

GLOIRE MODEL UNITED NATIONS **CONFERENCE**

UNITED NATIONS HUMAN RIGHTS COUNCIL

[Background Guide]

Agenda-1: *Human Right Violations in Conflict and Post-Conflict Areas.*

Agenda-2: *Protecting the Rights of the LGBT Community.*

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1. HUMAN RIGHT VIOLATIONS IN CONFLICT AND POST-CONFLICT AREAS.

Introduction:

In recent decades, armed conflict has blighted the lives of millions of civilians. Serious violations of international humanitarian and human rights law are common in many armed conflicts. In certain circumstances, some of these violations may even constitute genocide, war crimes or crimes against humanity. More than 44 million people are currently experiencing human rights violations due to conflicts and disasters. Today, it is imperative to find new and innovative ways to promote and protect human rights in post-conflict societies. Simply defined, conflict/post-conflict societies are populations belonging to countries that are facing or have recently emerged from, war or large-scale violence.

The Protection of Civilians (POC) during armed conflict forms one of the central pillars of international humanitarian law/law of war and international human rights law. The United Nations was founded on the idea of maintaining international peace and security, so to prevent armed conflict but also as importantly to stop the atrocities that occurred during World War II from ever reoccurring. Human rights violations, some on a massive scale, continued during the violence of decolonization and the Cold War, but with little inter-governmental action possible during the very polarized period of the United Nations. The protection of civilians from grave human rights violations during armed conflict became an issue of global attention and concern through the 1990s, during the post-Cold War era of violent transition and state collapse in which parties to conflict ignored international safeguards to commit atrocities against men, women, and children, while the international community failed to act to prevent these abuses. The massacres in Rwanda, and widespread abuse of civilians during the wars in the West Africa, Somalia and elsewhere were glaring indicators of the failure of all to protect civilians. Some analysts began to question the sanctity of state sovereignty in the face of widespread grave violations and the role that the UN and other international actors should play to protect civilians should the government be unable or unwilling to do so.

That discussion branched into several work streams in the United Nations. Responsibility to Protect (R2P), the Protection of Civilians, Prevention of Genocide, Children and Armed Conflict (CAAC) and Women, Peace, and Security (WPS), the latter of which split into two work streams, one on increasing the inclusion of women and women's issues in peacekeeping and peace efforts and the other on sexual violence in conflict.

International humanitarian law:

International humanitarian law is a set of rules that seek to limit the effects of armed conflict on people, including civilians, persons who are not or no longer participating in the conflict and even those who still are, such as combatants. To achieve this objective, international humanitarian law covers two areas: the protection of persons; and restrictions on the means and the methods of warfare.

International humanitarian law finds its sources in treaties and in customary international law. The rules of international humanitarian law are set out in a series of conventions and protocols. The following instruments form the core of modern international humanitarian law:

- The Hague Regulations respecting the Laws and Customs of War on Land;

- The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;

- The Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;

- The Geneva Convention (III) relative to the Treatment of Prisoners of War;

- The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War;

- The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I); and

- The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

The Hague Regulations are generally considered as corresponding to customary international law, binding on all States independently of their acceptance of them. The Geneva Conventions have attained universal ratification. Many of the provisions contained in the Geneva Conventions and their Protocols are considered to be part of customary international law and applicable in any armed conflict.

The International Committee of the Red Cross (ICRC) has a special role under international humanitarian law. The Geneva Conventions stipulate that it will visit prisoners, organize relief operations, contribute to family reunification and conduct a range of humanitarian activities during international armed conflicts.

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

The HRC has done a considerable amount of work on human rights in post-conflict societies. On 10 April 2013, the Council adopted resolution 22/16 on the “promotion and protection of human rights in post-conflict and post disaster situations.” In this resolution, the HRC requested its Advisory Committee to conduct research and report on successful experiences and remaining challenges regarding the advancement of human rights in post-conflict societies. The resolution calls special attention to mainstreaming human rights in all relief, recovery and reconstruction efforts, as well as promoting a rights-based approach in all humanitarian initiatives, focused on principles of humanity, impartiality, neutrality, independence, and self-sufficiency. The progress report on this research (A/HRC/27/57) was published on 11 August 2014. This progress report details the outcome of questionnaires sent to Member States on the subject of human rights in post-disaster and post-conflict situations. The progress report also lists regional frameworks and current implementation, based on the results of the questionnaires. The main challenges outlined in this report include the lack of consideration for vulnerable populations, focus on reconstruction efforts, and access to water. The report also highlights inadequate funding and programming for the promotion of transitional justice and peacebuilding efforts, as well as the prevention of domestic and gender-based violence. With these challenges, the Advisory Committee has concluded thus far that a human rights-based approach requires intention, participation, attention, and transparency.

