).

<sup>24</sup> General Assembly, *The Situation in Afghanistan* (A/RES/74/9).

<sup>25</sup> General Assembly, *The Syrian Golan* (A/RES/74/14).

against Rohingya Muslims and other minorities in Myanmar and the use of Information and Communication Technology for criminal purposes were discussed as well.

## Conclusion

The Third Committee is particularly concerned about reiterating the importance of the protection of human rights and specifically addressing necessary human rights situations through reports of subsidiary organs of the General Assembly and the UN at large. It is particularly committed to the adoption of suitable long-lasting frameworks and protection strategies by member States in enhancing conducive atmospheres for the exercise of rights irrespective of situations.

## Annotated Bibliography

General Assembly of the United Nations: Resolutions of the 74<sup>th</sup> session. Retrieved 2 December 2019 from: <https://www.un.org/en/ga/74/resolutions.shtml>

*This website contains all the relevant documents pertaining to the 74<sup>th</sup> session of the General Assembly Third Committee. Delegates will find particularly useful the resolutions adopted by the committee on human right questions and situations relevant to the mandate of the committee.*

International Service for Human Rights. (2017). Third Committee of the United Nations General Assembly: A Practical Guide for NGOs. Retrieved 1 December 2019 from: [https://www.ishr.ch/sites/default/files/article/files/ishr\\_3rd\\_com\\_handbook\\_eng\\_web.pdf](https://www.ishr.ch/sites/default/files/article/files/ishr_3rd_com_handbook_eng_web.pdf)

*This handbook by the International Service for Human Rights provides an overview of the Third Committee's work and structure. It also highlights the Third Committee's relationship with other UN bodies and stakeholders, as well as the role of regional and political groups.*

United Nations, Charter of the United Nations. (1945). Retrieved 1 December 2019 from: <http://www.un.org/en/documents/charter/>

*The Charter is the fundamental document highlighting the major functions, duties and exercise of powers by the UN. All organs of the UN draw relevance from the charter as it expressly coordinates the activities of the UN. Article 17 specifically relates the functions of the General Assembly.*

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financial implications” (A/73/587) (2019). Retrieved 1 December 2019 from: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/73/262](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/262)

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Permanent Mission of Switzerland to the United Nations, *The PGA Handbook: A practical guide to the United Nations General Assembly* (2017). Retrieved 5 December 2019 from: [http://www.unitar.org/ny/sites/unitar.org.ny/files/UN\\_PGA\\_Handbook.pdf](http://www.unitar.org/ny/sites/unitar.org.ny/files/UN_PGA_Handbook.pdf)

## I. Preventing Violence and Discrimination Based on Sexual Orientation and Gender Identity

*“Some say that sexual orientation and gender identity are sensitive issues. I understand, like many of my generation, I did not grow up talking about these issues. But I learned to speak out because lives are at stake and because it is our duty under the United Nations Charter and Universal Declaration of Human Rights to protect the rights of everyone, everywhere.”*—

**Ban ki-Moon, former Secretary-General of the United Nations**<sup>26</sup>

### Introduction

After decades during which the words “sexual orientation” and “gender identity” were rarely uttered in formal, intergovernmental meetings at the United Nations (UN), a debate has begun unfolding on the rights of lesbian, gay, bisexual and transgender people.<sup>27</sup>

Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) people are often the most persecuted, marginalized, or at risk for violence and discrimination.<sup>28</sup> Although there has been progress in the promotion and protection of human rights, discrimination against LGBTI people remains a prevailing issue both at an international and national level. Stigma and discrimination based on Sexual Orientation and Gender Identity (SOGI) can take many forms ranging from psychological harassment to physical assault, violence, and killings. Stigma and discrimination based on SOGI are deeply entrenched within prevailing traditional, religious, and cultural values. To date, over 70 States still retain laws that criminalize same-sex relationships by either fining, imprisoning the so-called perpetrators, or in some cases, practising “corrective” rape, and the death penalty.<sup>29</sup> Between January 2008 and October 2014, there were 1,612 reported killings of transgender people in 62 countries. Over 78% of documented murders were in central and South America. Worthy of note is the fact that 43.8% of lesbians and 61.1% of bisexual women have experienced rape, physical violence and hate crimes. The percentage for gay men is 26% and 37.3% for bisexual men.<sup>30</sup> Protecting LGBTI people from violence, stigma, and human rights violations does not specifically require the establishment of new SOGI oriented rights, but rather the respect and reinforcement of existing fundamental human rights standards.

The General Assembly Third Committee discusses matters relating to human rights, humanitarian affairs and social issues, thus preventing violence and discrimination based on SOGI is at the core of its mandate. The issue of violence and discrimination based on SOGI is a controversial and sensitive topic and is essential to be discussed by the General Assembly, given that within the UN there is no consensus by all member states in

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<sup>26</sup> Former UN Secretary General Ban ki-Moon to the Human Rights Council, 7 March 2012.

<sup>27</sup> Office of the High Commissioner for Human Rights (OHCHR), *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 9.

<sup>28</sup> UN Foundation: “9 quotes to inspire action during pride month”.

<sup>29</sup> *Ibid.*

<sup>30</sup> NCADV’s blog, *Domestic Violence and the LGBTQ community*.

addressing the issue. To understand this topic, it is essential to discuss certain terms, they include:

- **Bisexual:** Someone who may be attracted to individuals of the same or different sex.
- **Gay:** An individual who identifies as a man and is sexually and/ or romantically attracted to other people who identify as men.<sup>31</sup>
- **Gender binary:** Refers to the spectrum-based classification of gender into the two categories of either man or woman based on biological sex.<sup>32</sup>
- **Gender identity:** Refers to an inner sense of oneself as man, woman, masculine, feminine, neither, both, or moving around freely between or outside of the gender binary.<sup>33</sup>
- **Heterosexual:** People (sometimes known as “straight”) are attracted to individuals of a different sex from themselves.<sup>34</sup>
- **Homophobia:** An irrational fear of, hatred or aversion towards lesbian and gay people.
- **Biphobia:** An irrational fear of, hatred or aversion towards bisexual people.
- **Transphobia:** Denotes an irrational fear, hatred or aversion towards transgender people.<sup>35</sup>
- **Intersex:** A person born with sexual anatomy, reproductive organs, hormone and/ or chromosome patterns that do not fit the typical definition of male or female.<sup>36</sup>
- **Lesbians:** Individuals who identify as women and are sexually and/ or romantically attracted to other people who identify as women.<sup>37</sup>
- **Sexual orientation:** Refers to a person’s physical, romantic and/ or emotional attraction towards other people.<sup>38</sup>
- **Transgender** (sometimes shortened to “trans”) An umbrella term used to describe a wide range of identities—including transsexual people, cross-dressers (sometimes referred to as “transvestites”), people who identify as third gender or other non-binary terms, and others whose appearance and characteristics are perceived as gender atypical.<sup>39</sup>

It is against this backdrop that we would be discussing the current situation of violence and discrimination based on SOGI around various countries of the world, discriminatory practices carried out, the human rights issues at stake when these violent and discriminatory practices are carried out, as well as possible solutions to preventing it.

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<sup>31</sup> LGBTIQ+ Communities Glossary of common terms.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> UNFE Factsheets: Frequently Asked Questions.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> LGBTIQ+ Communities Glossary of common terms.

<sup>38</sup> UNFE Factsheet: Frequently Asked Questions.

<sup>39</sup> *Ibid.*

## International and Regional Framework

The case for extending the same rights to LGBTI persons as those enjoyed by everyone else is neither radical nor complicated. It rests on two fundamental principles that underpin international human rights law: equality and non-discrimination.<sup>40</sup> The principles of equality, universality, and non-discrimination are the foundation of human rights, enshrined in the *Charter of the United Nations* (1945) and the *Universal Declaration of Human Rights* (UDHR) (1948). The UDHR provides that all human beings are born free and equal in dignity and rights.<sup>41</sup> The *International Convention on Civil and Political Rights* (ICCPR) (1966) similarly provides that each State Party to the Covenant should respect the rights of individuals within its territory, without distinction of any kind, such as; race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>42</sup> The UDHR, the ICCPR, and the ICESCR all include lists of prohibited grounds of discrimination in their non-discrimination guarantees. These lists do not explicitly include “sexual orientation” or “gender identity”, but they all conclude with the words “other status”. The use of the phrase “other status” shows that the grounds of discrimination are not closed. According to the UN Committee on Economic, Social and Cultural Rights:

The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of “other status” is thus needed in order to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in article 2, paragraph 2. These additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization.<sup>43</sup>

Other international frameworks which highlight the principle of non-discrimination include the *Convention Relating to the Status of Refugees* (1951), the *Convention on Discrimination in Employment or Occupation* (1958), the *Convention on the Elimination of All forms of Discrimination against Women* (1979), and the *Convention on the Rights of the Child* (1989). The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) does not include a list of grounds of discrimination. However, in its General Comment No. 2, the Committee against Torture explained that the obligation of State parties to prevent torture includes the obligation to ensure that; “their laws are in practice applied to all persons, regardless of a variety of personal characteristics, including “sexual orientation” and “transgender identity”.<sup>44</sup>

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<sup>40</sup> OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 7

<sup>41</sup> General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), article 1.

<sup>42</sup> General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, article 2.

<sup>43</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 27.

<sup>44</sup> Committee against Torture, General Comment No. 2 (Implementation of article 2 by States Parties), para. 21.

The *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (YP plus 10) (2006) was created in response to well-documented patterns of abuse against LGBTI. The Yogyakarta Principles is a universal guide to human rights which affirm binding international legal standards with which all States must comply.<sup>45</sup> On 10 November 2017, the *Yogyakarta Principles plus 10* was adopted to supplement the *Yogyakarta Principles*. The *YP plus 10* emerged from the intersection of the developments in international human rights law with the emerging understanding of violations suffered by persons on grounds of SOGI and recognition of the distinct and intersectional grounds of gender expression and sex characteristics. It recognizes the right to State protection from violence, discrimination and harm, including the exercise of due diligence in prevention, investigation, prosecution and remedies. It also recognizes the right to bodily and mental integrity and right to freedom from criminalization and sanction arising from customary, religious, public decency, vagrancy, sodomy and propaganda laws.

