New Developments in International Norms and Governance

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I. Committee against Torture's Organizational Decisions, CAT/C/SR.1535

Report on follow-up to concluding observations under article 19 of the Convention . . .

1. **The Chair** invited Mr. Hani to present the progress report on follow-up to article 19.

2. **Mr. Hani** (Rapporteur for follow-up to concluding observations) said that between its 59th and 60th sessions, the Committee against Torture had received 11 follow-up reports concerning nine States parties. Generally speaking, States parties had complied with the reporting procedure, and some reports had even been submitted before the deadline, which demonstrated an eagerness to comply with the procedure. In accordance with paragraph 27 of the Guidelines for Follow-up to Concluding Observations, letters had been sent to the approximately 17 States which were over three months late in submitting their reports. Lastly, the Committee's database had been updated with additional information from States parties, observations from civil society and other stakeholders, in addition to the aforementioned letters.

3. **The Chair**, recalling that in 2015 the follow-up guidelines had been revised to invite States parties not only to respond to follow-up recommendations, but also to submit implementation plans for the remaining recommendations in the concluding observations, asked whether any States had yet presented such implementation plans.

4. **Mr. Hani** said that indeed that was the case. Moreover, there was interest on part of the Office of the High Commissioner for Human Rights (OHCHR) in following up on the process. The Tunis bureau of OHCHR had included the implementation plan within the follow-up procedure. It was hoped that some States parties would eventually incorporate the implementation plans into their follow-up reports.

5. **Ms. Belmir** said that in the meetings between the Committee and States parties, the issue of the follow-up procedure had not often been raised. The most important aspect was that States should respond within the prescribed time frame, a point which had not been sufficiently stressed. Perhaps greater emphasis could be placed on the relationship between the recommendations made by the Committee and the answers given by States parties.

6. **Mr. Hani** said that the situation varied from one country to another. The 2015 guidelines assessed the relevance of the information provided, as well as the extent to which implementation had been achieved in each State…

7. **The Chair** invited Mr. Machon to present the progress report on follow-up to article 22.

8. **Mr. Machon** (OHCHR, Rapporteur for follow-up to decisions on complaints submitted under article 22 of the Convention), introducing the report on information received from States parties and complainants since the conclusion of the 59th session, said that in *Tahir Hussain Khan v. Canada* (communication No. 15/1994), the complainant had received a temporary residence permit and was eligible to apply for permanent residence, whence the recommendation to close the follow-up dialogue with a note of satisfactory resolution.

9. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Communication No. 327/2007

10. **Mr. Machon** (OHCHR) said that in *Regent Boily v. Canada* (communication No. 327/2007), the State party had reportedly approved the complainant's request by way of adopting the Act on International Transfer of Offenders. The Secretariat thus recommended continuing the follow-up dialogue and sending a letter by the Special Rapporteur on Follow-up requesting the State party to specify the measures taken to implement the Committee's decision, following the adoption of the aforementioned Act.

11. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Communication No. 441/2010

12. **Mr. Machon** (OHCHR) said that in *Oleg Evloev v. Kazakhstan* (communication No. 441/2010), the Committee had urged the State party to conduct a proper, impartial and independent investigation into the acts of torture committed against the complainant. A pretrial

investigation was currently under way, and the State party had made a commitment to report on its outcome. The Secretariat therefore recommended continuing the follow-up dialogue and asking the State party for updates on the progress of the investigation.
13. **Ms. Gaer** said that perhaps the recommendation could be made more proactive if the Committee established a deadline for an update on the investigation, thereby strengthening the procedure. Sixty days from 9 May 2017 seemed acceptable, since the State party had already been sent the relevant material on 10 April 2017.
14. **The Chair** suggested that such a deadline could be applied to all cases, and not just *Oleg Evloev v. Kazakhstan*.
15. **Mr. Machon** (OHCHR) asked whether the Committee thought a 30- or 90-day deadline would be preferable.
16. **The Chair** said that, in order to ensure consistency with the language normally used in decisions on individual communications, 90 days would be reasonable.
17. **Ms. Gaer** said that, since the Committee would be meeting again in 90 days, 60 days was a better option in that context.
18. **The Chair**, agreeing with Ms. Gaer's argument, said that the Committee adopted the recommendation of the Secretariat with the amendment proposed.

Communication No. 477/2011
19. **Mr. Machon** (OHCHR) said that in *Aarrass v. Morocco* (communication No. 477/2011), the Rapporteur, upon the recommendation of the Secretariat, had registered a new complaint in the light of the deterioration of the complainant's conditions since his transfer to Tifelt 2 Prison on 10 October 2016. The Secretariat thus recommended continuing the follow-up dialogue and requesting a meeting with the Ambassador and Permanent Representative of Morocco to the United Nations Office at Geneva to discuss the possible measures by the State party's authorities to implement the Committee's decision. Thus far, efforts to arrange a meeting with the Ambassador had not been successful; if the meeting could not be arranged by the end of the 60th session, perhaps during the 61st session a meeting could be arranged between the Chair, the Follow-up rapporteur and the Ambassador.
20. **Mr. Bruni** said that, because the complainant was in very poor health, interim measures of protection had been requested at the time of registration of the communication.
21. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Communication No. 490/2012
22. **Mr. Machon** (OHCHR) said that in *E.K.W. v. Finland* (communication No. 490/2012), the Secretariat, which had sent two reminders to provide comments, had not been very successful in obtaining updates from the complainant's counsel. Hence, it recommended continuing the follow-up dialogue, with the possibility of sending a third reminder to the complainant's counsel.
23. **Ms. Gaer** said that she was disappointed with that outcome. Although the Committee had adopted its decision two years earlier, it had received no word on the complainant's status to date. The State party or the complainant's counsel should have been able to provide information as to what had happened to the complainant. The Finnish authorities in Geneva should be asked for a response and be given a time frame within which to provide it.
24. **The Chair**, agreeing with Ms. Gaer's argument, said that the Committee adopted the recommendation of the Secretariat with the amendment proposed.

Communication No. 497/2012
25. **Mr. Machon** (OHCHR) said that in *Rasim Bayramov v. Kazakhstan* (communication No. 497/2012), the complainant had been subject to a forced confession in the context of a criminal investigation. In 2014, the Committee had urged the State party to conduct a proper, impartial and independent investigation into those responsible for the complainant's treatment.

In 2016, the complainant had contracted tuberculosis while in prison and had subsequently died in the prison hospital, which made his mother the beneficiary of the remedy requested by the Committee.

26. Although the State party had not provided much assistance on the matter, a note verbale, which needed to be reflected in paragraph 21 of the follow-up report (CAT/C/60/3), had made it known that the investigation had been terminated without a satisfactory outcome because of a lack of evidence against three suspects in the complainant's case. The State party could therefore not overturn the deceased complainant's criminal conviction. For those reasons, the Secretariat recommended continuing the follow-up dialogue and requesting a meeting with the Permanent Representative of Kazakhstan to the United Nations Office at Geneva at the 61st session in order to seek additional updates.

27. **The Chair** said that the Permanent Representative had actually made a commitment to encourage the authorities to look into the matter again to see whether it would be possible to overturn the conviction, resume the investigation and provide a more adequate remedy to the complainant's mother.

28. **Ms. Gaer** said that, despite the fact that the Committee had asked the State party to provide remedy by way of investigation, reparation, and preventive measures, in view of the complainant's death in prison, it was clear that such remedy had not been adequately provided. It seemed that the Committee should do more than simply continue the dialogue with the State party; it would be worth stressing that the State party had an obligation to furnish compensation and rehabilitative care. It would be interesting to know what its plans were in that regard. However, it was unclear how to put the issue forward without reducing the value of a life to a monetary amount.

29. **The Chair** said that, more than simply continue the dialogue, the Committee had done everything possible to effect changes. It had pressed the Permanent Representative to review the decisions with which it disagreed and had expressed its dissatisfaction with the amount awarded to the complainant's mother as compensation.

30. *The Committee adopted the recommendation of the Secretariat, taking into account the additional remarks which had been made.*

Communication No. 503/2012

31. **Mr. Machon** (OHCHR) said that in *Boniface Ntikarahera v. Burundi* (communication No. 503/2012), the Committee had urged the State party to conduct an investigation to prosecute the alleged perpetrators of acts of torture. A judge had opened an inquiry, which had included a medical examination of the complainant, but the complainant's health remained precarious. There was a pending request for the State party's observations on a submission by the complainant transmitted on 28 March 2017. For those reasons, the Secretariat recommended continuing the follow-up dialogue and reverting to an assessment of implementation at subsequent sessions.

32. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Communication No. 523/2012

33. **Mr. Machon** (OHCHR) said that in *X. v. Finland* (communication No. 523/2012), the Committee had concluded that the deportation of the complainant to Angola would amount to a breach of article 3. Since the complainant had received a renewable residence permit, the Secretariat recommended closing the follow-up procedure, with a note of satisfactory resolution, subject to the comments of the complainant's counsel; no such comments had been received thus far. Should the complainant again be subjected to a new decision on his forcible removal from Finland, he might resubmit a complaint to the Committee.

34. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Communication No. 562/2013

35. **Mr. Machon** (OHCHR) said that in *J.K. v. Canada* (communication No. 562/2013), the Committee had concluded that the complainant's removal to Uganda would constitute a breach of article 3. It urged the State party to refrain from forcibly returning the complainant to his country of origin. The Secretariat recommended continuing the follow-up dialogue, sending a reminder for comments by the complainant and, subject to the complainant's comments, eventually closing the follow-up dialogue with a note of satisfactory resolution.

36. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Communication No. 580/2014

37. **Mr. Machon** (OHCHR) said that *F.K. v. Denmark* (communication No. 580/2014) was a case which had essentially been re-registered in 2016 because of the unsatisfactory implementation of the Committee's initial conclusion. The new complaint had included a request for interim measures and a reiteration of the request for the observance thereof. In April 2017, the State party had submitted that the complainant's additional comments had not given rise to further observations. The Secretariat thus recommended continuing the follow-up dialogue.

38. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Communication No. 606/2014

39. **Mr. Machon** (OHCHR) said that in *Naâma Asfari v. Morocco* (communication No. 606/2014), the Committee had decided that the State party had the obligation to provide compensation and rehabilitation, to initiate an impartial and thorough investigation of the alleged events, and to refrain from any pressure, intimidation or reprisals. The Court of Cassation had referred the complainant's case to the Court of Appeal in late summer 2016, and the State party had informed the Committee that it would no longer exchange information on follow-up unless the current domestic procedures were terminated. Since the investigation of the complainant's allegations of torture remained pending, the Secretariat recommended continuing the follow-up dialogue and requesting a meeting with the Ambassador and Permanent Representative of Morocco to the United Nations Office at Geneva to discuss measures the State party's authorities could take to implement the Committee's decision.

40. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Communication No. 628/2014

41. **Mr. Machon** (OHCHR) said that in *J.N. v. Denmark* (communication No. 628/2014), the complainant's counsel had expressed satisfaction that he had been granted asylum. The Secretariat thus recommended closing the follow-up dialogue, with a note of satisfactory resolution.

42. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Communication No. 634/2014

43. **Mr. Machon** (OHCHR) said that in *M.B., A.B. et al. v. Denmark* (communication No. 634/2014), the Committee had concluded that the State party had an obligation to refrain from forcibly removing the complainants from its territory. In 2017, the Danish Refugee Appeals Board had reopened the complainants' asylum cases for review, but the Board had ultimately ordered the complainants to leave Denmark. Initially, the Secretariat had recommended continuing the follow-up dialogue. However, taking an approach similar to that in *F.K. v. Denmark*, the complainants' counsel had recently requested the registration of a new case because of the unsatisfactory implementation of the Committee's decision. It would thus be helpful to hear the Committee's preference as to how to proceed, whether to address the matter in the context of follow-up or to adhere to the precedent set by *F.K. v. Denmark* and register a second complaint.

44. **Mr. Hani** said that, since comments from the complainants were pending, it would be acceptable for the Committee to decide on the matter at its subsequent session, when it would have received those comments.
45. **The Chair** said that the Committee would act in accordance with Mr. Hani's suggestion.

Communication No. 682/2015
46. **Mr. Machon** (OHCHR) said that in *Abdul Rahman Alhaj Ali v. Morocco* (communication No. 682/2015), because the complainant had been in pre-trial detention since 2014, the Committee had urged the State party to either release him or try him if charges were brought against him in Morocco. By January 2017, the State party had not yet implemented the Committee's decision. In March 2017, while on a hunger strike to protest his detention, the complainant had been visited by plain clothes police officers, who had proceeded to coerce him into signing an acceptance of extradition to Saudi Arabia. In the light of the gravity of the complainant's subsequent allegations of psychological torture, the Committee's rapporteurs had urged the State party to provide the necessary clarifications on the complainant's situation. To date, the State party had not responded to that request. The Secretariat thus recommended continuing the follow-up dialogue and requesting a meeting with the Ambassador and Permanent Representative of Morocco to the United Nations Office at Geneva in order to discuss the possible measures by the State party's authorities to implement the Committee's decision.
47. **The Chair** said that the Committee adopted the recommendation of the Secretariat.

Report on follow-up to reprisals
48. **The Chair** invited Mr. Bruni to present the progress report on follow-up to reprisals.
49. **Mr. Bruni** (Rapporteur on reprisals) said that the only case of reprisals concerning the reporting procedure involved Burundi. At the Committee's review of the State party's report in 2016, four lawyers had presented information on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Burundi. On the very day of the presentation, the Public Prosecutor of Bujumbura had ordered the Bar Association to disbar the four lawyers for their involvement in public uprisings against the President in 2015. The Bar Association had replied that, given the principle of presumption of innocence and the insufficient evidence of their involvement in the riots, the lawyers could not be disbarred.
50. The Public Prosecutor had thus turned to the Court of Appeal, which on 16 January 2017 had issued its decision, permanently disbarring three of the four lawyers and suspending the fourth for one year. The authorities' immediate action against the lawyers had suggested a link between their collaboration with the Committee, whereby they had provided information unfavourable to the Government. After contacting the Secretariat, the Chair and he had sent a second letter to the Ambassador of Burundi (the first one had resulted in what was, in effect, no response), detailing the conclusions of the Committee, noting the appeals process which had led to the disbarring of the four lawyers and pointing out the apparent connection between the lawyers' work with the Committee and their disbarment. The Government had been asked to provide the Committee with an explanation of the matter; no deadline had been given for such explanation, as it had been hoped that the goodwill of the Government would impel it to be forthcoming. The letter had been sent on 21 February 2017, and thus far no response had been received.
51. **Ms. Gaer** said that it might be advisable to notify the Secretary-General of the matter so that it might be included in his report. It might also be useful to notify the Special Rapporteur on the Situation of Human Rights Defenders or the Special Rapporteur on the Independence of Judges and Lawyers, for example. It would be interesting to know, moreover, whether the four lawyers were safe.

52. **Mr. Touzé**, expressing his agreement with Ms. Gaer, said that, since several United Nations bodies were concerned with Burundi, it would be a good idea to coordinate all their efforts, rather than have each approach the issue individually. Ms. Gaer had suggested notifying the Secretary-General, but there was also a commission of inquiry which unfortunately was unable to operate as it should; perhaps it, too, could be notified. It could thus be useful to organize a meeting among all those bodies in order to find a common solution.
53. **The Chair** said that the Committee would consider that proposal during its 61st session.
54. **Mr. Bruni** said that he believed that the Special Procedures were aware of the situation. He would remind the Secretariat of the Committee's decision to inform the Secretary-General for the purposes of his report. In addition, despite its lack of access to the State authorities, the commission of inquiry should also be formally notified of the case. The four lawyers in question were safe because they did not live in Burundi, but rather, in neighbouring countries; they were in contact with official international NGOs, which provided a channel by which the lawyers could transmit information which could be useful to the Committee.