Exploitation of women’s rights during times of Conflict:

For the most part, there are conflicts which involve women and children as approximately percent of casualties among civilians. Though conflicts are lethal to all genders and populations, women are especially vulnerable. Women in war-torn societies are victimized with harsh forms of sexual violence, which is sometimes even exploited calculatedly to fulfil military or political purposes. The problem of this gender based violence persists even after a conflict has ended in forms of unwanted pregnancies, sexually transmitted infections and stigmatization, meaning shame and dishonour. Such sexual violence is a consequence of insecurity and impunity, and it usually goes hand-in-hand with discrimination and unfair laws. Other than health issues, it can also limit women to protect their own rights, including access to education, rights of financial independence and participation in governance and peace building.

1. **SEXUAL SLAVERY AND TRAFFICKING-** Being almost inseparable, sexual slavery and trafficking of women is one of the most likely consequences of a war-like situation. Women are trafficking into other countries, sometimes as rewards for the winning parties, to be used in forced labor schemes, most likely forced prostitution. They are forced into

marriage or sexual relations with members of opposing groups through abduction or coercion.

2. **WAR RAPES-** War rapes are rapes committed by soldiers, other combatants or civilians during armed conflict or war, or during military occupation, distinguished from sexual assaults and rape committed amongst troops in military service. Rape as a weapon of war- Increasingly it is seen that rape and sexual abuse are not just byproducts of war, but also a deliberative military strategy. From the systematic rape of women in Bosnia, to an estimated 200,000 women raped during the battle for Bangladeshi independence in 1971, to Japanese rapes during the 1937 occupation of Nanking - the past century offers too many examples. It is mostly used a strategy for ethnic cleansing, as impregnating women of a community with a particular gene pool may at last lead to destruction of the opposing community completely. It is used as a measure to destabilize communities and sow terror. The Geneva Conventions and it's protocols explicitly prohibit wartime rapes and the International Criminal Tribunal on Rwanda also made a landmark judgment to this effect by defining rape as a crime of Genocide under the International Law. The effects of war rapes or using rape as a weapon of war are widespread.
 - i) Physical effects- Traumatic injuries and unwanted disease, which is hard to treat in these situations because of disruption of medical aid channels.
 - ii) Psychological Effects- Post-traumatic stress disorder is very common to find among the victims
 - iii) Effects on Perpetrators- Many cases pointed out that the rapists themselves are taken into a feeling of guilt and hate, which may develop into a PTSD and eventually leads to suicides and irrational choices.
 - iv) Unwanted Children- The conflict regions in such cases are flooded with rape babies, overburdening the region with orphans.
3. **HEALTH ISSUES** - In a conflict situation, health systems are already undermined, and sanctions put up by other nations further worsen the situation. War and displacement leads to a rise in infectious diseases and epidemics, which coupled with unsanitary conditions can lead to fatal implications.
4. **SOCIO-ECONOMIC CONDITIONS** - Conflict and post-conflict times notices a large percentage of feminization of poverty, besides lack of education and job opportunities, churning the female population into a spiral of oppression.

The cases of exploitation of women in times of war are abundant throughout the course of history, ranging from British accounts of Indian Rebels raping English

girls or women to European Colonist strategy to justify the colonization of the places they had conquered. During World War-II, the exploitation reached its peak with comfort women emerging in Japan, claims against the US Army of raping approximately 1,336 women in the Battle of Okinawa and the Soviet Army indulging in similar manner in their bases in China or Europe. Women have been the foremost bearers of atrocities in Genocidal and ethnic conflicts as well, with more than 20,000 reported rapes in the former Yugoslavia which led to the contention of rape becoming a war crime, which was followed by the incidence of an estimated 250,000 to 300,000 rapes during the Rwandan Genocide.