There also exist regional frameworks which highlight the principle of equality and non-discrimination. The founding treaties on the EU were amended in the *Treaty of Amsterdam*<sup>46</sup> to enable the EU fight SOGI discrimination. On May 1999, *Article 13 European Council Treaty*<sup>47</sup> entered into force and it was the first-ever international organization to explicitly mention and protect SOGI. Although sexual orientation is not explicitly mentioned in the *Convention for the Protection of Human Rights and Fundamental Freedoms*<sup>48</sup> by the Council of Europe, its relevance was established in a series of cases<sup>49</sup> where the European Court of Human Rights held that discrimination in the criminal law regarding consenting relations between adults was contrary to private life in *Article 8 of the European Convention on Human Rights* (ECHR). The *European Social Charter* also protects social and economic rights and its European Committee of Social Rights examines the human rights record of states. It can hear opinions only from groups that have consultative status with the COE, such as the International Lesbian and Gay Association (ILGA).

The *African Charter on Human and Peoples' Rights*<sup>50</sup> also guarantees rights to everyone without distinction. Article 2 of the Charter provides that individuals are entitled to the rights provided under the Charter without distinction of any kind such as race, sex, ethnic group, colour, language, religion, political or any other opinion, birth or other status. The

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<sup>45</sup> International Commission of Jurists, *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007.

<sup>46</sup> The treaty of Amsterdam amending the treaty of the EU, the treaties establishing the European Communities and certain related acts, European Communities, Germany, 1997.

<sup>47</sup> Adopted by the 1997 Amsterdam European Council that enlarged the EU's competence to take measures against discrimination that went beyond the labour market and included five new discrimination grounds—sexual orientation.

<sup>48</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms* 213 UNTS 222, 1998, articles 8, 14.

<sup>49</sup> *Modinos v. Cyprus* 16 EHRR 485 (25 March 1993); *X & Others v. Austria* 53 ILM 64

<sup>50</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights*, 27 June 1981.

African Commission has consequently mentioned “sexual orientation” as a ground for non-discrimination affirming that article 2 is to ensure equality of treatment for individuals irrespective of a number of grounds, including “sexual orientation”.<sup>51</sup> The African Commission in May 2014 also adopted its ground-breaking *Resolution 275*, calling on African governments to prevent and punish all forms of violence targeting people based on their real and imputed sexual orientation or gender identity.<sup>52</sup> On the other hand, the *American Convention on Human Rights*<sup>53</sup> does not include a direct reference to SOGI, however, the Inter-American Court of Human Rights in the landmark case of *Atala v. Chile*<sup>54</sup> held that SOGI are included within “any other social condition” and therefore constitute protected grounds under Article 1 of the Convention.

## Role of the International System

In 2011, the Human Rights Council (HRC) adopted resolution 17/19 on “Human Rights, Sexual Orientation, and Gender Identity” expressing concern at violence and discrimination against individuals based on their sexual orientation and gender identity.<sup>55</sup> The Resolution was approved by a narrow margin but significantly received support from Council members from all regions. Its adoption paved the way for the first official UN report on the same subject, prepared by the Office of the High Commissioner for Human Rights.<sup>56</sup> Special rapporteurs and other independent experts have also been appointed by the HRC to investigate and report on pressing human rights challenges.<sup>57</sup>

Additionally, the General Assembly in its *Resolution 57/214*,<sup>58</sup> *Resolution 61/173*,<sup>59</sup> *Resolution 65/208*<sup>60</sup> has called on States “to ensure the protection of the right to life of all persons under their jurisdiction” and investigate promptly and thoroughly all killings, including those motivated by the victim’s sexual orientation.

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<sup>51</sup> *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (2005) AHRLR 128 (ACHPR 2005), para. 169; *Zimbabwe Lawyers for Human Rights v. Zimbabwe* (2009) AHRLR 268 (ACHPR 2009), para. 155.

<sup>52</sup> African Commission on Human and Peoples’ Rights Resolution 275: Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, 2014.

<sup>53</sup> Organization of American States (OAS), American Convention on Human Rights, “Pact of San Jose”, Costa Rica, 22 November 1969.

<sup>54</sup> Inter-Am. Comm. HR, case 12.502.

<sup>55</sup> OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 7.

<sup>56</sup> Report of the United Nations High Commissioner for Human Rights, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity” 17 November 2011 (A/HRC/19/41).

<sup>57</sup> OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 7.

<sup>58</sup> Resolution on extrajudicial, summary or arbitrary executions, United Nations General Assembly Resolution A/RES/57/214 para. 6

<sup>59</sup> General Assembly, Resolution on Extrajudicial, summary or arbitrary executions, A/RES/61/173, para. 5(b).

<sup>60</sup> General Assembly, Resolution on Extrajudicial, summary or arbitrary executions, A/RES/65/208, para. 6(b).

Also, the Universal Free & Equal (UNFE) campaign was launched by the UN Human Rights Office. The Free & Equal campaign is a unique UN initiative that sets out to educate on lesbian, gay, bisexual and transgender (LGBT) rights and promote equality for all. Through this campaign, the Human Rights Office raises awareness on discrimination, violence, and other human rights abuse often aimed at the LGBT community.

The African Commission on Human and Peoples' Rights in May 2014 adopted its groundbreaking *Resolution 275*, calling on African governments to prevent and punish all forms of violence targeting people based on their real and imputed sexual orientation or gender identity.<sup>61</sup>

Similarly, in 2010, the Council of the European Union created a Toolkit to Promote and Protect the Enjoyment of all Human Rights by LGBT People. It aims to provide staff in the EU Headquarters, EU Member States' capitals, EU Delegations, Representations and Embassies with an operational set of tools to be used in order to promote and protect the human rights enjoyed by LGBT people. It seeks to enable the EU to proactively react to cases of human rights violations of LGBT people and structural causes behind these violations.<sup>62</sup> The EU also prohibits discrimination on grounds of sexual orientation in the field of employment, which has led to a revision of national legislation in its member States.<sup>63</sup>

There also exist various Civil Society organisations which aim for equal treatment of the LGBTI community and eradication of all forms of discrimination through advocacy, protests as well as research projects. They include the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), Gay and Lesbian International Sport Association (GLISA), Coalition for African Lesbian (CAL), Gay and Lesbian Alliance of Uganda, etc.

## **Violence and Discrimination Based on SOGI**

In order to prevent violence and discrimination based on SOGI, it is important to understand where such violence and discrimination stem from: usually cultural, religious and traditional moral values. Homophobic attitudes are often the result of a lack of adequate legal protection against discrimination on grounds of sexual orientation and gender identity. Discrimination based on SOGI occurs in the labour market, in schools, in hospitals, etc. LGBTI persons are sometimes even mistreated and disowned by their own families.<sup>64</sup> Violence based on SOGI may be physical (including murder, beatings, kidnappings, rape and sexual assault) or psychological (including threats, coercion and

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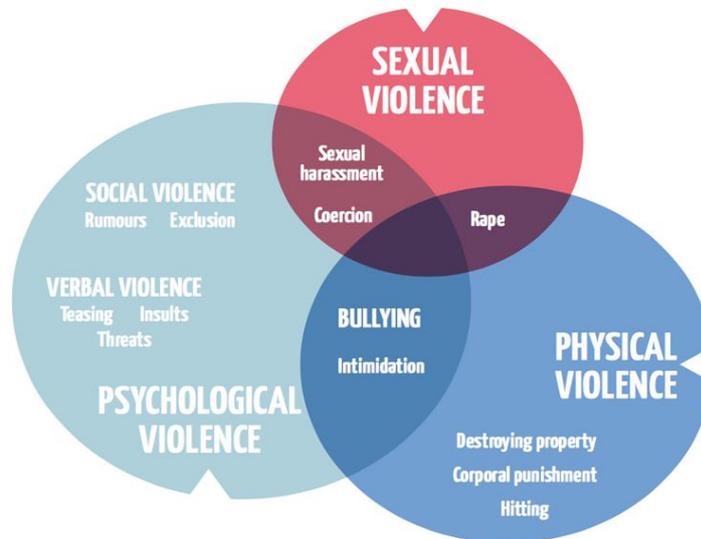
<sup>61</sup> African Commission on Human and Peoples' Rights Resolution 275: Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, 2014.

<sup>62</sup> Council of EU, Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People, 2010.

<sup>63</sup> European Union, Employment Equality Framework Directive 2000/78/EC.

<sup>64</sup> OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 7.

arbitrary deprivations of liberty). These attacks constitute a form of gender-based violence, driven by a desire to punish those seen as defying gender norms.<sup>65</sup> Between January 2008 and September 2017, 2,609 trans and gender non-conforming people were murdered in 71 countries worldwide.<sup>66</sup> A survey also showed that 61% of bisexual women and 37% of bisexual men have experienced rape, physical violence and/or stalking by an intimate partner and that 46% of bisexual women have been raped.<sup>67</sup>



Source: ILGA State Sponsored Homophobia Report 2017

## Discriminatory Laws and Practices on the grounds of SOGI

In more than 70 countries there exist laws that criminalize private, consensual same-sex relationships, exposing millions of individuals to the risk of arrest, prosecution and imprisonment – and even, in at least five countries, the death penalty.<sup>68</sup> Same-sex relationships are criminalized in African, Middle Eastern and Asian countries. In countries that have decriminalized adult consensual sexual conduct, there remain different ages of consent for homosexual and heterosexual relationships. Also, young people who engage in same-sex sexual conduct may be subject to criminal penalties, while those who engage in heterosexual sex are not.

According to the High Commissioner’s Report<sup>69</sup> evidence shows a pattern of systemic violence and discrimination directed at people in different regions because of their sexual orientation and gender identity – from discrimination in employment, health care and education, to criminalization and targeted physical attacks, even killings.

<sup>65</sup> *Ibid.*, p. 15.

<sup>66</sup> Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/38/43).

<sup>67</sup> *Ibid.*

<sup>68</sup> UNFE Factsheet: Criminalization.

<sup>69</sup> OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 7.