II. Organizational Matters Before Torture Subcommittee, CAT/C/SR.1531

1. **Sir** Malcolm **Evans** (Chair of the Subcommittee on Prevention of Torture), presenting the Subcommittee's 2016 annual report (CAT/60/3), said that, though there had not been any new ratifications, a number of countries had made the commitment to ratify the Optional Protocol to the Convention against Torture by the end of 2017. It was worth highlighting that Africa now had the largest share of States parties. Seven new members had joined the Subcommittee at the beginning of 2016.

2. Regarding country visits, the Subcommittee had significantly changed its approach as it had stopped differentiating between different types of visits. It was currently carrying out 10 visits per year, which was as many as could feasibly be accomplished with the resources and time available. Once again, the Subcommittee had found itself forced to suspend a visit—in the event, to Ukraine—owing to an inability to access places of deprivation of liberty in a useful manner. However, the visit had been resumed and completed in September 2016 following a dialogue with the State party. Visits were not an end in themselves; rather, they were the beginning of a relationship between the Subcommittee and the State party. There was a growing trend among States to give their consent for the visit report to be made public; just under two thirds of reports were available on the Subcommittee's website. That impressive rate notwithstanding, the Subcommittee was concerned at the number of States, listed in paragraph 21 of the annual report, that had not responded to their respective visit report. It should be noted, however, that some overdue States had contacted the Subcommittee via other means. Due to the sheer volume of work, the Subcommittee would be requesting an additional week of meeting time to be granted for the 2018–2019 biennium.

3. Some 57 of the 83 States parties had informed the Subcommittee of the establishment of their national preventive mechanism, but over 20 had failed to comply with their obligation under article 17 of the Optional Protocol in a timely manner. In response, the Subcommittee had decided to post a list of States that were more than three years behind, making it clear that the only way to be removed from the list was to set up a national preventive mechanism. The Subcommittee expected for the first time to be able to remove some States from the list at its next session.

4. The donations to the Special Fund, while naturally very welcome, remained insufficient to sustain the Fund in future. Pointing out that the Subcommittee had done away with the section of the annual report that had traditionally been devoted to substantive issues, chiefly because of word limits, he announced that the Subcommittee was considering moving towards more formal papers similar to general comments.

5. **Mr. Bruni** asked how the Subcommittee, bolstered by a decade of experience, would assess the national preventive mechanisms, specifically with regard to whether they met expectations, how efficient they were and whether they were helpful in the context of country visits.

6. **Ms. Racu** asked what the Subcommittee's approach was to visiting places of detention in de facto territories like Transnistria.

7. **Mr. Hani** asked whether there were plans to set up a system to assess and rank national preventive mechanisms. Recalling that the Committee was revising its general comment on article 3 of the Convention, he wished to know whether the Subcommittee and national preventive mechanisms might play a role in monitoring the situation of persons subject to removal from one country to another.

8. **Ms. Gaer** commended the Subcommittee on achieving such a milestone. Recalling that the Committee sometimes conducted visits to countries under the confidential inquiry procedure, asked how the Subcommittee viewed coordination between the two bodies in order to avoid overlapping visits.

9. **The Chair** said that there was scope to further deepen the relationship between the two bodies. Position papers and general comments were an obvious area of cooperation; in fact, the bodies might even consider creating joint working groups. It was vital that they should

have coordinated views on key issues. Why had the Subcommittee decided to stop producing the annual visit programmes? Was that not less transparent?

10. **Sir** Malcolm **Evans** (Chair of the Subcommittee on Prevention of Torture) said that the Subcommittee had always been of the view that it was not its role to give formal accreditation to national preventive mechanisms. However, it had produced considerable guidance on the matter, as well as self-assessment questionnaires, and maintained a dynamic relationship with most national preventive mechanisms that enabled it to know what their shortcomings were. National preventive mechanisms were very responsive to the Subcommittee's feedback and frequently contacted it with questions on practical issues.

11. The Subcommittee occasionally encountered the problem of places of detention that were difficult to reach because they were located in areas not under the direct control of the State. It had indeed happened in the Republic of Moldova, where the Subcommittee had not visited places in Transnistria because other activities had been going on at the same time. During the visit to Ukraine, the Subcommittee had met with the de facto authorities in the area of Donetsk about visiting places of detention there. The Subcommittee took as broad as possible an approach to its mandate.

12. The Subcommittee had discussed with national preventive mechanisms their role in the context of returns. Its view, which some mechanisms also held very strongly, was that involving them in such cases would undermine their functional independence. However, that was not to say that they did not play a role in the evaluation of removals: in much of Europe, the courts legitimately used reports by national preventive mechanisms to help assess the situation in countries of return. The matter was under active discussion in various quarters.

13. Certainly, the question of how best to use available resources and avoid overlap and duplication with other bodies was increasingly pressing. The reason that it had been difficult for the Subcommittee to take a hands-off approach to countries with which the Committee was engaged was simply that it was not informed of the States subject to a confidential inquiry. He was eager to explore ways of overcoming such hurdles. One of the advantages of moving towards general comments was the ability to take a more coordinated approach to and ensure greater alignment on substantive issues.

The Subcommittee still agreed on a pre-ordered programme of visits in June each year. However, for operational reasons it had become increasingly difficult and constraining to announce all the visits at once, so they were now announced in tranches.

III. Procedures of the Human Rights Treaty Bodies for following up on Concluding Observations, Decisions and Views, HRI/MC/2017/4

1. At their twenty-eighth meeting, held from 30 May to 3 June 2016, the Chairs of the human rights treaty bodies discussed the need to compare practices and further improve the procedures for following up on concluding observations, decisions and Views. Also at that meeting, they decided to include the issue of follow-up procedures in the agenda of their twenty-ninth meeting, to be held in June 2017. The Secretariat prepared the present note to serve as a basis for discussion at that meeting.

2. While it is recognized that the treaty bodies have engaged in a variety of follow-up activities, including country inquiries, workshops at the national and regional levels and country visits, the focus of the present note is essentially on the existing written follow-up procedures adopted by a number of treaty bodies regarding: (a) the concluding observations adopted after the relevant committee has reviewed the reports of States parties; and (b) the decisions and Views adopted on individual complaints. The note contains an overview of the policies and practices on follow-up procedures currently in place and information on how these procedures compare with each other.

II. Background

3. The human rights treaty bodies have regularly underscored the need to improve the procedures for following up on concluding observations, decisions and Views. Notably, at the second inter-committee meeting, held in June 2003, it was recommended that all treaty bodies should examine the possibility of introducing procedures to follow up their recommendations (see A/58/350, annex I, para. 42). That recommendation was reiterated at subsequent inter-committee meetings. In 2009, at the tenth inter-committee meeting, it was reaffirmed that follow-up procedures were an integral part of the reporting procedure and recommended that all treaty bodies should develop modalities for follow-up procedures (see A/65/190, annex I, para. 40).

4. Also at the tenth inter-committee meeting, it was suggested that the procedures could consist of one or more mandate holders assessing the information provided by States parties and developing, as necessary, pertinent criteria for analysing the information received. Moreover, a working group on follow-up was established with a view to improving and harmonizing the procedures. In 2011, the working group held its first meeting, at which points of agreement on follow-up to concluding observations, decisions on individual complaints and inquiries were reached (see HRI/ICM/2011/3HRI/MC/2011/2, para. 61). The points of agreement were submitted to the Chairs of the treaty bodies at their twenty-third meeting, held in June 2011, for approval and subsequent endorsement. The Chairs adopted the document with a minor amendment (see A/66/175, para. 4).

III. Procedures for following up on concluding observations

5. All treaty bodies request States parties to provide, in their periodic reports, information on the implementation of recommendations made in previous concluding observations. In addition, the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on Enforced Disappearances have adopted formal procedures to follow up on the implementation of specific concluding observations or decisions on cases brought under the individual complaints procedures.

6. Follow-up practices and procedures developed by each treaty body, including the criteria for identifying follow-up recommendations and the modalities for assessing follow-up reports, differ from one committee to another. In general, committees appoint a rapporteur or a coordi-

nator on follow-up who is responsible for assessing the follow-up reports of the States parties and presenting them to their committee. The rapporteur assesses the follow-up report, taking into account the information submitted by civil society organizations, national human rights institutions and United Nations entities and agencies, when available. Some members of treaty bodies have undertaken visits to States parties, at the invitation of Governments, in order to follow up on the report and on the implementation of concluding observations…

Follow-up procedures for individual complaints

A. Overview

50.Eight treaty bodies currently deal with individual communications: the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. All of them monitor and encourage the implementation of their decisions on individual complaints of human rights violations. Among them, six (the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances) have formal follow-up procedures to assess compliance with decisions. To a large extent, those procedures have been harmonized.

51. At its thirty-ninth session, in July 1990, the Human Rights Committee established the mandate of Special Rapporteur for follow-up on Views (see A/45/40 (vol. II), annex XI). The Committee against Torture and the Committee on the Elimination of Racial Discrimination commenced their follow-up procedure in May 2002 (see A/57/44) and August 2005 (see A/60/18) respectively. In September 2013, the Committee on the Rights of Persons with Disabilities initiated its follow-up procedure. No committee, however, has yet adopted procedural guidelines on how to assess the information received from States parties and complainants under the follow-up procedure. The lack of a written methodology affects the consistency and sustainability of the procedure owing to the turnover of committee rapporteurs and Secretariat staff.

B. Proposed remedies following the finding of violations

52. Upon finding a violation, all committees dealing with individual communications request the States parties concerned to provide information on the steps taken to implement the recommendations within a particular period. The requests appear at the end of the dispositive part of the decisions of all committees. While these technical paragraphs are standard for each committee, they differ from one another.

53. The committees recommend various types of remedies to redress human rights violations. The most common is compensation (the amount is never specified). The committees may also recommend release, investigation, retrial, non-removal of the victim or amendments to legislation, among other options. The remedies suggested to the State party by the Committee on the Elimination of Discrimination against Women, the Committee on Enforced Disappearances, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of Persons with Disabilities differ somewhat from those suggested by the other committees. While the Committee on the Elimination of Racial Discrimination and the Committee against Torture only suggest a remedy for the particular victim of the violation, the Committee on the Elimination of Discrimination against Women, the Committee on Enforced Disappearances, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of Persons with Disabilities (and more recently and gradually, the Human Rights Committee) set out recommendations relating to the victim, including on compensation, as well as more general recommendations to prevent and rectify the violation.

54. At times, as in the case of Human Rights Committee and the Committee against Torture,

the recommendations are not very detailed and, for example, refer broadly to the provision of an adequate or an effective remedy. Often, however, the recommendations are more specific, and request, for example, the payment of adequate compensation, early release, the refraining from forcible removal of the victim, a retrial or amendments to legislation

C. Rapporteurs on follow-up

55. The Human Rights Committee, the Committee against Torture, the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Racial Discrimination each elect, from among their members, a Rapporteur or Special Rapporteur on follow-up to Views. The Committee on the Elimination of Discrimination against Women designates two Rapporteurs on follow-up.

D. Analysis of follow-up information

56. All of the committees adopt follow-up decisions based on an analysis of follow-up information provided by States parties and/or complainants. The Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Persons with Disabilities have a formal follow-up procedure to assess compliance with decisions.

57. In March 2017, the Human Rights Committee introduced a new, simplified grading system that did away with subgrades and whereby: A—response largely satisfactory; B—action taken, but additional information of measures required; C—response received, but actions or information not relevant or do not implement the recommendation; D—non-cooperation with the Committee and no follow-up report received after reminders; and E—response indicates that the measures taken are contrary to the Committee's recommendation. The system used by the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances, however, still includes subgrades.

E. Phases of follow-up procedures on individual communications

58.The standard follow-up process typically has the following major phases, although there are some differences among committees in terms of the deadline for submission of information, the assessment of information etc. (see annex II):

(a) When it finds a violation of the Convention, the committee gives the State party a set time limit (between 90 and 180 days) to provide information on measures taken to comply with the committee's recommendation;

(b) If information is received from the State party, it is routinely transmitted to the author, who is given a specified time (generally, two months) to comment on the State party's submission;

(c) Once information has been received from the author, the Rapporteur on follow-up to Views prepares summary of the State party's response and the author's comments and makes a recommendation to the committee, in plenary, on the follow-up measures to be adopted;

(d) If the committee does not receive a reply from the State party within a reasonable time after the deadline, the Rapporteur, through the secretariat, sends up to three reminders to the State party. If the State party does not reply despite the reminders, the Rapporteur requests a meeting with the representative of the State party in Geneva;

(e) Upon receipt of a response by the State party and the author, the Rapporteur presents his or her report on follow-up, including recommendations on further action, to the committee;

(f) The committee sends a letter to the State party and, if appropriate, to the Rapporteur on follow-up, who holds meetings with representatives of the State party in Geneva in order to share the committee's concerns about the implementation of its Views, listen to the position of the State party in that regard and find possible ways of assisting the State party to implement those Views;

(g) Implementation of the general recommendations contained in the Views of the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Per-

sons with Disabilities and the Committee on Enforced Disappearances is monitored under the follow-up procedure, unless the committee concerned decides otherwise or decides not to pursue the matter. General recommendations are also examined during the consideration of the next periodic report of the State party. However, the Committee may continue to consider general recommendations as a part of its procedure on follow-up to Views;

(h) Generally, the follow-up procedure is carried forward by the Rapporteur and the committee, in plenary, until such time as a decision is taken not to pursue the matter further.

F. Confidentiality and publication online

59. The Human Rights Committee and the Committee against Torture consider interim follow-up reports in public session, while the Committee on the Rights of Persons with Disabilities, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women hold such meetings in private. All committees consider that information provided in the context of follow-up to their decisions is public. Although the submissions are not accessible to the general public, including on the website, the follow-up reports on Views are posted on the web pages of the committees. The report of the Rapporteur also includes summaries of submissions by States parties. All committees include summaries of interim follow-up information in their annual reports.

IV. Operations of the Voluntary Fund for Financial and Technical Assistance in the Implementation of the Universal Periodic Review, A/HRC/35/18

1. In its resolution 6/17, the Human Rights Council requested the Secretary-General to establish a voluntary fund for financial and technical assistance in order to provide, in conjunction with multilateral funding mechanisms, a source of financial and technical assistance to help countries implement recommendations emanating from the universal periodic review in consultation with, and with the consent of, the country concerned. In its resolution 16/21, the Council requested that the Voluntary Fund be strengthened and operationalized in order to provide a source of financial and technical assistance to help countries, in particular least developed countries and small island developing States, to implement the recommendations emanating from their review. The Council also requested that a board of trustees be established in accordance with the rules of the United Nations.

2. The Voluntary Fund was established in 2009. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has continued to provide financial and technical assistance to States that have requested or consented to receiving such support. Support has been provided in the spirit of the founding resolution of the universal periodic review, in which it is stated that the objectives of the review include the improvement of the human rights situation on the ground (Human Rights Council resolution 5/1, annex, para. 4 (a)), the fulfilment of the State's human rights obligations and commitments (ibid., para. 4 (b)) and the enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned (ibid., para. 4 (c)).