Exploitation of the rights of children during conflict:

The wounds inflicted by armed conflict on children - physical injury, gender-based violence, psychosocial distress, are affronts to every impulse that inspired the United Nations Convention on the Rights of the Child. Armed conflict affects all aspects of child development - physical, mental and emotional. Such effects accumulate and interact with each other. The disruption of food supplies, the destruction of crops and agricultural infrastructures, the disintegration of families and communities, the displacement of populations and the destruction of educational and health services and of water and sanitation systems, all take a heavy toll on children. Children are killed every year, in numbers that may extend to thousands of thousands, as a direct or consequential result of knife wounds, bullets, bombs and landmines, even by their participation as forced soldiers, but many more die of malnutrition and disease caused or accelerated by armed conflict. Worldwide, hundreds of thousands of children under 18 have been affected by armed conflict. They are recruited into government armed forces, paramilitaries, civil militia and a variety of other armed groups. Often they are abducted at school, on the streets or at home. Others enlist voluntarily, usually because they see few alternatives. Yet international law prohibits the participation in armed conflict of children aged under the age of 18. It means that in reality girls and boys illegally and under force, participate in combat where frequently they are injured or killed. Others are used as spies, messengers, porters, servants or to lay or clear landmines. Girls are at particular risk of rape and other sexual abuse. Such children are robbed of their childhood and exposed to terrible dangers and to psychological and physical suffering. Another added concern is of recruitment of these children into extremist factions or organized groups to fight the war. The past years have shown an increasing trend of children being used as suicide bombers, especially by the Taliban and terrorist organizations like Al-Qaeda. It has been reported that the Taliban and Al-Qaeda have been recruiting children of ages as young as 7 years for their suicide missions. Instances of child human bombs were also seen in the Israeli-Palestinian Conflict where such strategies have been reportedly used by the Hezbollah and Hamas. When children have experienced traumatic or other events in times of war, they may suffer from

increased anxiety about being separated from their families, or they may have nightmares or trouble sleeping. They may cease playing and laughing, lose their appetites and withdraw from contact. Younger children may have difficulty concentrating in school. Older children and adolescents may become anxious or depressed, feel hopeless about the future or develop aggressive behaviour.

Tens of thousands of children — many under the age of 10 — have been recruited into armies around the world. In Liberia, children as young as seven have been found in combat, while in Cambodia, a survey of wounded soldiers found that 20 per cent of them were between the ages of 10 and 14 when recruited. In Sri Lanka, of 180 Tamil Tiger guerrillas killed in one government attack, more than half were still in their teens, and 128 were girls. Solid statistics are hard to come by, however, as most armies and militia do not want to admit to their use of child soldiers. These children have been snatched away from their homes and the streets, mostly on their way to school or even from playgrounds. In some conflicts, children have been forced to commit atrocities against their own families. In Sierra Leone, for example, the Revolutionary United Front forced captured children to take part in the torture and execution their own relatives after which they were led to neighboring villages to commit a similar slaughter. In the current scenario of Syria, most than 200,000 children have been reported to be internally displaced, while the UN missions and UNICEF have only be able to aid a very small percentage of the totality.

Case Studies:

Afghanistan:

In 2014, conflict-related violence in Afghanistan took an extreme toll on civilians. There were over 10,000 civilian casualties, making a 22% increase in civilian casualties compared to 2013 (Annual Report on Protection of Civilians). In Afghanistan alone between January 1, 2009 to December 31, 2014 the United Nations Assistance Mission in Afghanistan (UNAMA) recorded 47,745 civilian casualties (Annual Report on Protection of Civilians). Civilian casualties in Afghanistan are primarily due to high explosive weapon systems, such as rockets and grenades in civilian-populated areas. Most of the civilian casualties were due to Anti-Government Elements and partly due to Pro-Government Forces. The UNAMA recorded the highest number of women's deaths and injuries from conflict-related violence in 2014. In addition, it was found that women who were left as sole income-providers for their households after the death of their husbands experienced long-lasting social and economic consequences, long-term problems included forcing many women to give their daughters in marriage in exchange for debts or to take their children out of school to work. The leading cause of civilian casualties in 2014 was ground fighting in civilian-populated areas with parties using mortars and other explosive weapons that led to harmful

consequences for citizens. There was a 54% increase in civilian casualties from ground fighting in 2014 as opposed to 2013.