As regards employment, 54 States have laws prohibiting discrimination in employment based on sexual orientation. However, in the absence of such laws, employers may be able to fire or refuse to hire or promote people because they are thought to be members of the LGBTI community. Benefits that accrue to heterosexual employees may be denied to their LGBTI counterparts - from parental or family leave to participation in pension and health-care insurance schemes.<sup>70</sup> In *X v. Colombia*<sup>71</sup> and *Young v. Australia*,<sup>72</sup> the Human Rights Committee found that failure to provide pension benefits to an unmarried same-sex partner, when such benefits were granted to unmarried heterosexual couples, was a violation of rights guaranteed by the Covenant.

In many countries, LGBTI persons face particular difficulties in their access to health care. Gender reassignment therapy, if available, is often expensive and State funding or insurance coverage is rarely available. Healthcare professionals are often insensitive to the needs of transgender persons and lack the necessary professional training.<sup>73</sup> Additionally, intersex children who are born with atypical sex characteristics are often subjected to medically unnecessary surgery, performed without their informed consent or that of their parents, in an attempt to fix their sex. Also, the fear of discrimination deters some of those most at risk of infection from coming forward for testing and treatment out of fear of being deemed a criminal.

Bullying and violence have also been found in schools that do not have protective policies for LGBTI people. Homophobic and transphobic violence sometimes target students who either are or are perceived as lesbian, gay, bisexual or transgender. It also targets other students whose gender expression does not fit into society's norms and expectations, such as boys perceived as "feminine" and girls perceived as "masculine". Violence can occur in the classroom, playgrounds, toilets, changing rooms, on the way to and from school, and online. While this kind of violence mostly occurs among students, it can also take place between teachers and students. Such violence can sometimes target school staff, particularly teachers.<sup>74</sup>

While families and communities are often an important source of support, they too may engage in discriminatory practices. Such discrimination manifests itself in various ways, including through individuals being excluded from family homes, disinherited, prevented from going to school, sent to psychiatric institutions, forced to marry, forced to relinquish

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<sup>70</sup> Report of the United Nations High Commissioner for Human Rights, "Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity" 17 November 2011 (A/HRC/19/41).

<sup>71</sup> Comm. 1361/2005, U.N. Doc. A/62/40, Vol. II, at 293 (HRC 2007).

<sup>72</sup> Comm. 941/2000, U.N. Doc. A/58/40, Vol. II, at 231.

<sup>73</sup> Report of the United Nations High Commissioner for Human Rights, "Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity" 17 November 2011 (A/HRC/19/41).

<sup>74</sup> UNFE Factsheets: Bullying and Violence in schools.

children, punished for activist work and subjected to attacks on personal reputation.<sup>75</sup> LGBT persons are also among the victims of so-called “honour” killings, carried out against those seen by family or community members to have brought shame or dishonour on a family, often for transgressing gender norms or for sexual behaviour, including actual or assumed same-sex sexual activity.<sup>76</sup>

## **Effects of Violence and Discrimination based on SOGI on Human Rights**

The legal obligations of States to safeguard the human rights of LGBTI people are well established in international human rights law. All people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protections provided for by international human rights law.

Laws that criminalize homosexuality give rise to several human right violations. Such laws violate an individual’s right to be free from discrimination, which is enshrined in *Article 2 of the UDHR* and other international human rights treaties.<sup>77</sup> LGBTI individuals experience discrimination in different aspects of their daily lives. They suffer from official discrimination in the form of State laws and policies that criminalize homosexuality, bar them from certain forms of employment or deny them access to benefits, and unofficial discrimination, in the form of social stigma, exclusion, and bias including at work, at home, at school and in health care institutions.

Restrictions on the enjoyment of the rights to freedom of association,<sup>78</sup> expression<sup>79</sup> and assembly by LGBT individuals and organizations are extensively documented by the human rights mechanisms of the UN. Laws that prohibit the public promotion of homosexuality may silence discussions of sexuality in the public sphere. In some countries, LGBTI marches, parades and other gatherings are refused permits or are met with threats and violence from spectators.

The criminalization of private, consensual sex between adults of the same sex breaches a State’s obligations under international law to protect an individual’s right to privacy.<sup>80</sup> This has been the consistent position of UN human rights experts since 1994 when the Human Rights Committee decided *Toonen v. Australia*.<sup>81</sup>

LGBTI persons are also sometimes subjected to arbitrary arrest and detention. It has been stated by the Working Group on Arbitrary Detention that detaining someone for offences

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<sup>75</sup> Report of the United Nations High Commissioner for Human Rights, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity” 17 November 2011 (A/HRC/19/41).

<sup>76</sup> OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 10.

<sup>77</sup> Articles 2 & 26 of ICCPR; Article 2(2) of ICESCR; Article 2 of CRC; Article 1 of CEDAW.

<sup>78</sup> Article 20 & 23 of UDHR; Article 22 of ICCPR; Article 11 of ECHR.

<sup>79</sup> Article 19 of UDHR & ICCPR.

<sup>80</sup> Article 12 of UDHR; Article 17 of ICCPR.

<sup>81</sup> Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

relating to sexual orientation or gender identity breaches international law as is it violates *Article 9 of the UDHR and ICCPR* and consequently, a violation of the right to move freely provided for by a plethora of international treaties and respective national laws.

Also, all forms of discrimination and violence in schools are an obstacle to children and young people's fundamental right to quality education. Violence in schools and other educational settings is a worldwide problem and students who do not conform to prevailing sexual and gender stereotypes are significantly more vulnerable.<sup>82</sup> It can also endanger those who work to defend the human rights of lesbian, gay, bisexual and transgender (LGBT) people by exposing them to attacks and intimidation.<sup>83</sup>

The right to form a family is denied by the governments by not recognizing same-sex families and by denying the rights otherwise granted by the state to heterosexual families who have not sought legal recognition but still enjoy several rights. Children can also be denied protection against separation from parents based on their parent's SOGI. LGBT people are not allowed to adopt in some countries, even when it is the child of their same-sex partner.<sup>84</sup> The right to work of LGBT people are also affected as they are being fired on the basis of their SOGI or discriminated in employment policies and practices.<sup>85</sup>

Furthermore, laws that impose the death penalty for sexual conduct violate the right to life guaranteed by international human right law.

### **Barriers to the Development of the Rights of LGBTI People**

At the core of barriers to the development of LGBTI rights is that abuses perpetrated against LGBTI people in most countries are not considered as human rights violations; countries like Iran and Saudi Arabia have laws calling for the execution of "practising homosexuals". Thus, human rights protection measures are not inclusive of LGBTI people.

The criminalization of same-sex behaviours in some countries hinders the development of LGBTI rights. At least 76 countries have laws in effect that are used to criminalize consensual relationships between adults of the same sex. Such laws typically prohibit either certain types of sexual activity or any intimacy or sexual activity between persons of the same sex. In some cases, the language used refers to vague and undefined concepts, such as "crimes against the order of nature" or "morality", or "debauchery".

In some countries, transgender people are not legally recognized. They are required to submit themselves to sterilization as a condition of obtaining legal recognition of their

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<sup>82</sup> UNFE Factsheets: Bullying and Violence in Schools.

<sup>83</sup> UNFE Factsheets: Criminalization.

<sup>84</sup> University of Minnesota Human Rights Library Study Guide: Sexual Orientation and Human Rights, 2003.

<sup>85</sup> *Ibid.*

gender, without which many are forced to live on the margins of society, excluded from regular employment, healthcare and education, and denied other basic rights.<sup>86</sup>

There also exists a disparity in State provided benefits between married and unmarried heterosexual couples and those of unmarried homosexual couples. Examples include; pension entitlements, the ability to leave property to a surviving partner, the opportunity to remain in public housing following a partner's death, or the chance to secure residency for a foreign partner.<sup>87</sup>

It cannot be denied that there have been some improvements in the development of the right of LGBTI, however, despite positive developments, most countries lack comprehensive policies to address human rights violations against LGBTI people. Even where these are in place, most States do not collect relevant data to measure and evaluate their effectiveness.<sup>88</sup>

## **Global Responses to Violence and Discrimination Based on SOGI**

According to the Annual Report of the UN High Commissioner for Human Rights (UNHCR) and Reports of the Office of the High Commissioner and the Secretary-General, there are many examples, in all regions, of initiatives that seek to address violence and discrimination on grounds of SOGI.<sup>89</sup>

Globally, there is a trend towards decriminalization of consensual same-sex relationships. The decision in *Dudgeon v. the United Kingdom*,<sup>90</sup> in 1982 intensified this trend; it was held that *Section 11 of the Criminal Law Amendment Act 1885* which criminalized male homosexual acts in England, Wales and Northern Ireland violated the ECHR. As a result of the decision as at mid-2016, 47 countries have taken steps to decriminalize same-sex relationships between consenting adults. Of these, at least 22 had done so as part of a broader review of their penal codes, 12 had specifically repealed criminalizing legislation, and ten had brought about the change as a result of the findings of a judicial body. Some of the most recent countries to undertake decriminalization in this area are; Mozambique, Nauru, Palau, Sao Tome and Principe and Seychelles, all of which have revised their penal codes following recommendations received during the Universal Periodic Review (UPR) of the HRC.<sup>91</sup>

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<sup>86</sup> UNFE Factsheets: Equality and non-discrimination.

<sup>87</sup> OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 53.

<sup>88</sup> OHCHR, *Living Free and Equal: What states are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, 2016, p. 11.

<sup>89</sup> A/HRC/19/41 (2011).

<sup>90</sup> Appl. No. 7525/76, Council of Europe: European Court of Human Rights, 22 October 1981.

<sup>91</sup> OHCHR, *Living Free and Equal: What states are doing to tackle violence and discrimination against lesbian, gay, bisexual; transgender and intersex people*, 2016, p. 55.

The UNHCR advises that individuals who fear persecution on account of their sexual orientation or gender identity may be considered members of a “particular social group”. The UNHCR estimates that at least 42 States have granted asylum to individuals with a well-founded fear of persecution owing to sexual orientation or gender identity, although the precise figure is unclear.