II. Operationalization of the Voluntary Fund

A. Board of Trustees of the Voluntary Fund

3. The members of the Board of Trustees of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights also serve as the Board of Trustees for the Voluntary Fund for Financial and Technical Assistance in the Implementation of the Universal Periodic Review (see A/HRC/29/22, para. 4). They are tasked with overseeing the management of the latter Fund. The members are Marieclaire Acosta Urquidi (Mexico), Lin Lim (Malaysia), Valeriya Lutkovska (Ukraine), Christopher Sidoti (Australia) and Esi Sutherland-Addy (Ghana). The Board elected Mr. Sidoti as Chair for the period 30 June 2016 to the end of the Board's seventh session, held in Geneva in March 2017; at that session, the Board elected Ms. Acosta Urquidi as Chair.

4. In close consultation with the various sections of OHCHR, the Board of Trustees focuses its attention on broadly guiding the operationalization of the Voluntary Fund for Financial and Technical Assistance in the Implementation of the Universal Periodic Review by providing policy advice.

5. Since the submission of the previous report, the Board of Trustees has undertaken a field mission to the OHCHR office in Guatemala, in October 2016, and has held its regular annual session, its seventh, in Geneva in March 2017. At that session, the Board had strategic discussions with the relevant OHCHR officers on follow-up support to identify strategic options for OHCHR provision of technical assistance and cooperation aimed at assisting States to implement more effectively recommendations emanating from the universal periodic review and other international human rights mechanisms at the country level. The Board will develop the strategic options over the next six months for further consideration at its next session.

6. During the session, the Board of Trustees acknowledged the results achieved by its follow-up support strategy focusing on national follow-up mechanisms and processes at the country level. It highlighted the need for OHCHR to articulate a strategic vision for follow-up support focusing on and leading to better implementation on the ground of recommendations emanating from international human rights mechanisms. The Board strongly encouraged OHCHR to explore ways of providing more focused technical assistance and cooperation aimed at as-

sisting States to implement specific key human rights recommendations and address specific issues, in accordance with the priorities established in the framework of the OHCHR Management Plan 2018-2021, which is currently under development.

B. Strategic vision

7. As noted in previous reports (A/HRC/26/54, A/HRC/29/22 and A/HRC/32/28), OHCHR has been developing the capacity to provide increased support to States in their efforts to implement the outcome of the universal periodic review and other international human rights mechanisms. That effort has been anchored in a holistic and integrated approach that allows OHCHR to provide technical assistance and support that takes into account the recommendations of the universal periodic review, the treaty bodies and the special procedures. Such an integrated approach provides States with a significant opportunity to address the key human rights issues identified in the recommendations emanating from international human rights mechanisms.

8. OHCHR has been making every effort to render its follow-up support more proactive, systematic and results-oriented. To that end, it has been engaging States in their efforts to implement the recommendations of international human rights mechanisms by providing support directly through its field presences or by ensuring the integration of support in United Nations country team programming on follow-up.

9. Thus far, OHCHR has focused its support on establishing or strengthening national mechanisms and processes for follow-up. Key elements identified for more effective follow-up at the national level include a well-functioning inter-institutional body, an implementation action plan that clearly identifies achievable results and priorities, national government agencies responsible for implementation, and indicators and timelines against which to measure impact. OHCHR has made every effort to maximize its effectiveness. Support from the Voluntary Fund to strengthen national follow-up mechanisms and processes has been closely aligned and coordinated with the support provided to States under the treaty body capacity-building programme on national mechanisms for reporting and follow-up.

10. OHCHR has been increasingly providing support to address key thematic human rights issues identified in recommendations from international human rights mechanisms as priority issues for implementation on the ground.

11. In order to provide more effective support to States in implementing their human rights commitments and obligations, OHCHR will continue to adapt and revitalize its strategic vision to support States in the preparation of their national reports and the implementation of the recommendations emanating from the universal periodic review.

12. In line with the terms of reference of the Voluntary Fund, it is essential to ensure that the universal periodic review outcomes are well integrated and mainstreamed into the United Nations Development Assistance Frameworks, the integrated strategic frameworks in peacekeeping missions and in national development plans, and that the information on review outcomes is widely disseminated.

13. A thorough analysis of the universal periodic review outcomes and those of other human rights mechanisms, such as the concluding observations of treaty bodies, the findings and recommendations of special procedures and the findings of commissions of inquiry mandated by the Human Rights Council, may also serve as a tool for conflict prevention, providing an indication of potential risk factors and necessary measures to be taken by the international community to adequately address them.

14. In addition, it should be highlighted that the universal periodic review outcomes may constitute an essential element to be considered in relation to implementation of the Sustainable Development Goals. Hence, follow-up support through technical assistance and cooperation to States should be aimed at fully integrating the universal periodic review outcomes into national frameworks and processes for the implementation of the Sustainable Development Goals . . .

15. Since the establishment of the Voluntary Fund in 2009, 13 countries have made financial contributions: Australia, Colombia, Germany, Kazakhstan, Morocco, the Netherlands, Norway, Oman, the Republic of Korea, the Russian Federation, Saudi Arabia, Spain and the United Kingdom of Great Britain and Northern Ireland. Table 2 provides an overview of all contributions received from the establishment of the Voluntary Fund to 31 December 2016.
16. It is expected that, as the revitalized OHCHR strategic vision for follow-up support focuses on providing support to States in implementing key thematic priority recommendations in a holistic and integrated manner, the demand from States for financial support from the Voluntary Fund will continue and indeed increase. Hence, it is critical to extend the donor base and obtain additional funding in order to make a sustained impact at the country level in providing technical assistance and support to States for more effective implementation of recommendations emanating from international human rights mechanisms.

V. Conclusions

17. The primary responsibility for implementing recommendations of international human rights mechanisms at the country level rests with States. Hence, securing the political will of States and enhancing their ability to bring about tangible results is vital to meeting the key objective of the universal periodic review, namely, improving the human rights situation on the ground. With a view to achieving that objective, the Voluntary Fund has continued to serve as a valuable source of support for countries in the implementation of the recommendations emanating from their universal periodic review and from other international human rights mechanisms such as treaty bodies and special procedures.
18. The focus of OHCHR support has been on building the capacity of States to implement more effectively the recommendations of international human rights mechanisms, particularly by providing support for the establishment or strengthening of national follow-up mechanisms and processes, including inter-institutional bodies such as national mechanisms for reporting and follow-up.
19. OHCHR support to help national follow-up mechanisms and processes function more effectively has continued to gain traction. That support to national mechanisms for reporting and follow-up will continue in close coordination with the OHCHR treaty body capacity-building programme. Support from the Voluntary Fund will focus on assisting States to fulfil their commitments to implement priority thematic human rights recommendations accepted during their universal periodic review and those from other international human rights mechanisms.
20. OHCHR will continue to strive to share with States and other United Nations partners several tools that are available to help integrate and mainstream the recommendations of international human rights mechanisms into their respective programmes, such as the United Nations Development Assistance Frameworks and national development action plans.
21. It is worth noting that OHCHR, with the advice of the Board of Trustees of the Fund, constantly reviews and updates its strategic vision for follow-up support in order to provide more effective support to States in an effort to facilitate results on the ground in terms of the promotion and protection of human rights. While OHCHR continues to take a holistic and integrated approach to its follow-up support, it seeks, through the use of money from the Voluntary Fund, to: (a) provide capacity-building to States for them to prepare meaningful national reports on implementation, through the provision of training across the spectrum of the government actors concerned; and (b) enable States to meet their commitments by focusing on supporting them to implement key thematic priority recommendations. In that regard, it is important to integrate recommendations from international human rights mechanisms into the national planning processes; to utilize international human rights recommendations for early warning and conflict prevention by integrating them into the Human Rights Up Front initiative; and to ensure that the recommendations become a crucial element in the implementation of the Sustainable Development Goals by integrating them into the relevant national implementation frameworks and action plans.

22. It is also important to encourage and secure the active participation of other stakeholders in the follow-up process, as that is key to achieving a sustained impact. Hence, various stakeholders should be able to benefit, either directly or indirectly, from the Voluntary Fund by becoming involved in the technical cooperation and assistance programme for the States that are beneficiaries of the Fund.
23. In order to provide technical support and assistance for follow-up more effectively, it is imperative that more contributions be made to the Voluntary Fund. With additional resources, the Fund will be able to support OHCHR to ensure the sustainability of support to States in implementing the recommendations of the international human rights mechanisms.

V. Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations, A/HRC/34/31

1. The present report is submitted pursuant to Human Rights Council resolution 32/14, in which the Council requested the United Nations High Commissioner for Human Rights, as Co-Chair of the Global Migration Group Working Group on Migration, Human Rights and Gender Equality, to continue to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms, and to report thereon to the Human Rights Council at its thirty-fourth session.

2. Accordingly, on 27 October 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) addressed a note verbale to Member States and intergovernmental and non-governmental organizations, seeking their views and information on the issue. Written submissions were received from States, intergovernmental organizations, non-governmental organizations and individual experts.[1]

3. The Global Migration Group Working Group on Migration, Human Rights and Gender Equality, led by the High Commissioner as Co-Chair, is developing the principles and guidelines through a human rights-based, multi-stakeholder, expert process, which is open to the involvement of all relevant actors.[2] This initiative reflects the primary stated purpose of the Global Migration Group, which is "to promote the wider application of all relevant international and regional instruments and norms relating to migration" and "to encourage the adoption of more coherent, comprehensive approaches to the issue of international migration."[3]

4. The draft principles and guidelines have already been referenced in reports to the Human Rights Council and General Assembly (see A/HRC/33/67, and A/71/285, para. 106). States have acknowledged and called for the continuation of the process of developing the principles and guidelines (see the New York Declaration for Refugees and Migrants, para. 51 and Council resolution 32/14).

5. In view of considerations of space, the present report provides an introduction and 20 draft principles, as derived from international human rights law. The report should be read in conjunction with the related conference room paper outlining a set of draft guidelines, which complement each principle.[4] The principles and guidelines are currently in draft form and the present document is being presented as a progress report, pursuant to the request of the Human Rights Council. Since many terms used in global discussions in this area have required clarification, a limited glossary of key terms used in the report and the principles and guidelines has been included in the annex to the present document. . . .

6. In the New York Declaration for Refugees and Migrants, the General Assembly recognized the complex reasons for contemporary movement: "Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and

1. In addition to submissions from a large number of non-governmental organizations and individual experts, submissions were received from the following States; Australia, Cuba, Ghana, Iraq, Italy, Japan, Lebanon, Mexico, Peru, Qatar, Serbia, Slovakia, Slovenia, Sweden, Turkey and the European Union. The submissions can be found on the migration page of the OHCHR website at www.ohchr.org/EN/Issues/Migration/Pages/largeandormixedmovements.aspx.

2. Members of the Working Group on Migration, Human Rights and Gender Equality include the International Labour Organization (ILO), the International Organization for Migration (IOM), OHCHR, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime, the United Nations University, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the World Health Organization. The group is co-chaired by OHCHR and UN-Women.

3. See www.globalmigrationgroup.org/system/files/uploads/documents/Final_GMG_Terms_of_Reference_prioritized.pdf and www.globalmigrationgroup.org/what-is-the-gmg.

4. Each principle is illustrated by a set of related practical interventions, "promising practices," which are examples of measures that have been implemented by States and other stakeholders and are intended to encourage practical action to give effect to the principles and guidelines.

abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change) or other environmental factors. Many move, indeed, for a combination of these reasons."[5] The Secretary-General has also noted in this regard that the gradual expansion of refugee protection notwithstanding, many people are compelled to leave their homes for reasons that do not fall within the refugee definition in the Convention relating to the Status of Refugees (see A/70/59, para. 18).

7. While migration can be a positive and empowering experience for individuals and communities and can benefit countries of origin, transit and destination, it is clear that precarious movements of people are a serious human rights concern (see A/HRC/31/35). Although they might fall outside the specific legal category of refugee, migrants may need particular attention to be paid to the respect, protection and fulfilment of their human rights. Some will need specific protection as a result of the conditions they are leaving behind, the circumstances in which they are compelled to move and in which they are received, and/or according to specific characteristics such as age, gender, disability or health status. It is these people on the move and these situations of movement that are the focus of the current principles and guidelines. . . .[6]

8. The concept of a "migrant in a vulnerable situation" may be understood as a range of factors that are often intersecting, can coexist simultaneously and can influence and exacerbate each other. Situations of vulnerability may change over time as circumstances change or evolve. The factors that create a vulnerable situation for migrants might be what drives their migration from their countries of origin, occurs in transit and/or is related to a particular aspect of a person's identity or circumstance. Thus, vulnerability in this context can be understood as situational (external) and/or embodied (internal). . . .[7]

9. The drivers for "non-voluntary" precarious movements are multiple and often intertined, and should be assessed on an individual basis. They can include poverty, discrimination, lack of access to fundamental human rights, including education, health, food and water, and decent work, as well as xenophobia, violence, gender inequality, the wide-ranging consequences of natural disaster, climate change and environmental degradation, and separation from family. The New York Declaration for Refugees and Migrants emphasizes in addition that many people move, indeed, for a combination of these reasons.

A vulnerable situation occurring in the context of the circumstances encountered by migrants en route, at borders and at reception

10. People are often compelled to utilize dangerous means of transportation in hazardous conditions and to resort to the use of smugglers and other types of facilitators, which can place them in situations of exploitation, at risk of trafficking in persons and other abuse. Such a journey can be marked by hunger, deprivation of water, a lack of personal security and lack of access to medical care. Many migrants can spend long periods of time in transit countries, often in irregular and precarious conditions, unable to access justice and at risk of a range of human rights violations and abuses. The inadequate and often harsh conditions in which they are received at borders can also violate rights and further exacerbate vulnerabilities. Responses, such as the arbitrary closure of borders, denial of access to asylum procedures, arbitrary push-backs, violence at borders committed by State authorities and other actors (including criminals and civilian militias), inhumane reception conditions, a lack of firewalls, and denial of humanitarian assistance, increase the risks to the health and safety of migrants, in violation of their human rights.

5. See also the preamble to the Paris Agreement under the United Nations Framework Convention on Climate Change.

6. For further background on the rationale for the principles, see A/HRC/33/67.

7. It is important to note that migrants often show considerable resilience and agency throughout their migration. The vulnerable situations that migrants face have often been created for them by others through law, policy and practice. A human rights-based approach to migrants in a vulnerable situation would therefore seek to ensure that responses aim above all to empower migrants, rather than stigmatizing them and denigrating their agency. See, for example, A/HRC/33/67, paras. 9–12 and A/71/285, paras. 59–61.

A vulnerable situation related to a specific aspect of a person's identity or circumstance
As they move, some people are more at risk of human rights violations than others owing to their persisting unequal treatment and discrimination based on factors including age, gender, ethnicity, nationality, religion, language, sexual orientation or gender identity, or migration status, singly or in combination. Certain people, such as pregnant women, persons in poor health, including those with HIV, persons with disabilities, older persons, or children (including unaccompanied or separated children), are more at risk because of their physical and/or psychological condition. . . .
11. Principles and practical guidance
12. There is an international legal framework that specifically protects the rights of all migrants. However, more precise understanding of the human rights standards for migrants in vulnerable situations, as well as of how States (and other stakeholders) can operationalize those standards in practice, is lacking. The principles and guidelines are accordingly an attempt to provide guidance to States and other stakeholders on how to implement obligations and duties to respect, protect and fulfil the rights of migrants who are moving in vulnerable situations, including within large and/or mixed movements.
13. The principles are drawn directly from international human rights law and related standards, including international labour law, refugee law, criminal law, humanitarian law, the law of the sea, customary international law and general principles of law, including in relation to specific groups in such movements, such as children, persons with disabilities, women at risk, older persons, and lesbian, gay, bisexual, transgender and intersex individuals. The guidelines elaborate international best practice related to each principle in order to assist States (and other stakeholders) to develop, strengthen, implement and monitor measures to protect migrants in vulnerable situations. The guidelines are derived from international human rights law and other relevant branches of law, authoritative interpretations or recommendations by the international human rights treaty bodies and the special procedure mandate holders of the Human Rights Council, as well as other expert sources where relevant.[8] It should be noted that the principles and their associated guidelines are interrelated and inform each other; as such the principles and guidelines should be read holistically.