Central African Republic:

Since 2012 the extreme levels of violence against civilians in the Central African Republic (CAR) have increased and illustrate the failure of international efforts to protect these civilian populations. Individuals are fleeing their homes, since they feel it is the only option to avoid slaughter (International Efforts to Protect Civilians in Central African Republic Failing to Stop Slaughter). Within CAR, civilians of both main religious communities are being held hostage to violence instigated by armed groups. For instance, a team from the Médicos Sin Fronteras (MSF) went to Bozoum and found 17 injured people by gunshot, machete or grenade wounds, who were too afraid to go to the hospital, in case they were going to be attacked again (International Efforts to Protect Civilians in Central African Republic Failing to Stop Slaughter). MSF reports that the organization has dealt with many issues regarding attacks on hospitals further discouraging civilians to seek help and thus are left to die. Thus, this causes strain on organizations like MSF, which are trying to help and in return are not able to.

Syrian Arab Republic:

Over 200,000 Syrians have died during the four-year long armed conflict that began with anti-government protests before escalating into a civil war. Over 11 million Syrians have been forced from their homes, as loyal forces to President Bashar al-Assad battle those opposed to his rule, while simultaneously fighting against ISIS (Syria – The story of the conflict). In March 2011 pro-democracy protests erupted after the arrest of teenagers who were pro-revolutionary. Al-Assad willingly fired on his people, killing several; and by July thousands began protesting. As violence escalated, the conflict rose into a full-scale civil war and by March 2015 nearly 220,000 Syrians have died due to the war (The story of the conflict). The rise of jihadist groups has added a further dimension to the conflict. The image below highlights Syria's death toll throughout the war. Over the course of the conflict, al-Assad has committed war crimes against his people, including the use of chemical weapons. Since the war began, nearly 2 million Syrians have fled and neighbouring countries like Lebanon, Jordan and Turkey have been struggling to accommodate the new arrivals. Furthermore, 7.6 million Syrians have been internally displaced within the country and the escalating rise of the jihadists will increase this number and continue to decrease the nation's safety.

Relevant UN Treaties and Events:

- The Geneva Conventions: The Geneva Conventions are a series of treaties on the treatment of civilians, prisoners of war and soldiers who are otherwise rendered hors de combat, or incapable of fighting (Geneva Conventions).

- S/RES/2222: This resolution was submitted by the Security Council on the protection of journalists that focused on the need to combat impunity for attacks against them.

- S/RES/2150: This resolution was submitted by the Security Council and called on all states to prevent and fight against genocide and other serious crimes under international law, reaffirming the principle of responsibility to protect populations from war crimes, ethnic cleansing.

- S/2012/376: This was the Secretary General's 9th report on the protection of civilians in armed conflict.

- S/2013/689: This was the Secretary General's 10th report on the protection of civilians in armed conflict.

- S/2011/278: This was a report of the Secretary General on the protection of civilians in Chad. - International Humanitarian Law – Rule 156: Definition of War Crimes (Customary IHL - Rule 156. Definition of War Crimes)

Challenges:

Numerous challenges and shortcomings impede the capacity of peacekeepers to effectively protect civilians on the ground. As UN Secretary-General Ban Ki-moon recently acknowledged, the relevant actors continue to struggle over what it means for peacekeeping operations to protect civilians, in both definition and practice. The perennial problem of many operations is summarized best by the Brahimi Report from 2000: peacekeepers may not be able to justifiably use force against attackers in order to protect civilians when they feel “morally compelled” to do so. Despite developments in peacekeeping mission mandates, it is not always clear how these mandates translate into operations on a case by case basis, creating situations wherein troops and police are not clear on what is expected of them. As a result, there is a lack of cohesion between mandates, intentions, and expectations, especially if civilian protection requires the use of force.

Questions a Resolution Must Answer:

1. What concrete measures must be taken to ensure protection of civilian rights by both state and non-state actors in conflict regions?
2. What long-term political solutions are possible in post-conflict areas?
3. With the recent exodus of civilians from the Middle East into Europe and back, what measures can be taken within the mandate to ensure civilian rights in such cases?
4. Special measures and frameworks to be undertaken for women and children's rights.

