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Background Guide

United Nations Human Rights Council



UNHRC

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Background Guide: United Nations Human Rights Council.

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Letter from the USG

Dear Delegates,

It is my pleasure to welcome you to this year's Lagos Model United Nations (LMUN) conference. This year symbolizes many things for us at LMUN but most importantly, it is our fifth year and our fifth session. LMUN is a platform for youths to innovate, debate and take action to create the world that they want, while developing skills in leadership, public speaking, diplomacy, critical thinking, research and teamwork. This has been our mission for the last four years and we hope to achieve this and more this year.

The world has only ten years to achieve its goals on global issues including human rights. Yet, there is still a lot to be done. The task ahead is not an easy one, so everyone must play their part. It is my hope that delegates embrace this duty and strive to create solutions to the issues before their committees. Furthermore, it is my hope that this desire to make impact transcends beyond this conference.

The staff for the **United Nations Human Rights Council (UNHRC)** are: **Adedokun Titilope Ayo** (Under-Secretary-General); **Boma Praise George** (Chair); **Livingstone Akin-Ajala** (Vice Chair); **Morenike Oyeleke Oluwapelumi** (Researcher); and **Busola Adebayo** (Researcher).

Titilope was a delegate at LMUN 2017 & 2018, where she won Position Paper and Distinguished Delegate awards. She was also a Vice Chair at LMUN 2019. She served as a delegate at National Model United Nations New York 2019, where she won the Position Paper award and co-won the Outstanding Delegation award. In 2020, she served as a Chair at Geneva International Model United Nations. **Boma** is a 500 level law student at the University of Lagos. She has participated actively in LMUN since the 2017 Conference, where she won the Honourable Mention award as a delegate. She served as a Researcher of the United Nations Environment Assembly, at LMUN 2019. She is passionate about human rights and societal justice. **Livingstone** is a 500 level law student at the University of Lagos. He served as a Researcher in the 2019 LMUN Conference. He also currently serves as the Director of Clean and Affordable Energy Goal in the Youth Sustainability Development Conference (YSDC) 2020. **Morenike** is a 400 level law student at the University of Lagos. She participated as a delegate at the 2019 LMUN Conference where she won the Honourable Mention award. **Busola** is a 400 level law student at the University of Lagos. She possesses a keen interest in human rights and international law. Busola participated as a delegate at the 2019 LMUN Conference, where she won an award for the Distinguished Delegate.

UNHRC is the United Nations body which has the mandate to protect and promote human rights worldwide. UNHRC plays an important role in the UN system due to its ability to discuss urgent human rights issues, as they occur - throughout the year.

The topics to be discussed by the committee are:

- I. The Protection of the Rights of Internally Displaced Persons and Refugees
- II. Protection of The Right to Privacy in a Digital Age

The Background Guide is one of the first steps to research at LMUN. However, delegates must note that it is not to serve as a replacement for their individual research. Therefore, delegates are encouraged to conduct research outside of the Background Guides. Delegates are also advised to make use of the Further Research, Annotated Bibliography and Bibliography parts of the Background Guide to aid their research. In addition to this, delegates are encouraged to use the Delegate Prep Guide and the Rules of Procedure for their preparation towards the Conference. These documents are available on the LMUN website – www.lmun.ng.

In order to further 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 position paper guide.

If you have any questions or concerns regarding your preparation for the committee or the Conference itself, please contact the USG at - usgpeacesecurityhr@lmun.ng or the committee at - unhrc@lmun.ng.

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

Adedokun Titilope Ayo

USG Peace, Security and Human Rights, LMUN 2020

Abbreviations

ACHR	American Convention on Human Rights
AALCO	Asian-African Legal Consultative Organization
ACHPR	African Centre for Health Policy Research and Analysis
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CHR	Commission on Human Rights
CMW	Committee on Migrant Workers
CRC	Convention on the Rights of the Child
CRIN	Child Rights International Network
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
ERGP	Economic Recovery and Growth Plan
HIV	Human Immunodeficiency Virus
HRC	Human Rights Council
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICT	Information and Communication Technology
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Persons
ILO	International Labour Organization
IOM	International Organization for Migration
IPA	Instrument for Pre-Accession Assistance
ITU	International Telecommunication Union
LGBTI	Lesbian Gay Bisexual Transgender and Intersex
LGBTQ	Lesbian Gay Bisexual Transgender and Queer
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
OAU	Organization of African Unity
OHCHR	Office of the High Commissioner for Human Rights
SDGs	Sustainable Development Goals
SGBV	Sexual and Gender-Based Violence
UDHR	Universal Declaration of Human Rights
UIS	UNESCO Institute for Statistics
UN	United Nations
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UN-Women	United Nations Entity for Gender Equality and Empowerment of Women
UPR	Universal Periodic Review

Committee Overview

“All victims of human rights abuses should be able to look to the Human Rights Council as a forum and a springboard for action.” – **United Nations former Secretary-General Ban Ki Moon**¹

Introduction

The Human Rights Council (HRC) is the organ of the United Nations (UN) “responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations on them”.² The HRC has a duty of looking into human rights violation situations and addressing the liability for violations under international human rights and humanitarian law.³ HRC’s main working scope involves the promotion and protection of human rights globally. It presently focuses on several regions in Africa, Latin America and the Middle East, with special attention to the ongoing conflict in Syria.⁴

Since the adoption of the *Universal Declaration of Human Rights* (UDHR) in 1948, the human rights agenda has expanded greatly.⁵ To facilitate the implementation of the UDHR, the UN Secretariat established a UN department responsible for overseeing its human rights program.⁶ This department, which is referred to as the Centre for Human Rights, expanded its reach in the 1980s and moved from New York to Geneva.⁷

In 1993, at the World Conference on Human Rights, Member States created the Office of the UN High Commissioner for Human Rights (OHCHR) with the responsibility of coordinating human rights frameworks within the intergovernmental agencies and departments of the UN.⁸ OHCHR is responsible for the substantive, logistical, and administrative needs of all UN human rights mechanisms, including core treaty-based bodies, thematic working groups, and the HRC.⁹ As international human rights law has evolved, specialized agencies within the UN system have also emerged due to the urgent need to respond to human rights violations.¹⁰ Among these was the Commission on Human Rights (CHR), which was an intergovernmental organization of the UN established in 1946 to address human rights challenges and concerns.¹¹ However, the CHR has been criticized by the international community for being “excessively politicized”.¹²

Controversies as to the credibility of the CHR severely damaged the UN’s reputation and work in human rights.¹³ Efforts were therefore made to create an agency that could deal with human rights violations. These reform efforts culminated in the creation of the HRC in

¹ OHCHR, *United Nations Human Rights Council* (2017).

² OHCHR, *The 20th Anniversary of OHCHR – 20 human rights achievements* (2017).

³ *Ibid.*

⁴ OHCHR, *31st Regular Session of the Human Rights Council* (2016).

⁵ General Assembly, *Universal Declaration of Human Rights*, 10 December 1948.

⁶ OHCHR, *Who we are: Brief History* (2017).

⁷ *Ibid.*

⁸ *Ibid.*

⁹ OHCHR, *The Human Rights Council and the role of the Office of the High Commissioner for Human Rights*.

¹⁰ OHCHR, *Who we are: Brief History* (2017).

¹¹ *Ibid.*

¹² UN Department of Public Information, *General Assembly Establishes New Human Rights Council by vote of 170 in Favour to 4 Against, with 3 Abstentions* (GA/10449) (15 March 2006).

¹³ General Assembly, “In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General” (2005) Fifty-ninth session A/59/2005.

2006.¹⁴ Adopted as *Resolution 60/251* (2006), the General Assembly “decided to establish the Human Rights Council, based in Geneva, in replacement of the CHR”.¹⁵ The HRC had the same responsibilities as CHR, but its scope of action expanded as provided under its new mandate.¹⁶ In 2011, the HRC submitted a five-year review.¹⁷ All areas of the HRC were assessed in order to ensure that the mechanisms and frameworks are efficient.¹⁸ The “strong and largely well-functioning” nature of HRC led to preservation as a subsidiary body of the General Assembly without significant changes to its structure or operation.¹⁹

Governance, Structure and Membership

The HRC is made of 47 Member States, which are elected by the majority of members of the General Assembly ensuring an equitable geographical distribution through direct and secret ballot, with each seat serving a three-year term; and since elections are unsteady, one-third of the seats are elected each year.²⁰ Thus, seats are distributed as follows: 13 seats from Africa, 13 from the Asia-Pacific States, eight from Latin American and the Caribbean States, seven from Western European and other States, and six from Eastern European States.²¹ Additionally, the General Assembly elected Iceland in July 2018 to serve on the HRC, following the withdrawal of the United States of America, for a term ending on 31 December 2019.²² An important part of the work of the General Assembly Third Committee is to focus on the examination of human rights questions, including reports of the special procedures of the HRC.²³ During the 74th session of the General Assembly, the Third Committee ran from 1 October 2019 through 21 November 2019, at the UN Headquarters in New York, working closely with special rapporteurs, independent experts, and chairs of working groups as mandated by the HRC.²⁴

The HRC holds at least three regular sessions a year, for a total of at least ten weeks. Holding in March (four weeks), June (three weeks) and September (three weeks).²⁵ The HRC could as well hold special sessions apart from this designated times to address human rights violations emergencies is requested for by a one-third of members of the HRC.²⁶ There have been 28 special sessions, the last of which was held in May 2018 to address “the deteriorating human rights situation in the occupied Palestinian territory, including East Jerusalem”.²⁷ At the first regular session of each year, the President and four Vice Presidents are elected by Member States to constitute the Bureau, with the responsibility of coordinating the procedures of HRC and dealing with the organizational issues.²⁸ The President is responsible for convening and chairing organizational meetings and regular

¹⁴ M. Spohr, “United Nations Human Rights Council: Between Institution-Building Phase and of Status” (2010) *Max Planck Yearbook of United Nations Law*, 169-218.

¹⁵ General Assembly, “Human Rights Council” (2006) Sixtieth session A/RES/60/251.

¹⁶ *Ibid.*

¹⁷ General Assembly, *Review of the Human Rights Council* (2011).

¹⁸ UN Department of Public Information, *Five Years After Creation, General Assembly Maintains Human Rights Council as Subsidiary Body, Concluding Review of Work, Functioning* (17 June 2011) GA/11101.

¹⁹ *Ibid.*

²⁰ OHCHR, *Membership of the Human Rights Council* (2018).

²¹ *Ibid.*

²² UN Department of Public Information, *General Assembly Elects Iceland to Human Rights Council, Adopts Fourth Committee Text Endorsing 2018 Proposals of Special Committee on Peacekeeping Operations* (13 July 2018) GA/12040.

²³ General Assembly, *General Assembly of the United Nations: Social, Humanitarian & Cultural - Third Committee*.

²⁴ Universal Rights Group, *Report on the 74th session of the Third Committee of the General Assembly* (25 November 2019).

²⁵ OHCHR, *Sessions* (2018).

²⁶ *Ibid.*

²⁷ OHCHR, *28th special session of the Human Rights Council on the deteriorating human rights situation in the occupied Palestinian territory, including East Jerusalem* (2018).

²⁸ Human Rights Council, “Institution-building of the United Nations Human Rights Council” (2007) Fifth session A/HRC/RES/5/1.

sessions, as well as proposing candidates to serve as Special Procedures mandate holders.²⁹ The current President is Coly Seck, a Permanent Representative of Senegal to the UN Office in Geneva since October 2016.³⁰

Additionally, HRC established the Advisory Committee as its subsidiary body.³¹ Pursuant to *Resolution 5/1* (2018), the Advisory Committee is to function as a “think-tank” for the HRC and work at its direction.³² The Committee first meeting held in August 2008. It holds meeting twice a year; one week in February immediately before the HRC first session in March and for one week in August.³³ It meets biannually and is comprised of 18 human rights experts, which are elected by HRC in proportion to the regional composition of the HRC.³⁴ The Advisory Committee regularly produces reports at the request of HRC and discusses research proposals and studies in the field of human rights.³⁵

Partnerships

HRC strengthens its efforts in upholding human rights by forming partnerships with non-governmental organizations (NGOs), National Human Rights Institutions (NHRIs), and other civil society actors.³⁶ NGOs and NHRIs can be accredited to participate in the HRC’s sessions as Observers. These partners could address the HRC during its interactive discussions and debates, thus highlighting human rights situations from different perspectives globally.³⁷ NGOs in consultative status with the UN Economic and Social Council (ECOSOC) can attend and observe all proceedings of the HRC except for the HRC deliberations under the Complaints Procedure. They can also participate in debates, interactive dialogues, panel discussions and informal meetings and organize “parallel events” on issues relevant to the work of the HRC.³⁸

Mandate, Functions, and Powers

In its *Resolution 60/251* (2006) on the HRC, the General Assembly decides that the HRC shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.³⁹ The General Assembly mandates HRC to further address and provide recommendations on all, and particularly grave and systematic violations of human rights; and to promote an effective system of coordination within the UN system with respect to human rights issues.⁴⁰ In addition, the General Assembly designated HRC as an international forum that “addresses violations, promotes human rights assistance and education, reviews States’ human rights records, works to prevent human rights abuses, responds to emergencies, and serves as an international forum for human rights dialogue.”⁴¹

²⁹ *Ibid.*

³⁰ OHCHR, *President of the 13th Cycle* (2019).

³¹ Human Rights Council, “Institution-building of the United Nations Human Rights Council” (2007) Fifth session A/HRC/RES/5/1.

³² OHCHR, *Background information on the Advisory Committee* (2018), paras. 65-84.

³³ *Ibid.*

³⁴ Human Rights Council, “Institution-building of the United Nations Human Rights Council” (2007) Fifth session A/HRC/RES/5/1.

³⁵ Human Rights Council, “Report of the Advisory Committee on its Twentieth session” (2018) A/HRC/AC/20/2.

³⁶ OHCHR, *NGO and NHRI Information* (2018).