III. The Principles[9]
The proposed text of the draft principles is as follows:
Principle 1. Ensure that human rights are at the centre of addressing migration, including responses to large and/or mixed movements of migrants.
Principle 2. Counter discrimination against migrants in all its forms.
Principle 3. Protect the lives and safety of migrants and ensure rescue and immediate assistance to all migrants facing risks to life or safety.
Principle 4. Ensure access to justice for migrants.
Principle 5. Ensure that all border governance measures protect human rights, including the right to freedom of movement and the right of all persons to leave any country, including their own, recognizing that States have legitimate interests in exercising immigration controls.
Principle 6. Ensure that all returns are only carried out in full respect for the human rights of migrants and in accordance with international law, including upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsions and the right to seek asylum.

8. The guidance of the international human rights treaty bodies and the special procedure mandate holders of the Human Rights Council is legally binding to the extent that their work is based on binding international human rights law and enjoys the collaboration of States in the system; and also by the authority given on the one hand to the treaty bodies by their creation in accordance with the provisions of the treaty that they monitor, and on the other the authority provided to the special procedure mandate holders by the Human Rights Council. The recommendations of the treaty bodies and special procedure mandate holders are also considered authoritative by prominent international and regional judicial institutions.

9. The sources of international and regional law listed in the footnotes to each principle are further supplemented by various general comments of the human rights treaty bodies, United Nations resolutions and international and regional case law, which are not listed here for reasons of space.

Principle 7. Protect migrants from all forms of violence and exploitation, whether inflicted by institutions or officials, or by private individuals, entities or groups.
Principle 8. Uphold the right of migrants to liberty and prohibition of arbitrary detention through making targeted efforts to end immigration detention of migrants. Never detain children on account of their migration status or that of their parents.
Principle 9. Ensure the widest protection of the family unity of migrants, facilitating family reunification and preventing arbitrary or unlawful interference in the right of migrants to the enjoyment of private and family life.
Principle 10. Guarantee the human rights of all children in the context of migration and ensure that they are treated as children first and foremost.
Principle 11. Protect the human rights of migrant women and girls.
Principle 12. Ensure the enjoyment of the highest attainable standard of physical and mental health of all migrants.
Principle 13. Safeguard the right of migrants to an adequate standard of living.
Principle 14. Guarantee the right of migrants to work in just and favourable conditions.
Principle 15. Protect the right of migrants to education, including primary, secondary and higher education and vocational and language training.
Principle 16. Uphold migrants' right to information.
Principle 17. Guarantee monitoring and accountability in all responses to migration, including in large and/or mixed movements of migrants.
Principle 18. Respect and support the activities of human rights defenders and others working to rescue and provide assistance to migrants.
Principle 19. Improve the collection of disaggregated data on the human rights situation of migrants, while ensuring the right to privacy and protection of personal data.
Principle 20. Build capacity and promote cooperation amongst and between all relevant stakeholders to ensure a gender-responsive and human rights-based approach to migration governance and to understand and address the drivers of the movement of migrants.

Glossary
An **asylum seeker** is any person who has applied for protection as a refugee and is awaiting the determination of their status.
Border Governance: Legislation, policies, plans, strategies, action plans and activities related to the entry into and exit of persons from the territory of the State, including detection, rescue, interception, screening, interviewing, identification, reception, detention, removal, expulsion, or return, as well as related activities such as training, technical, financial and other assistance, including that provided to other States.[10]
Firewalls: Measures to effectively separate immigration enforcement activities from public service provision by State and non-State actors and from labour law enforcement, as well as from criminal justice measures for victims of crime, so as not to deny human rights to persons in an irregular status.[11] They are "designed to ensure, particularly, that immigration enforcement authorities are not able to access information concerning the immigration status of individuals who seek assistance or services at, for example, medical facilities, schools and other social service institutions. Relatedly, firewalls ensure that such institutions do not have an obligation to inquire or share information about their clients' immigration status."[12]

10. See Recommended Principles and Guidelines on Human Rights at International Borders.

11. See François Crépeau and Bethany Hastie, "The case for 'firewall' protections for irregular migrants: safeguarding fundamental rights," *European Journal of Migration and Law*, vol. 17, Nos. 2–3 (2015); European Commission against Racism and Intolerance, general policy recommendation No. 16 on safeguarding irregularly present migrants from discrimination; and ILO, *Promoting Fair Migration: General Survey Concerning the Migrant Workers Instruments* (2016), paras. 480–482. See also European Union Agency for Fundamental Rights, "Apprehension of migrants in an irregular situation—fundamental rights considerations" (2012).

12. See Crépeau and Hastie, "The case for 'firewall' protections" p. 165.

Human Rights Defenders: A term used to describe people who, individually or with others, act to promote or protect human rights. There is no specific definition of who is or can be a human rights defender.[13] A person or group need not necessarily self-identify as a human rights defender to constitute one. In the present principles and guidelines, "human rights defender" should be read as specifically including those working with migrants, including providing humanitarian assistance.

Large Movements: "Whether a movement is characterized as 'large' depends less on the absolute number of people moving than on its geographical context, the receiving States' capacities to respond and the impact caused by its sudden or prolonged nature on the receiving country."[14] "'Large movements' may be understood to reflect a number of considerations, including: the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement which is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another. 'Large movements' may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes."[15]

Migrants: In the present principles and guidelines, an international migrant (or migrant) refers to "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence."[16] There is no universal, legal definition of a migrant.

The term "migrant" within the present principles and guidelines refers throughout to a migrant in a vulnerable situation.[17]

Mixed Migration: The term describes the cross-border movements of people with varying protection profiles, reasons for moving and needs, who are moving along the same routes, using the same transport or means of travel, often in large numbers.[18] There is no official or agreed definition of mixed migration.

Non-Refoulement: The prohibition of refoulement under international human rights law generally applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the individual would be in danger of suffering torture or other irreparable harm in the place to which he or she is to be transferred or removed.[19] As an inherent part of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterized by its absolute nature.[20]

A **refugee** is a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail

13. The fourth preambular paragraph of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms refers to "individuals, groups and associations . . . contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals."

14. See A/70/59, para. 11.

15. New York Declaration for Refugees and Migrants, para. 6.

16. See Recommended Principles and Guidelines on Human Rights at International Borders, chap. I, para. 10. IOM defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (a) the person's legal status; (b) whether the movement is voluntary or involuntary; (c) what the causes for the movement are; or (d) what the length of the stay is. Some categories of migrants are defined in international instruments, particularly "migrant worker" or "migrant for employment," which are defined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 2 (1); ILO Migration for Employment Convention (Revised) No. 97 (1949), art. 11; ILO Migrant Workers (supplementary provisions) Convention, No. 143 (1975), art. 11. UNHCR always refers to refugees and migrants separately, to maintain clarity about the causes and character of refugee movements and not to lose sight of the specific obligations owed to refugees under international law.

17. For an explanation of the term "migrant in a vulnerable situation," see paras. 12–15 of the report.

18. See A/HRC/31/35, para. 10.

19. See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3; and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation on States parties to the Covenant, para. 12.

20. See A/70/303, paras. 38 and 41.

himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such [persecution] . . . is unable or, owing to such fear, is unwilling to return to it."[21]

Separated Children: Children who have been separated from both parents or from their previous legal or customary primary caregiver, but not necessarily from other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Children may become separated at any point of their migration.[22]

Statelessness: A stateless person is defined in article 1 (1) of the Convention relating to the Status of Stateless Persons as someone who is "not considered as a national by any State under the operation of its law."[23]

Unaccompanied Children: Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Children may become unaccompanied at any point of their migration.[24]

Xenophobia: The term has commonly been used to describe attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the reality or perception that they are outsiders or foreigners to the community, society or national identity.[25] There is no universal, legal definition of xenophobia.

21. See Convention relating to the Status of Refugees, art. 1. A (2).

22. See Committee on the Rights of the Child, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, para. 8.

23. The International Law Commission has considered the definition in article 1 (1) of the Convention to form part of customary international law (see A/61/10, Chap. II Natural Persons, Art. 8, Commentary (3), page 49). See also UNHCR, *Handbook on Protection of Stateless Persons Under the 1954 Convention relating to the Status of Stateless Persons* (Geneva, 2014).

24. See Committee on the Rights of the Child, general comment No. 6, para. 7.

25. See ILO, IOM and OHCHR, "International migration, racism, discrimination and xenophobia" (2001), p. 2.

VI. Special Rapporteur Report on Trafficking in Persons, especially Women and Children on her Mission to the United States of America

Forms and manifestations of trafficking in persons

1. The United States faces challenges as a destination, transit and source country for trafficked men, women and children, including lesbian, gay, bisexual, transgender and intersex individuals, migrant workers and unaccompanied migrant children, runaway youth, American Indian and Alaska Natives and persons with disabilities. In some places, African American women and girls are disproportionately affected by trafficking in persons.[26] Both nationals of the United States and migrants, mainly from Central America and South-East Asia, are trafficked within and into the United States. China, Guatemala, Honduras, Mexico and the Philippines are the most common countries of origin for trafficking victims.[27] According to national hotline data from 2016, the states of California, Texas, Florida, Ohio and New York had the highest number of trafficking cases.[28] The close proximity to international borders and large immigrant populations are some of the factors that make these regions more vulnerable to trafficking in persons.

2. The economic prosperity of the United States promotes mobility within the country and draws migrants in search of better livelihoods. However, economic inequality and social exclusion, discrimination, organized crime, including drug trafficking, and insufficient labour protections create vulnerability to human trafficking.

3. While many workers have found employment that matches their qualifications and aspirations, some have been compelled to work in precarious or informal employment, on short-term or part-time contracts or on temporary visas if they are migrants, rendering them vulnerable to human trafficking. Traffickers' modus operandi typically involves deceptive and fraudulent practices by some recruitment agents and employers relating to the nature and type of the employment offered. Many workers find themselves in a situation akin to debt bondage, trying to repay exorbitant debts owed to traffickers for their journey once promises of well-paying employment have turned into exploitative situations. The retention of passports and wages, as well as threats of deportation, are common forms of controlling migrant workers in certain sectors.

1. Trafficking for the purpose of sexual exploitation

4. From 2007 to 2016, 31,659 potential sex trafficking cases were identified in the United States through the national hotline/textline.[29] In 2016, 73 per cent of reported cases of human trafficking concerned sex trafficking.[30]

5. Adults, predominantly women, and children are compelled to engage in prostitution or sex work by family members, individuals with whom they are romantically involved, gangs or others who have forced them into prostitution or sex work or lured them with the false promise of a job, including via online advertisements. Persons trafficked for the purpose of sexual exploitation may be either United States citizens or foreign nationals. Sex trafficking often occurs in fake massage parlours, escort service agencies, brothels, private homes, on the street or at hotels or motels.

6. There are also reports that Native Americans are disproportionately at risk of being trafficked, especially for the purpose of sexual exploitation.[31] The influx of young, unaccompanied men working in high-paying oil jobs, for example in the Bakken Shale region (North Dakota), coincides with the increased trafficking of Native American women and children, notably by women from the reservations.

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26. Mayor's Taskforce on Anti-Human Trafficking, "Human trafficking in San Francisco report 2016," p. 41.

27. Polaris, "2016 Statistics from the National Human Trafficking Hotline and BeFree textline."

28. Ibid.

29. Ibid.

30. Ibid.

31. See www.womenspirit.net/sex-trafficking/.

2. Trafficking for the purpose of labour exploitation

7. Victims of trafficking for the purpose of forced labour and labour exploitation make up 14 per cent of trafficking cases reported via the national hotline/textline.[32] The victims are mainly from Jamaica, Mexico, Peru, the Philippines and South Africa, held temporary, non-immigrant visas (mostly A-3, B-1, G-5, H-2A, H-2B, J-1 and H-1B) and were employed in agriculture, landscaping, hospitality, restaurants and domestic work, among others.[33] Labour exploitation is, at times, accompanied by sexual abuse.

8. First-hand information was also received about victims exploited through precarious or informal employment, subjected to the reduction or non-payment of salaries, made to work long hours and given no rest days. Some recruitment agencies take advantage of the vulnerable situation of migrant workers to offer low wages and benefits and to charge future employees a recruitment fee, which can include migration or settlement expenses. As a result, migrant workers may find themselves in an inextricable situation where reporting violations of their rights, or returning voluntarily to their home country, is impossible due to the debts they have incurred.

9. Most temporary work visas tie a migrant worker to a single employer. As a result, if a worker leaves his or her job, he or she loses his or her legal status to work in the country and becomes at risk of deportation. This situation can be exploited by traffickers as a means of controlling their victims. In fact, 40 per cent of labour trafficking cases reported via the national hotline/textline are linked to temporary visas.

3.Trafficking for the purpose of domestic servitude

10. The United States hosts about two million domestic workers.[34] An estimated 95 per cent of domestic workers are women and 46 per cent are foreigners.[35] As their work is performed in private households, including those of diplomats and international civil servants, where oversight is—by nature—limited, domestic workers are vulnerable to trafficking for the purpose of domestic servitude.

11. The majority of the 16 potential victims identified by one non-governmental organization (NGO) between 1 August, 2014 and 31 July, 2015 were located in the north-eastern United States; they were all female and 25 per cent of them were Filipina.[36] One survivor described how she had been brought to the United States by international civil servants—with the promise that she could attend school while helping them—but found herself working long hours without a wage; her passport was confiscated and her interactions with the outside world were monitored. She was finally rescued after a neighbour signalled her presence to the police.

12. Many victims of trafficking for the purpose of domestic servitude are recruited through family or community ties. Employment agencies, in source countries and the United States, also play a role in the trafficking of domestic workers. Victims face abuse and exploitation that further contributes to the trafficking situation, including breaches of contract, non-payment of salaries and deductions of recruitment and permit fees from their already meagre wages. Many domestic workers also experience physical and mental abuse at the hands of their employers and their families, as well as threats of deportation.

13. If domestic workers with A-3, G-5 or NATO-7 visas, which tie their immigration status to a single employer, leave an abusive situation, they become undocumented and risk deportation. Furthermore, traffickers frequently use victims' unfamiliarity with United States laws to

32. Polaris, "Hotline statistics."

33. Labour Trafficking cases in the United States reported to the National Human Trafficking Hotline and BeFree Textline from 1 August 2014 to 31 July 2015; Polaris, "Labor trafficking in the U.S.: a closer look at temporary work visas."

34. Heidi Shierholz, "Low wages and scant benefits leave many in-home workers unable to make ends meet," Economic Policy Institute Briefing Paper No. 369, 25 November 2013, pp. 4 and 23.

35. Linda Burnham and Nik Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work* (National Domestic Workers Alliance, 2012).

36. Polaris, "Labor trafficking."

make them believe there is danger in reporting their trafficking situation to law enforcement officers or seeking help.

4. Other forms of trafficking

14. There are also cases of trafficking involving unaccompanied migrant children who, after being processed by the agencies of the Department of Homeland Security and the Department of Health and Human Services, have been placed with family members in the United States. Some of these children have been trafficked for the purpose of sexual and labour exploitation by members of criminal networks who posed as family members or forced them into begging or drug smuggling.