2. PROTECTING THE RIGHTS OF THE LGBT COMMUNITY.

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

Introduction

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

Advancing universal human rights to protect against discrimination based on SOGI is at the core of HRC’s mandate, reflecting the principle of non-discrimination, which is a cornerstone of the *Universal Declaration of Human Rights*.¹⁰² Human rights mechanisms advocated by HRC aim at promoting universal rights, including the right to express safely one’s sexual orientation,

and to exercise freely one's sexual rights.¹⁰³ Thus, protecting LGBTI people from violence, stigma, and human rights violations does not specifically require the establishment of new SOGI-oriented rights, but rather the respect and reinforcement of existing fundamental human rights standards.¹⁰⁴ Addressing this topic on the HRC agenda is essential, given that not all voices within the UN agree on the best way to prevent discrimination based on SOGI, and some proposals could be considered a significant setback for LGBTI rights.¹⁰⁵ Several terms essential to understanding this topic are defined below:

- Sexual orientation refers to a person's sexual identity, in relation to the gender to which the individual is physically and emotionally attracted.¹⁰⁶
- Homosexuals (gay and lesbian) are attracted to individuals of their own sex, while heterosexuals are attracted to individuals of the opposite sex.¹⁰⁷
- Bisexuality refers to individuals who are attracted to both sexes.¹⁰⁸
- Asexuality is a form of sexual orientation that concerns people who do not experience sexual attraction.¹⁰⁹
- The term gender refers to the social roles and attitudes attributed by society to women and men, while the term sex refers to the biological and physiological features that characterize them.¹¹⁰ Thus, gender identity is a person's private experience and own sense of his or her gender.¹¹¹
- Transgender describes a wide range of individuals whose identity is considered as third gender, or more typically people whose appearance and features are considered as gender atypical.¹¹²
- Intersex refers to individuals who are born with sexual anatomy or reproductive organs that do not typically fit into the gender norm.¹¹³ They can identify as woman, man, or third gender.¹¹⁴
- Sexual rights are human rights which aim at protecting individuals' rights to fulfil and express their sexuality free from discrimination; to enjoy sexual health and pleasure, including reproductive rights; and to benefit from bodily integrity and dignity.¹¹⁵
- SGBV refers to violence that is directed against a person on the basis of gender, and entrenched within gender inequalities and power dynamics.¹¹⁶ Women are the most vulnerable to this form of violence, but men can also fall prey to it.¹¹⁷ SGBV reflects on a wide range of abuses including rape, exploitation, domestic violence, involuntary prostitution, torture, female genital mutilation or cutting, and sexual harassment.¹¹⁸

International and Regional Framework

The pre-existing international human rights framework is central to any future discussion focused on sexual orientation and gender identity. The principles of equality, universality, and non-discrimination are the foundation of human rights, enshrined in the 1945 *Charter of the United Nations* and the 1948 *Universal Declaration of Human Rights* (UDHR).¹¹⁹ The first article of the UDHR is unequivocal, stating, “all human beings are born free and equal in dignity and rights.”¹²⁰ Similarly, the 1966 *International Covenant on Civil and Political Rights* (ICCPR) contends that each state should respect the rights of all individuals recognized within the Covenant, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹²¹ This particular quote taken from article 2 of the ICCPR is at the core of this topic as exemplified in the historic case *Toonen v. Australia*, in which the United Nations Human Rights Committee held that “other status” and “sex” include sexual orientation and gender identity.¹²² This decision created a precedent within UN human rights agencies, and while very few legal agreements in the UN framework directly reference SOGI, the principles of non-discrimination and equality still apply in any instance of human rights violations based on sexual orientation and gender identity.¹²³ Other essential documents within the international legal framework which highlight non-discrimination include the *Convention relating to the status of refugees* (1951) and its *Protocol* (1967), the *International Labour Organization Convention on Discrimination in Employment or Occupation* (1958), the *Convention on the Elimination of All forms of Discrimination against Women* (1979), the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), the *Convention on the Rights of the Child* (1989), and the *Vienna Declaration and Programme of Action* (1993).¹²⁴ Since the *Toonen v. Australia* case, UN treaty bodies have confirmed repeatedly in decisions or general policy guidance that sexual orientation and gender identity are included under international human rights law as inadmissible causes for discrimination.¹²⁵