There has been the institution of training programs for law-enforcement officials to sensitize them to bias-motivated violence against LGBTI persons and help them to recognize, register and respond to reports of such crimes. In some countries, including Spain and Honduras, special prosecutors have been appointed to investigate and bring cases to trial.<sup>92</sup> In South Africa, a national task team on homophobic and transphobic hate crime has been established following consultations with the LGBT community.<sup>93</sup> There are also examples of public information campaigns designed to address societal prejudice. In Brazil, the Government has supported a public education campaign implemented under the slogan “Brazil without Homophobia”.<sup>94</sup>

In Namibia, the Life Skills Syllabus includes learning and discussion about different sexualities. In the Philippines, the Implementing Rules and Regulations for the Anti-Bullying Act includes references to bullying on the basis of sexual orientation and gender identity. In the United States, the Department of Education issued guidelines to schools on respect for the gender identity of transgender students.<sup>95</sup>

The HRC has also stated that States have a common shared responsibility to uphold international binding human rights standards; it therefore provided an obligation to protect the human rights of LGBTI people through five core legal obligations: protect people from homophobic and transphobic violence; prevent the torture and cruel, inhuman and degrading treatment of LGBT persons in detention by prohibiting and punishing such acts and ensuring that victims are provided with redress; repeal laws criminalizing homosexuality, including all laws that prohibit private sexual conduct between consenting adults of the same sex; prohibit discrimination on the basis of sexual orientation and gender identity and safeguard freedom of expression, association and peaceful assembly for LGBT and intersex people.<sup>96</sup>

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<sup>92</sup> Report of the United Nations High Commissioner for Human Rights, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity” 17 November 2011 (A/HRC/19/41).

<sup>93</sup> OHCHR, *Living Free and Equal: What states are doing to tackle violence and discrimination against lesbian, gay, bisexual; transgender and intersex people*, p. 36.

<sup>94</sup> Report of the United Nations High Commissioner for Human Rights, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity” 17 November 2011 (A/HRC/19/41).

<sup>95</sup> UNFE Factsheet: Bullying and Violence in schools.

<sup>96</sup> OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012 p. 12.

## Education as a Tool in Preventing Violence and Discrimination-Based SOGI

Preventing violence and discrimination based on SOGI requires the promotion and implementation of education programs targeting different groups, including law enforcement and educators. These education programs will help steer social change and educate members of the community about the rights of all individuals irrespective of their sexual orientation or gender identity.

It has been suggested by the UNFE that states should provide training and support to teachers and other school staff to prevent and address violence in schools based on SOGI.<sup>97</sup> Although education can be used as an important tool in preventing violence and discrimination based on SOGI, it is important to note that the school environment can also be hostile to LGBTI students in more implicit ways.<sup>98</sup> Examples include teachers or school administrators asserting that some subjects are better suited to students based on their sex or reinforcing stereotypes in curriculum materials. This can reinforce prejudice and a biased understanding of LGBT people, which are often at the root of homophobic and transphobic violence. It is thus necessary to change the mindset of those in the education sector in order to discard stereotypes. Thus, six mutually-supportive components have been prescribed, they are: National and school-level policies to prevent and address SOGI based violence; curricula and learning materials supportive of diversity; support and training for educational staff, especially teachers; support for students; partnerships with civil society organisations, in part to inform about SOGI based violence; monitoring violence and evaluating responses.<sup>99</sup>

A related area of concern is sex education. The right to education includes the right to receive comprehensive, accurate and age-appropriate information regarding human sexuality in order to ensure young people have access to information needed to lead healthy lives, make informed decisions and protect themselves and others from sexually-transmitted infections. The Special Rapporteur on the right to education noted that “in order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality”.<sup>100</sup>

### Conclusion

The principle of non-discrimination is at the core of a host of international human rights treaties and States have an obligation to respect the rights of all individuals. People may

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97 UNFE Factsheet: Bullying and Violence in School.

98 UNFE Factsheet: Bullying and Violence in School.

99 Safe at school: Education sector responses to violence based on sexual orientation, gender identity/expression or sex characteristics in Europe, 2018.

100 Report of the United Nations High Commissioner for Human Rights, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity” 17 November 2011 (A/HRC/19/41).

not be discriminated against in the enjoyment of rights based on sexual orientation or gender identity. As the UN High Commissioner for Human Rights has stated, “the principle of universality admits no exception. Human rights truly are the birthright of all human beings”.<sup>101</sup> States have a legal obligation both to make sure that their laws and policies do not discriminate against people based on sexual orientation and gender identity and that the legal framework offers adequate protection against such discrimination practised by third parties. This obligation transcends culture, tradition and religion.

## Further Research

How can human rights be reinforced to prevent discrimination based on SOGI? In what ways and in which direction can the General Assembly influence discriminatory laws and practices concerning sexual orientation and gender identity? What are the areas that are not necessarily addressed by international human rights documents? How can the obligation of States to protect human rights to all people irrespective of SOGI be reinforced? What can States do to prevent the perpetration of violence and systemic discrimination against persons based on SOGI? What can the General Assembly do to make States more accountable in the performance of their SOGI-based obligations under international law? What can the General Assembly do to combat discrimination based on culture and societal values? What can the General Assembly do to ensure that State parties provide equal benefits to persons irrespective of their SOGI? What further roles can the educational system in the respective Member States play towards preventing violence and discrimination against SOGI?

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*“Born Free and Equal” sets out the source and scope of some of the core legal obligations that States have to protect the human rights of lesbian, gay, bisexual and transgender (LGBT) people. The 60-page booklet is designed as a tool for States, to help them better understand the nature of their obligations and the steps required to meet them, as well as for civil society activists, human rights defenders and others seeking to hold Governments to account for breaches of international human rights.*

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*Every year, ILGA World publishes its State-Sponsored Homophobia report, a world survey of sexual orientation laws. The publication is accompanied by a series of maps and charts illustrating where criminalization, protection and recognition laws exist. It also provides a breakdown of homophobic attacks in different countries.*

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*The publication “Living Free and Equal” provides an analysis of more than 200 examples of what States are doing to tackle violence and discrimination against LGBTI people. It offers concrete guidance for States based on initiatives taken by Governments, courts, parliaments, national human rights institutions and others around the world to implement international human rights standards and United Nations recommendations to protect, respect and fulfil the rights of LGBTI people.*

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*This report was submitted to the HRC pursuant to Resolution 17/19 in which the council requested the United Nations High Commissioner for Human Rights to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on SOGI and how International law can be used to end violence and related human rights violations based on SOGI.*

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*The Yogyakarta Principles were written during an expert group meeting that took place in Yogyakarta, Indonesia in November 2006. This meeting assembled a distinguished set of human rights experts and activists, including former UN High Commissioner for Human Rights, Mary Robinson, and several United Nations Special Rapporteurs. As the official name of the Yogyakarta Principles indicates, this set of principles charts the way towards a binding legal standard for the universal reach of human rights. The 29 principles set*

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## II. Protecting Economic, Social and Cultural Rights of Refugees

*“Only by upholding our duty to protect those fleeing persecution and violence, and by embracing the opportunities that refugees and migrants offer to their new societies, will we be able to achieve a more prosperous and fairer future for all” – Ban Ki-moon, former Secretary-General of the United Nations*<sup>102</sup>

### Introduction

Over the years, many persons have been forced to flee their homes in search of safety for reasons which are conflict-related and due to human rights violations. As a result, these persons seek asylum in host countries. It is however important for host countries to recognize that their obligations transcend beyond simply granting the right to asylum, there is a further need to protect the economic, social and cultural rights of refugees as the denial of these rights can in itself foster displacement.

As a response to the eventualities caused by the World War II, the United Nations (UN) General assembly established the UN High Commissioner for Refugees (UNHCR) on 14 December 1950 to protect and support refugees as well as assisting in their voluntary repatriation, local integration or resettlement to a third country. Under the *Convention Relating to the Status of Refugees* (1951),<sup>103</sup> the key legal instrument that forms the basis of refugee protection by the UNHCR, the term “refugee” applies to:

any person who owing to a well-founded fear of prosecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>104</sup>

A person is accorded with the refugee status once the above stipulations are met. Across the world, about 70.8 million people around the world have been forced from home. Among them are nearly 25.9 million refugees, over half of whom are under the age of 18.<sup>105</sup> There are also millions of stateless people who have been denied a nationality and access to basic rights such as education, health care, employment and freedom of movement.<sup>106</sup> Approximately, 1.4 million refugees who are at risk of violence or other

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<sup>102</sup> Statement of the Former United Nations Secretary-General, Ban Ki-moon “In Safety and Dignity: Addressing Large Movements of Refugees and Migrants” (A/70/59).

<sup>103</sup> UN Convention Relating to the Status of Refugees.

<sup>104</sup> *Ibid*, Article 1 (a) (2).

<sup>105</sup> United Nations, Figures at a Glance.

<sup>106</sup> United Nations, Global issues.

reasons need to be permanently resettled. But only 92,400 refugees were resettled in 2018, less than 7% of those awaiting resettlement.<sup>107</sup>

As part of UNHCR's responsibility to supervise and support the application of the *1951 Refugee Convention* and its 1967 Protocol, UNHCR is available to assist States in establishing asylum systems and in working to enhance the quality of refugee status determination. Refugee Status Determination (RSD) is the legal or administrative process by which respective governments or the UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law. RSD is often a vital process in helping refugees realize their rights under international law and although it is the primary duty of a state to carry out this process, the *1951 Refugee Convention* does not dictate the procedures to be followed for determining refugee status. Thus, in accordance with UNHCR's supervisory responsibility, the "Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status" was first issued in 1979 to guide governments as well as UNHCR officials in applying the refugee definition.

Economic, social and cultural (ESC) rights are part of the body of human rights law that applies to all persons, including refugees. ESC rights are necessary for the self-sufficiency of refugees and should be duly protected. ESC rights include the right to work, education, access to healthcare, and an individual lifestyle.<sup>108</sup> However, host countries barely recognize these rights and even if they do, its enforcement is restricted as rigid conditions are usually imposed for the rights to be enjoyed. Therefore, we will be examining the extent to which refugees are afforded legal protection in relation to a wide range of ESC rights.