15. A potential case of trafficking for the purpose of organ removal was also brought to the attention of the Special Rapporteur. The victim had been brought into the United States after marrying a man who was living in the country; she escaped from a moving car that was taking her to a hospital where she was due to have her kidney involuntarily removed.

16. Cases of trafficking in persons with disabilities for the purpose of sexual exploitation, forced labour and others also exist. In such cases, traffickers—who may also be family members—steal their victims' social security and disability benefits.

B. Post-visit information about the criminalization of irregular migration and the impact on trafficked persons[37]

17. Post-visit legal reforms related to immigration may affect the human rights of trafficked persons. These measures include the Executive Order on border security and immigration enforcement improvements, signed by President Donald Trump on 25 January 2017, which confirms the detention of individuals apprehended on suspicion of violating immigration law pending the decision of their removal or immigration relief. The Special Rapporteur cautions that the routine detention of migrants, including possible victims of human trafficking who have been classified as smuggled and processed for removal in the absence of accurate identification of trafficking grounds, may amount to "penaliziing victims] solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation or working without documentation."[38]

18. Another source of concern is the Executive Order on protecting the nation from foreign terrorist entry into the United States. By limiting the refugee resettlement programme, the Order places women and men at risk of human trafficking. In this context, the Special Rapporteur will pay close attention to the enforcement of the Executive Order on enforcing federal law with respect to transnational criminal organizations and preventing international trafficking, signed on 9 February 2017, which includes specific provisions related to trafficking in persons, in order to ensure that its implementation does not adversely affect trafficking victims.

37. For reasons related to the internal deadline for this report, information on post-visit developments was only gathered until 15 March, 2017.

38. Trafficking Victims Protection Act (2000), section 102 (19).

VII. Joint meeting of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on the Occasion of the Seventieth Anniversary of the Universal Declaration of Human Rights

1. **Ms. Bras Gomes** (Chair of the Committee on Economic, Social and Cultural Rights) said that the statement "all human beings are born free and equal in dignity" reflected the vision of a world in which everyone could live free from fear and want. That aspiration, which was manifest in the universality, indivisibility and interdependence of all civil, cultural, economic, social and political rights, had acquired a renewed sense of urgency on the seventieth anniversary of the Universal Declaration of Human Rights. The world was undoubtedly more willing to uphold rights than when the Universal Declaration had been adopted, thanks to the unflagging commitment of individuals and organizations that stood up for rights in their communities and beyond. However, material and other forms of deprivation persisted amid the affluence of the twenty-first century. Inequalities within and between countries continued to grow, and the benefits of development were not equitably shared. Conflicts destroyed lives and undermined hope for a better world. Climate change had a particularly adverse impact on the most vulnerable groups, such as migrants and refugees. Men and women seeking a safe haven and better opportunities for their children were faced with closing borders. The principles, values and aspirations of the Universal Declaration of Human Rights, which had been further materialized in the rights enshrined in the two Covenants and the other core human rights treaties, should guide States parties in upholding human dignity.

2. The United Nations High Commissioner for Human Rights had been unable to attend the meeting in person because he had commitments abroad. However, he had sent a recorded video message.

3. **Mr. Al Hussein** (United Nations High Commissioner for Human Rights), in the video message, said that the universality of human rights bound humanity together, despite differences, in the conviction that all human life was valuable and that all persons were equal in rights and dignity. It was that universality which had given the Universal Declaration of Human Rights such deep resonance since 1948. No other document in history had been translated into so many languages, bringing hope to people all over the world and was the closest example of a global constitution for mankind.

4. The Vienna Declaration and Programme of Action had taken the fundamental notion of universality a step further by acknowledging that all human rights were indivisible, interdependent and interrelated. The division into two Covenants had been a response to political pressure during the cold war and did not correspond to any sound logic. Civil and political rights, economic, social and cultural rights, and the right to development built upon each other and advanced together. Even if people's right to speak out and protest was recognized, they were not truly free if they were constrained by lack of education or inadequate living conditions. Moreover, wealthy people were not living well if they lived in fear of arbitrary detention by their government. The joint celebration by the two Committees of that unity of vision sent a strong message of their shared determination to uphold the Universal Declaration of Human Rights.

5. **Ms. Gilmore** (United Nations Deputy High Commissioner for Human Rights) said that the current meeting was historic in factual and symbolic terms. The two Committees were tasked with monitoring the implementation of two Covenants that established the mutuality of a panoply of rights. Seven decades after its adoption, the Universal Declaration continued to issue a clarion call for all persons to be recognized as equal in dignity and rights. If such rights were guaranteed comprehensively and universally, the outcome would be utter freedom from fear and want.

6. The Declaration had been drafted by people from cultures and traditions around the world. It embodied rights found in all major legal and religious traditions, such as African traditions of interdependence and collective responsibility, and reflected Qur'anic references to the universal dignity of humankind and to justice and responsibility for future generations.

7. The Declaration had risen as a phoenix from the ruins of cruel assaults and suffering inflicted by human beings on each other. Remarkable leaders had ensured that the text would stand the test of time. The Chinese diplomat Chang Peng-chun had advocated for the inclusion of values from both eastern and western cultures. Hansa Mehta of India had influenced the wording of article 1, which stated that all human beings were equal in dignity and rights, by arguing against the use of the word "men," which would imply that women were excluded. Begum Ikramullah of Pakistan had opposed Member States that had claimed that the Declaration was based on western standards, by defending the universality of the principle of equality in marriage; she had also spoken out strongly against child marriage. Charles Malik of Lebanon had helped to shape the Declaration's ethical basis. Latin American States had advocated for international application of rights and specifically for social and economic rights, with the strong backing of Saudi Arabia. The Soviet Union had advocated for racial equality. Hernán Santa Cruz of Chile had described the result as a consensus about the supreme value of the human person, a value originating not in the decision of a worldly power, but in the fact of existing. She wondered whether such a document could be drafted by Member States today.
8. Many countries had rightly viewed the human rights principles enshrined in the Declaration as powerful support for the liberation movements that were fighting to end colonialist exploitation throughout the world. Human rights were not an instrument for domination by any power. On the contrary, they served to uphold the freedom of people everywhere. Human rights empowered people to demand governments that served them rather than dominating them, economic systems that enabled them to live in dignity instead of exploiting them, and decision-making systems that were participatory rather than exclusionary.
9. The two iconic Committees had helped States to formulate national constitutions and legislation, to abolish the death penalty and to outlaw austerity measures. Their work had led to the development of the nine core international human rights treaties. They had tackled challenges that required universal solutions rooted in the indivisibility of rights. They had addressed the rights of migrants, the right to privacy in the digital age, the human rights ramifications of environmental degradation and climate change, and human rights in the context of the Sustainable Development Goals. They had also provided Member States with the tools necessary to uphold their peoples' human rights.
10. The milestones of 2017 included: the irreversible advance of women's suffrage and the birth of Mandela 100 years previously; the assassination of Martin Luther King 50 years previously; the adoption of the Vienna Declaration and Programme of Action and the establishment of the Office of the United Nations High Commissioner for Human Rights (OHCHR) 25 years previously; and the adoption of the Rome Statute of the International Criminal Court and the Declaration on Human Rights Defenders 20 years previously.
11. A great deal had been achieved but much remained to be done. It was not a time for optimism or hope so much as a time for courage. It was essential to stand up for universal, indivisible, interdependent and inalienable human rights for the sake of all.
12. **Mr. Abdel-Moneim** (Committee on Economic, Social and Cultural Rights) said that the two Covenants represented one bird and the two Committees were the wings that enabled the bird to fly. All governmental and civil society human rights bodies were comparable to birds and also needed wings to fly. It was wrong to cut those wings in the name of so-called reform.
13. **Ms. Jelić** (Human Rights Committee) said that, despite many challenges, the Universal Declaration remained crucial not only for the universal human rights protection system but also for regional systems. It was a cornerstone of all legal human rights instruments and provided fundamental support for all individuals, who shared the inherent value of human dignity. The Declaration was a highly accountable legal source and had been accorded legal authority by the two international Covenants.
14. The Universal Declaration had also been recognized as an inspiration and legal basis in the preamble to the European Convention for the Protection of Human Rights and Fundamental

Freedoms. It was of special significance for countries in transition, for which realization of the rule of law, democracy and human rights standards presented a challenge. For instance, it was treated in her own country, Montenegro, as valid positive law in addition to the Covenants, which were directly applicable. Eleanor Roosevelt, who had submitted the Universal Declaration to the General Assembly, had underscored the importance of readiness for the fight for human rights, which called for assertiveness and responsibility.

15. **Ms. Shin** (Committee on Economic, Social and Cultural Rights) said that the Universal Declaration was an amazingly progressive and forward-looking document. She wished to pay special tribute to the countless human rights defenders around the world, both individuals and NGOs, who had promoted human rights through their arduous and lengthy struggle, protecting voiceless people against threats and intimidation. In March 2017 the Committee on Economic, Social and Cultural Rights had issued a statement entitled "Human Rights Defenders and Economic, Social and Cultural Rights," in which it had recognized the invaluable contribution of civil society, NGOs and human rights defenders to the realization of human rights. As the first treaty body to provide NGOs with the opportunity to present written and oral statements on States parties under review, that Committee greatly appreciated the role of human rights defenders. The statement reminded States parties of their responsibility to ensure that human rights defenders were effectively protected against all forms of abuse, violence and reprisals while carrying out their work. Given the recent surge in restrictions on their activities, States should take concrete action to provide human rights defenders with an enabling environment and adopt relevant laws and policies so that they could continue their valuable work to protect and promote human rights in accordance with the Universal Declaration of Human Rights.

16. **Mr. Shany** (Human Rights Comm[ittee) said that the Universal Declaration, which at the time had been aspirational in nature, aiming to introduce a common standard of achievement and to inform the contents of the programmatic provisions of the Charter of the United Nations, had succeeded in giving the international human rights movement a sense of direction, and a grand vision that anticipated many of the subsequent developments, including the adoption of the two Covenants in 1966, which built upon the Declaration, further elaborated its provisions and established the two monitoring bodies. The Declaration and the ideals it stood for, in particular the inherent dignity and the equal and inalienable rights of all members of the human family, also served as the basis for the seven other core United Nations treaties, and the development of the Charter-based bodies and regional human rights instruments and mechanisms.

17. One of the most important aspects of the Declaration had been the combined proclamation in one instrument of civil and political rights and economic, social and cultural rights. Despite the rhetoric of indivisibility, the two groups of rights had been divided into two treaties with two separate monitoring mechanisms. The 2020 review of the implementation of General Assembly resolution 68/268 concerning the strengthening of the treaty body system would provide a unique opportunity to reflect on whether it was time to return to the ethos of 1948 and to introduce a coordinated Covenant review process, which might, for instance, facilitate a two-Committee review of the entire human rights record of the States parties to the Covenants on the basis of a consolidated list of issues. Such an approach would underscore the indivisibility of human rights and create a stronger and more prominent review process. If successful, it could be the first step towards the eventual consolidation of the two treaty bodies, whose approach to promoting human rights had become closer over time. The Committee on Economic, Social and Cultural Rights had overcome the issue of justiciability and was beginning to review individual communications, and the Human Rights Committee was developing additional jurisprudence based on duties to protect and fulfil, dealing progressively with background conditions for full implementation of human rights.

18. However, the Committees' ability to fully realize the promise of the Universal Declaration and to effectively fulfil their roles under the Covenants depended on their ability to maintain the support of constituencies, first and foremost the individuals whose rights they defended, but also States, the United Nations and OHCHR, which provided invaluable material and logistical support. The current situation was still precarious. Despite the huge progress in acceptance of human rights, and in the development of sophisticated legal doctrines and mechanisms of protection, United Nations Member States were still content to leave the treaty bodies with limited legal powers. Moreover, they failed to provide them with the resources they required to fulfil their mandate, a situation that reflected not only monetary belt-tightening but also skewed priorities. As long as that unhappy state of affairs continued, the full potential of the two treaty bodies would remain underrealized, despite the dedication of the excellent professional support staff. In addition, the Universal Declaration's goal of attaining universal respect for and observance of human rights and fundamental freedoms would sadly remain beyond the treaty bodies' reach.

19. **Mr. Kedzia** (Committee on Economic, Social and Cultural Rights) said that the impact of a commemoration, such as that of the Universal Declaration, was measured not only in terms of its contribution to memory but perhaps primarily in terms of its contribution to the future. The former Secretary-General Kofi Annan, addressing a meeting of the Commission on Human Rights in 1998 to mark the fiftieth anniversary of the Declaration, had stated that, in light of the experience of the international community during the past 50 years, the guiding idea for the forthcoming decades should be prevention.

20. He highlighted the importance of the joint meetings held during the past 18 months of the Committees that served as guardians of the two Covenants. They were a symbol of the universality and indivisibility of human rights. Treaty body strengthening in line with General Assembly resolution 68/268 remained crucial. However, action should also be taken to ensure the sustainability of both international human rights treaties and the treaty body system. The Committees could contribute enormously to that discussion.

21. One of the main tasks of the United Nations system as a whole was to promote follow-up to the treaty bodies' conclusions, recommendations and views. The system must be encouraged to engage in every conceivable manner in the follow-up procedure. In his view, the strongest link between the two Committees was a growing awareness of the adverse impact of corruption on human rights and the need to develop effective means of combating such corruption.

22. **Ms. Waterwal** (Human Rights Committee) said that the treaty bodies had a collective responsibility not only to monitor the rights enshrined in the two Covenants but also to raise peoples' awareness of their rights. One important procedure supported by the Centre for Civil and Political Rights was follow-up to concluding observations. States parties were required, within one year of an interactive dialogue with a treaty body, to report on the implementation of three or four urgent recommendations. Committee members, acting in their own capacity, visited States parties, where officials and NGOs were informed about recommendations and the need to raise awareness of human rights in general. They gave interviews, lectured at universities and shared information during workshops with NGOs. She wished to know whether the Centre for Civil and Political Rights had undertaken research on the added value of the informal procedure and, if so, what conclusions it had reached. She hoped that the Centre would continue to support the work of the Human Rights Committee. The current historic meeting afforded the two Committees an opportunity to pledge their continued commitment to enabling people to enjoy their human rights and fundamental freedoms throughout the world.

23. **Ms. Gilmore** (Deputy High Commissioner for Human Rights) welcomed the Committees' vision of an integrated structure that could promote, symbolically and materially, the mutuality of the two core human rights treaties.

24. The goal of strengthening rather than eroding the Committees in the years ahead presented a major challenge. Lack of financial resources restricted their potential and was a

source of grave frustration, both for the treaty bodies and for OHCHR. There was a pernicious and intentional effort under way in the United Nations system to counter the authority of the treaty bodies and to minimize the scope of their responsibilities. The source of that political agenda should not be underestimated. She urged the Committees to join OHCHR in a concerted effort to challenge the conflicts of interest of the General Assembly. They should oppose the convenient narrative that the requirements and demands of the treaty bodies had been invented by OHCHR.

25. She reiterated that the time had come to take firm and determined action. It was essential to address the unhealthy concentration of power, to deal with the treaty bodies' inadequacies in the context of that inequality, and to compensate for missed opportunities to uphold rights. It was time to support the land rights of indigenous people, to defy State authorities that sought to silence journalists, to stress that reproductive health and rights were integral to the dignity of women and girls, and to involve young people in decision-making.

26. The purpose of celebrating seven decades since the adoption of the Universal Declaration was to ensure further progress in the next seven decades. She commended the Committees' partnership with OHCHR staff and looked forward to continuous courageous cooperation in defence of human rights.