Another instrumental covenant is the 1994 *International Conference on Population and Development (ICPD) Programme of Action*, which advocates for the full implementation of reproductive health and reproductive rights, while also recognizing sexual rights as an inalienable part of universal human rights.¹²⁶ The current ICPD Beyond 2014 review process represents a unique opportunity to identify remaining challenges regarding sexual expression and to develop future policies that favor positive sexual experiences.¹²⁷

Two recent international agreements directly refer to human rights and their application to issues of sexual orientation and gender identity. First, the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity were developed in Indonesia

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

Role of the International System

A number of ongoing UN processes are in place to prevent discrimination based on sexual orientation and gender identity, advance LGBTI persons’ access to human rights, and promote sexual rights.¹³⁵ In particular, HRC bolstered its efforts through the adoption of resolution 17/19 in June 2011, and during the panel discussion on the issue of SOGI in March 2012.¹³⁶ This panel was a landmark event, as it represented the first time an intergovernmental body discussed systematic violence and discrimination around the world on the grounds of SOGI.¹³⁷ It was also an opportunity for concerned actors and Member States to share successes, make recommendations, and review the 2011 report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on violence and discrimination based on SOGI.¹³⁸ Both the report and the discussions held during the panel outlined the various ways in which LGBTI persons face discrimination and human rights abuses, and generated debate on advancing human rights, promoting positive attitudes towards sexual orientation and gender identity, and tackling the root causes of bigotry.¹³⁹ Pursuant to the panel, OHCHR released a report titled *Born Free and Equal* in which it reminds all Member States of their core legal obligations regarding the promotion of human rights, and the specific areas in which they are responsible for the safeguard of LGBTI persons’ access to human rights.¹⁴⁰ Additionally, the work of the HRC boosted efforts at a national level, as Norway and South Africa coordinated talks in the spring of 2013, inviting 200 experts to participate in cross-regional discussions on SOGI and HRC resolution 17/19.¹⁴¹ This initiative aimed to identify the different gaps and challenges that lay ahead, gathered information on efficient policy responses, and acknowledged the positive or negative impact national frameworks can have on SOGI.¹⁴² On a more global scale, HRC launched in July 2013 the United Nations Free and Equal campaign (UNFE) to raise awareness on violence and abuses linked to homophobia and transphobia.¹⁴³ The forum fosters online open discussion on how to promote fair

and equal treatment of LGBTI persons, and how to change the prevailing prejudiced discourse.¹⁴⁴ Furthermore, the UN Economic Commission for Europe (UNECE) and the UN Population Fund (UNFPA) have been trying to advance sexual rights for all during the UNECE Regional Youth Conference Call to Action in May 2013.¹⁴⁵ Their activism, which is intrinsically linked to the ICPD Beyond 2014 review process, aims at advocating for acceptance of comprehensive sexuality education (CSE), as well as the right to privacy and bodily integrity.¹⁴⁶

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

Civil society organizations (CSOs) have also significantly contributed to the advancement of the sexual orientation and gender identity agenda at an international level, working hand in hand with HRC to galvanize progress on the achievements of human rights and sexual rights for all. When HRC adopted resolution 17/19, a statement made by a coalition of LGBTI-oriented CSOs stated that "now, our work is just beginning."¹⁵⁴ CSOs have an essential role within the UN framework, as they review and monitor the compliance of international human rights standards, and contribute to UN initiatives and analysis on best practices.¹⁵⁵ For example, the Sexual Rights Initiative (SRI) is a coalition of human rights organizations primarily focused on gender and sexuality which have allied to advance sexual rights on the HRC's agenda and create political space at a national level on these issues.¹⁵⁶ SRI is currently the only advocacy group working to influence the HRC that calls attention to a broad

range of sexual rights, including SOGI, and sexual and reproductive rights.¹⁵⁷ SRI also tracks each UN Member State's attitude towards sexual rights and expression, by using HRC's Universal Periodic Review as a database tool.¹⁵⁸ One of the major achievements of SRI is that it has brought together different perspectives that in the past have co-existed but not collaborated, such as SOGI-oriented associations with women's rights associations, in an attempt to gain visibility on the importance of adopting an open-minded attitude towards sexuality, gender identity, and sexual preference.¹⁵⁹