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ General Assembly, “Human Rights Council” (2006) Sixtieth session A/RES/60/251.

⁴⁰ *Ibid.*

⁴¹ OHCHR, *The Human Rights Council and the role of the Office of the High Commissioner for Human Rights*.

The work of the HRC is guided by the principles of “universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development”.⁴² Also crucial to informing the mandate and work of HRC is the *International Bill of Human Rights*, a framework which consists of the *UDHR*, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) (1966), and the *International Covenant on Civil and Political Rights* (ICCPR) (1966) with its two Optional Protocols.⁴³ These documents are the pillars that guide HRC in its recommendations by outlining the fundamental obligations and commitments of Member States in international human rights law.⁴⁴ Further, the *2030 Agenda for Sustainable Development* (2015), through the 17 Sustainable Development Goals (SDGs) guides the work of HRC.⁴⁵

The HRC adopted *Resolution 5/1* (2007) on “institution-building”, which created mechanisms and procedural frameworks that could act as a guide in enforcing its operational functions.⁴⁶ The resolution also established the format for the Special Procedures, the Universal Period Review (UPR), and the Complaint Procedure, which comprise the main powers of HRC.⁴⁷ The Special Procedures of the HRC are independent human rights experts with mandates to report and advise on human rights from a particular country’s perspective.⁴⁸ The system of Special Procedures is central to the UN human rights machinery and covers all forms of human rights, that is including: civil, cultural, economic, political, and social rights.⁴⁹ In the context of the 2011 review of its work and functioning, the HRC reaffirmed the obligation of States to cooperate with the Special Procedures, and the integrity and independence of Special Procedures.⁵⁰ The review addressed the significant role of the system of Special Procedures in expanding the capacity of HRC in solving human rights issues as well as the constitutive principles of cooperation, transparency and accountability.⁵¹ Further, in its *Resolution 16/21* (2011), the HRC recognized the importance of ensuring transparent, adequate and equitable funding to support all Special Procedures according to their specific needs.⁵²

The UPR is one of the main features of HRC.⁵³ The UPR ensures that all countries are equally treated while their human rights situations are being evaluated equal treatment for every country when their human rights situations are assessed.⁵⁴ The ultimate aim is to improve the human rights situations in all countries and address human rights violations as they occur.⁵⁵ Through the HRC, Member States of the UN submit to a periodic review that assesses the country’s fulfilment of its human rights obligations.⁵⁶ The full cycle of the UPR

⁴² General Assembly, “Human Rights Council” (2006) Sixtieth session A/RES/60/251.

⁴³ OHCHR, *Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights* (1996).

⁴⁴ OHCHR, *Human Rights: A Basic Handbook for UN Staff*.

⁴⁵ General Assembly, “Transforming our world: the 2030 Agenda for Sustainable Development” (2015) Seventieth session A/RES/70/1.

⁴⁶ Human Rights Council, “Institution-building of the United Nations Human Rights Council” (2007) Fifth session A/HRC/RES/5/1.

⁴⁷ *Ibid.*

⁴⁸ OHCHR, *Special Procedures of the Human Rights Council* (2018).

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² General Assembly, “Review of the work and functioning of the Human Rights Council” (2011) Sixteenth session A/HRC/RES/16/21.

⁵³ OHCHR, *Universal Periodic Review* (2018).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Office of the UN High Commissioner for Human Rights, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (2008).

assessment process takes around four years and includes various steps.⁵⁷ The UPR is a unique and State-driven process in both its approach and its universality.⁵⁸ At the preparation stage, information is gathered that will form the basis of the review, including national reports from the state under review, stakeholder submissions, and information prepared by OHCHR.⁵⁹ At the review stage, documents are presented at the regular sessions of the Working Group on the UPR, which consists of all 47 Member States of HRC.⁶⁰ At the adoption and considerations stage, Member States are allowed to make comments and the state being assessed could make reservations on particular issues.⁶¹ Finally, during the follow-up stage, each state under review shows how effectively it has acted upon the recommendations received.⁶² The UPR is in its third cycle (2017-2021) and will continue reviewing the national reports for its 42 Member States.⁶³

Recent Sessions and Current Priorities

The HRC and the General Assembly have adopted annual resolutions on internally displaced persons (IDPs) and frequent resolutions on “Human Rights and Mass Exodus” concerning both IDPs and refugees.⁶⁴ The 41st regular session of the HRC was held from 24 June-12 July 2019.⁶⁵ At this session, HRC adopted *Resolution 41/15 (2019)* entitled “Mandate of the Special Rapporteur on the human rights of internally displaced persons”, which recognizes the increase in the number of natural disasters and climate change as one of the drivers of disaster risk, and that the adverse effects of climate change may contribute to internal displacement and additional pressure on host communities, noting also that the susceptibility of IDPs may increase if their host communities are affected by natural disasters.⁶⁶ The resolution calls upon Member States to provide durable solutions in accordance with the *Framework on Durable Solutions for Internally Displaced Persons*. It encourages strengthened international cooperation, including through the provision of resources and expertise to assist affected countries, particularly developing countries, in their efforts and policies relating to assistance, protection rehabilitation, durable solutions, including disaster risk reduction, and development assistance for IDPs.⁶⁷

This resolution is in support of the *New York Declaration for Refugees and Migrants*, which was unanimously adopted on 19 September 2016 by the General Assembly. The *New York Declaration for Refugees and Migrants* reaffirms the importance of the international refugee regime towards which Member States have shown commitments as to providing sustainable mechanisms that protect refugees while on the move.⁶⁸ This Declaration paved the way for the adoption of two new global compacts in 2018: a global compact on refugees and a global compact for safe, orderly and regular migration.⁶⁹ It further provides

⁵⁷ *Ibid.*

⁵⁸ OHCHR, *Universal Periodic Review* (2018).

⁵⁹ OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (2008).

⁶⁰ *Ibid.*, p.81.

⁶¹ *Ibid.*, p.81.

⁶² *Ibid.*, p.81.

⁶³ OHCHR, *Human Rights Council Universal Periodic Review* (Third Cycle).

⁶⁴ OHCHR, *Resolutions of the Human Rights Council, previous Commission on Human Rights, and the General Assembly on internally displaced persons*.

⁶⁵ General Assembly, “Mandate of the Special Rapporteur on Human Rights of Internally Displaced Persons” (2019) Forty-first session (A/HRC/RES/41/15).

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ UNHCR, *New York Declaration for Refugees and Migrants*.

⁶⁹ *Ibid.*

a framework for states to cooperate on solving refugees issues, and as well aim at the protection of the rights of migrants and refugees.⁷⁰

At the beginning of taking up her duties on 1 November 2016, the Special Rapporteur on the Human Rights of IDPs, Cecilia Jimenez-Damary, undertook a series of bilateral consultations with key stakeholders in order to shape the strategic priorities and main thematic priorities for the three years of work as a mandate-holder.⁷¹ The Special Rapporteur also decided to prioritize Partnerships with agencies working on internal displacement in the development of a multi-stakeholder “Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced Persons 2018-2020.”⁷² The Plan of Action was launched on 17 April 2018 and focuses on four prioritized issues noted at a 2017 IDP stakeholder meeting convened by the Special Rapporteur. These issues are; participation of IDPs; national laws and policies addressing internal displacement; data and analysis on internal displacement; and addressing protracted displacement and facilitating sustainable solutions.⁷³

The 37th regular session of HRC took place from 26 February to 23 March 2018.⁷⁴ This session marked the commemorative year of the UDHR and the *Vienna Declaration and Programme of Action*, which led HRC to hold a high-level panel discussion on the anniversaries of these important human rights framework documents.⁷⁵ Additionally, HRC adopted its *Resolution 37/2* (2018) on “The right to privacy in the digital age”, which extended the mandate of the Special Rapporteur on the right to privacy until March 2021.⁷⁶ In *Resolution 34/7* (2017), the HRC asked that the High Commissioner for Human Rights prepare a cogent report that would establish the principles, standards and best practices that could be made available for the promotion and protection of the right to privacy in the digital age and the responsibilities of the private sector in the protection of privacy rights.⁷⁷ The *report 39/29* was presented at the 39th session of the HRC in September 2018 and is available in all UN languages.⁷⁸ The report addresses the challenges that the digital world brings to the right to privacy which is more acute than ever.⁷⁹ The theme of the report focuses on privacy interferences trends and concerns; State surveillance and communication interception; and State responsibilities to respect and protect the right to privacy in the digital age.⁸⁰

Conclusion

HRC addresses human rights issues across the globe, on regional and national levels as well, and it works to ensure that Member States respect and protect the human rights and freedoms provided by international law.⁸¹ Ahead of future sessions, it has become clear that there is an important link between human rights and the 2030 Agenda for Sustainable

⁷⁰ General Assembly, “New York Declaration for Refugees and Migrants” (2016) Seventy-first session A/RES/71/1.

⁷¹ OHCHR, *Special Rapporteur on the Human Rights of internally displaced persons*.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ Human Rights Council, “Report of the Human Rights Council on its thirty-seventh session” (2016) Thirty-seventh session A/HRC/37/2.

⁷⁵ *Ibid.*

⁷⁶ Human Rights Council, “The right to privacy in the digital age” (2018) Thirty-seventh session A/HRC/RES/37/2.

⁷⁷ OHCHR, *Report of the Office of the United Nations High Commissioner for Human Rights on the right to privacy in the digital age*.

⁷⁸ *Ibid.*

⁷⁹ General Assembly, “The right to privacy in the digital age” (2018) Thirty-ninth session A/RES/39/29.

⁸⁰ *Ibid.*

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

Development and this relationship plays a vital role in the work of the HRC.⁸² With respect to the human rights of migrants and refugees, as part of the process of the *New York Declaration for Refugees and Migrants*, the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees will also remain an important aspect for HRC to consider.⁸³

Annotated Bibliography

General Assembly, “The Right to privacy in the digital age” (2018) Thirty-ninth session A/RES/39/29, available at: <https://daccess-ods.un.org/TMP/5857528.44810486.html> (accessed 14 December 2019)

The resolution adopted by the HRC provides guidance on how to address some of the pressing challenges that the right to privacy faces in the digital age. It provides a brief overview of the international legal framework and includes a discussion of the most significant current trends. It then turns to the obligations of States and the responsibility of business enterprises, including a discussion of adequate safeguards and oversight. The final chapter gives some insights into how remedies can be provided for privacy infringements and abuses.

Human Rights Council, “Institution-building of the United Nations Human Rights Council” (2007), Fifth session A/HRC/RES/5/1, available at: <http://www.refworld.org/docid/4ae9acbbd.html> (accessed 14 December 2019)

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

OHCHR, *Human Rights: A Basic Handbook for UN Staff*, available at: <http://www.ohchr.org/Documents/Publications/HRhandbooken.pdf> (accessed 14 December 2019)

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

⁸² *Ibid.*

⁸³ General Assembly, “New York Declaration for Refugees and Migrants” (2016) Seventy-first session A/RES/71/1.

OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (2008), available at: http://www.ohchr.org/en/AboutUs/CivilSociety/Documents/Handbook_en.pdf (accessed 14 December 2019)

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

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I. Protection of the Rights of Internally Displaced Persons and Refugees

“Similar to refugees, the internally displaced often face great uncertainty. They can be uprooted more than once as they seek opportunities to restart their lives, and risk being marginalized in the societies where they live. The consequences of our failure to resolve internal displacement can be devastating.” – **United Nations High Commissioner for Refugees, Filippo Grandi**⁸⁴

Introduction

Human Rights violations are both a cause and a consequence of internal displacement. These violations often precede or trigger displacement and during displacement, human rights violations often occur. According to a report by the Internal Displacement Monitoring Centre (IDMC), over 10 million new displacements were recorded in the first half of 2019.⁸⁵ During all phases of displacement, internally displaced persons (IDPs) experience increased risks of human rights violations as displacement provides fertile ground for human rights abuses such as torture, rape, as well as forced evictions and property loss.⁸⁶ Most times, the persons in displacement are unprotected and unable to assert their rights. Human rights violations are also present within refugee settings. According to the United Nations (UN) High Commissioner for Refugees (UNHCR),⁸⁷ “human rights violations are a major factor in causing the flight of refugees. Respect for human rights is also essential for the protection of refugees in countries of asylum”.⁸⁸ The protection of the rights of refugees and IDPs is important, as very often, the factors which led to their displacement involve violations of human rights. Their treatment in the countries of refuge or the IDP camps within the country should, therefore, represent an improvement on the situation from which they have fled.⁸⁹ Such camps or countries of refuge should offer an environment which provides the refugees and IDPs with some form of security against the threat of further violations of their human rights.

International and Regional Framework

Following World War I, governments responded to the millions of people who had been displaced and were seeking refuge by drawing up a set of international agreements to provide travel documents for these people.⁹⁰ After the Second World War, the number of people who had been forcibly displaced and/or resettled drastically increased.⁹¹ These occurrences were what led the international community throughout the 20th century to assemble a set of laws, guidelines and conventions to ensure the adequate treatment of refugees and the protection of their human rights. In July 1951, at a conference in Geneva, the *Convention relating to the Status of Refugees* (1951 Convention) was adopted;⁹² it was later amended by the *1967 Protocol*.⁹³ The *1967 Protocol* broadens the applicability of the *1951 Convention* and removes the geographical and time limits that were part of the *1951*

⁸⁴ Joint press release by the Special Rapporteur on the human rights of IDPs and UNHCR (2018).

⁸⁵ *Mid-Year Figures Internal Displacement from January to June 2019*.

⁸⁶ UNHCR, *Internal Displacement: Responsibility and Action* (2013) Handbook for Parliamentarians No.20 – 2013.

⁸⁷ UNHCR, *RLD5 – Human Rights and Refugee Protection*.

⁸⁸ Statement of the UNHCR to the 50th Session of the UN Commission on Human Rights (1994).

⁸⁹ Training Manual on Human Rights Monitoring: Chapter X – Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps, p. 169.