27. **Mr. Iwasawa** (Chair, Human Rights Committee) expressed the hope that the current meeting marked the beginning of an overarching effort by the two Committees to work together seamlessly and vigorously in support of the Universal Declaration. They must speak out for the rights of others and their voices would be louder if they spoke together.

VIII. Information received from the United States of America on Follow-Up to the Concluding Observations, CCPR/C/USA/4/Add.1

1. Although there remain matters regarding the interpretation or application of the Covenant on which the United States and members of the Committee are not in full agreement, in the spirit of cooperation the United States provides the following more recent information to address a number of the Committee's concerns, whether or not they bear directly on States Parties' obligations arising under the Covenant.

Paragraph 5

2. The Committee's follow-up requests focus on conduct during international operations in the context of armed conflict, and particularly detention and interrogation in the aftermath of the September 11 terrorist attacks. The United States reiterates its long-standing and fundamental disagreement with the Committee's view regarding the application of ICCPR obligations with respect to individuals located outside the territory of the United States.[39] However, in the spirit of cooperation, the United States has endeavored throughout the periodic reporting process to provide details on how the United States has conducted and will continue to conduct thorough and independent investigations of credible allegations of crimes committed during such international operations and of credible allegations of mistreatment of persons in its custody, as well as on final decisions regarding any prosecution of persons for such crimes when such disclosure is appropriate. We hope that the Committee is able to recognize that although the public disclosure of government information is often in the public interest, refraining from releasing information concerning specific individuals can also be appropriate, especially when privacy or other human rights interests counsel against disclosure.

3. In further response to the Committee's request in subparagraph (a), the United States reaffirms and continues to uphold the bedrock principle that torture and cruel, inhuman, or degrading treatment or punishment[40] are categorically and legally prohibited always and everywhere, violate U.S. and international law, and offend human dignity, and the United States has many protections against torture and cruel, inhuman, or degrading treatment or punishment. Torture is contrary to the founding principles of our country and to the universal values to which the United States holds itself and others in the international community. All U.S. military detention operations conducted in connection with armed conflict, including at Guantanamo, are carried out in accordance with all applicable international and domestic laws. Paragraph 177 of our Fourth Periodic Report summarized Executive Order 13491, *Ensuring Lawful Interrogations*.[41] The National Defense Authorization Act for Fiscal Year 2016 ("2016 NDAA") codified many of the interrogation-related requirements included in the Executive Order, including requirements related to Army Field Manual 2-22.3.[42] It also imposed new legal requirements, including that the Army Field Manual remain publicly available, and that any revisions be made publicly available 30 days in advance of their taking effect.

4. In addition to the Army Field Manual, the U.S. Department of Defense has Department-wide policy directives in place to ensure humane treatment during intelligence interrogations

39. The Committee is aware of the United States' position on the territorial scope of a State Party's obligations under the ICCPR, based on the ordinary meaning of Article 2(1), as discussed during the U.S. presentation at the Committee's 110th session and in previous exchanges and submissions. See also Observations of the United States of America on Human Rights Committee General Comment No. 31: Nature of the General Legal Obligations Imposed on States Parties to the Covenant, dated December 27, 2007, paragraphs 3-9 (hereinafter "U.S. Observations on General Comment No. 31"), available at http://2001-2009.state.gov/s/l/2007/112674.htm; and Observations of the United States of America on the Human Rights Committee's Draft General Comment No. 35: Article 9, June 10, 2014, *reprinted in* Digest of U.S. Practice in International Law 2014, p. 179, at paragraph 5, available at www.state.gov/documents/organization/244445.pdf.

40. The United States' ratification of the ICCPR is subject, inter alia, to the following reservation: "[t]hat the United States considers itself bound by article 7 to the extent that 'cruel, inhuman or degrading treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."

41. Executive Order 13491, *Ensuring Lawful Interrogations*, 74 FR 4893, Jan. 27, 2009, available at www.gpo.gov/fdsys/pkg/FR-2009-01-27/pdf/E9-1885.pdf.

42. The Army Field Manual 2-22.3 is available at www.apd.army.mil/epubs/DR_pubs/DR_a/pdf/web/fm2_22x3.pdf.

and detention operations. For example, Department of Defense Directive 3115.09[43] requires that Department of Defense personnel and contractors promptly report any credible information regarding suspected or alleged violations of Department policy, procedures, or applicable law relating to intelligence interrogations, detainee debriefings, or tactical questioning. Reports must be promptly and thoroughly investigated by proper authorities, and remedied by disciplinary or administrative action, when appropriate. Additionally, Department of Defense Directive 2311.01E[44] requires that "[a]ll military and U.S. civilian employees, contractor personnel, and subcontractors assigned to or accompanying a Department of Defense Component shall report reportable incidents through their chain of command," including "[a] possible, suspected, or alleged violation of the law of war, for which there is credible information." All reportable incidents must be investigated and, where appropriate, remedied by corrective action.

5. U.S. law provides several avenues for the domestic prosecution of U.S. Government officials and contractors who commit torture and other serious crimes overseas. For example, 18 U.S.C. § 2340A makes it a crime to commit torture outside the United States.[45] Similarly, under the provisions of the Military Extraterritorial Jurisdiction Act (MEJA), persons employed by or accompanying the Armed Forces outside the United States may be prosecuted domestically if they commit a serious criminal offense overseas.[46] In addition, U.S. nationals who are not currently covered by MEJA are still subject to domestic prosecution for certain serious crimes committed overseas if the crime was committed within the special maritime and territorial jurisdiction of the United States — which includes, among others, U.S. diplomatic and military missions overseas and at Guantanamo Bay. As another example, the Uniform Code of Military Justice is available to punish members of the U.S. armed forces for violations of the law of war.

6. Regarding the conviction and sentencing of four former security guards for Blackwater USA that were previously reported in our October 9, 2015 reply (paragraph 3), the U.S. Court of Appeals for the District of Columbia Circuit overturned the conviction of Nicholas Abram Slatten on August 4, 2017, and ordered a new trial, finding that the trial court had abused its discretion in denying Slatten's motion to sever his trial from that of his three co-defendants. It also concluded that the imposition of a mandatory 30-year minimum sentence on the other three defendants violated the Eighth Amendment prohibition against cruel and unusual punishment and remanded their cases for resentencing.

7. The U.S. Government has investigated numerous allegations of torture or other mistreatment of detainees. For example, prior to August 2009, career prosecutors at the Department of Justice carefully reviewed cases involving alleged detainee abuse. These reviews led to charges in several cases and the conviction of a Central Intelligence Agency (CIA) contractor and a Department of Defense contractor.[47] And, as previously reported, in 2009, the U.S. Attorney General directed a preliminary review of the treatment of certain individuals alleged to have been mistreated while in U.S. Government custody subsequent to the September 11 attacks. The review considered all potentially applicable substantive criminal statutes as well as the statutes of limitations and jurisdictional provisions that govern prosecutions under those statutes. That review of the alleged mistreatment of 101 individuals, led by a career federal prosecutor and now informally known as the Durham Review, generated two criminal inves-

43. Department of Defense Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning, Nov. 15, 2013, www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/311509p.pdf.

44. DoD Directive 2311.01E, DoD Law of War Program, May 9, 2006 ("DoD Directive 2311.01E"), available at www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231101e.pdf.

45. "Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life." 18 U.S.C. § 2340A(a).

46. 18 U.S.C. ch. 212.

47. See Fourth Periodic Report of the United States of America to the United Nations Human Rights Committee, paragraphs 533–534, and United States Written Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report (July 13, 2013), paragraphs 41 and 46, on these cases and others.

tigations. The Department of Justice ultimately declined those cases for prosecution because the admissible evidence would not have been sufficient to obtain and sustain convictions. See United States' follow-up response dated March 31, 2015 (paragraph 5), and follow-up reply dated October 9, 2015 (paragraph 4). John Durham, the career prosecutor who led this extraordinarily thorough review, had access to all of the information that the Senate Select Committee on Intelligence (SSCI) reviewed when the Committee members wrote their full report, which included information about all of the detainees mentioned in the SSCI report. In addition, Mr. Durham and his team interviewed a substantial number of witnesses in the United States and abroad, and reviewed other evidence. Finally, before the SSCI report was released, Mr. Durham's team reviewed the Senate Select Committee's report as it existed in 2012 to determine if it contained any new information that would change his previous analysis, and determined that it did not.

8. In addition to the Department of Justice, and in further response to the Committee's subparagraph (a) request, there are many other accountability mechanisms in place throughout the U.S. Government aimed at investigating credible allegations of torture and prosecuting or punishing those responsible. For example, the CIA Inspector General conducted more than 25 investigations into misconduct regarding detainees after 9/11. The CIA also convened six high-level accountability proceedings from 2003 to 2012. These reviews evaluated the actions of approximately 30 individuals, around half of whom were held accountable through a variety of sanctions.

9. In addition, the U.S. military investigates credible allegations of misconduct by U.S. forces, and multiple accountability mechanisms are in place to ensure that personnel adhere to laws, policies, and procedures. The Department of Defense has conducted thousands of investigations since 2001 and it has prosecuted or disciplined hundreds of service members for misconduct, including mistreatment of detainees. Convictions can result in, among other punishments and consequences, punitive confinement, reduction in rank, forfeiture of pay or fines, punitive discharge, or reprimand. Individuals have been held accountable for misconduct related to the abuse of detainees by personnel within their commands. These individuals include senior officers, some of whom have been relieved of command, reduced in grade, or reprimanded.

10. The U.S. law, policy, and procedures that we have described in the preceding paragraphs apply to U.S. Government personnel, including persons in positions of command. Persons in positions of command are not exempt from the requirement to comply with the law, nor are they exempt from investigations based on allegations of wrongdoing. As noted above, it is sometimes not appropriate to highlight the cases of particular individuals.

11. In relation to the Committee's subparagraph (a) inquiry regarding judicial remedies available to detainees in U.S. custody at Guantanamo, the United States notes that all Guantanamo detainees have the ability to challenge the lawfulness of their detention in U.S. federal court through a petition for a writ of habeas corpus. Detainees have access to counsel and to appropriate evidence to mount such a challenge before an independent court. The United States has the burden in these cases to establish its legal authority to hold the detainees. Detainees whose habeas petitions have been denied or dismissed continue to have access to counsel pursuant to the same terms applicable during the pendency of proceedings. Additionally, in February 2014, the U.S. Court of Appeals for the D.C. Circuit held that detainees at Guantanamo can use a petition for a writ of habeas corpus to challenge certain "conditions of confinement" where such conditions would render that custody unlawful.[48]

12. In response to the Committee's subparagraph (b) inquiry regarding the responsibility of lawyers who provided legal advice for government actions following the 9/11 attacks, the United States reported in paragraph 13 of its response dated March 31, 2015, the final decision of the Department of Justice (DOJ) on January 5, 2010, made by a career DOJ official

48. *Aamer v. Obama*, 742 F.3d 1023 (D.C. Cir. 2014).

with more than four decades of DOJ service, following an investigation conducted by the DOJ Office of Professional Responsibility into the "Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of 'Enhanced Interrogation Techniques' on Suspected Terrorists."

13. With respect to the Committee's views and recommendation under subparagraph (c) concerning command responsibility, the United States notes its explanation provided in paragraph 12 of its follow-up response of March 31, 2015, regarding how the Uniform Code of Military Justice and other U.S. federal criminal law, as well as comparable state law, hold persons in the chain of command responsible for crimes committed by subordinates.

14. With respect to persons subject to the Uniform Code of Military Justice, the failure of persons in positions of command to take necessary and reasonable measures to ensure that their subordinates do not commit violations of international humanitarian law is made punishable through its punitive articles. For example, the Uniform Code of Military Justice makes punishable violations of orders, including orders to take necessary and reasonable measures to ensure that subordinates do not commit violations. The Uniform Code of Military Justice also makes punishable dereliction in the performance of duties, even if such dereliction was through neglect or culpable inefficiency.

15. Additionally, in some cases, the responsibility for offenses committed by a subordinate may be imputed directly to persons in positions of command. As noted in paragraph 12 of the U.S. response of March 31, 2015, Article 77 of the Uniform Code of Military Justice makes any person subject to the Uniform Code of Military Justice punishable as a principal, including any such person in position of command, who (1) aids, abets, counsels, commands, or procures the commission of an offense, or (2) causes an act to be done which, if done by that person directly, would be an offense. As a principal, the person is equally guilty of the underlying offense as the one who commits it directly and may be punished to the same extent.

16. With respect to the Committee's comment in subparagraph (d), the Committee previously acknowledged that the United States provided the declassified executive summary, totaling more than 500 pages, of the Senate Select Committee on Intelligence (SSCI) Report on the CIA's former Detention and Interrogation Program, which has been made available to the public, and also that the Durham investigation team reviewed a draft of the classified SSCI report in 2012 and did not find any new information that they had not previously considered during their investigation, as indicated in paragraph 4 of our reply dated October 9, 2015, and further confirmed in paragraph 8 above.

Paragraph 10

17. There have been no new developments to report regarding legislation related to requiring background checks for all private firearm transfers response to subparagraph (a) of the Committee's requests.

18. Federal agencies increased the number of active records available in the National Instant Criminal Background Check System Indices (NICS Indices) between December 31, 2015, and July 31, 2017, by 493,737 records—a six percent increase. States increased the number of active records they make available in the NICS Indices by nearly 35 percent between December 31, 2015, and July 31, 2017. The total number of active records in the NICS Indices increased by approximately 18 percent between December 31, 2015, and July 31, 2017. The Department of Justice has also provided incentives for schools to invest in safety and helped provide them with a model for how to develop emergency management plans.

19. Most recently, in response to an unacceptable level of gun violence that continues to plague the City of Chicago, the Attorney General outlined on June 30, 2017, the creation of the Chicago Gun Strike Force. The Crime Gun Strike Force is a permanent team of special agents, task force officers, intelligence research specialists, and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Industry Operations investigators who are focused on the most violent

offenders, in the areas of the city with the highest concentration of firearm violence. The Strike Force became operational June 1, 2017, and consists of 20 additional permanent ATF special agents, six intelligence specialists, 12 task force officers from the Chicago Police Department, two task force officers from the Illinois State Police, and four National Integrated Ballistics Information Network specialists. The Attorney General further announced the reallocation of federal prosecutors and prioritization of prosecutions to reduce gun violence, as well as further efforts working with law enforcement partners to stop the lawlessness.[49]

20. The United States wishes to clarify a misunderstanding of our earlier response regarding Stand Your Ground laws that is apparent from the Committee's request under paragraph (b). The review of Stand Your Ground provisions of state law, as previously reported, was not undertaken by the U.S. Government, but rather by the U.S. Commission on Civil Rights, which is an independent, bipartisan agency established by Congress to investigate, report, and make recommendations to the President and the Congress on civil rights matters. The information we reported regarding the focus of the Commission's independent review and the expectation of a final report was based on publicly available statements by participants in the Commission hearings. The United States has no role in or control over this independent undertaking. Also, our previous reports and responses, including paragraph 22 of our March 31, 2015 response, have made clear the respective roles of federal, state, and local governments and laws under our federal system of government, including criminal laws and rules governing self-defense. In our federal system, these laws are the province of state and local governments.