Understanding Discrimination Based on Sexual Orientation and Gender Identity

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

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

International Statistical Classification of Diseases and Related Health

*Problems.*¹⁷⁰ To this date, WHO still defines transsexualism as a mental and behavioural disorder.¹⁷¹ Using medical terminology when dealing with issues of SOGI complicates the ongoing debate and contributes to the idea that LGBTI people can be “cured.”¹⁷² Due to these detrimental values and perceptions, the LGBTI community often faces stigma, ridicule, and outright rejection, without any public outcry given that these harmful attitudes are perceived as socially acceptable.¹⁷³ Persistent stigmatization and marginalization has forced the LGBTI community to act invisible, and issues of human rights in relation to SOGI remain controversial.¹⁷⁴

Discriminatory laws, practices, and acts of violence on the grounds of sexual orientation and gender identity

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

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

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

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

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

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

Nonetheless, one of the most fundamental human rights which is denied is the right to privacy, as SOGI issues are often considered a matter of public opinion, despite their private nature.²⁰⁶

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

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

Emerging Responses and Best Practices

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

HRC has specified that Member States have a common shared responsibility to uphold international binding human rights standards.²¹⁹ This implies a direct obligation to protect the human rights of LGBTI people through five core legal obligations: (1) protect individuals from violence rooted in homophobia and

transphobia; (2) prevent any forms of torture and cruel, inhuman and degrading treatment targeted at LGBTI persons; (3) rescind any legislation that criminalizes homosexuality; (4) prohibit any forms of discrimination on the grounds of SOGI; and (5) safeguard LGBTI people's rights to freedom of expression, association, and peaceful assembly.²²⁰ Further, CSOs suggest that States should take a more proactive role in mainstreaming these issues within their national institutions.²²¹ Specifically, the repeal of detrimental national laws criminalizing and targeting the LGBTI community is indispensable.²²² Additionally, the omission of these issues within national policies that influence access to healthcare, education, housing, welfare, and justice can lead to unlawful discrepancies in everyday life.²²³ Emerging responses have shown that countries who include trade unions in combating LGBTI employment discrimination and train public officials on these matters have managed to bolster more positive and tolerant attitudes within society.²²⁴ Another key recommendation to take into account is the need to respect the right of asylum, so as to protect any individual fleeing persecutions on grounds of SOGI.²²⁵ Similarly, countries should be encouraged to provide documentation that reflects each person's gender identity.²²⁶

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

Combating LGBTI prejudices requires the promotion of social change, and cultural awareness, as well as the implementation of education programs targeting different groups, including law enforcement and educators.²³³ Public awareness campaigns can help individuals identify, register, and respond to hate crimes and everyday discrimination in an appropriate and healthy manner.²³⁴ For example, British transportation systems carried billboards promoting LGBTI acceptance and the government of Brazil launched the national "Brazil without Homophobia" campaign.²³⁵ Additionally, the adoption of CSE is advocated for

in order to foster a greater understanding of sexual orientation and gender identity.²³⁶ CSE can also help root out discrimination and help young individuals make responsible, safe, and healthy decisions in relationships.²³⁷ CSE's ambitions are to provide the youth with inclusive, accurate, and age-sensitive sex education.²³⁸ However, these programs can also be targeted at a wider audience, as all individuals are concerned by health rights, and should be kept informed on the risks of HIV/AIDS contraction, or other sexually transmitted infections, in addition to reproductive health issues relating to pregnancy.²³⁹ Further, education programs and curricula are efficient methods to address discrimination, and counter homophobic and transphobic attitudes.²⁴⁰ Recent education initiatives include Hong Kong's Boys and Girls Clubs Association and Australian's Safe Schools Coalition, which offer counselling in schools and youth centres, and promote a safe space to discuss SOGI.²⁴¹

Conclusion

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

Further Research

It is important to keep the formation of these goals in mind during debate post-2016 debate as it outlines the future perceptions on sexual orientation and gender identity. Additionally, while researching this topic, delegates should consider the following questions:

1. How can human rights be reinforced to prevent discrimination based on SOGI?
2. What are the key lessons learned – either best practices or shortcomings – from current policies?
3. In what ways and in which direction can the Council influence discriminatory laws and practices in relation to sexual orientation and gender identity?
4. What are the priority areas that are not necessarily addressed by the universal human rights standard and which should be included in the post-2015 development agenda discussion?
5. How can sexual orientation and gender identity be mainstreamed within future development programs at the UN?