⁹⁰ UNHCR, *The Legal Framework for Protecting Refugees*, p. 1.

⁹¹ *Ibid.*

⁹² General Assembly, *Convention Relating to the Status of Refugees* (1951) 189 UNTS 137.

⁹³ General Assembly, *Protocol Relating to the Status of Refugees* (1967) 606 UNTS 267.

Convention.⁹⁴ Both documents define who a refugee is, and provides the social rights, legal protection and other forms of assistance which a refugee is entitled to receive.⁹⁵ Despite the fact that the *1951 Convention* imposes certain obligations on countries as regards the treatment of refugees, countries are not legally obliged to assist other countries which are overburdened with large numbers of refugees.⁹⁶ This concern, along with the rising refugee crises, led the high-level plenary of the General Assembly in September 2016 to adopt the *New York Declaration for Refugees and Migrants*.⁹⁷ The declaration reaffirmed the need to respect the human rights of refugees and saw 193 Member States commit to “a more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees”.⁹⁸

The Guiding Principles on Internal Displacement, which was first presented to the UN Human Rights Commission in 1998,⁹⁹ provide a framework for preventing, addressing and resolving internal displacement. In 2005, at the World Summit, Heads of State and Government Leaders unanimously recognized the Guiding Principles as an important international framework for the protection of IDPs.¹⁰⁰ The gross violation of human rights that occur amongst IDPs and Refugees are guarded against by several human rights conventions and instruments. The violations that are most evident are those against women and children as they are the most vulnerable groups. In 1979, the General Assembly adopted the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW),¹⁰¹ a treaty which serves as a codification of the international standards for women’s rights.¹⁰² The rights of children IDPs and Refugees are also specially protected by the *Convention on the Rights of the Child* (CRC),¹⁰³ an international treaty which protects the rights of children around the world. It was adopted by the General Assembly on 20 November 1989. The General Assembly has made several resolutions on the protection of IDPs, with their rights being of utmost consideration. *Resolution 74/160* (2019) obliges States to protect and provide assistance to IDPs without discrimination, as well as critically dissolve the causes of displacement;¹⁰⁴ *Resolution 56/164* (2016) notes the need to establish a global IDP database to keep track of IDPs in order to effectively protect them;¹⁰⁵ and *Resolution 70/165* (2015) emphasizes the importance of upholding IDPs rights and encourages the need for cooperation amongst States and international agencies in the area of supporting their (IDPs) development.¹⁰⁶

On the regional level, States in different parts of the world have developed guidelines and standards that complement the international framework for the protection of refugees. In Africa, the large-scale refugee movements which were produced by the conflicts that followed the end of the colonial era prompted the drafting and adoption of Organization of

⁹⁴ UNHCR, *The Legal Framework for Protecting Refugees*, p. 8.

⁹⁵ *Ibid.*

⁹⁶ Ionel Zamfir, *The Global compact on refugees: Strengthening international cooperation to ease the plight of refugees in the world* (2019).

⁹⁷ General Assembly, *New York Declaration for Refugees and Migrants* (2016).

⁹⁸ UNHCR, *The Legal Framework for Protecting Refugees*, p. 6.

⁹⁹ UNHCR, *Internal Displacement: Responsibility and Action* (2013).

¹⁰⁰ General Assembly, *2005 World Summit Outcome Resolution A/RES/60/1* (2005), para. 132; General Assembly *A/RES/66/165*, para. 12 (2012); *A/HRC/RES/23/8*, para. 12 (2013).

¹⁰¹ General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women* (1979) UNTS vol. 1249, p. 13.

¹⁰² Grace Poore, Regional Program Coordinator for Asia, IGLHRC, “Amazing Responses by CEDAW to Address LGBT Discrimination in Singapore” 27 July 2011.

¹⁰³ General Assembly, *Convention on the Rights of the Child* (1989) UNTS vol. 1577, p. 3.

¹⁰⁴ General Assembly, “Protection of and assistance to Internally Displaced Persons” (2019) Seventy-fourth session (A/RES/74/160).

¹⁰⁵ General Assembly, “Protection of and assistance to Internally Displaced Persons” (2016) Fifty-sixth session (A/RES/56/164).

¹⁰⁶ General Assembly, “Protection of and assistance to Internally Displaced Persons” (2015) Seventy session (A/RES/70/165).

African Unity (OAU) *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969).¹⁰⁷ There is also the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Kampala Convention) (2009) entered into force in 2012.¹⁰⁸ The *Kampala Convention*, which is the only legally binding regional standard on IDPs in Africa,¹⁰⁹ was designed as a tool to deal with the issues of internal displacement in Africa.¹¹⁰ In 2008, the *Pact on Security, Stability and Development in the Great Lakes Region*,¹¹¹ which was adopted in 2006, was entered into force. The Pact has two protocols which concern internal displacement: The *Protocol on the Protection and Assistance to Internally Displaced Persons* (the IDP Protocol) and the *Protocol on the Property Rights of Returning Persons*. The IDP Protocol requires its States parties “to adopt and implement the Guiding Principles as a regional framework for providing protection and assistance to IDPs in the Great Lakes Region”.¹¹² As at June 2018, the comprehensive refugee framework which was contained in the *New York Declaration for Refugees and Migrants*¹¹³ was being applied in eight countries in Sub-Saharan Africa including Djibouti, Ethiopia, Kenya, Somalia and Uganda. The aforementioned countries also applied the comprehensive refugee response framework in the regional context through the *Nairobi Declaration on Durable Solutions for Somali Refugees and the Reintegration of Returnees in Somalia*.¹¹⁴

In 1984, in Latin America, a colloquium of distinguished jurists and government representatives convened in Cartagena, Colombia to discuss the protection of refugees in Latin America.¹¹⁵ At this Convention, inspired by the *1969 OAU Convention*, they adopted the *Cartagena Declaration on Refugees*.¹¹⁶ The declaration reaffirms the importance of international cooperation to solve refugee problems and recommends the enlargement of the definition of refugees used throughout the region to include persons who have fled their country “because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”.¹¹⁷ In the Middle East and Asia, there are no binding instruments addressing refugee law.¹¹⁸ However, in 2001, Asian and African countries adopted the revised *Bangkok Principles on the Status and Treatment of Refugees*.¹¹⁹

Role of the International System

There are certain protections for IDPs under international human rights law. The UNHCR, United Nations Children’s Fund (UNICEF), the International Committee of the Red Cross (ICRC) and several other inter-governmental and non-governmental organizations have developed programmes to provide protection and assistance to IDPs in various

¹⁰⁷ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969) UNTS 1001.

¹⁰⁸ African Union, *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (2009).

¹⁰⁹ Human Rights Council, “Internal displacement and the role of national human rights institutions”, Report of the Special Rapporteur on the Rights of Internally Displaced Persons (A/HRC/41/40).

¹¹⁰ Human Rights Council, Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons (A/HRC/32/35).

¹¹¹ *The Pact on Security, Stability and Development in the Great Lakes Region*.

¹¹² *Mid-Year Figures Internal Displacement from January to June 2019*, p. 30.

¹¹³ General Assembly, *New York Declaration for Refugees and Migrants* (2016).

¹¹⁴ *Nairobi Declaration on Durable Solutions for Somali Refugees and Reintegration of Returnees in Somalia* (2017).

¹¹⁵ UNHCR, *The Legal Framework for Protecting Refugees*, p. 20.

¹¹⁶ UNHCR, *The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflicts and Other Situations of Violence in Latin America* (2013) PPLA/2013/03.

¹¹⁷ UNHCR, *A guide to international refugee protection and building state asylum systems* (2017).

¹¹⁸ UNHCR, *The Legal Framework for Protecting Refugees*, p. 21.

¹¹⁹ Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* (Bangkok Principles) (1966).

countries.¹²⁰ The ICRC gave a supervisory mandate to ensure the effective enforcement of international humanitarian law.¹²¹ In 2018, the Special Rapporteur on the rights of IDPs, marking the 20th anniversary of the Guiding Principles on Internal Displacement (GP20) participated in the development and launch of the multi-stakeholder GP20 Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People 2018-2020.¹²² The Plan of Action which was launched during a stakeholder meeting held in Geneva on 17 April 2018 had as its objective the reinforcement of multi-stakeholder engagement towards reducing and resolving internal displacement.

The Special Rapporteur, seeking the strengthening of regional mechanisms, supported the African Union in promoting the implementation of the *Kampala Convention*.¹²³ National Human Rights Institutions (NHRIs) have attuned their functions to become more aware of the protection needs of IDPs. In various countries, including Colombia, Kenya, Mexico, Nigeria, the Philippines, Uganda and Ukraine, NHRIs in partnership with humanitarian organizations play critical roles in addressing internal displacement. The Office of the High Commissioner for Human Rights (OHCHR) through its National Institutions and Regional Mechanisms Section, functions as an international partner to NHRIs; supporting their establishment thereof and supporting them in the implementation of their human rights mandates.¹²⁴ NHRIs are also promoting a rights-based approach to development in the context of the *2030 Agenda for Sustainable Development*. The 2030 Agenda offers NHRIs a global framework within which they can pursue national-level objectives on behalf of IDPs, including through the integration of internal displacement issues at the national and local development levels.

The Guiding Principles on internal displacement was also introduced into the UN Human Rights Commission in 1998 setting out the rights of IDPs and the obligations the government owe in ensuring their protection.¹²⁵ Regional areas through the 2006 *Pact on Security, Stability and Development in the Great Lakes Region of Africa* introduced a Protocol obliging states to incorporate and enforce the provisions of the Guiding Principles.¹²⁶

Climate Change and Internal Displacement

There is a link between climate change, disasters and displacement.¹²⁷ In October 2015, the UNHCR's Assistant High Commissioner for Protection, stated the existence of this link, that more people were being displaced from their homes "as a result of the interaction between environmental degradation, natural hazards, and climate change and the effects of rapid urbanization, water insufficiency, and food and energy insecurity", all of which was worsened by "desertification, drought, flooding, and the growing severity of disasters".¹²⁸ Every year, tens of millions of people are displaced as a result of natural and man-made disasters such as tsunamis, earthquakes and protracted droughts and extensive

¹²⁰ Human Rights Council, *Internal displacement and the role of national human rights institutions*, Report of the Special Rapporteur on the Rights of Internally Displaced Persons (A/HRC/41/40), p. 181.

¹²¹ Jean-Philippe Lavoyer, *Refugees and Internally Displaced Persons: International Humanitarian Law and Role of the ICRC* (1991).

¹²² *Ibid.*

¹²³ Report of the Special Rapporteur on the Rights of Internally Displaced Persons, "Human Rights Council, Internal Displacement and the Role of National Human Rights Institutions" (A/HRC/41/40), p. 3.

¹²⁴ *Ibid.*, p. 6.

¹²⁵ Roberta Cohen, *The Development of International Strategies to Protect Internally Displaced Persons*, (1998).

¹²⁶ Rhodri C. Williams, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, (2008).

¹²⁷ UNHCR, *UNHCR and Climate Change, Disasters and Displacement* (2017).

¹²⁸ Volker Türk, *Keynote Address, The Nansen Initiative, Global Consultation Conference Report: Geneva* (2015).

flooding.¹²⁹ Disasters such as the Asian tsunami of 2004 (1.6 million), the Northern Pakistan earthquake of 2005 (3.5 million) and Hurricane Katrina in the United States (800,000) generated large numbers of IDPs.¹³⁰ Forced displacement in Africa was driven by factors such as environmental degradation, erratic weather, floods and drought.¹³¹ In 2014, the IDMC estimated that in 100 countries, over 19.3 million people were forced to flee their homes because of disasters.¹³² In the first half of 2019, there were 7 million new displacements associated with over 950 disasters in 102 countries and territories.¹³³ In May 2019, Cyclone Fani triggered over 3.4 million new displacements in India and Bangladesh.¹³⁴

There have been several international initiatives regarding this issue such as the Sustainable Development Goals (SDGs), the World Humanitarian Summit, the Sendai Framework for Disaster Risk Reduction,¹³⁵ the *New York Declaration for Refugees and Migrants*, the Nansen Initiative on Disaster-Induced Cross-Border Displacement and its successor, the Platform on Disaster Displacement. However, there remains much work to be done on this issue.¹³⁶ The international community has been at the forefront of providing assistance to persons displaced by the impact of disasters. Since 1999, the UNHCR has carried out relief operations for persons displaced internally by disasters, including in the Philippines following the 2009 typhoons and in Pakistan following the 2010 floods.¹³⁷ In 2010, after the earthquake in Haiti, the OHCHR led the Global Protection Cluster in assisting those affected.¹³⁸ In 2015, the General Assembly in *Resolution 70/165* (2015) encouraged the Special Rapporteur on the human rights of IDPs to continue to explore the human rights dimensions and implications of disaster-induced internal displacement.¹³⁹ In his report, the Special Rapporteur on the human rights of IDPs called for more synergy in the protection and assistance of disaster-related IDPs, based on the protection agenda that was elaborated by the Nansen Initiative in 2015.¹⁴⁰

Sexual and Gender-Based Violence against Female Refugees and IDPs

With the rise in the population of refugees and IDPs, it has become increasingly important to address the security of women and girls in refugee and IDP camps. Women represent a source of survival and support for the whole group during different stages of the refugee or displaced cycle and as such their security should be seen as important as that of the entire group.¹⁴¹ In addition to the problems faced by all refugees and displaced persons, women face gender-specific threats and problems. Sexual and gender-based violence (SGBV) occurs throughout the refugee-cycle and it is one that is not always adequately detected or fully addressed.¹⁴² In the *UN Declaration on Violence Against Women* (1993), SGBV was defined to include battering, sexual abuse of children, marital rape, trafficking in women, forced prostitution and other violent acts against women perpetrated or

¹²⁹ Andrew Solomon, *Forced Displacement and Housing, Land, and Property Ownership Challenges in Post-Conflict and Reconstruction* (2009).

¹³⁰ *Ibid.*, p. 3.