## **International and Regional Framework**

Following the aftermath of World War II, legal frameworks were put in place to address the resulting refugee crisis at the time by affording protection to forcibly displaced persons. At the forefront of these laws is the *1951 Refugee Convention*<sup>109</sup> and its *1967 Protocol*.<sup>110</sup> Globally, a total of 148 countries have ratified the *1951 Refugee Convention* and/or its 1967 Protocol. The *1951 Refugee Convention* is the foundation of international refugee law that affords refugees a broad range of rights in host countries. It defines the term "refugee", establishes the principle of non-refoulement and sets out the duties of both refugees towards the host countries as well as States' responsibilities towards refugees. The cornerstone of the *1951 Refugee Convention* is the principle of non-refoulement provided for in Article 33. This right imposes an obligation on States not to return a refugee for any reason whatsoever to the frontiers of territories where his life or freedom

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<sup>107</sup> Global Refugee Crisis: Statistics and Facts, Amnesty International.

<sup>108</sup> Circle of Rights: Economic, Social & Cultural Rights Activism – A Training Resource, 2015.

<sup>109</sup> General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951 UNTS vol. 189, p. 137.

<sup>110</sup> General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967 UNTS vol. 606, p. 267.

would be threatened on grounds of his race, religion, nationality, membership of a particular social group or political opinion. The construction of the principle of non-refoulement under the Convention is such that it also extends to any behaviour by the State that would place a refugee at risk of being returned, either directly or indirectly, to their country of origin. This includes the refusal of entry at the border as well as the removal from within the territory and is applied wherever the State exercises its authority, including beyond its borders (i.e. when intercepting ships on the high seas).<sup>111</sup> All refugees are afforded the right to non-refoulement, *prima facie*, notwithstanding that they are yet to be accorded with such status. There are however two exceptions to the principle of non-refoulement. *Article 33(2) of the 1951 Refugee Convention* permits the refoulement of a refugee if there are reasonable grounds for regarding him or her as a danger to the security of the country where he or she is present or if, having been convicted of a particularly serious crime, the refugee constitutes a danger to the community. The *1967 Protocol* is integrally related to the *1951 Refugee Convention*. The Convention was an immediate response to the refugee problems caused by the world war and as such was initially restricted to persons who became refugees due to events occurring in Europe before 1 January 1951. Thus, the 1967 Protocol operates to remove the temporal and geographical limits found in the Convention and broadens its applicability.

The *Convention relating to the Status of Stateless Persons* (1954)<sup>112</sup> is a UN multilateral treaty created to protect stateless persons who are under the protection of the UNHCR by providing practical solutions for states to address the particular needs of these persons that guarantee their security and dignity. *Article 26 of the Convention relating to the Status of Stateless Persons* upholds the right to freedom of movement in the territory of the accommodating state and *Article 31* prohibits the expulsion of stateless persons who are lawfully on the territory of a state. It goes ahead to define the term “stateless person” as a person not considered as a national by any State under the operation of its law. It further prescribes the standards of treatment to be accorded to stateless persons. Often, stateless persons can be considered as refugees, as they might have “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”.<sup>113</sup> Refugees who are not stateless are those who for the above-mentioned reasons are unable or unwilling to avail themselves of the protection of the country of their nationality. A difference is sometimes made between *de jure* and *de facto* stateless persons. Generally, refugees are *de facto* unprotected and stateless persons are *de jure* unprotected. In this respect, the difference between “unable” and “unwilling” should be stressed: stateless persons are normally unable to invoke any protection, while asylum-seekers with a nationality are normally *unwilling* to avail themselves of the protection of their country of nationality. It is taken for granted that the

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<sup>111</sup> UNHCR, *A Guide to International Refugee Protection and Building State Asylum Systems*.

<sup>112</sup> *Convention relating to the Status of Stateless Persons*, United Nations Treaty Series, vol. 360, p.117.

<sup>113</sup> Article 1(a) (2), United Nations Convention Relating to the Status of Refugees.

relationship between a country and its citizens involves “protection” in whatever form that may be.<sup>114</sup>

The rising number of refugees fleeing wars and internal conflicts in Africa around the late 50s led to the adoption of what is generally considered the most comprehensive and significant regional treaty dealing with refugees. The Organization of African Unity (OAU) (now African Union (AU)), on 10 September 1969, adopted the *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*.<sup>115</sup> This Convention is notable for its expanded definition of the term “refugee” as a “well-founded fear of persecution” was not sufficiently wide a criterion to cover all the refugee situations in Africa. The second paragraph of *Article 1 of the OAU Refugee Convention* provides that “the term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence to seek refuge in another place outside his country of origin or nationality”. Apart from the broad refugee definition, the *OAU Refugee Convention* regulates the question of asylum.<sup>116</sup> It also contains important provisions on voluntary repatriation<sup>117</sup> and on the prohibition of subversive activities by refugees.<sup>118</sup>

The 1966 *International Covenant on Economic, Social and Cultural Rights* (ICESCR)<sup>119</sup> serves as the primary international treaty that guarantees economic, social and cultural rights for all people including stateless persons and refugees. A total of 165 countries are party to the ICESCR. It was adopted by the General Assembly on 16 December 1966 and defines a broad set of rights related to the economic, social, and cultural elements of life, its main focus being within specific rights that relate to education, health, social security, cultural rights like language and religion, housing, employment rights and so on. It should be noted that the 1951 convention is in tandem with *Article 14 of the UDHR*<sup>120</sup> which recognizes the right of persons to seek asylum from persecution in other countries. Additionally, *Articles 22-27 of the UDHR* enumerates the ESC rights which are fundamental to the protection and preservation of the humanity of refugees.

Other conventions and treaties which have been adopted for the protection of the rights of refugees include the *Cartagena Declaration on Refugees* (1984) which applies to Latin-American countries and although it is a non-binding regional instrument, it reaffirms the

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<sup>114</sup> Van Krieken, P. (1979). The High Commissioner for Refugees and Stateless Persons. Netherlands International Law Review.

<sup>115</sup> Organization of African Unity, *Convention Governing the Specific Aspect of Refugee Problems in Africa*, 10 September 1969.

<sup>116</sup> *Ibid*, Article II.

<sup>117</sup> *Ibid*, Article V.

<sup>118</sup> *Ibid*, Article III.

<sup>119</sup> General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, A/RES/2200.

<sup>120</sup> General Assembly, *Universal Declaration of Human Rights*, 217(III) A. Paris, 1948.

right to asylum as well as the principle of non-refoulement. The *Arab Convention on Regulating Status of Refugees* (1994) in the Arab Countries was adopted by the League of Arab States (LAS), but it never entered into force. In October 2017, the League of Arab States adopted a new Arab Convention on refugees. In 2012, Member States of the Organization of Islamic Cooperation adopted the *Ashgabat Declaration* at a ministerial conference in Turkmenistan. The Declaration recognizes the Islamic basis on granting asylum to refugees.

## **Role of the International System**

The UNHCR, whose core responsibilities relate to the protection of refugees, was established by the General Assembly in its *Resolution 319 (IV)*<sup>121</sup> on 3 December 1949. The UNHCR is saddled with the duty of providing international protection to refugees who fall within the UNHCR Statute<sup>122</sup> and also assisting in their voluntary repatriation, local integration or resettlement to a third country. For a long time after it was established, the UNHCR only covered the safety of refugees but overtime; its mandate has been expanded to cover returnees, asylum seekers and stateless persons.<sup>123</sup> Although UNHCR does not have a general mandate for internally displaced people, it may be involved in certain circumstances to enhance protection and provide humanitarian assistance. As part of UNHCR's responsibility to supervise and support the application of the *1951 Refugee Convention* and *1967 Protocol*, UNHCR is available to assist States in establishing asylum systems, engage in relief distribution, emergency preparedness, special humanitarian activities, broader development work, as well as registration, determination of status and issuance of documentation for refugees and working to enhance the quality of refugee status determination under the mandate.<sup>124</sup>

In September 2016, the UN by a consensus adopted the *New York Declaration for Refugees and Migrants*.<sup>125</sup> The Declaration contains some commitments aimed at recognising that the protection and support of refugees is a shared responsibility that should be borne by all member states on the international scale. It is geared towards the provision of more predictable and sustainable support to refugees and the countries that host them. The New York declaration presupposes that this can be achieved through the *Comprehensive Refugee Response Framework (CRRF)*<sup>126</sup> which came into force two years after the adoption of the New York declaration. The framework presents a response to situations involving large movements of refugees, designed to ensure rapid reception measures by assisting refugees-receiving countries by engaging a broad group of stakeholders; governments at all levels, international and regional financial institutions, UN Agencies, NGOs and other private sector actors. The set objectives of the CRRF includes; easing pressure on host

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<sup>121</sup> General Assembly, *Refugees and Stateless persons*(A/RES/319)1949.

<sup>122</sup> General Assembly, *Statute of the Office of the United Nations High Commissioner* A/RES/428(V).

<sup>123</sup> UNHCR, *Emergency Handbook*.

<sup>124</sup> Mandate of The UN High Commissioner of Refugees and His Office Executive Summary.

<sup>125</sup> General Assembly, *New York Declaration for Refugees and Migrants* (A/RES/71/1) 2016.

<sup>126</sup> UNHCR, *Comprehensive Refugee Response Framework*, 2018.

communities, improving refugee self-reliance, increasing access to third-country solutions and creating conditions in countries of origin for voluntary return in safety and dignity.<sup>127</sup> Led by concerned governments, the CRRF has been put into practical application in several countries like Uganda, Tanzania, Ethiopia and Djibouti, to mention a few.<sup>128</sup> The CRRF has also been explored on a regional basis in its application to the Somalia situation.<sup>129</sup>

In addition to the CRRF, the UN, on 17 December 2018, affirmed the Global Compact on Refugees (GCR) after two years of extensive deliberations led by the UNHCR with member states and other international organizations. The Global Compact for Refugees is a framework for more predictable and equitable responsibility-sharing, recognizing that a sustainable solution to refugee situations cannot be achieved without international cooperation. The Global Compact for Refugees applies the CRRF and provides a blueprint for governments, international organizations, and other stakeholders to ensure that host communities get the support they need and that refugees can lead productive lives. It constitutes a unique opportunity to transform the way the world responds to refugee situations, benefiting both refugees and the communities that host them. Its objectives are to ease pressure on host countries, give the refugees self-reliance, support the countries of origin to assure safe return for refugees.<sup>130</sup> It adopts the system of responsibility-sharing and recognizes that a durable solution to the rampant refugee crisis cannot be achieved without international cooperation. This framework aims at easing the pressure of host countries, enhancing the self-reliance of refugees as they have a right to international protection from these organizations who also support conditions in countries of origin.<sup>131</sup>

The Office of the High Commissioner for Human Rights (OHCHR), a department of the UN Secretariat was established by the General Assembly in the wake of the 1993 World Conference on Human Rights. Its mandate includes the prevention of human rights violations, securing respect for all humans, and strengthening and streamlining the UN system in the field of human rights. In 1999, the mandate of the Special Rapporteur on the Human Rights of Migrants as created by the OHCHR, functions to examine ways and means to overcome obstacles of migrants like recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation, receive and request complains about violations of the human rights of migrants and their families and overall, ensuring safety of the rights of refugees and migrants.