21. As a final note, the United States wishes to remind the Committee of the long-standing position of the United States regarding the scope of a State Party's ICCPR responsibility with respect to the private conduct of non-State actors, both in relation to gun violence and the exercise of self-defense, as noted in our response dated October 9, 2015, paragraph 10.[50] Likewise, the United States does not share the Committee's view as to the applicability of such concepts as "necessity" and "proportionality" in relation to assessing the use of force or self-defense for purposes of Articles 6 and 9 of the ICCPR. These concepts are derived from domestic and regional jurisprudence under other legal systems and are not broadly accepted as legally-binding internationally, nor supported by either the Covenant text or its *travaux preparatoires*.[51]

Paragraph 21

22. The United States continues to ensure that operations at the Guantanamo Bay detention facility are consistent with its international obligations.[52]

23. In response to subparagraph (a) of the Committee's request, since our follow-up reply on October 9, 2015, 73 more detainees have been transferred from Guantanamo Bay, listed by date of announcement by the Department of Defense (DoD)[53] as follows: one Mauritanian to Mauritania (October 29, 2015); one U.K. national to the United Kingdom (October 30, 2015); five Yemenis to the United Arab Emirates (November 15, 2015); two Yemenis to Ghana (January 6, 2016); one Kuwaiti to Kuwait (January 8, 2016); one Saudi to Saudi Arabia (January

49. See Department of Justice Press Release dated June 30, 2017, available at www.justice.gov/opa/pr/attorney-general-jeff-sessions-we-cannot-accept-these-levels-violence-chicago.

50. See also the USG Observations on General Comment No. 31, supra note 1, paragraphs 10–18; and the USG Observations on Draft General Comment No. 35, supra note 1, paragraphs 10–18.

51. See USG Observations on Draft General Comment No. 35, supra note 1, paragraphs 31 and 35, addressing the Committee's application of such concepts in relation to its interpretation of the term "arbitrary" under Article 9, as well as the discussion below in relation to Article 17.

52. As previously observed in response to General Comment No. 31, supra note 1, paragraphs 24–27; and Draft General Comment No. 35, supra note 1, paragraphs 19–23, international humanitarian law (IHL) is the *lex specialis* with respect to the conduct of hostilities and the protection of war victims. Although the United States agrees as a general matter that armed conflict does not suspend or terminate a State's obligations under the Covenant within its scope of application, we do not believe that the Committee's recommendations with respect to law of war detentions and related operations accord sufficient weight to this well-established principle. As further stated in paragraph 24 of the United States' one-year follow-up report and previous submissions, the United States continues to have legal authority under the law of war to detain Guantanamo detainees while hostilities are ongoing.

53. Department of Defense news releases are available at www.defense.gov/News/News-Releases/.

11, 2016); 10 Yemenis to Oman (January 14, 2016); one Egyptian to Bosnia Herzegovina (January 21, 2016); one Yemeni to Montenegro (January 21, 2016); two Libyans to Senegal (April 4, 2016); nine Yemenis to Saudi Arabia (April 16, 2016); one Yemeni to Montenegro (June 22, 2016); one Yemeni to Italy (July 10, 2016); one Yemeni and one Tajik to Serbia (July 11, 2016); 12 Yemenis and three Afghans to the United Arab Emirates (August 15, 2016); one Mauritanian to Mauritania (October 17, 2016); one Yemeni to Cape Verde (December 4, 2016); four Yemenis to Saudi Arabia (January 5, 2017); eight Yemenis and two Afghans to Oman (January 17, 2017); and one Saudi to Saudi Arabia and one Afghan, one Russian, and one Yemeni to the United Arab Emirates (January 19, 2017). There are currently 41 detainees held at Guantanamo.

24. Also, in response to the Committee's subparagraph (a) request, initial Periodic Review Board (PRB) hearings for each detainee at Guantanamo eligible for review were completed as of September 8, 2016. The final determinations for these hearings have been made public. The PRB determined that continued detention of 38 detainees was no longer necessary to protect against a continuing significant threat to the United States. Thirty-six of these detainees have been transferred from Guantanamo and two remain at Guantanamo. The PRB designated 26 detainees for continued law-of-war detention. These 26 detainees are subject to subsequent full reviews by the PRB on a triennial basis. They also receive file reviews every six months to determine whether any new information raises a significant question as to whether a detainee's continued detention is warranted. If such a significant question is raised, the detainee promptly receives another full review. The PRB is currently conducting file reviews for all eligible detainees and subsequent full reviews as warranted. Further information, including periodic updates on PRB hearings and determinations, is posted by the Periodic Review Secretariat at www.prs.mil/.

25. Of the 41 detainees who remain at Guantanamo, five detainees are currently approved for transfer; 10 detainees are currently facing charges, awaiting sentencing, or serving criminal sentences in the military commissions; and the remaining 26 detainees continue to be eligible for review by the PRB.

26. In response to the Committee's subparagraph (b) request concerning the status of military commission prosecutions, proceedings are currently pending before military commissions against Khalid Sheikh Mohammed and four other alleged co-conspirators accused of planning the September 11 attacks, as well as against Abd Al-Rahim Hussein Muhammed Abdu Al-Nashiri for his alleged role in the 2000 attack on the USS Cole, and Abd Al Hadi Al-Iraqi for conspiring with and leading others in attacks on U.S. and coalition service members in Afghanistan, Pakistan, and elsewhere from 2001 to 2006.[54] Several individuals have been convicted through military commission proceedings (either through trial or guilty pleas) and are awaiting sentencing, serving sentences, or have completed their sentences. One conviction was vacated on appeal to the U.S. Court of Appeals for the D.C. Circuit after the defendant had been released;[55] another conviction has recently been upheld by the D.C. Circuit and is now being considered for review by the U.S. Supreme Court;[56] and appeals in two cases are pending before the U.S. Court of Military Commission Review.[57]

27. In further response to the Committee's subparagraph (b) and (c) observations and recommendations, the United States has explained the legal grounds for detentions at the Guantanamo Bay detention facility and disagrees with the premise of the Committee's recommendation and

54. Unlike the alleged plotters of the September 11 attacks and Al-Nashiri, the charges against Al-Iraqi were referred to a military commission not authorized to issue a capital sentence.

55. *Hamdan v. United States*, 696 F.3d 1238 (D.C. Cir. 2012), *overruled in part*, *Al Bahlul v. United States*, 767 F.3d 1, 11–17 (D.C. Cir. 2014) (en banc).

56. *Bahlul v. United States*, 840 F.3d 757 (D.C. Cir. 2016) (en banc) (per curiam). As of this writing, Bahlul has petitioned the Supreme Court for review.

57. See *In re Khadr*, 823 F.3d 92 (D.C. Cir. 2016) (denying petition for writ of mandamus to the U.S. Court of Military Commission Review).

follow-up requests that prosecution or immediate release of detainees is required.[58] As addressed in our Fourth Periodic Report and subsequent follow-up responses, the United States has authority under the 2001 Authorization for Use of Military Force (2001 AUMF), as informed by the laws of war, to detain individuals who were part of, or substantially supported, the Taliban, al Qaeda, or associated forces that are engaged in hostilities against the United States or its coalition partners. The U.S. Supreme Court has recognized that the capture and detention of enemy belligerents in order to prevent their return to the battlefield has long been recognized as an "important incident[] of war," *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (plurality opinion) (internal quotations omitted), and the United States' authority to detain under the 2001 AUMF has been upheld by U.S. federal courts in habeas corpus proceedings. Accordingly, the United States continues to base its domestic legal authority to detain the individuals held at Guantanamo Bay on the 2001 AUMF, as informed by the laws of war.

Paragraph 22

28. The United States has provided information on how the U.S. Constitution and domestic laws ensure the protection of the law against arbitrary and unlawful interference with privacy in conformity with its obligations under Article 17. These protections apply to any person located within United States territory in the conduct of surveillance activities, whether at the federal or state level and regardless of purpose or context. In response to the Committee's subparagraph (a), (b), and (f) assessments, and as previously stated, the United States fundamentally disagrees with Committee's view regarding the application of ICCPR obligations with respect to individuals located outside the territory of the United States.

29. The United States also disagrees with the Committee's view regarding the applicability of such concepts as "necessity" and "proportionality" in relation to interpreting the meaning of either "lawful" or "arbitrary" in the context of Article 17 of the ICCPR.[59] As we have previously responded, these concepts are derived from domestic and regional jurisprudence under other legal systems, are not broadly accepted internationally, go beyond what is required by the ICCPR, and are not supported by either the text of Article 17 or the Covenant's *travaux préparatoires*. In further response to the Committee's subparagraph (a) request, legal provisions governing access to personal data in the United States, whether for criminal justice or national security purposes, are clear and comprehensive. They adhere to the fundamental guarantee in the Fourth Amendment to the U.S. Constitution, which provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Although the Fourth Amendment generally does not apply to searches of non-U.S. persons located abroad,[60] it does typically govern searches of non-U.S. persons and their property if they are located in the United States,[61] including searches through electronic surveillance.[62]

30. The United States has also provided information on Presidential Policy Directive 28, Signals Intelligence Activities (PPD-28), which applies important protections to personal information regardless of nationality. The scope of these protections includes signals intelligence activities conducted outside the United States. With respect to subparagraph (a)-(b), the

58. Also as stated in paragraph 30 of its one-year follow-up report and previously, all current military commission proceedings incorporate fundamental procedural guarantees that meet or exceed the fair trial safeguards required by Common Article 3 and other applicable law, and are further consistent with those in Additional Protocol II of the 1949 Geneva Conventions.

59. See paragraph 33 of the United States' one-year follow-up response dated March 31, 2015; see also paragraph 18 and footnote 19 of the United States' Reply to the Special Rapporteur for Follow-up dated October 9, 2015.

60. See *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990).

61. See *id.* at 278 (Kennedy, J., concurring).

62. See generally *Katz v. United States*, 389 U.S. 347 (1967).

Committee appears, from its earlier follow-up questions, to have the impression that PPD-28's safeguards are "administrative measures."[63] To be clear, in the United States, "[a] presidential directive has the same substantive legal effect as an executive order,"[64] which has the full force and effect of law. In addition, presidential directives, like executive orders, "remain effective upon a change in administration."[65] Thus, as applied to the Executive Branch generally and to intelligence agencies conducting signals intelligence activities specifically, the measures required by PPD-28 have the force of law, and remain in effect.

31. As discussed more fully in previous submissions, the Foreign Intelligence Surveillance Act ("FISA") governs, among other things, electronic surveillance, physical search, and access to personal data for foreign intelligence in the United States. FISA was first enacted in 1978, and it "embodie[d] a legislative judgment that court orders and other procedural safeguards are necessary to [e]nsure that electronic surveillance by the U.S. Government within this country conforms to the fundamental principles of the Fourth Amendment."[66] All parts of the statute (including all subsequent amendments) are public and are contained within Title 50 of the U.S. Code.[67] Section 702 of FISA authorizes the acquisition of foreign intelligence information through targeting of non-U.S. persons located outside the United States, with the compelled assistance of U.S. electronic communications service providers.[68] It contains extensive legal constraints, oversight requirements, and other privacy safeguards. Multiple layers of oversight by all three branches of government ensure that this activity is carefully undertaken in strict compliance with legal requirements. As the Privacy and Civil Liberties Oversight Board (PCLOB) found, Section 702 collection targets specific persons about whom an individualized determination has been made that the person is likely to use a selector (e.g., email address or phone number) to communicate a category of foreign intelligence information approved by the Foreign Intelligence Surveillance Court (FISC). Such collection is not "mass surveillance" or "bulk collection."[69] Recently, partly in response to a report by its Inspector General, the National Security Agency (NSA) reported compliance issues to the FISC regarding so-called "upstream" collection. This resulted in modifications to the Section 702 targeting procedures and minimization procedures that narrow the communications the NSA collects under Section 702. The government has released a great deal of information regarding this change, including an explanatory statement from the NSA, the revised targeting and minimization procedures approved by the FISC, and the FISC opinion addressing the change.[70]

32. In further response to the Committee's requests under subparagraphs (a), (b), and (c) regarding the implementation, application, and effectiveness of the USA FREEDOM Act of 2015 (the Act) in ensuring the protection of the law against arbitrary and unlawful interference with privacy, we note that the Act was enacted in June 2015, and contains a number of provisions that modify U.S. surveillance authorities and other national security authorities through legislation, and increase transparency regarding the use of these authorities described in our October 2015 reply to the Committee.[71] As described in that reply, the Act prohibits bulk collection by the U.S. Government under Title V of FISA (also referred to as Section 215),

63. See Deputy Special Rapporteur's letter following the Committee's 114th session in July 2015 at p. 2.

64. *Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order* [OLC opinion January 29, 2000], available at www.justice.gov/sites/default/files/olc/opinions/2000/01/31/op-olc-v024-p0029_0.pdf.

65. Ibid.

66. *United States v. Duggan*, 743 F.2d 59, 73 (2d Cir. 1984) (quoting Senate Report No. 95-701, at 13 (1978)).

67. See 50 U.S.C. §§ 1801, et seq.

68. Large amounts of information about the operation and oversight of Section 702 is publicly available. Numerous court filings, judicial decisions, and oversight reports relating to the program have been declassified and released on the ODNI's public disclosure website, www.icontherecord.tumblr.com. Moreover, Section 702 was comprehensively analyzed by the PCLOB, in a report which is available at www.pclob.gov/library/702-Report.pdf.

69. www.pclob.gov/library/702-Report.pdf.

70. Links to these documents are available at https://icontherecord.tumblr.com/post/160561655023/release-of-the-fisc-opinion-approving-the-2016.

71. See paragraphs 20-24 of the United States' response dated October 9, 2015.

the FISA pen register and trap and trace provision, and through the use of National Security Letters. In addition, the Act replaces the NSA bulk telephony metadata program under FISA with a new mechanism, under which the U.S. Government may only make targeted requests for telephone records held by communication service providers pursuant to individual orders from the FISC, rather than requesting such records in bulk. In furtherance of transparency, the government has released a report by NSA's Civil Liberties and Privacy Office that describes in detail how it is implementing the Act.[72] NSA's minimization procedures that apply to records obtained under the Act have also been released.[73]

33. One particular element of increased transparency is the Act's codification and expansion of a previously existing policy commitment to report publicly certain statistics concerning the use of critical national security authorities, including FISA, in an annual report called the *Statistical Transparency Report Regarding Use of National Security Authorities (Annual Report)*.[74] The Fourth Annual Report, covering calendar year 2016, was published in April 2017 and, where these statistics are available, provides a compendium of four years' worth of informative data concerning the exercise of FISA authorities, both before and as amended by the Act. This includes Title IV and Title V authorities to obtain data from third parties upon the issuance of an individualized order by the FISC.

34. The Act also provides that recipients of certain national security orders and directives may publish statistical information regarding the number of orders and directives received under particular categories.[75] To protect intelligence sources and methods, these numbers must be published in numerical ranges. The public can view such reports by visiting web pages set up by service providers to make such statistical information available.

35. Another transparency mandate under the Act is the requirement that the Director of National Intelligence (DNI), in consultation with the Attorney General, conduct a declassification review of each decision, order, or opinion issued by the FISC and the Foreign Intelligence Court of Review (FISC-R) that includes a significant construction or interpretation of any provision of law, and to make publicly available to the greatest extent practicable any such decision, order, or opinion.[76] Where declassification is not possible for national security reasons (the Act provides for a formal waiver process), then an unclassified summary must be prepared. Several FISA opinions, orders, and related court documentation have already been publicly released.[77]

36. The Act also provides for the designation of amici curiae from a panel of not fewer than five individuals jointly established by the FISC and FISC-R. The court is to designate an amicus curiae to assist the FISC in the consideration of any application for an order or review that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a finding that such appointment is not appropriate.[78] It may also designate an amicus curiae to provide technical assistance and in any instance where the court deems appropriate. An amicus curiae designated to assist the court is to provide, as appropriate, legal arguments that advance the protection of individual privacy and civil liberties; information related to intelligence collection or information technology; or legal arguments or information regarding any other area relevant to the issue presented to the

72. Transparency Report: The USA FREEDOM Act Business Records FISA Implementation (Jan. 15, 2016), available at www.nsa.gov/about/civil-liberties/reports/assets/files/UFA_Civil_Liberties_and_Privacy_Report.pdf.