¹³¹ Report of the Secretary-General, "Assistance to Refugees, Returnees and Displaced Persons in Africa" (A/RES/71/322).

¹³² Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons (A/HRC/32/35).

¹³³ UNHCR, *UNHCR and Climate Change, Disasters, and Displacement* (2017), p. 4.

¹³⁴ *Ibid.*, p. 2.

¹³⁵ General Assembly, *Sendai Framework for Disaster Risk Reduction 2015-2030* (2015) (A/RES/69/283).

¹³⁶ UNHCR, *The Legal Framework for Protecting Refugees*.

¹³⁷ *Ibid.*, p. 11.

¹³⁸ *Ibid.*, p. 12.

¹³⁹ Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons (A/HRC/32/35), p. 8.

¹⁴⁰ *Ibid.*

¹⁴¹ Recommendations for policy and practice from International Expert Seminar, *Improving the Security of Refugee and Displaced Women* (2002).

¹⁴² *Ibid.*, p. 26.

condoned by the State.¹⁴³ The prevalence of SGBV has been worsened by displacement.¹⁴⁴ In South Sudan, nearly half of the 2500 IDPs interviewed by International Organisation for Migration (IOM) reported that a woman or girl in their household had been a victim of some form of SGBV.¹⁴⁵ In Syria, impact assessments have shown the occurrence of high levels of SGBV among refugees fleeing the conflict.¹⁴⁶

SGBV is condemned under various international standards and guidelines relating to IDP women.¹⁴⁷ *Principle 11 of the UN Guiding Principles on Internal Displacement* provides that IDPs shall be protected against “rape, mutilation...gender-specific violence, forced prostitution and any form of indecent assault”.¹⁴⁸ The Guiding Principles have also laid the foundation on which international frameworks like the *Kampala Convention* and the Inter-Agency Standing Committee (IASC) *Framework on Durable Solutions for Internally Displaced Persons* has developed in the discussion of ways by which displaced women challenges could be put to rest.¹⁴⁹ Goal 5, Target 5.2 of the SDGs deals with the elimination of all forms of violence against women and girls, including sexual and other types of exploitation. SGBV is also condemned under several international human rights instruments, such as *Article 7 of the ICCPR*,¹⁵⁰ *Article 2 and 16 of the Convention against Torture*¹⁵¹ and *Article 5 of the Universal Declaration of Human Rights (UDHR)* which provide that no one shall be subjected to cruel, inhuman or degrading treatment.¹⁵²

Humanitarian agencies have also given special attention to SGBV prevention and response through the provision of increased access to healthcare, psychosocial support and legal aid and community engagement.¹⁵³ In 1991, *Guidelines on the Protection of Refugee Women* was adopted by the UN Human Rights Commission with the aim of addressing the specific risks faced by women and girls.¹⁵⁴ For example, in Nigeria, the UN Entity for Gender Equality and the Empowerment of Women (UN-Women) built seven new “empowerment spaces” for displaced women. These centres, which were focused on the prevention of and response to SGBV, attended to over 110,000 people.¹⁵⁵ The UN-Women also extended its efforts to Cameroon where it increased awareness of SGBV prevention among 17,000 IDPs.¹⁵⁶ Noting that the risk of SGBV is heightened by the lack of access to safe and sustainable energy, several agencies of the UN through a steering committee, participated in the development of the *Global Plan of Action for Sustainable Energy Solutions in Situations of Displacement* (2018). The Plan launched in July 2018 emphasized the role of sustainable energy in reducing the exposure of women and girls to SGBV. The UN

¹⁴³ Articles 1 and 2 of the UN Declaration on the Elimination of Violence against Women (1993). See General Assembly, “Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach – Report of the Secretary-General” (2017) (A/RES/71/818).

¹⁴⁴ UN Secretary-General, “Assistance to refugees, returnees and displaced persons in Africa” (2018) (A/RES/73/340).

¹⁴⁵ *Ibid.*, p. 7.

¹⁴⁶ Lorraine Charles and Kate Denman, “Syrian and Palestinian Syrian Refugees in Lebanon: The Plight of Women and Children” (2013) 14(5) *Journal of International Women’s Studies*, 96-111 at 103.

¹⁴⁷ UNHCR, *Handbook for the Protection of Women and Girls* (2018); UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response* (2003); Inter-Agency Standing Committee, *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies* (2005); Inter-agency Working Group on Reproductive Health in Crises, *Inter-agency Field Manual on Reproductive Health in Humanitarian Settings* (2010).

¹⁴⁸ UN Office for the Coordination of Humanitarian Affairs (OCHA), *Guiding Principles on Internal Displacement* (1998), principles 11(2) and 19(2).

¹⁴⁹ Brookings-Bern Project on Internal Displacement, *Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons* (2010); UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Framework on Durable Solutions for Internally Displaced Persons* (9 February 2010) A/HRC/13/21/Add.4.

¹⁵⁰ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

¹⁵¹ *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984) UNTS 1465.

¹⁵² See *Article 2 and 7 of the UDHR*, *Article 2(1) of ICCPR*, *Article 2(2) of the ICESCR*.

¹⁵³ Recommendations for policy and practice from International Expert Seminar, *Improving the Security of Refugee and Displaced Women* (2002).

¹⁵⁴ *Ibid.*, p. 22.

¹⁵⁵ *Ibid.*

¹⁵⁶ UN Secretary-General, “Assistance to refugees, returnees and displaced persons in Africa” (A/RES/74/322).

Population Fund (UNFPA) supported programmes in Kenya which provided medical support for survivors of rape and psychosocial support services for refugees in Kakuma camp and Kalobeyei settlement.¹⁵⁷

Addressing Discrimination against the LGBTI Refugees and IDPs

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals within the refugee community are also subject to particular vulnerabilities¹⁵⁸ as they experience various forms of harm while in forced displacement.¹⁵⁹ A few examples of the harm they experience include violence and harassment by other refugees, sexual and gender-based violence (SGBV), safety threats and discrimination in healthcare, accommodation and employment by State and non-State agents, amongst several others.

The protection of the LGBTI community among refugees and IDPs is in line with international human rights instruments and resolutions.¹⁶⁰ *Article 1 of the UDHR* provides that “all human beings are born free and equal in dignity and rights”, and *Article 2* states that “everyone is entitled to all the rights and freedoms set forth in this Declaration”. All people, including members of the LGBTI community, are entitled to the equal protection of international human rights law without any form of discrimination.¹⁶¹ The Preamble of the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*¹⁶² provides:

All persons, regardless of their sexual orientation or gender identity, are entitled to full enjoyment of all human rights, and the application of existing human rights entitlements should take account of the specific situations and experiences of people of diverse sexual orientations and gender identities.

Despite the existence of these laws, implementation has been a huge issue. Reports have shown that many LGBTI persons are harassed and attacked by other members of the refugee community and by local people.¹⁶³ Some are forced to flee their homes due to the persecution they face in their countries. However, due to their sexual orientation and gender identity, LGBTI refugees often face the same persecution they fled from and they are subjected to several forms of discrimination and violence that other refugees do not experience.¹⁶⁴ In 2009, the Human Rights Watch reported the deportation of gay men, who possessed UNHCR documents, from Jordan and Syria back to Iraq.¹⁶⁵ LGBTI refugees are also exposed to a heightened risk of violence, such as sexual assault, when they are detained in the country of transit or asylum.¹⁶⁶ LGBTI refugees also experience discrimination concerning access to housing, healthcare, employment, education and other social services in host countries. Access to critical HIV prevention and care services could be hindered by the double stigma faced by LGBTI refugees who are HIV positive.¹⁶⁷

¹⁵⁷ *Ibid.*

¹⁵⁸ UNHCR, *Guidelines on International Protection* No. 9.

¹⁵⁹ UNHCR, *Working with Lesbian, Gay, Bisexual, Transgender & Intersex Persons in Forced Displacement* (2011).

¹⁶⁰ UN Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement* (1998), principle 4.

¹⁶¹ OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, (2012) para. 5.

¹⁶² International Commission of Jurists, *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (2007).

¹⁶³ Helsinki Citizens' Assembly - Turkey and Organization for Refuge, Asylum and Migration, *Unsafe Haven: the Security Challenges Facing Lesbian, Gay, Bisexual and Transgender Asylum Seekers and Refugees in Turkey*, (2009).

¹⁶⁴ UNHCR, *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*, (2010).

¹⁶⁵ Human Rights Watch, *They Want Us Exterminated: Murder, Torture, Sexual Orientation and Gender in Iraq* (2009).

¹⁶⁶ *Ibid.*; UN Committee Against Torture, “Concluding Observations: United States of America” (2006).

¹⁶⁷ *Ibid.*; UNHCR, *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees* (2010).

Actions have been taken by various international agencies in addressing this issue. The Human Rights Campaign on June 2019, marking the World Refugees Day, highlighted the challenges faced by the LGBTQ refugees in the United States.¹⁶⁸ In 2015, the OHCHR along with 11 UN agencies, including the UNHCR and the World Food Program (WFP), issued a joint LGBTI rights statement which noted the fact that LGBTI people “often face violence and discrimination when seeking refuge from persecution and in humanitarian emergencies”.¹⁶⁹

Realization of the Right to Adequate Housing for Refugees and IDPs

The right to adequate housing is guaranteed to all persons as a component of the right to an adequate standard of living.¹⁷⁰ It is closely linked to other human rights, such as the right to dignity, freedom from discrimination and other rights which are guaranteed under the various international human rights instruments.¹⁷¹ *Article 25 of the UDHR* recognized the right to adequate housing where it provided that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The right to adequate housing is also recognized under *Article 11(1) of the ICESCR* which provides that State Parties to the Covenant shall “recognize the right of everyone 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.” The *UN Guiding Principles on Internal Displacement* further provides for the right of IDPs to adequate housing.¹⁷² *Article 21 of the 1951 Refugee Convention* provides that as regards to housing, refugees shall be accorded treatment as favourable as possible or at least, not less favourable than that given to other aliens in similar circumstances.¹⁷³ The UN Committee on Economic, Social and Cultural Rights in its *General Comment No. 4 on the Right to Adequate Housing* stated that adequate housing includes the protection against forced evictions and arbitrary destruction of one’s home.¹⁷⁴ The *UN Principles on Housing and Property Restitution for Refugees and Displaced Persons* (Pinheiro Principles) makes specific reference to the right to housing and encourages States to take positive measures to assist and alleviate the plight of refugees and IDPs living in inadequate shelters.¹⁷⁵ This includes key aspects like availability of services, facilities, materials and infrastructure; habitability; accessibility; and location.¹⁷⁶

In 2018, the UN and its partners identified one million refugees and over nine million IDPs who required shelter-related assistance.¹⁷⁷ Refugee and IDP camps around the world are

¹⁶⁸ Milagros Chirinos, *HRC Honors LGBTQ Refugees and Asylum Seekers on World Refugee Day*.

¹⁶⁹ Kyle Knight, *LGBT People in Emergencies – Risks and Service Gaps*.

¹⁷⁰ Article 25 of the UDHR; Article 11 of the ICESCR; UN-Habitat, “The Habitat Agenda Goals and Principles, Commitments and Global Plan of Action” (1996), paras. 60 and 61.

¹⁷¹ Legislative Analysis, IDPs’ Right to Adequate Housing.

¹⁷² UN Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement* (1998), principle 18.

¹⁷³ Brian Gorlick, *New Issues in Refugee Research Working Paper No. 30 – Human rights and refugees: enhancing protection through international human rights law*, (2000) p. 6.

¹⁷⁴ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing* (Article 11(1) of the ICESCR) 13 December 1991, E/1992/93.

¹⁷⁵ *UN Principles on Housing and Property Restitution for Refugees and Displaced Persons*, principles 2 and 8.

¹⁷⁶ Humanitarian Charter and Minimum Standards, *Chapter 4: Minimum Standards in Shelter, Settlement and Non-Food Items*.

¹⁷⁷ UN Secretary-General, “Assistance to refugees, returnees and displaced persons in Africa” (2018) A/RES/73/340, p. 11.

often overcrowded and dilapidated and as such, they do not provide adequate shelter for the inhabitants.¹⁷⁸ In 2018, out of the 10,000 refugees who were registered with the UNHCR, about 8,000 of them were being held in detention centres. Due to increased overcrowding and a lack of basic living conditions, the condition of the detention centres deteriorated¹⁷⁹ and as such did not meet the standards of adequate housing provided by international law. Urban refugees and IDPs in urban areas do not fare much better, as due to their legal status or the practice in the host countries, they are unable to rent adequate accommodation. As a result of this, many of them are forced to live in precarious, overcrowded and insecure conditions in the urban cities.¹⁸⁰ In Afghanistan, due to the absence of affordable housing options, vulnerable IDP families occupied public and private land without permission and as such, they were exposed to the constant risk of forced eviction.¹⁸¹ Pointing out the conditions of housing centres in Europe, the Report of the Committee on Migration, Refugees and Displaced Persons noted that the centres which were accommodating refugees and IDPs lacked basic hygiene, appropriate security, water and energy supplies; and in addition to that, the buildings were seriously damaged.¹⁸²

There have been several initiatives, which have been developed to address the issue of housing amongst refugees and IDPs. The Council of Europe Development Bank has since 2010, been involved in a regional initiative known as the “Regional Housing Programme”. The initiative which is aimed at the provision of durable housing solutions for the most vulnerable refugees and IDPs covers Bosnia and Herzegovina, Croatia, Montenegro and Serbia and was estimated to benefit 74,000 people.¹⁸³ In 2014, the UNHCR in partnership with United Nations Development Programme (UNDP), UNICEF, IOM and civil society partners began the implementation of a 7 million euro project under the Instrument for Pre-Accession Assistance (IPA) programme of 2012. The project which put into operation the principles adopted in the Joint Declaration has assisted 800 families out of whom 125 were assisted with their housing needs.¹⁸⁴

Providing access to education for internally displaced children and refugees

Education is essential as it empowers and promotes the development of every individual’s wellbeing.¹⁸⁵ The importance of education to displaced communities is not far-fetched, as access to education provides self-reliance skills.¹⁸⁶ It is crucial to the development of the host community, makes refugees aware of other human rights that should be enforced and as well increase the chances of them being of great help to their home communities when they return.¹⁸⁷ The right to education is provided for in various international frameworks like *Article 28 of the CRC* and *Article 1 of the UNESCO Convention against Discrimination in Education (1960)*,¹⁸⁸ both reaffirming the right to equal treatment and education of children at all levels. Former UN Special Rapporteurs on the right to education, Moumne Rolla and Sakai Leticia, stated “women, men, boys and girls of all ages and backgrounds,

¹⁷⁸ OHCHR, *Fact Sheet No. 21: The Human Right to Adequate Housing* (2009).