## **Status of Refugees in the World**

The terms “refugee”, “asylum-seeker” and “irregular migrant” are used to describe people who are on the move, who have left their countries, have crossed borders and are seeking

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<sup>127</sup> *Ibid.*

<sup>128</sup> UNHCR, Update on the Practical Roll-Out of the CRRF- Address at the Annual NGOs Consultations.

<sup>129</sup> Human Rights Watch, World Report 2019: Somalia.

<sup>130</sup> UNCHR: Global Compact on Refugees.

<sup>131</sup> Refugees, Asylum-Seekers and Migrants, Amnesty International.

safety in other countries.<sup>132</sup> A refugee is a person who is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>133</sup> The term “refugee” has been given a wider scope under the *OAU Refugee Convention* (1969). It defines a refugee to be a person, who in fear of being persecuted for reasons of race, religion, or for being a member of a social or political group, leaves his/her country due to such fear or a person, due to external aggression, occupation or foreign domination is compelled to leave his place of habitual residence in order to seek refuge in another country. An asylum seeker, on the other hand, is someone who claims to be a refugee but whose claim has not been evaluated. This person would have applied for asylum on the grounds that returning to his or her country would lead to persecution on account of race, religion, nationality or political beliefs. Thus, not every asylum seeker will be recognized as a refugee, but every refugee is initially an asylum seeker.

As at the end of 2018, the UNHCR recorded over 70.8 million refugees globally, a significant increase in the number of refugees ever recorded.<sup>134</sup> In 2018, there were 1.1 million new refugees, most of them fleeing conflict in Syria, South Sudan, and the Democratic Republic of Congo.<sup>135</sup> In South Sudan, about 1.8 million people have been displaced within the country, in addition to 2.3 million who fled to neighbouring countries. According to very recent reports, of the over 70 million displaced persons worldwide, the office of the UNHCR records over a third of this population to be in Africa, with South Sudan having the highest number at about 2.3 million refugees.<sup>136</sup>

An estimated 80% of the refugees are women and children, and about 50,000 of the children are orphaned or unaccompanied.<sup>137</sup> In Afghanistan, the increased violence in 2015 led to a serious surge in asylum seekers.<sup>138</sup> Over 2.4 million Afghans have fled their country and about 1 million are now refugees in Pakistan.<sup>139</sup> More recently, in Venezuela, by the first five months of 2019, about 4 million Venezuelans had left their homes in one of the world’s biggest displacement crises. More than 460,000 Venezuelans have sought asylum but to date, only a small fraction have been recognized as refugees.<sup>140</sup>

There are several reasons for the forced migration of people around the world, some of which includes reasons include; the search for gainful employment or decent education, fleeing persecution, human rights violations, armed conflicts or other crises or violence.

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<sup>132</sup> Refugees, Asylum-Seekers and Migrants: Amnesty International.

<sup>133</sup> Article 1(a)(2) 1951 Convention and Protocol Relating to the Status of Refugees.

<sup>134</sup> United Nations, Figures at a Glance.

<sup>135</sup> UNCHR: Global Trends.

<sup>136</sup> Africa Confidential, “Security Flashpoints and Migration in Africa”.

<sup>137</sup> UNCHR: Analysis of Refugee Vulnerability in Uganda.

<sup>138</sup> UNCHR: Global Trends.

<sup>139</sup> *Ibid.*

<sup>140</sup> Refugees and migrants from Venezuela top 4 million: UNHCR and IOM.

Some no longer feel safe and might have been targeted because of who they are what they do or believe in – for example, for their ethnicity, religion, sexuality or political opinions. Violence, insecurity, persecution and shortages of food, medicine and other basics, have also prompted millions of refugees to leave their country. Host countries continue to prioritize policies that will deter people from seeking asylum, and finding ways to stop people coming altogether. Such restrictive and short-sighted policies are forcing women, men and children to take dangerous land and sea journeys, putting their lives at risk and fuelling human rights abuses.

It should be noted also that 84% of refugees are hosted by developing and underdeveloped countries<sup>141</sup> which shows that even the wealthier countries are not opening their borders to displaced people. In Germany, close to 11,500 people were deported in the first six months of 2019, slightly fewer than in the same period last year according to the German federal government. It was also mentioned that during deportations, the degree of physical resistance by asylum seekers and the resulting use of force by the police are on the rise and an additional 1,525 people were expelled after they had irregularly entered Germany.<sup>142</sup> The French government defended a new immigration bill as “completely balanced” despite criticism from rights groups and some ruling party lawmakers that it will lead to thousands of extra deportations.<sup>143</sup>

## **Economic Rights**

Economic rights encompass the right to employment, favourable work conditions, housing as well as the right to social security. *Article 21 of the 1951 Refugee Convention* foresees that with respect to housing, all refugees lawfully staying within a state’s territory must be accorded favourable treatment. The right to housing is further protected under *Article 25 of the UDHR* which contemplates the right to an adequate standard of living to include the right to housing. Housing is a basic human necessity, and without stable accommodation, the ability of these persons to re-start their lives and integrate into society will be put on hold.<sup>144</sup> The lack of adequate housing and in particularly favourable living conditions is a significant issue faced by refugees. Asylum seekers and refugees are all faced with the risk of homelessness especially while in another man’s land. It is therefore expedient that Member States’ housing policies ensure that refugees have adequate access to housing and that any housing provided through social assistance, complies with the principle of non-discrimination and equal treatment. *Article 11 of the ICESCR* provides that everyone has the right to “an adequate standard of living for himself and his family including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

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<sup>141</sup> Global Refugee Crisis: Statistics and Facts, Amnesty International.

<sup>142</sup> “Around 11,500 Deportations from Germany in the first half of 2019”, Info Migrants.

<sup>143</sup> “France Unveils Controversial Migrant Bill”, The Local France News.

<sup>144</sup> UN Committee on Economic Social and Cultural Rights, General comment No. 4: The right to adequate housing (Article 11(1) of the ICESCR), UN. Doc. E/1992/23.

Even though the right to adequate housing has been repeatedly reaffirmed by the international community, there still exists a wide gap between the standards set out in *Article 11 of the ICESCR* and what obtains in prevailing situations around the world. Refugee and IDP camps are often dilapidated and overcrowded, providing inadequate shelter services. Displaced women and girls living in those camps are often subject to sexual and gender-based violence as little or no attention is paid to their specific needs and vulnerabilities in the design and layout of the camps.<sup>145</sup> According to the UN Committee on Economic, Social and Cultural Rights, the right to housing must not be interpreted in a restrictive sense as “merely having a roof over one’s head”,<sup>146</sup> rather adequate housing must satisfy a range of requirements. Adequate housing must provide more than just four walls and a roof. In particular, it should be of sufficient quality to ensure protection from the elements; reflect the cultural requirements of inhabitants, be connected to public utilities and sanitation services; be connected to public services and allow access to work opportunities through an adequate infrastructure. It should also include adequate protection against forced or summary eviction, and be affordable. Member States must take cognizance of the vulnerabilities and peculiarities of the refugees when providing social assistance and when allocating housing. Such vulnerable groups include; children, whether accompanied, unaccompanied or separated children; women and girls at risk; victims/survivors of torture, abuse and sexual and gender-based violence; victims or potential victims of trafficking; traumatized persons; lesbian, gay, bisexual, transgender or intersex (LGBTI) persons; ethnic and religious minorities and indigenous persons; persons with disabilities; and older persons. This is further reiterated by the UNHCR’s Executive Committee which sets out guiding principles for the reception of asylum-seekers which includes the incorporation of gender and age-sensitivity in reception arrangements, addressing in particular the specific needs of children, especially unaccompanied and separated children; victims of sexual abuse and exploitation; victims of trauma and torture; as well as of other vulnerable groups.<sup>147</sup> The respect for human dignity requires access to adequate housing and the possibility of enjoying private and family life, which are not only essential for the individual but also the proper functioning of societies.

While the conflict or persecution or reasons that have forced refugees to leave their homeland persists, refugees are likely to remain in host countries for a long period. It then becomes expedient that these refugees are allowed the right to work and access to the labour market. The right to employment with favourable work conditions is important to provide refugees with a means of livelihood and to preserve their dignity and self-worth. It may be well said then that the denial of the economic rights of refugees amounts to constructive refoulement. The restoration of “social and economic independence” is one of

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<sup>145</sup> UNHCHR, Fact Sheet No.21 (Rev 1) “The Right to Adequate Housing”.

<sup>146</sup> UN Committee on Economic, Social and Cultural Rights, General comment No. 4: The Right to Adequate Housing.

<sup>147</sup> UNHCR’s Executive Committee Conclusion No. 93 (LIII) on reception of asylum-seekers in the context of individual asylum systems.

the principal integration objectives of the UNHCR.<sup>148</sup> *Article 6 and 7 of the ICESCR* recognizes the right to work and the right of any person to gain a living out of any work he so freely chooses. This right is further protected under *Article 23 of the UDHR* that indiscriminately accords everyone with the right to work, free choice of employment and to just and favourable conditions of work and protection against unemployment. *Part III of the 1951 Refugee Convention* regulates gainful employment: *Article 17* refers to wage-earning employment; it calls on States to give refugees “lawfully staying” in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment. Similarly, *Articles 18 and 19* refer to refugees “lawfully staying” in the States’ territory to be accorded with favourable treatment with regards to self-employment and liberal profession respectively. It has been suggested that not all rights are applicable upon the granting of status but rather dependent on “lawful presence”, “lawful residence” or “habitual residence”.<sup>149</sup> In order to engage in wage-earning employment on a most-favoured nation basis, refugees must be ‘lawfully staying’ in the territory of a State party, while to engage in self-employment activities they must only be ‘lawfully in’ the territory of the State party. In practice, however, many States do not allow refugees access to their labour markets. Many are thus obliged to scrape by in the informal economy, where they risk exploitation, arrest and detention. Obstacles to exercising the right to work peacefully by refugees are evident in the practical barriers to work which includes costly work permits, failure to recognize foreign acquired diplomas, language, restrictions on freedom of movement.