¹⁷⁹ UN Secretary-General, “Assistance to refugees, returnees and displaced persons in Africa” (2018) A/73/340, p. 6.

¹⁸⁰ OHCHR, *Fact Sheet No. 21: The Human Right to Adequate Housing* (2009).

¹⁸¹ Caroline Howard and Jelena Madzarevic, *Still at risk: forced evictions in urban Afghanistan*.

¹⁸² Report of the Committee on Migration, Refugees and Displaced Persons, *Alternatives to Europe’s sub-standard IDP and refugee collective centres*.

¹⁸³ *Ibid*, p. 5.

¹⁸⁴ *Ibid*, p. 5 & 8.

¹⁸⁵ Ruth Naylor, *The right to education for refugees and internally displaced people* (2016).

¹⁸⁶ *Ibid*.

¹⁸⁷ Rima Cherri, *Turkey scholarship let’s star Syrian student pursue dentistry dream* (2019).

¹⁸⁸ UNESCO, *Convention against Discrimination in Education* (1962) 429 UNTS 93.

whether migrants, refugees, asylum-seekers, stateless persons, returnees or IDPs have the right to education”.¹⁸⁹ This right is in line with Goal 4 of the SDGs which notes the importance of education at all levels in the attainment of a sustainable future, and meeting up with this goal would mean fulfilling other goals as eradicating poverty and reducing inequality.

Although the need and importance of education are known, out-of-school refugees and internally displaced children are of great concern as enrolment rate among refugees is low.¹⁹⁰ According to UNHCR, 3.2 million school-aged refugee children are out of school.¹⁹¹ UNHCR, giving world statistics of this crisis reports that at the end of 2016, 47% and 84% of refugee children were out of primary school and secondary school respectively.¹⁹²

Education opportunities provided are limited, and refugees and IDPs face various challenges in gaining access to quality education. Common barriers include language barrier, overcrowded schools which negatively has an impact on the provision of quality education; discrimination due to their displaced status;¹⁹³ lack of documentation as refugee children find it hard to obtain certain certificates needed for their registration; payment of school fees, child exploitation issues; inadequate compensation for teachers as well as a significant barrier towards the provision of quality education as the salaries they receive has an effect on their morale and how efficient they would work.¹⁹⁴ There is a need to recruit more teachers as UNESCO Institute for Statistics estimated in 2016 that by 2030, countries would need to recruit about 3.4 million and 16.7 million teachers in primary and secondary school respectively to provide quality education in the attainment of Goal 4 of the SDGs.¹⁹⁵ Some barriers are peculiar to females; their access to education being hindered by such factors as cultural restrictions, early marriage and fear of being faced with gender-based violence in these schools.¹⁹⁶ Under the pressure of displacement, displaced families prioritize the benefits they get from using their children for domestic labour and early marriage and would rather want their children out of school.¹⁹⁷

There is however a need to make displaced persons see the necessity of quality education as its protective quality equips children with the knowledge that would protect them from exploitation, which is also highly significant to their growth.¹⁹⁸ It further equips them with effective means through which they could rebuild their lives, bring themselves out of poverty, shape and contribute meaningfully to their communities.¹⁹⁹ Education provides a dependable and safe environment for these people. Apart from primary education, secondary education and vocational training are all important in providing a sustainable

¹⁸⁹ Mounne Rolla and Sakai Leticia, *Protecting the right to education for refugees*.

¹⁹⁰ Rima Cheri, *Turkey scholarship let's star Syrian student pursue dentistry dream* (2019).

¹⁹¹ Stephanie Bengtsson and Ruth Naylor, *Education for refugees and IDPs in low-and-middle-income countries: Identifying challenges and opportunities* (2016).

¹⁹² Inter-agency Information Management Unit, *Back to school-2016* (2016).

¹⁹³ UNICEF, *Equitable Access to Quality Education for Internally Displaced Children*.

¹⁹⁴ Stephanie Bengtsson and Ruth Naylor, *Education for refugees and IDPs in low-and-middle-income countries: Identifying challenges and opportunities* (2016).

¹⁹⁵ Refugee Education 2030, *A Strategy for Refugee Inclusion*.

¹⁹⁶ Stephanie Bengtsson and Ruth Naylor, *Education for refugees and IDPs in low-and-middle-income countries: Identifying challenges and opportunities* (2016).

¹⁹⁷ Mounne Rolla and Sakai Leticia, *Protecting the right to education for refugees*.

¹⁹⁸ Stephanie Bengtsson and Ruth Naylor, *Education for refugees and IDPs in low-and-middle-income countries: Identifying challenges and opportunities* (2016).

¹⁹⁹ UNICEF, *Equitable Access to Quality Education for Internally Displaced Children*.

future for refugees and IDPs. In a recent UNHCR report, the significance of education in enabling children and youth is to “thrive and not just to survive”.²⁰⁰

The Refugee Education Strategy launched by the UNHCR was made to act as a guide towards the implementation of Goal 4 of the SDGs targets.²⁰¹ One of the objectives of this strategy is to create a safe environment for refugee students while learning and ensure schools respect their diversities. UNHCR in its implementation of this strategy in Malaysia where there are 30,000 refugee children has been able to encourage the creation of learning centres that adopts the national education curriculum. Education is a building block towards the progressive development of refugees and IDPs and the attainment of the SDGs as well. May-Elin Stener, the Deputy Permanent Representative of Norway stated that “progress towards the SDGs will not be achieved if these people (IDPS) are not reached”.²⁰²

The duty is therefore on host countries to ensure the actualization of this right, without discrimination on any grounds. The *Incheon Declaration, Education 2030* emphasizes the duty of Member States to make provisions that would strengthen the educational systems for all children including IDPs and refugees.²⁰³ The *Global Framework on Refugee Education* has been initiated to ensure host communities have the support they need in protecting these groups.²⁰⁴ New global partnerships such as the Global Partnership for Education have developed a means which can be used by Members States to ensure refugees and IDPs have access to education.²⁰⁵ Some countries have created national policies towards education like in Thailand where the “Education for All” policy which includes all stateless persons was implemented.²⁰⁶ African countries like Ethiopia, Djibouti, and Chad have taken actions to ensure refugee children are involved in their national education system. For example, Uganda in partnership with UNICEF has created a three-year plan running from 2018-2021 which aims at ensuring refugees have access to education at all levels.²⁰⁷ These are viable means adopted to ensure easy access to education.

Addressing the employment needs of IDPs and refugees

Creating more livelihood opportunities has become part of the discourse in relation to refugee assistance in the international sphere, as it would make refugees independent, thereby gradually eliminating the consequences of displacement.²⁰⁸ Equipping IDPs with sustainable livelihoods would reduce their dependency on humanitarian assistance and help them cope with the challenges they face in their displaced locations which would at best integrate them with their host communities. The UNHCR’s Convention Plus Initiative and The Agenda for protection consist of some goals and objectives aimed at promoting livelihoods for refugees. Goal 3: “Sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees”, and Objective 7: “Achievement of Self-Reliance for Refugees” of this Initiative clearly provide reasonable approaches towards the development of livelihood opportunities for refugees.

²⁰⁰ UNHCR, *Missing Out: Education in Crisis* (2016).

²⁰¹ Delia Paul, *UNHCR Refugee Education Strategy Promotes Inclusion* (2019).

²⁰² *Ibid.*

²⁰³ Moumne Rolla and Sakai Leticia, *Protecting the right to education for refugees*.

²⁰⁴ Report from Save the Children, *Education at the global refugee forum takes shape with the new framework* (2019).

²⁰⁵ Summary of UNHCR spokesperson Babar Baloch speech, *More support needed for refugees’ education in Iran* (2019).

²⁰⁶ Refugee Education 2030, *A Strategy for Refugee inclusion*.

²⁰⁷ General Assembly, Report of Secretary-General, *Assistance to refugees, returnees and displaced persons in Africa* (2018).

²⁰⁸ Machtelt De Vries, *Refugee livelihoods: A review of evidence* (2006).

International Labour Organisation (ILO) recognizes livelihood as an important tool towards the development of displaced communities and has established some frameworks aimed towards this goal like its *Guiding Principles on the Access of Refugees and other Forcibly Displaced Persons to the Labour Market* and the *Employment and Decent work for Peace and Resilience*,²⁰⁹ which has a significant vision of providing work opportunities for forcibly displaced communities.²¹⁰ Because IDPs and refugees usually work informally under unsafe conditions and get paid wages lower than the minimum standard,²¹¹ ILO has also adopted *Conventions No. 97* and *No. 143* related to migrants to promote equal treatment amongst workers, refugees inclusive.

Without livelihood opportunities, IDPs and refugees would most likely remain in poverty, making them less useful to their host country as well as reduce their chances of becoming self-reliant. Ensuring IDPs and refugees have equal access to work is an issue that needs to be addressed. Various International frameworks have been made in this regard, such as the *New York Declaration for Refugees and Migrants*²¹² and *Comprehensive Refugee Response Framework*, both aimed at increasing the number of self-reliant refugees.²¹³ *Articles 17, 18 and 19 of the 1951 Refugee Convention* and *Article 6 of the ICESCR* are provisions that guarantee the right to work of every individual.

Notwithstanding these provisions, refugees are not allowed to work in about 50% of asylum countries²¹⁴ due to various barriers standing in the way of their implementation such as recruitment requirements and language barriers. Absence of enforcement of other closely related rights such as freedom of movement and right to land is another factor that hinders refugees' access to enjoy available jobs.²¹⁵

Even where public employment opportunities are provided, it has never been enough to help all IDPs.²¹⁶ Davit Darakhvelidze, Minister of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia made a statement that further notes the need for sustainable livelihoods in assisting forcibly displaced persons. He stated that "until today, the main problems to solve has been housing and shelter. But a multi-sectoral plan to improve the livelihoods of IDPs is equally essential... trying to provide emotional support, to make the IDPs believe in their capabilities for self-dependency".²¹⁷

Some of the notable challenges are lack of access to financial services, access to land for those involved in agricultural activities, skills and knowledge.²¹⁸ IDPs and refugees lack financial services to create livelihoods for themselves. They seek help from secondary sources like commercial banks but are subjected to loan conditions such as being required to provide collateral which they do not have most at times, making it difficult for them to expand their business. Many refugees and IDPs prefer agricultural livelihoods and subsistence farming, especially as a coping mechanism. They are however faced with the

²⁰⁹ International Labour Organisation, *Employment and Decent Work for Peace and Resilience Recommendation* (No. 205) 2017.

²¹⁰ International Labour Organisation, *ILO to facilitate better access to labour market opportunities for refugees and IDPs* (2019).

²¹¹ International Labour Organisation, *Social Justice Decent work, Lessons learned of ILO's refugee response programme in Turkey: Supporting livelihood opportunities for refugees and host communities* (2019).

²¹² General Assembly, *New York Declaration for Refugees and Migrants* (2016) A/RES/71/1.

²¹³ UNHCR, *Refugee Livelihoods and Economic inclusion 2019-2023 Global Strategy Concept Note* (2018).

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ International Labour Organisation, *Social Justice Decent work, Lessons learned of ILO's refugee response programme in Turkey: Supporting livelihood opportunities for refugees and host communities*, (2019).

²¹⁷ Report Supporting the livelihoods of internally displaced persons in Georgia, *A review of current practices and lessons learned*.

²¹⁸ *Ibid.*

problem of getting access to land and natural resources with equal quality that would provide income for a large number of people. Host countries have however supported rural refugee livelihood initiatives.²¹⁹ Zambia, for instance, in the late 2000s, engaged in an initiative to make refugees more productive,²²⁰ which after a year's implementation met the target of several refugees who could rely on themselves for food.²²¹

NGOs have sought to fill in the credit gap for IDPs to allow easy access to financial assistance with various schemes as like that of the Centre for Training and Consultancy, a Georgina NGO that reduces interest rates for loans given to IDPs.²²² In situations where they lack skills that would be of effective use in the labour market, investing in education and vocational training²²³ to improve their knowledge and skills on how to make efficient use of their assets for their benefits is a useful step towards addressing livelihood issues for IDPs and refugees.²²⁴ According to research in Guinea, education is seen amongst refugees as an important tool in promoting self-reliance and alleviating poverty.²²⁵

Creating new strategies that would provide livelihood opportunities is also necessary for today's contemporary society. Information and Communication Technology (ICT) is an efficient tool that could be used to address livelihood support issues enhancing self-reliance of these groups.²²⁶ Technology would provide easy access to learning resources that would teach them vocational skills, make it easy to find jobs and provide new employment opportunities like online-based work enabling them to work wherever they find themselves without having to satisfy work requirements. The private sector as well could assist by supporting and enhancing existing income generation activities for refugees to reduce reliance on governmental aid.²²⁷

Formulating more labour market policies that would assist these groups in accessing sustainable livelihoods, so as to ensure they get equal employment opportunities as other members of the host community is another means.²²⁸ ILO for instance launched a market policy programme to support Ethiopia in providing economic opportunities to refugees thereby expanding their access to the labour market.²²⁹ ILO has also set up the ILO Refugee Response programme based on three pillars: increasing easy access to labour supply through skills related intervention; supporting local areas in developing job opportunities and assisting those with entrepreneurship ideas; and supporting labour market policies and encouraging compliance.²³⁰ Turkey has adopted the 2016 Regulation on Provision of Work permit for people under temporary protection to reduce challenges Syrian and non-Syrian refugees face in satisfying recruitment requirements, and the National Employment Strategy to provide equal job opportunities without

²¹⁹ Machtelt De Vriese, *Refugee livelihoods: A review of evidence* (2006).

²²⁰ UN High Commissioner's Forum, *Forum/2005/3*, p. 14.

²²¹ Machtelt De Vriese, *Refugee livelihoods: A review of evidence* (2006).

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ Maho Hatayama, *ICTs and livelihood supports of refugees and IDPs*.

²²⁷ DCED Synthesis Note, *Private sector development for refugees*.

²²⁸ Roger Zetter and H lo se Ruadel, *Refugees' right to work and access to labour markets: constraints, challenges and ways forward*.

²²⁹ General Assembly, Report of Secretary-General, *Assistance to refugees, returnees and displaced persons in Africa* (2018).

²³⁰ International Labour Organisation, Social Justice Decent work, *Lessons of ILO's refugee response programme in Turkey: Supporting livelihood opportunities for refugees and host communities* (2019).

discrimination.²³¹ Nigeria in showing her commitment to the development of displaced populations implemented the Economic Recovery and Growth Plan (ERGP) 2017-2020, which aims at providing equal job opportunities significantly prioritizing IDPs.²³²

The creation of more sustainable livelihoods is important as it would eradicate all forms of poverty which is in line with Goal 1 of the SDGs, which aims at ending poverty in all forms.²³³ A target underneath Goal 8 of the SDGs is to ensure that by 2020, a strategy for youth employment is developed which would specifically include refugee youths as well. Cecilia Jimenez-Damery, the UN Special Rapporteur on the Human Rights of IDPs pointed out the relevance of the achievement of the *2030 Agenda on Sustainable Development* to IDPs.²³⁴ She noted that the achievement of some goals, such as SDG 8 relating to productive employment and decent work would provide easy access to employment for IDPs.

The UNHCR in dealing with this issue has engaged in advocacy aimed at creating an environment that would let refugees have de-facto access to dignified work, and has also encouraged economic inclusion of refugees, as regards not only gaining access to labour markets but also other economic opportunities.²³⁵

Conclusion

UN agencies and their partners have renewed their commitment to resolve and reduce internal displacement, in response to the multiple crises around the world which have uprooted millions within the borders of the countries.²³⁶ The Special Rapporteur on the human rights of IDPs, Cecilia Jimenez-Damery said, “bold and ambitious steps are needed to face this complex human rights, humanitarian and development challenge”.²³⁷

Further Research

Considering the topic and the subtopics within it, delegates are asked to consider the following questions: In what ways can employment opportunities be made readily available for refugees and IDPs on arrival in their country of residence? How can the guidelines regarding SGBV amongst refugees be effectively implemented within refugee and IDP camps? What further steps can the UN through the HRC take to eliminate discrimination against LGBTI refugees and IDPs in countries where members of the LGBTI community are regarded as criminals? In what ways can Member States of the UN partner with one another towards the protection of the rights of IDPs and refugees? In what ways can the HRC partner with other UN bodies like UNICEF towards the provision of education to child refugees and IDPs? What effective solutions can the UN use in solving the problem of climate change as a cause of internal displacement? What sustainable housing solutions can be provided for IDPs and refugees considering the economic capabilities of the host countries?

²³¹ *Ibid.*

²³² Masooma Rahmety and Alice Debarre, *Connecting National Policies to the SDGs in Tackling Internal Displacement* (2019).

²³³ The Sustainable Development Goals and Migrants/Migration: Regarding the UN 2030 Sustainable Agenda.

²³⁴ At the meeting of IPI July 17th high-level event.

²³⁵ UNHCR, *Refugee Livelihoods and Economic Inclusion 2019-2023 Global Strategy Concept Note* (2018).

²³⁶ *Joint press release by the Special Rapporteur on the human rights of IDPs, and UNHCR* (2018).

²³⁷ *Ibid.*

Annotated Bibliography

Refugees Deeply, *International Legal Framework for Protecting Refugees*, available at: <https://www.newsdeeply.com/refugees/background/international-legal-framework> (accessed 14 December 2019)

This document is useful as it gives delegates a basic knowledge about the legal framework for the protection of refugees. Delegates are enlightened about why certain legal frameworks were put in place; they are also given further information about who a refugee is and the kind of protection offered to refugees by the frameworks in place.

UNHCR, *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees* (2010), available at: <https://www.refworld.org/docid/4cff9a8f2.html> (accessed 14 December 2019)

In this document, delegates gain insight into the challenges faced by LGBTI refugees. The document discusses the legal and policy framework surrounding the protection of LGBTI refugees; it also points out the security challenges faced by LGBTI refugees in the phase of flight and settlement. Solutions are propounded in this regard and delegates would, therefore, gain insight into what is currently being done by the UN in solving this problem.

UNHCR, *UNHCR and Climate Change, Disasters, and Displacement* (2017), available at: <https://www.refworld.org/docid/59413c7115.html> (accessed 14 December 2019)

Delegates will find this document useful as they research on the link between climate change and displacement. In this document, the role of the UNHCR in the Global Protection Cluster is discussed; as well as UNHCR's general role in the context of climate change and displacement. In this document, delegates will learn about the challenges faced by the UNHCR in the field of disaster-induced displacement; the ways in which displacement caused by climate change can be prevented and possible solutions to the Global issue.

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II. The Right to Privacy in the Digital Age

“Every person is entitled to a ‘private sphere’ free from undue interference or surveillance by the State or other actors” – **Navi Pillay, UN Human Rights Chief**²³⁸

Introduction

The right to privacy is a fundamental human right that has to be duly catered for, especially in the advent of the digital era. Information is prone to being shared without consent of the source or the owner, violating the right to privacy of such. In the wake of the digital age, there seems to be a rather blurred line between providing information for the public as against the respect and protection of the right to privacy of individuals. This has led to the discussion of distinguishing the right to privacy of individuals from public enlightenment in the digital age through activities such as information sharing, Information Communication and Technology (ICT) etc. Thus, this makes the right to privacy in the digital age an important subject of discussion.²³⁹

The fast improvement of society through digital technologies has formed the basis of the digital age and has similarly introduced it with new challenges, like the violation of privacy and threats to security.²⁴⁰ Also, the taking and accumulation of personal data as well as the tracking of digital communication can adversely affect human rights such as the freedom of expression and the freedom of assembly and association.²⁴¹ This information is taken in form of Meta-Data, which is data that is produced when using electronic communication tools, such as chat rooms, e-mails and social media. It can reveal information about people which ordinarily should be very personal or known to one’s close community such as habits, activities etc.²⁴² The data can be used for various purposes such as specific commercials or adjusting offers.²⁴³ The other implication of this is that it proves a challenge to privacy as a result of the risk that comes with data collection, the most popular being hacking.²⁴⁴

Risks to privacy in the digital age are heightened for certain groups, one of these groups being children.²⁴⁵ Children’s right to privacy is extremely vulnerable especially when using the internet, because of their lack of knowledge about the processing of personal data, online surveillance, or pre-existing risks such as cyber bullying and stalking.

International and Regional Framework

The right to privacy is recognised in various international and regional human rights instruments. The *Universal Declaration of Human Rights* (UDHR)²⁴⁶ is the first comprehensive international instrument on human rights. *Article 12 of the UDHR* provides that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”. This serves a ground or

²³⁸ UN Human Rights Chief Navi Pillay at the 24th Human Rights Council meeting in Geneva.

²³⁹ Human Rights Council, *Report of the Special Rapporteur on the Right to Privacy* (2019) Fortieth session A/HRC/40/63.

²⁴⁰ General Assembly, “The Right to Privacy in the Digital Age” (2017) Seventy-first session A/RES/71/199.

²⁴¹ UN HRC 42: *Action to Protect Privacy and Address Artificial Intelligence among Key Priorities* (2019).

²⁴² *Ibid.*

²⁴³ Human Rights Council, “Report of the Special Rapporteur on the Right to Privacy” Fortieth session (2019) A/HRC/40/63.

²⁴⁴ Human Rights Council, “The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights” (2017) A/HRC/27/37.

²⁴⁵ UNICEF, *Child Privacy in the Age of Web 2.0 and 3.0: Challenges and Opportunities for Policy* (2017).

²⁴⁶ *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A (III).

foundation for the provision and protection of the right to privacy. It is from this provision of the *UDHR* that more inferences can be given in interpretation of this right.

Similarly, the *International Covenant on Civil and Political Rights* (ICCPR), provides and protect civil and political rights of individuals.²⁴⁷ It provides in Article 17 that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”. Furthermore, *Articles 16 and 40 of the CRC* extend the *UDHR* definition of the right to privacy to include children and stress that “the child has the right to the protection of the law against such interference or attacks”.

In 2013, the General Assembly adopted *Resolution 68/167*, this is first resolution on the right to privacy in the digital age.²⁴⁸ This resolution focuses on the protection and enjoyment of human rights on the internet and the respect of privacy in the context of digital communication. It calls upon Member States to take measures to protect the right to privacy, and in the context of digital communication, and “to review their procedures, practices and legislation regarding the surveillance of communication, their interception, and the collection of personal data”.

In 2015, the General Assembly adopted the 17 Sustainable Development Goals (SDGs).²⁴⁹ These goals plan actions to end poverty, protect the planet, and highlight that every individual has the right towards peace and prosperity.²⁵⁰ Specifically, SDGs 16 (peace, justice and strong institutions) and 17 (partnerships for the goals) precisely highlight the right to privacy.²⁵¹ For instance, Goal 16 is connected to the right to information and to express oneself online or offline through the medium of advocacy for strong institutions. Goal 17 is to apply, strengthen, and re-establish a global partnership for the SDG with the idea that individuals have the right to free will, development, and to privacy. Goal 17 and the right to privacy directly relates to *Article 12 of the UDHR* and *Article 17 of the ICCPR*.²⁵² This is more like an expansive interpretation of the SDGs to cover human rights in the advancement of the sustainable development agenda.

Recently, the General Assembly *Resolution 71/199* on “The Right to Privacy in the Digital Age” (2016) expressed the need to further discuss and examine issues that occur in the context of the protection of the right to privacy in the digital age.²⁵³ The resolution emphasizes that Member States should further review their practices, legislations, and procedures to ensure that privacy is respected and paramount in the context of mass surveillance and that measures are taken to prevent possible violations of the right to privacy. Business enterprises are also called upon to respect human rights and are recommended to follow the Protect, Respect and Remedy Framework.²⁵⁴ This framework is central to the Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, which

²⁴⁷ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

²⁴⁸ General Assembly, “The Right to Privacy in the Digital Age” (2018) A/RES/68/167.

²⁴⁹ General Assembly, *Transforming: the 2030 Agenda for Sustainable Development* (2015) A/RES/70/1.

²⁵⁰ United Nations Development Programme, *Sustainable Development Goals* (2017).

²⁵¹ J. Wandel et al., *Finding the Balance: Right to Privacy and the Drive to Innovate in the UN* (28 April 2017).

²⁵² International Planned Parenthood Federation, *Sustainable Development Goals and Human Rights* (2016).

²⁵³ General Assembly, “The Right to Privacy in the Digital Age” (2017) Seventy-first session A/RES/71/199.

²⁵⁴ Privacy International, *United Nations Recognition of Privacy*.

was submitted to the HRC in 2011.²⁵⁵ These guiding rules place a demand on Member States to provide principles and clear expectations for businesses to protect human rights.

The *European Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data* (Convention 108) was drafted by the Council of Europe and entered into force in 1985, a progressive interpretation and expansion of the right to privacy.²⁵⁶ The Convention provides for the protection of the right to privacy with regard to the automatic processing of personal data. Automatic processing is the storage of data and the “alteration, erasure, retrieval or dissemination” of data.²⁵⁷ In 2018, a protocol amending and modernizing *Convention 108* was opened for signature. The modernized convention promises to deal with new challenges that come with the use of new information and communication technologies, and to strengthen the effective implementation of the convention.²⁵⁸

In 2016, the European Union adopted *Regulation 2016/679 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation (GDPR))*.²⁵⁹ This regulation is a reform package, which updates and modernizes the principles of the 1995 Data Protection Directive.²⁶⁰ It establishes the rights and obligations of individuals and those responsible for processing data, methods for compliance, and the scope of sanctions for those that breach the rules laid out in this regulation.

Also, in considering the regional framework, the *American Convention on Human Rights* (ACHR) (1969) and the *European Convention on Human Rights* (ECHR) (1970) both emphasized the need to protect the right of privacy. Under *ACHR*, individuals have the right to know what data the government and private entities have on individuals, and can contact the data and modify, correct, or remove the data.²⁶¹ The *ECHR* groups interfering with private communication, medical treatment, and withholding access to information as breaching the right to privacy, and even if controlled by public officials, it is still regarded as a breach of this right.²⁶² It presents a challenge for Member States to implement both frameworks with the lack of frameworks to follow.²⁶³ It is also a task on what information can be considered private or public interest with the growth of information technology and search engines.

In Africa, there is rather slow progress in the advancement on this topic. However, commendable effort is also recognized, on the creation of the *African Union Convention on Cyber Security and Personal Data Protection*.²⁶⁴ The Convention was adopted by the African Union in 2014. Only 10 nations have signed the Convention since its adoption. Presently, only 23 out of 55 African nations have passed or enlisted personal privacy laws, and only

²⁵⁵ Human Rights Council, “Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie” Seventeenth session (2011) A/HRC/17/31.

²⁵⁶ Council of Europe, *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data* (1981).

²⁵⁷ *Ibid.*

²⁵⁸ Council of Europe, *Modernisation of Convention 108* (2019).

²⁵⁹ European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Data Protection Law* (2018).

²⁶⁰ European Union, *Regulation (EU) 2016/679 of the European Parliament and of the Council* (2016).