The right to social security has been affirmed in the international sphere. *Articles 22 of the UDHR* recognizes the right of all to social security whilst reaffirming that ESC rights are indispensable for the preservation of human dignity. *Article 25 of the UDHR* ensures the right to security in the event of unemployment, sickness, disability, widowhood, old age or any other lack of livelihood in circumstances beyond his control. Social security as described under *Article 24(1) (b) of the 1951 Refugee Convention* refers to legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national law or regulations, is covered by a social security scheme. Social security scheme can be understood as schemes imposed and controlled by government units to provide social benefits to members of the community as a whole, or of particular sections of the community. In a broad sense, it can be referred to as both “earned” benefits and “need-based assistance”. Though it is argued to be a universal basic right and physical human welfare, many host countries have only very limited schemes for its citizens. Thus, host countries are usually unable to provide social security for refugees and

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<sup>148</sup> UNHCR, “Refugee Resettlement: An International Handbook to Guide Reception and Integration”, Oct. 2002, at Chapter 1.3.

<sup>149</sup> R. Cholewinski, “Economic and social rights of refugees and asylum seekers in Europe” (2000) 14 *Georgetown Immigration. L.J.* 709, at 711.

require external factors, such as international or non-governmental organizations to assist.<sup>150</sup>

In its General Comment No. 19 (2007) on the right to social security,<sup>151</sup> the UN Committee on Economic, Social and Cultural Rights describes social security to include: the right to access and maintain benefits, whether in cash or kind, without discrimination in order to secure protection from social risks and contingencies. These benefits must be available, adequate and accessible, especially to individuals belonging to the most disadvantaged and marginalized groups. Accessibility also implies that qualifying conditions for benefits must be reasonable, proportionate and transparent. Social security has been recognized as playing an important role in poverty reduction and alleviation and promoting social inclusion, however many refugees are unable to access social security schemes because they can only manage to find employment in sectors of the labour market that are not covered by social security or in which compliance with social security laws is poorly enforced. The Special Rapporteur on the Human Rights of Migrants noted that migrant workers, both regular and irregular are in most cases, employed under precarious and discriminatory conditions, with temporary contracts that do not entitle them to access social security services.<sup>152</sup>

## Social Rights

The right to food, water, good health care facilities, the right to be integrated into the society and equal access to education are specific social rights for the protection of refugees. The right to good healthcare facilities is at the core of social rights as the access of refugees to quality and adequate health services is of utmost importance to global health securities. Following the adoption of the *New York Declaration*,<sup>153</sup> representatives from the WHO, the office of the UNHCR and the International Organization for Migration convened to collectively address the pressing issue of health with respect to migration and forced displacement.<sup>154</sup> In May 2017, the World Health Assembly at its 70<sup>th</sup> World Health Assembly endorsed a Resolution on promoting the health of refugees and migrants.<sup>155</sup> The resolution urged the development of a draft Global Action Plan on the health of refugees and migrants. The draft action plan is aimed at improving global health by addressing the health and well-being of refugees and migrants in an inclusive, comprehensive manner and as part of holistic efforts to respond to the health needs of the overall population in any given setting, as well as the coordination of international efforts to link health care for

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<sup>150</sup> Makhema Mpho, "Social Protection for Refugees and Asylum Seekers in the Southern Africa Development Community (SADC)" April 2009.

<sup>151</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security (Article 9 of the ICESCR), 4 February 2008, E/C.12/GC/19.

<sup>152</sup> "Report of the Special rapporteur on human rights of migrants, Jorge Bustamante: Mission to Japan" (A/HRC/17/33/Add.3), para. 70.

<sup>153</sup> General Assembly, *New York Declaration for Refugees and Migrants*.

<sup>154</sup> WHO, *Recognizing Health as a Human Right for Refugees and Migrants*.

<sup>155</sup> World Health Assembly (WHA) *Resolution 70.15 "Promoting the Health of Refugees and Migrants"* (2017).

refugees and migrants to humanitarian programs. The draft action plan is in line with the WHO's mandate on achieving universal health coverage and the highest attainable standard of health.

*Article 12 of the ICESCR* sets out the right to enjoy the highest attainable standard of physical and mental health. States therefore need to ensure asylum-seekers have access to free primary and emergency medical care, both on arrival and throughout the asylum procedure. Where States have difficulty in providing these services, assistance can be sought from the international community (WHO and UNHCR). The UN Committee on Economic, Social and Cultural Rights, in its General Comment 14, reiterated this by noting that the right to health includes the availability and accessibility of quality healthcare facilities.<sup>156</sup>

Guaranteeing equal access to education for refugees is a core social right necessary for the self-preservation of these persons. *Article 22 of the 1951 Refugee Convention* provides that refugees be accorded the same treatment as is accorded to nationals with respect to elementary education and not less favourable treatment than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education with particular reference to access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships. *Article 26 of the UDHR* protects the right to education. Similarly, *Article 28 of the Convention on the Rights of a Child*<sup>157</sup> recognizes the right of every child, irrespective of status to education on the basis of equal opportunity.

Refugees are likely to encounter difficulties in communication as well as other cultural differences, it therefore becomes paramount that host countries make efforts in integrating these persons into the society and that their special needs are recognized in national integration policies and practices. *Article 34 of the 1951 Convention* recognizes the participation of states in the facilitation of refugees' assimilation and naturalization into society. The term "assimilation" used in *Article 34 of the 1951 Convention* is to be understood in the sense of integration into the economic, social and cultural life of the country and not as denoting any notion of forced assimilation or coercion. The term integration ("assimilation") has also been interpreted as referring to the process of laying the foundations for the refugee to become familiar with the customs, language and way of life of the country of asylum, so that without any feeling of coercion, he/she may more readily be integrated into the different aspects of life in the country of refuge. This may be accomplished through such means as, inter alia, language and vocational courses, lectures on national institutions and culture, and by creating opportunities for stimulating contacts between refugees and the host population.

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<sup>156</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000, E/C.12/2000/4.

<sup>157</sup> General Assembly, *Convention on the Rights of the Child*, 20 November 1989 UNTS vol. 1577, p. 3.

## Cultural Rights

Cultural rights are perhaps the least understood and recognized of the rights protected by international law. *Article 27 of the UDHR* reflects the right of all, to freely participate in the cultural life of the community. The right to cultural life is recognized under *Article 15 of the ICESCR* and it is also enshrined in the right to education, i.e. the right to receive education according to one's culture. The *UNESCO Declaration on Cultural Diversity*<sup>158</sup> affirmed that culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional feature of society or social group and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value system, traditions and beliefs

Cultural rights include the right to the enjoyment of one's cultural lifestyles. Seeing as refugees are usually forced to leave their countries of origin as a matter of urgency and necessity, there is a low probability that the countries in which they go to seek refuge shares the same ideologies with their countries of origin, as such host countries are expected to show understanding of this and respect the values and beliefs of the refugees. In the process of trying to assimilate refugees into society, host countries must respect the cultural beliefs and lifestyles and avoid imposing their own beliefs on them.

Cultural values relate directly to a person's sense of identity, thus a deprivation of the expression of such values challenges the integrity of a person.<sup>159</sup> The Kurds, an indigenous minority group have for long been on the receiving end of cultural rights violations and as a result been forced to flee and seek refuge in other countries.<sup>160</sup> The height of these oppressions is faced by Kurds located in Turkey, where their culture, traditions and even their language has been prohibited on the basis of Turkey being an indivisible entity.<sup>161</sup> The Kurdish situation buttresses the fact that ESC violations are both as cause and effect of the refugee crisis.

## The Syrian Refugee Crisis

The Syrian refugee crisis remains one of the largest humanitarian crises since the end of World War II and now the biggest disaster of the decade. With over 5.6 million Syrian refugees displaced around the world and another 13.1 million trapped inside their once-peaceful country, the UN and other several NGOs are beckoning on host countries to make a home for these refugees. Neighbouring countries like Turkey, Egypt, Iraq, Jordan and Lebanon are said to contain the largest population of Syrian refugees in the whole world with Turkey holding the number one spot, sheltering over 3.3 million Syrian refugees.<sup>162</sup>

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<sup>158</sup> UNESCO, *Universal Declaration on Cultural Diversity*, adopted by the 31<sup>st</sup> session of the General Conference of UNESCO, Paris, 2 November 2001.

<sup>159</sup> Circle of Rights, *Economic, Social and Cultural Rights Activism: A Training Resource*, Module 17.

<sup>160</sup> Cultural Survival Quarterly Magazine, *Kurdish Repressions in Turkey*.

<sup>161</sup> Preamble to the Constitution of the Republic of Turkey, 1982.

<sup>162</sup> UNHCR: Syrian Emergency.