²⁶¹ Mendel et al., *Global Survey on Internet Privacy and Freedom of Expression* (2012).

²⁶² *Ibid.*

²⁶³ Human Rights Council, “Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue” (2013) A/HRC/23/40.

²⁶⁴ African Union, *African Union Convention on Cyber Security and Personal Data Protection* (2014) EX.CL/846(XXV).

nine of them have data protection establishments.²⁶⁵ The Convention strives to create a continent-wide framework for establishing a reliable digital space for electronic transactions, personal data protection and battling cybercrime. However, there has not been much progress in implementation.

Role of the International System

The HRC is one of the UN organizations which focused on the right to privacy in the digital age.²⁶⁶ In December 2014, the HRC published a report of the OHCHR on an HRC panel about privacy rights and technology.²⁶⁷ In the course of the panel discussion, the HRC addressed issues relating to “the promotion and protection of the right to privacy in the digital age in the context of domestic and extraterritorial surveillance and the interception of digital communications and the collection of personal data, including on a mass scale”. In April 2015, the HRC adopted *Resolution 28/16* (2015) on “The Right to Privacy in the Digital Age”.²⁶⁸ In the resolution, the HRC reaffirms the right to privacy, and noted that “no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence”. The HRC further recognizes “the global and open nature of the internet and the rapid advancement in information and communications technology as a driving force in accelerating progress towards development in its various forms”.

Following the adoption of the resolution, the HRC appointed a Special Rapporteur on the right to privacy for three years, whose tasks include gathering relevant information on international and national frameworks, studying challenges with respect to the right to privacy and making recommendations to facilitate its protection.²⁶⁹ The tasks of the Special Rapporteur also include identifying obstacles to the right to privacy, reporting violations on the right to privacy set by the UDHR and ICCPR, and submitting annual reports to the HRC and General Assembly.

In November 2016, the Special Rapporteur submitted a report to the HRC on the right to privacy.²⁷⁰ Some of the thematic assessments include privacy across cultures; security, surveillance, and cyber-peace; genetics and privacy; and dignity and reputation for privacy. The Special Rapporteur also included a ten-point action plan to protect privacy, including defining the right to privacy; creating ongoing dialogue; promoting national and regional developments plans; and harnessing the influence of civil society.²⁷¹ Additionally, the Special Rapporteur submitted another report on the right to privacy in the digital age in February 2017.²⁷²

In March 2017, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the HRC and the General Assembly submitted a report that addresses the private sector’s responsibility in digital technology, and evaluates Member States’ obligation to protect and promote the right to privacy and

²⁶⁵ Abdi Latif Dahir, *Africa isn’t ready to protect its citizens personal data even as EU champions digital privacy* (2018).

²⁶⁶ OHCHR, *Special Procedures of the Human Rights Council* (2017).

²⁶⁷ Human Rights Council, “Summary of the Human Rights Council panel discussion on the Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights” (2014) A/HRC/28/39.

²⁶⁸ Human Rights Council, “The Right to Privacy in the Digital Age” (2015) A/HRC/RES/28/16.

²⁶⁹ *Ibid.*

²⁷⁰ Human Rights Council, “Report of the Special Rapporteur on the Right to Privacy” (2016) A/HRC/31/64.

²⁷¹ *Ibid.*

²⁷² OHCHR, *Special Rapporteur on the Right to Privacy* (2017).

freedom of expression online.²⁷³ The report particularly discussed telecommunications and Internet Service Providers (ISPs). As gatekeepers of vast information networks, providers face significant government pressure to comply with censorship and surveillance activities, as they are required to invest substantial physical and business infrastructure, including network equipment and personnel.²⁷⁴ The report further states that Members have certain responsibilities with respect to the protection of the right to privacy. These responsibilities include upholding international human rights standards, protecting individuals from unnecessary intrusion, and taking necessary steps for appropriate action on any abuse to the right to privacy.²⁷⁵ The report recalls previous resolutions that protect privacy and freedom of expression, and asks companies to continue to respect common human rights. In addition, the report reviews the Internet and telecommunications blackouts, local and national government access to end user data, remaining neutral in digital technology, and more on the human rights responsibilities of digital access and protection.²⁷⁶

The General Assembly adopted *Resolution 68/187* (2013), entitled “The Right to Privacy in the Digital Age.”²⁷⁷ The resolution recognizes “that unlawful or arbitrary surveillance and/or interception of communications, as well as unlawful or arbitrary collection of personal data, as highly intrusive acts violate the rights to privacy and to freedom of expression and may contradict the tenets of a democratic society”.²⁷⁸ The resolution further noted that “while concerns about public security may justify the gathering and protection of certain sensitive information, States must ensure full compliance with their obligations under international human rights law.” In addition, the resolution calls Member States to respect and protect the right to privacy, including in the context of digital communication and to make measures to put an end to violations of those rights and to create the conditions to prevent such violations, by ensuring that relevant national legislation complies with their obligations under international human rights law.

The International Telecommunication Union (ITU) is the UN specialized agency for ICT, which allocates global radio spectrum and satellite orbits, develops the technical standards that ensure networks and technologies seamlessly interconnect, and strives to improve access to ICTs in underserved communities worldwide.²⁷⁹ With over one billion households having access to technology, ITU has made positive strides towards standards for technology services, global resources, and developing communications worldwide. ITU provides support for communications in the “wake of disasters and emergencies, through on-the-ground assistance, dedicated emergency communications channels, technical standards for early warning systems, and practical help in rebuilding after a catastrophe”.

Privacy concerns are increasingly significant in the online world. ITU recognizes the importance of addressing privacy internationally and creating frameworks to help the international community stay compliant.²⁸⁰ In March 2012, ITU developed best practices in protecting privacy that include: secure telecommunications, secure framework for cloud

²⁷³ Human Rights Council, “Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression” (2017) A/HRC/35/22.

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ Human Rights Council, “The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights” (2017) A/HRC/27/37.

²⁷⁷ General Assembly, “The Right to Privacy in the Digital Age” (2013) Sixty-eighth session A/RES/68/167.

²⁷⁸ *Ibid.*

²⁷⁹ UN International Telecommunication Union, *About International Telecommunication Union* (2017).

²⁸⁰ UN International Telecommunication Union, Telecommunication Standardization Sector, *Privacy in Cloud Computing* (2017).

services, and secure platforms for virtual networks. Besides ITU, non-governmental organizations (NGOs) such as the International Organization for Standardization (ISO), Organization for the Advancement of Structured Information Standards (OASIS), and Cloud Security Alliance (CSA) have started to develop standards for digital privacy.²⁸¹

Technology and the Right to Privacy

As of January 2019, 57% of the global population has access to the internet.²⁸² However, being connected to the largest information database in the world does come at a price.²⁸³ Although some internet users see the loss of privacy as a necessary evil, others see it as an abuse which they are trying to eliminate, through different ways. Worldwide, 53% of online users are currently more concerned about their online privacy compared to a year ago.²⁸⁴ The internet is vulnerable to electronic surveillance and interception. Worldwide, unchecked mass surveillance continues to adversely affect the right to privacy and other fundamental human rights.²⁸⁵

In December 2013, the General Assembly adopted *Resolution 68/167*, which recognized the negative impact that surveillance and communications interception may have on human rights.²⁸⁶ It affirmed that “the same rights that people have offline must also be protected online, including the right to privacy” and it called upon all States to “respect and protect the right to privacy, including in the context of digital communication”.²⁸⁷ The General Assembly also called on all States to “review their procedures, practices and legislation related to communications surveillance, interception and collection of personal data and emphasized the need for States to ensure the full and effective implementation of their obligations under international human rights law”.²⁸⁸ HRC also adopted *Resolution 28/16* in April 2015 to address issues relating to “the promotion and protection of the right to privacy in the digital age, effective domestic oversight and remedies, the impact of surveillance on the right to privacy and other human rights, as well as the need to examine the principles of non-arbitrariness and lawfulness, and the relevance of necessity and proportionality assessments in relation to surveillance practices”.²⁸⁹

Surveillance and Communications Interception

Developments in information communication technology are intensely improving real-time communication and information-sharing. By improving access to information and facilitating global debate, they nurture democratic contribution.²⁹⁰ However, at the same time, it has become clear that these new technologies are susceptible to electronic surveillance and interception. Recent discoveries have shown that new technologies are being developed covertly, with a view to developing these practices with efficiency.²⁹¹ Such surveillance threatens individual rights, including the right to privacy and the freedom of expression and association. The report of Office of the UN High Commissioner on the right

²⁸¹ *Ibid.*

²⁸² Statista, *Online Privacy - Statistics & Facts* (2019).

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ Human Rights Watch, *Human Rights Council: Protect the right to privacy* (8 March 2017).

²⁸⁶ General Assembly, “The Right to Privacy in the Digital Age” (2013) Sixty-eighth session A/RES/68/167.

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

²⁸⁹ Human Rights Council, “The Right to Privacy in the Digital Age” (2015) A/HRC/RES/28/16.

²⁹⁰ OHCHR, *The Right to Privacy in the Digital Age* (2019).

²⁹¹ *Ibid.*

to privacy in the digital age addresses several issues including mass surveillance and data collection.²⁹²

On 14 October 2014, the UN Special Rapporteur for counter-terrorism and human rights issued a formal report to the General Assembly.²⁹³ The report condemns electronic surveillance as a clear violation of core privacy rights assured by multiple treaties and conventions. It, however, noted that the use of mass surveillance technology effectively does away with the right to privacy of communications on the Internet altogether. Fundamental to the Rapporteur's findings is the dissimilarity between targeted surveillance, which hinges upon the existence of prior suspicion of the targeted individual or organization and surveillance, with which states with high levels of Internet penetration can gain access to the telephone and e-mail content of an effectively unlimited number of users and preserve an overview of Internet activity associated with specific websites.²⁹⁴ In a system of "mass surveillance," the report explained, "All of this is possible without any prior suspicion related to a specific individual or organization. The communications of literally every Internet user are potentially open for inspection by intelligence and law enforcement agencies in the States concerned."²⁹⁵

Article 17 of the ICCPR guarantees the right of privacy, the defining protection of which, the report explained, is that:

Individuals have the right to share information and ideas with one another without interference by the State, secure in the knowledge that their communication will reach and be read by the intended recipients alone.²⁹⁶

Mass surveillance thus totals to a systematic interference with the right to esteem for the privacy of communications. As a consequence, it is incompatible with existing concepts of privacy for States to collect all communications or metadata all the time indiscriminately.²⁹⁷ The HRC recognizes the need to evaluate the legality of surveillance practices.²⁹⁸

There is also the clog of communication interception which in the long run aids surveillance.²⁹⁹ Communications interception may include listening to telephone calls or reading target's letters or e-mails. On the other hand, interception is directed on targeted surveillance.³⁰⁰ It is often carried out by the state on suspicion of a crime of terrorism and other forms of national or international security. Worries are that global mass surveillance can affect human rights, including the right to privacy.³⁰¹ Still, it is blurred to what extent users are mindful about the data they are sharing when using the internet.

²⁹² Human Rights Council, "The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights" (2017) A/HRC/27/37.

²⁹³ Glen Greenwald, *UN Report Finds Mass Surveillance Violates International Treaties and Privacy Rights* (2014).

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*

²⁹⁸ Human Rights Council, "The Right to Privacy in the Digital Age" (2017) Thirty-fourth session A/HRC/RES/34/7.

²⁹⁹ Glen Greenwald, *UN Report Finds Mass Surveillance Violates International Treaties and Privacy Rights* (2014).

³⁰⁰ Human Rights Council, "The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights" (2017) A/HRC/27/37.

³⁰¹ *Ibid.*

Unfortunately, the main apprehension is that intelligence services are creating “back doors” to exploit flaws in security standards.³⁰² These flaws can be also exploited by terrorists or other criminals.³⁰³ These allow for the necessary actions to be taken to be considered. Other main points are: surveillance by governments should only be employed when necessary and legitimate, and that Member States have extraterritorial duties since the internet has no boundaries. Likewise, the report facts out the reputation of transparency and accountability of data collection and it stresses that technology companies are important to maintain and uphold the right to privacy.³⁰⁴

Balancing the Right to Privacy and Public Interest

The right to privacy is not an absolute right but a qualified right. It may be limited but always in a very carefully delimited way.³⁰⁵ According to the standard established in *Article 17 of the ICCPR*, interferences with the right to privacy are only permissible if they are neither arbitrary nor unlawful. HRC explained in General Comment 16 that the term “unlawful” implies any interference has to be envisaged by the law, and the law itself must comply with the provisions, aims and objectives of ICCPR.³⁰⁶ The concept of arbitrariness, according to the Human Rights Committee guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. Further, such interferences must be “necessary in a democratic society”.³⁰⁷ The right to privacy continues to face growing threats as a result of the surveillance system which is often justified in the name of public interest, particularly national security.

With the advent of technology, notably those that relate to invasion of privacy, communication interception and digital personal profiling, has made it possible for law enforcement agencies to be able to gather the personal data of an individual at a click of a button, particularly in the field of surveillance.³⁰⁸ Although, surveillance of electronic communications data can be necessary for legitimate law enforcement or intelligence reasons, when conducted in compliance with the law, governmental mass surveillance programs “raise questions around the extent to which such measures are consistent with international legal standards and whether stronger surveillance safeguards are needed.”³⁰⁹ A 2017 report by HRC Special Rapporteur on the right to privacy, Joseph A. Cannataci, focuses on “governmental surveillance activities from a national and international perspective”.³¹⁰ In his report, Cannataci stated that measures of current national legislation to regulate government surveillance are extremely intrusive, inefficient, and non-proportional. Drafted laws have been “rushed through the legislative process in order to legitimize practices of surveillance.”³¹¹ Governments thereby make use of the fear of terrorism and manipulate policy-makers to adopt “unduly disproportionate privacy-

³⁰² Council of Europe, Parliamentary Assembly, *Mass Surveillance* (2015).