While it can be said that global warming had a role to play in the 2011 uprising because Syria had, before the war, already been experiencing a severe drought which had stunted Syria's economic growth and had forced many of its citizens out of the rural areas to the large cities in search of a new means of livelihood,<sup>163</sup> the Syrian crisis is in fact a direct offshoot of flagrant human rights violations under the Syrian government. By April 2012, the UN had reported over 200,000 Syrians internally displaced.<sup>164</sup> Most had fled to neighbouring countries like Jordan, Lebanon, and Turkey. Then around 2014, the chemical baths in Syria started, killing off hundreds of people helplessly stuck in the country. The OHCHR confirmed 34 chemical attacks in Syria which were said to be in utter violation of the *Chemical Weapons Convention*.<sup>165</sup> The most recent chemical attack took place on the 7 April 2018 in Douma, Syria.<sup>166</sup> Most Syrian refugees now have to survive in host countries, living in unsanitary shelters with food barely enough for nourishment. There are also several obstructions placed directly or indirectly by the host countries in the exertion of their basic human rights like the right of employment being blocked by legal barriers and the right to education of the minors not being exercised. Half of the Syrian refugees are children who are put in such unbearable conditions, with millions of them already thrown into a spiral of harm and danger leaving them prone to infections, scarred with trauma and vulnerable to exploitation. Women Syrian refugees are also said to share almost the same fate. Of all Syrian refugees, 50.5% are women and 49.5% are men.<sup>167</sup> With the refugees already forced into horrible conditions, women's health problems are soaring. They experience sexual harassment, rape, violence, girl child marriages, unwanted/early pregnancies, complications during pregnancies-this is mostly due to the chemical attacks and so on. The influx of these refugees into host countries have affected the Infrastructures, economies, and social service structures, causing host countries to run out of resources.<sup>168</sup> In total, 104,410 resettlement places have been offered globally since the start of the Syria crisis, which equates to a mere 2.6% of the total population of Syrian refugees in Lebanon, Jordan, Iraq, Egypt and Turkey.<sup>169</sup>

In Jordan, the number of Syrian refugees registered by the UNHCR currently falls at about 660,330.<sup>170</sup> According to the ILO response, just a few of the Syrian refugees live in the camps set aside for them while most of the Syrian refugees live in the capital Amman and northern governorates of Irbid and Mafraq and this alone puts a lot of economical strain on the kingdom like the crash of the labour market due to the competition brought in by the refugees, increase in child labour, displacement defects, low employment opportunities and

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<sup>163</sup> Syria's Civil War Explained, Aljazeera News.

<sup>164</sup> Factbox: Syrian refugee exodus grows" 10 April 2012.

<sup>165</sup> UN Independent International Commission of Inquiry on the Syrian republic.

<sup>166</sup> BBC News, "What we know about Douma chemical attack" 10 July 2018.

<sup>167</sup> "Response to Syrian Refugee Women Health's Needs In Lebanon, Turkey And Jordan", Humanity In Action.

<sup>168</sup> UN refugees and migrants: Syrian RefugeeCrisis.

<sup>169</sup> Syria's Refugee Crisis in Numbers, Amnesty USA.

<sup>170</sup> Syria Regional Refugee Response, UNHCR.

so on leading to intolerable living for both the refugees and some Jordanians.<sup>171</sup> Most of the assistance rendered by the UNHCR to the refugees in Jordan usually come in forms of cash in order to help the refugees survive the harsh winter weather. As of November 2019, winter cash assistance was distributed to approximately 60,000 refugees in order to allow them make purchases in preparation for the extreme weather conditions. The amount of money received varies from 66USD for a single person to about 110USD for a family of 7.<sup>172</sup> This rationing system proved to be an issue and, in a bid, to find a sustainable solution and encourage self-reliance, the Jordan Compact was adopted in 2016. The Jordan Compact is a trade deal between Jordan and the European Union (EU) developed to promote investments in Jordan and encourage labour market incorporation of the Syrian refugees, providing work permits and more job opportunities and also providing quality education for minors.<sup>173</sup> The ILO has also been working hand-in-hand with host countries to better the economy by creating employment opportunities and giving out employment-rich ideas to the Jordanian government for implementation in order for refugees to easily exercise their basic right to employment and create a livelihood for themselves and their families.<sup>174</sup>

According to UNCHR, there are about 918,000 Syrian refugees in Lebanon<sup>175</sup> with over 70% of Syrians live below the poverty line.<sup>176</sup> This has led to a plethora of socio-economic breakdowns and pressure like unhealthy competition in the labour market and a huge decline in wages, particularly on low-productivity jobs. There has also been a reduction in public services like health care, education, utilities etc. including the worst forms of child labour and rising social agitation among refugees.<sup>177</sup> However, UN assistance in Lebanon is not slacking off. The UNHCR has provided humanitarian assistance through monetary means like ATM cards and vouchers. They provide to the refugees, the monthly cash assistance of \$175 per month to 33,000 families and also provide winter support to over 165,000 refugee families.<sup>178</sup> The 1993 Agreement for Economic and Social Cooperation between Syria and Lebanon sets guidelines for freedom of movement, residence, work and economic activity between nationals of Syria and Lebanon. This agreement largely dictated Lebanon's open-door policy toward Syrian refugees until January 2015. Since 2015, the Lebanese government has added new restrictions on refugee registration and refugee work rights that violate the bilateral agreement's progressive standards which now have the refugees struggling with menial jobs and depending solely on aids to survive.<sup>179</sup>

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<sup>171</sup> ILO Response to Syrian Refugee Crisis in Jordan, June 2019.

<sup>172</sup> UNHCR Jordan begins the distribution of cash assistance to support refugees in winter weather.

<sup>173</sup> The Jordan Compact- UNHCR.

<sup>174</sup> "ILO Jordan Response to Syrian Refugee Crisis Employment Policy", 2019.

<sup>175</sup> Situations in Syria- UNHCR.

<sup>176</sup> "Syria Crisis Explained" USA to UNCHR.

<sup>177</sup> ILO response to Syrian refugee crisis employment policy, 2019.

<sup>178</sup> UNHCR Lebanon: Basic Assistance.

<sup>179</sup> Middle East Refugee Work Rights Syria Crisis, 2017.

Egypt is seen as the home of refugees with over 58 different nationalities calling it their home, with Syrian refugees remaining the largest population amongst them. As of December 2018, the UNHCR in Egypt has registered 244,910 refugees and asylum-seekers. Despite the absence of a land border with Syria, 132,871 individuals (54% of the total refugee and asylum seeker population) are from Syria, including 55,328 children (42% of the entire Syrian refugee population),<sup>180</sup> most of them concentrated in the urban areas like Cairo and Alexandria. As per 2012 presidential decree, Syrian refugees have access to public education and health services at an equal level of Egyptian nationals. Additionally, Syrians also benefit from all subsidies in the transport and food sectors, provided by the state to Egyptian citizens. This is because it is acknowledged that the Syrians and Egyptians have very similar foods and cultures. The Egyptian government also recognises the need to defend the human rights of refugees and therefore present them with choices to make them comfortable. For example, refugees are given their right to education and are even offered the luxury of being taught in their country's curriculum rather than the Egyptian curriculum.<sup>181</sup> The UNHCR has about 21 agencies in Egypt regularly providing both citizens and refugees with funding and aids. At the beginning of 2019, the UN released a \$104.2 million budget to support and protect refugees in Egypt. This includes the provision of free education, access to healthcare, and legal assistance to families who need it, especially when it comes to the Refugee Status Determination Processes.<sup>182</sup> WHO Egypt also play their little but vital part by being directly responsible for providing free health services for Syrians in close collaboration with local health authorities and relevant country partners.

## Conclusion

The refugee problem continues to challenge the international community. While refugee-receiving States should maintain their commitment to the protection of refugees and respect the basic rights that make these refugees human refugee-producing States have the duty to prevent acts that produce mass exoduses of their populations. Countries should care enough for and welcome refugees who are in grave danger in order to allow them to rebuild their lives in safety and from harm's way. Opening up borders and allowing refugees into the country builds a relationship with host communities, brings about a healthy competition and rise of the labour market that leads to a better economy. It also helps the host countries in gathering diversity, creativity and flexibility needed in this ever-evolving world. All rights, including ESC rights, need to be protected by host countries to prevent direct or indirect refoulement.

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<sup>180</sup> Regional refugee and Resilience Plan, 2019/2020, Egypt.

<sup>181</sup> How Egyptians Make Millions of Refugees Feel at Home, Egypt Today.

<sup>182</sup> UNHCR Urges Critical Support for Refugees in Egypt.

## Further Research

As delegates conduct their research on this topic, they should put the following questions into perspective: How have the regional and bilateral frameworks helped improve the labour market participation of refugees in countries? How have the international frameworks helped the countries of origin in creating danger-free zones for its citizens to reduce the influx of refugees seeking safety in host countries? How can host countries stop the violation of ESC rights? How can host countries reduce the strict conditions imposed for the exercise of the ESC rights of refugees? What are the implementation policies on the ground to guarantee refugees ESC rights? What are innovative ideas to protect and guarantee ESC rights?

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*This is the main website of the United Nations High Commissioner for Refugees. The UNHCR is the major agency that protects refugees and stateless persons and is focused on guaranteeing long-term solutions for them. This handbook provides information as to the circumstances under which a person can be accorded with the refugee status. It is a good research start point for delegates*

International Justice Resource Centre, “Asylum and the Rights of Refugees”. Retrieved 10 January 2020 from: [https://ijrcenter.org/refugeelaw/#National\\_Procedures\\_for\\_Claiming\\_Asylum](https://ijrcenter.org/refugeelaw/#National_Procedures_for_Claiming_Asylum)

*This webpage provides relevant and concise information on the legal frameworks protecting the rights of refugees at both international and regional levels. It defines a refugee according to recognized standards and outlines the rights of a refugee with particular reference to the right of non-refoulement*

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Retrieved 24 January 2020 from: <https://www.unhcr.org/3b66c2aa10.html>

*The 1951 Convention is the fundamental international framework for the protection of the rights of refugees. It is in the backbone of this law that the UNHCR was established. This link leads to the original document and will provide delegates with an unadulterated insight into the provisions of the Convention.*

United Nations High Commissioner for Refugees (UNHCR), *Global trends: Forced Displacement in 2018*. Retrieved 24 January 2020 from: <https://www.unhcr.org/globaltrends2018/>

*This link leads to the official website of the UNHCR and provides comprehensive data and statistics on the refugee population globally as at the end of 2018. It also highlights the efforts of the UNHCR in protecting refugees and the impact of refugee influx on host countries.*

Office of the United Nations High Commissioner for Human Rights and United Nations High Commissioner for Refugees (OHCHR), "Fact Sheet No.20: Human Rights and Refugees". Retrieved 24 January 2020 from: <https://www.ohchr.org/Documents/Publications/FactSheet20en.pdf>

*It is the duty of a state to guarantee human rights (including ESC rights) to all its citizens, however, refugees and asylum seeker suffer human rights violations as they do not have a state to protect them. This document discusses the link between human rights and refugee protection. It also highlights the steps taken by the international community to assist refugees.*

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