³⁰³ *Ibid.*

³⁰⁴ Human Rights Watch, *United Nations: Rein in Mass Surveillance* (2014).

³⁰⁵ Human Rights Council, “Report of the Special Rapporteur on the Right to Privacy” (2019) A/HRC/40/63.

³⁰⁶ Human Rights Committee, “General Comment No. 16: Article 17 (The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation)” (1988), adopted at the Thirty-second session.

³⁰⁷ *Ibid.*

³⁰⁸ L. Nooraneda, *Privacy vs. National Security: Where Do We Draw the Line?* (December 2015).

³⁰⁹ Human Rights Council, “The Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights” (2017) A/HRC/27/37.

³¹⁰ Human Rights Council, “Report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci” (2017) A/HRC/34/60.

³¹¹ *Ibid.*

intrusive laws”.³¹² This sentiment is echoed throughout the many investigations into government surveillance by the UN and the many civil society actors specially engaged around this issue, which characterizes the moral collision course set by intelligence community special interests and regulators defending individual sovereignty.

Privacy of Minors in the Digital Age

According to a survey report by Wearesocial, the number of internet users globally has surpassed four billion.³¹³ At every half of a second every day, a child goes online for the first time tapping into all the great opportunities the Internet has to give, but facing grave risks.³¹⁴ There is a constant rise of the users and devices that get access to the digital space daily for various reasons. In 2017, UNICEF released a report that displayed the opportunities and challenges for children in the digital world.³¹⁵ In 2019, UNICEF released the Innocenti Research Brief, which shows that most children between the ages of 9 and 17 have internet access and undertake various activities on the internet.³¹⁶ Fast advancing and increasing, children have digital footprints in the digital space, some even before birth. In fact, children are now accessing the internet at even younger ages; in some countries, children under 15 are as likely to use the internet as adults over 25.³¹⁷

This introduction to a new environment for minors holds new and bespoke challenges to the right to privacy, access to information, and public engagement. Threats to children’s privacy in the digital age can be as a result of children’s lack of knowledge in understanding the area of collection and processing of personal data, online surveillance which captures personal data, and the use of biometrics.³¹⁸ The lack of knowledge is a big reason why children are more at risk in the digital age than adults.

The bigger use of social media and online services signifies that children now share a tremendous volume of personal information online. The internet has enabled children to learn, and partake in civic life.³¹⁹ The use of the internet brings vast benefits to children with access to information, ease of learning and social interaction. However, the internet foretells risk to the privacy and reputation of children. Frequently, children are not aware of the imminent risk their digital footprint could possibly bring.

Also, there are pre-existing risks and challenges that now take advanced forms online, posing more danger and threat to the child, such as “cyberbullying, online stalking, identity theft, and exposure to inappropriate advertising content”.³²⁰ Children are particularly at risk caused by a lack of knowledge about data collection in general, and what happens when their information gets shared without their consent.³²¹ They have no control of it whatsoever without proper supervision as their lack of knowledge places them in a great disadvantage. They could be victims of digital kidnapping. Digital kidnapping is another increasing occurrence, where pictures of children are collected for role play by online users.

³¹² *Ibid.*

³¹³ Nathan McDonald, *Digital in 2018: World's Internet Users pass the 4 BillionMark* (2018).

³¹⁴ UNICEF, *The State of the World's Children 2017: Children in a Digital World* (2017).

³¹⁵ *Ibid.*

³¹⁶ UNICEF, *Innocenti Research Brief: Is there a Ladder of Children's Online Participation?* (2019).

³¹⁷ *Ibid.*

³¹⁸ UNICEF, *Child Privacy in the Age of Web 2.0 and 3.0: Challenges and Opportunities for Policy*, (2017).

³¹⁹ UNICEF, *Children's Online Privacy and Freedom of Expression* (2018).

³²⁰ UNICEF, *Child Privacy in the Age of Web 2.0 and 3.0: Challenges and Opportunities for Policy*, (2017).

³²¹ *Ibid.*

Article 12 of the UDHR provides for rights to privacy and *Article 16 of the CRC* provides a universal framework on the need to protect the privacy of children. The *CRC* provides that the law should protect children from attacks against their families and homes. There have been a number of national and international determination and on-going effort at protecting the online privacy of children. Some of these instruments, especially in Africa are undergoing scrutiny and reform to accommodate the new changes in the digital space, especially the ones which pose threats to children. Some of these instruments are: The *African Charter on the Rights and Welfare of the Child*,³²² *African Union Convention on Cyber Security and Personal Data Protection*,³²³ *European Union General Data protection Regulation (GDPR)*,³²⁴ *Convention 108 + Convention for the protection of individuals with regard to the processing of personal data*.³²⁵ The major distress to the protection of children on the continent is the largely lack or inadequate regulations for protection in most countries.

In 2018, the Child Rights International Network (CRIN) submitted a paper towards OHCHR's report on the right to privacy in the digital age.³²⁶ In this report, CRIN provided recommendations to guarantee the right to privacy in the digital age for children. These recommendations include that terms and conditions of websites should be written in clear language to ensure that children understand them. Also, the collection of children's data while exploring the internet should be minimal and there should be an option for children and adults to request that their data gets deleted. Although the removal of some personal information on the internet can be hard to put into practice, in the context of the collection and use of children's data, CRIN provides recommendations to caregivers, parents and Member States.

Children's use of digital communication tools should never be supervised without their knowledge, the scope and nature of the information that is accessible to children should be suitable without interfering with the decision-making of children.³²⁷ CRIN recommends that data should only be collected and/or shared with the child's consent, which should also apply to adults.³²⁸ Likewise, CRIN recommends that children should study in school about their rights in the digital world, to guarantee the protection of privacy in the digital age.³²⁹ Learning how personal data is collected and processed can be challenging, therefore digital literacy education should take place from an early age, also keeping in mind more technological growth.³³⁰

There are several challenges for the international community to ensure the right to privacy of children in the digital age. Data collection, storage and processing without the child's understanding of what this might entail, is one of those challenges.³³¹ Children's constrained access to information that influences their ability to make self-directed decisions is another challenge.³³² Children may not be conscious about how the sharing of personal data online can influence their offline status and further influence, for instance,

³²² African Union, *African Charter on the Rights and Welfare of the Child* (1990) CAB/LEG/24.9.

³²³ African Union, *African Union Convention on Cyber Security and Personal Data Protection* (2014) [EX.CL/846(XXV)].

³²⁴ European Union, *General Data protection Regulation* (2016).

³²⁵ Council of Europe, *Convention for the Protection of Individuals with regard to the Processing of Personal Data* (1981) ETS No. 108.

³²⁶ Child Right International Network, *CRIN's Submission of OHCHR's Report on the Right to Privacy in the Digital Age* (2018).

³²⁷ *Ibid.*

³²⁸ *Ibid.*

³²⁹ *Ibid.*

³³⁰ *Ibid.*

³³¹ UNICEF, *Industry Toolkit: Children's Online Privacy and Freedom of Expression* (2018).

³³² *Ibid.*

their ability to employment as they enter adulthood.³³³ The right to privacy needs to be further promoted to confirm a safe use of the internet and the digital world, especially for marginalized and high-risk groups, such as children or minors.³³⁴

Conclusion

The UDHR, ICCPR, and other international documents have emphasized the importance of fundamental human rights and the HRC is particularly focused on addressing issues related to these rights. Member States have always been responsible for supporting the right to privacy despite the impact of technological advancement on this right.³³⁵ Also, national and international laws have yet to evolve with new technology and as a result, large-scale violations have occurred.³³⁶ The scope of the right to privacy is a collaborative effort between UN agencies, Member States, NGOs, and the private sector.³³⁷ As technology continues to develop, international rules and laws should continue to advance and maintain the basic human rights every individual is promised to have.³³⁸ It is therefore important to understand the effect that the right to privacy in a digital age has on the SDGs, UN organizations, agencies, and every individual.

Further Research

As Member States review the right to privacy in the digital age, delegates should consider their own policies, as well as the following: How can the right to privacy best be protected in light of the growing development of mass surveillance technology? What have local and regional actors done in regard to privacy, and what more can be done in balancing the notion of public interest and national security with the right to privacy? What is the partnership between the HRC and its Member States? What are the Member States doing in regard to the right of privacy as the UN moves towards achieving the SDGs and working towards technology innovation and privacy? How can HRC engage with other UN organizations and the private sector to develop guidelines on privacy? How can the HRC collaborate with child rights organizations in protecting the privacy of minors in the digital age?

Annotated Bibliography

Human Rights Council, “Report of the Special Rapporteur on the Right to Privacy” (2016) A/HRC/31/64, available at: <http://undocs.org/A/HRC/31/64> (accessed 14 December 2019)

This 2016 report from the Special Rapporteur on the right to privacy describes his three-year work plan, his targets, initiatives, and mandate. The Special Rapporteur reviews the work needed to see the committee, and discusses how he wants to review the right to privacy between Member States. Some of the work of the Special Rapporteur includes country monitoring, assessing thematic studies, and building bridges for policies to protect the right to privacy. He also draws out a 10-point action to plan to help implement the right to privacy.

³³³ *Ibid.*

³³⁴ *Ibid.*

³³⁵ C. Nyst, “Interference-Based Jurisdiction Over Violations of the Right to Privacy” (2013) *European Journal of International Law*.

³³⁶ *Ibid.*

³³⁷ J. Wandel et al., *Finding the Balance: Right to Privacy and the Drive to Innovate in the UN* (April 2017).

³³⁸ Human Rights Council, *The Right to Privacy in the Digital Age*, (2015) (A/HRC/28/16).

Human Rights Council, “Summary of the Human Rights Council panel discussion on the Right to Privacy in the Digital Age: Report of the Office of the United Nations High Commissioner for Human Rights” (2014) A/HRC/28/39, available at: <http://undocs.org/A/HRC/28/39> (accessed 14 December 2019)

The report opens with remarks from the Deputy High Commissioner for Human Rights on how technologies have evolved and how the concern of privacy for individuals has escalated with surveillance, putting the right to freedom of expression in danger. Delegates can examine Member States’ obligations to protect individuals based on common human rights. As delegates prepare their working papers, this report would be a good document to help them review what safeguards are needed or have been put into place, the role of the private sector, and the transparency needed to protect the right to privacy.

Human Rights Council, “The Right to Privacy in the Digital Age” (2015) A/HRC/RES/28/16, available at: <http://undocs.org/A/HRC/RES/28/16> (accessed 14 December 2019)

The right to privacy in the digital era is a topic that the Human Rights Council (HRC) discusses and makes recommendations on. This resolution recalls previous resolutions related to the topic, and delegates can review what further action may be done to discuss on digital privacy. Besides, the resolution particularly draws attention to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) in regards to protection and privacy. Member States are called upon to reaffirm the right to privacy, freedom of expression, and this may be a great tool for delegates in expanding their working papers.

Human Rights Council, “The Right to Privacy in the Digital Age: Report of the OHCHR” (2017) A/HRC/27/37, available at: <http://undocs.org/A/HRC/27/37> (accessed 14 December 2019)

This report from the Office of the United Nations High Commissioner for Human Rights (OHCHR) is a great start and overview of the rights to privacy with regards to technology. Delegates may gain a better understanding of the previous work done by OHCHR and some of the issues related to the right to privacy by reading this source. The report breaks the topic down further by the international framework, reports, and discussions on this topic. Additionally, the role of businesses for privacy is clearly defined in this report, as well as who is protected under such law, and what can be considered arbitrary or unlawful.

Human Rights Watch, *Human Rights Council: Protect the right to privacy*, (8 March 2017) available at: <https://www.hrw.org/news/2017/03/08/human-rights-council-protect-right-privacy> (accessed 14 December 2019)

This news article is interesting for delegates to read, as it reviews what the UN Special Rapporteur has done on the right to privacy. The source shares the Rapporteur’s concerns that unchecked mass surveillance continues to undermine the right to privacy and other human rights worldwide. It goes further into a review of Member States’ obligation to protect human rights and

to ensure any intrusion on the right to privacy, including the gathering of meta-data or surveillance communications content, are strictly necessary and proportionate to protection of a specified state interest and clearly regulated in law on a non-discriminatory basis. As delegates start preparing their working papers, this link can give them some insights on what is needed to protect the right to privacy against surveillance and communications interception.

J. Wandel et al., *Finding the Balance: Right to Privacy and the Drive to Innovate in the UN*, United Nations Development Group (28 April 2017), available at: https://undg.org/silofighters_blog/finding-the-balance-right-to-privacy-and-the-drive-to-innovate-in-the-un/?type=silofighters (accessed 14 December 2019)

When it comes to the right to privacy and technology innovation, it is important for delegates to see the correlation with each other. This source compares the right to privacy, SDGs, and technology innovation. The link lays out specific incidents where big data helped Member States with health crises. Delegates can discover the balance between the information gathered from technology and how delegates need to be aware of the privacy laws to require and keep information. The post also provides other sources for delegate research on how digital privacy is a concern on multiple levels.

Mendel et al., *Global Survey on Internet Privacy and Freedom of Expression* (2012) UN Educational, Scientific and Cultural Organization, available at: <https://unesdoc.unesco.org/ark:/48223/pf0000218273> (accessed 14 December 2019)

When it comes to finding the relationship on the right of privacy and freedom of expression on the Internet, this report from the UN Educational, Scientific and Cultural Organization (UNESCO) points out how close and similar both are. The report describes the legal right to privacy based on countries and regions, and the challenges of protecting personal data and some initiatives to protect individuals online. By understanding how other Member States view digital privacy, delegates may find this source a great reference to review different cases to look at for privacy and some of the outcomes.

OHCHR, *Special Rapporteur on the Right to Privacy* (2017), available at: <http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx> (accessed 14 December 2019)

It is important to understand and review the mandate of the Special Rapporteur on the right to privacy. The website provides working criteria and objectives such as submitting annual reports, integrating gender perspectives, and participating in international conferences. Delegates can use this as a resource to review the latest news on the right to privacy and find external documents that review the right to privacy.

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