73. www.nsa.gov/about/civil-liberties/reports/assets/files/UFA_SMPs_Nov_2015.pdf.

74. See paragraph 37 of the United States' one-year follow-up response dated March 31, 2015, referencing the first Annual Report, issued in June of 2014. All Annual Reports are publicly available at https://icontherecord.tumblr.com/transparency/odni_transparencyreport_cy2016.

75. 50 U.S.C. § 1874.

76. 50 U.S.C. § 1872.

77. See, *e.g.*, https://icontherecord.tumblr.com/post/143070924983/release-of-three-opinions-issued-by-the-foreign.

78. 50 U.S.C. § 1803(i).

court. The FISC has published a list of individuals authorized to appear as amici curiae,[79] and has already made several appointments in specific cases.[80]

37. In subparagraph (d), the Committee observed and recommended that the United States refrain from imposing mandatory data retention requirements on third parties. The United States has taken this recommendation under consideration and wishes to inform the Committee that it respectfully declines its adoption. Such data retention requirements, where applicable, are exercised pursuant to U.S. law consistent with our obligations under Article 17.

38. With respect to the Committee's request under subparagraph (e) for information on access to remedies, to supplement previous responses, U.S. law provides a number of avenues of redress for individuals who have been the subject of unlawful electronic surveillance for foreign intelligence purposes. Under FISA, an individual who can establish standing to bring suit would have remedies to challenge unlawful electronic surveillance under FISA. For example, FISA allows persons subjected to unlawful electronic surveillance to sue U.S. Government officials in their personal capacities for money damages, including punitive damages and attorney's fees.[81] Such individuals could also pursue a civil cause of action for money damages, including litigation costs, against the United States when information about them obtained in electronic surveillance under FISA has been unlawfully and willfully used or disclosed.[82] In the event the government intends to use or disclose any information obtained or derived from electronic surveillance of any aggrieved person under FISA against that person in a judicial or administrative proceeding in the United States, it must provide advance notice of its intent to the tribunal and the person, who may then challenge the legality of the surveillance and seek to suppress the information.[83] Finally, FISA also provides criminal penalties for individuals who intentionally engage in unlawful electronic surveillance under color of law or who intentionally use or disclose information obtained by unlawful surveillance.[84]

39. In addition to avenues for redress under FISA, the Computer Fraud and Abuse Act prohibits intentional unauthorized access (or exceeding authorized access) to obtain information from a financial institution, a U.S. Government computer system, or a computer accessed via the Internet, as well as threats to damage protected computers for purposes of extortion or fraud. Any person who suffers damage or loss by reason of a violation of this law may sue the violator (including a government official) for compensatory damages and injunctive relief or other equitable relief regardless of whether a criminal prosecution has been pursued, provided the conduct involves at least one of several circumstances set forth in the statute.[85]

40. Title I of the Electronic Communications Privacy Act (ECPA), also known as the Wiretap Act, is the principal statute regulating the domestic interception of wire, oral, and electronic communications.[86] Title II of ECPA, also known as the Stored Communications Act, regulates the government's access to stored electronic communications, transactional records, and subscriber information held by third-party communication providers.[87] Both the Wiretap Act and the Stored Communications Act allow, under certain circumstances, any person who suffers damage or loss by reason of a violation of either law to sue a violator for compensatory damages, injunctive relief, and reasonable attorney's fees.[88] Additionally, any person who is

79. www.fisc.uscourts.gov/amici-curiae.

80. For example, this publicly released case involved an amicus curiae, who made legal arguments to advance the protection of individual privacy and civil liberties: www.dni.gov/files/documents/20151106-702Mem_Opinion_Order_for_Public_Release.pdf.

81. 50 U.S.C. § 1810.

82. 18 U.S.C. § 2712.

83. 50 U.S.C. § 1806.

84. 50 U.S.C. § 1809.

85. 18 U.S.C. § 1030.

86. 18 U.S.C. §§ 2510–2522.

87. 18 U.S.C. §§ 2701–2712.

88. See 18 U.S.C. §§ 2520, 2707.

aggrieved by any willful violation of the Wiretap Act or the Stored Communications Act may commence an action against the United States to recover money damages.[89]

41. Additionally, individuals have sought, and in some cases have obtained, judicial redress for allegedly unlawful government access to personal data through civil actions under the Administrative Procedure Act (APA), a statute that allows persons "suffering legal wrong because of" certain government conduct to seek a court order enjoining that conduct.[90] For example, a recent challenge under the APA resulted in a decision by a federal appeals court holding both that bulk collection of telephone metadata under Title V of FISA could be challenged as exceeding, and did in fact exceed, the U.S. Government's authority under the statute.[91] That bulk telephone metadata collection program was terminated in the USA FREEDOM Act of 2015, as discussed above.

89. 18 U.S.C. § 2712.

90. 5 U.S.C. § 702.

91. *ACLU v. Clapper*, 785 F.3d 787 (2d Cir. 2015). Other courts, agreeing with the U.S. Government, have reached contrary rulings on both points. See *Klayman v. Obama*, 957 F. Supp. 2d 1, 19–25 (D.D.C. 2013) (finding that plaintiffs could not bring suit under the APA alleging violations of the statute, but could bring suit alleging violations of the Fourth Amendment), *vacated*, 800 F.3d 559 (D.C. Cir. 2015); *In re Application of the FBI*, No. BR 13–109, 2013 WL 5741573, at *3–9 (FISC Aug. 29, 2013) (holding that the program was consistent with the statute).

IX. Sustainable Development Goals and Realizing the Right to Work

III. The 2030 Agenda for Sustainable Development and the Right to Work

1. The 2030 Agenda for Sustainable Development, in a significant departure from the Millennium Development Goals that preceded it, is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law, and is grounded in the Universal Declaration of Human Rights and international human rights treaties, among other instruments.[92] The Sustainable Development Goals seek to realize the rights of all; States have committed, in the 2030 Agenda, to leaving no one behind and to reaching the furthest behind first.[93] As previously noted by OHCHR in its position paper "Transforming Our World: Human Rights in the 2030 Agenda for Sustainable Development", the Sustainable Development Goals offer a new, more balanced paradigm for more sustainable and equitable development in that, while the Millennium Development Goals addressed only a narrow set of economic and social issues, the Sustainable Development Goals include 17 goals and 169 targets covering a wide range of issues that effectively mirror the human rights framework. Moreover, the targets of the Goals reflect the content of corresponding human rights standards, even though they are not framed explicitly in the language of human rights. The 2030 Agenda and the political commitments contained in it therefore complement the human rights framework by affirming many existing norms and setting out a road map to achieve them.

2. With regard to work, States pledged in the 2030 Agenda to create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work and to work to build dynamic, sustainable, innovative and people-centred economies, promoting youth employment and women's economic empowerment, in particular decent work for all. These pledges are complemented by a commitment to adopt policies that increase productive capacities, productivity and productive employment. Sustainable Development Goal 8, on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, is the most comprehensive goal applicable to the right to work, in particular the targets 8.3, 8.5, 8.6, 8.8, 8.9 and 8.b.

3. A number of other Sustainable Development Goals and targets are of broader relevance to the right to work. The realization of this right has a clear and direct impact on the achievement of Goal 1 (on ending poverty in all its forms everywhere) and Goal 2 (on ending hunger, achieve food security and improved nutrition and promoting sustainable agriculture). With regard to health, target 3.4 aims at reducing premature mortality from non-communicable diseases through prevention and treatment and the promotion of mental health and well-being, while target 3.9 aims at reducing the number of deaths and illnesses from hazardous chemicals. Such objectives are directly linked to the duty of States to ensure safe and healthy working conditions. With regard to education and its role in promoting the realization of the right to work by building a skilled workforce, targets 4.3 and 4.4 are pertinent, as they aim, respectively, to ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education and to increase the number of youth and adults who have relevant skills for employment, decent jobs and entrepreneurship. In the light of the gender disparities that persist in labour force participation and employment (see A/HRC/34/29, para. 15), the achievement of Goal 5 (on achieving gender equality and empower all women and girls), particularly targets 5.4, 5.5 and 5.a, would do much to foster the realization of the right to work, as would Goal 10 (on reducing inequality within and among countries) with its targets addressing laws, policies and practices, social, economic and political inclusion, equality of opportunity, and the reduction of inequalities of outcome, as enshrined in targets 10.2, 10.3 and 10.4.

92. General Assembly resolution 70/1, para. 10.

93. Ibid., para. 4.

4. In considering the relationship between the realization of the right to work and the implementation of relevant targets of the Sustainable Development Goals, it is important to recognize that, to the extent that they are implemented consistently with international law, including human rights norms and standards,[94] the Goals and targets are a useful framework for supporting States in respecting, protecting and fulfilling the right to work. Certain targets provide for many elements of an enabling environment for the realization of the right to work: article 6(2) of the International Covenant on Economic, Social and Cultural Rights provides for, in addition to technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment, under conditions safeguarding the fundamental political and economic freedoms of the individual. Part of creating an enabling environment involves legislative, policy and other measures to give effect to the duty to respect, protect and fulfil the right to work.[95] In this respect, targets 8.3 (on development-oriented policies), 8.8 (the protection of labour rights and the promotion of safe and secure working environments for all workers), 8.9 (developing and implementing policies to promote sustainable tourism that creates jobs and promotes local culture and products) and 8.b (global strategy for youth employment and implementation of the ILO Global Jobs Pact) are especially relevant.

5. Some of the normative content of the right to work is reflected in the targets, as are several State obligations. Under the International Covenant on Economic, Social and Cultural Rights, the overarching obligation is for States to ensure the progressive realization of the right to work.[96] This is echoed in target 8.5, while the targets relating to the protection of labour rights and the promotion of occupational health and safety also align with the normative content of the right to work.

6. Non-discrimination, equality and inclusion are an integral part of several goals and targets: the objectives of achieving equality overall and gender equality specifically underpin Goals 5 and 10, respectively. Target 8.5 (on full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value) requires the elimination of discrimination in remuneration and access to employment. Several dimensions of inclusion, particularly economic, social and political inclusion, equality and non-discrimination are features of a number of targets, including targets 10.2, 10.3 and 10.4.

7. The Sustainable Development Goals and, necessarily, their targets are universal and interlinked with a view to supporting a coordinated, comprehensive approach. In the 2030 Agenda, the General Assembly clearly noted that the interlinkages and integrated nature of the Goals were of crucial importance in ensuring that the purpose of the new Agenda was realized. This reflects the interdependence and indivisibility of the human rights on which the 2030 Agenda is based.

8. In this context, interesting examples can be considered. Since 2005, in India, the Mahatma Gandhi National Rural Employment Guarantee Act has provided a minimum of 100 days of guaranteed wage employment in any financial year to every rural household whose adult members volunteer to do unskilled manual work. Through this process, the Act address the linkage between the right to work, the right to food and the right to life enshrined in the Constitution of India.

IV. Leaving no one behind

9. Adopting a human rights-based approach to the implementation of the targets of the Sustainable Development Goals insofar as this relates to vulnerable and marginalized individuals, groups and populations is a fundamental element of contributing to the realization of the right to work.

94. See General Assembly resolution 70/1, para. 18.

95. See Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, paras. 24–28.

96. Ibid., para. 19.

A. Women

10. According to ILO, the significant progress in women's educational achievements has not yielded a corresponding improvement in their position at work, and women continue to experience greater challenges in gaining access to work than men; specifically, "barriers to participation, persistent occupational and sectoral segregation and a disproportionate share of unpaid household and care work prevent them from enjoying equal access to opportunities."[97] Moreover, access to employment has not necessarily meant access to decent work, and women remain at greater risk of unemployment.[98] The gendered nature of the global workforce has meant that women are concentrated and overrepresented in lower paying occupations and positions (such as domestic work), in non-standard employment and in the informal sector, where social protection tends to be limited or non-existent (see A/HRC/34/29).

11. With regard to working conditions, the global gender pay gap is estimated to be around 23 per cent, with women earning, on average, 77 per cent of men's wages.[99] ILO notes in this regard that the lack of data disaggregated by sex inhibits an accurate assessment of this disparity.[100] Working mothers also experience a "wage penalty," earning less than women without dependent children, while working fathers tend to earn a "fatherhood bonus," becoming higher earners when they have children. This premium on fatherhood may even be exceptionally high for men, depending on their education level, ethnicity, heterosexual marital status and professional or managerial status.[101] In a recent report, the United Nations High Commissioner for Human Rights noted the vulnerability of women working in manufacturing and other sectors in export-processing zones to violations of their labour rights, observing that, often, in order to attract investors, States adopt specific regimes for export-processing zones whereby labour law does not apply, either partially or fully, and that reports of low wages, long working hours, unpaid overtime, sexual harassment and other forms of violence in export-processing zones are rife (A/HRC/34/29, para. 49).

12. A human rights-based approach to addressing gaps in the realization of women's right to work entails, among other steps, the establishment of a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment for women by ensuring equal pay for work of equal value.[102] It also includes the review of law and policy frameworks and labour practices to ensure the adoption of measures necessary to align them with human rights norms and standards pertaining to the right to the right to work in this area. Furthermore, as the Committee on Economic, Social and Cultural Rights noted in its general comment No. 18 (2005), States should take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection. The key objectives of these measures should be the elimination of structural, social and other barriers to women's access to decent work and retention of employment, and just and favourable working conditions.

B. Persons with disabilities

13. There are approximately 470 million persons with disabilities of working age around the world. Many find it hard to gain access to decent work, and are often forced to seek employment in the informal sector. As well as experiencing discrimination and marginalization in employment, they also have limited enjoyment of other rights essential for the realization of the right to work, such as the rights to education, legal capacity and access to information. An estimated 82 per cent of persons with disabilities in developing countries live below the pov-

97. ILO, *Women at Work: Trends 2016*, Geneva, 2016, p. 5.

98. Ibid., p. 12.

99. Ibid., p. xvi.

100. ILO, *Fundamental principles and rights at work: From challenges to opportunities*, Geneva, 2017, para. 65.

101. ILO, *Women at Work* (see footnote 12), p. 58.

102. Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, para. 13. See also CEDAW/C/THA/CO/6-7, para. 37 (c).

erty line, and are among the most vulnerable and marginalized.[103] There is, therefore, a strong link between disability and poverty.

14. Persons with disabilities face barriers of access that include the denial of reasonable accommodation, meaning an adjustment or modification required in the work environment or application process to enable a person with a disability to enjoy equal employment opportunities. This is a key part of States' obligations to ensure non-discrimination and equality, and that no one is left behind. Access to decent work is also impeded by widespread perceptions that persons with disabilities are unable to work or are eligible only for specific jobs, or for work in segregated environments.[104]

15. Many persons with disabilities consequently rely on disability benefits (where they are offered). Many States have, however, gradually reduced social protection programmes, including those targeting persons with disabilities, through austerity measures, and are continuing to do so. Social support and assistance have been reduced, and eligibility criteria for social assistance have been tightened, while conditionalities have been increased and more severe sanctions for non-compliance introduced (CRPD/C/GBR/CO/1, para. 58). Measures of this type have significantly increased the risk of further marginalization of and poverty among persons with disabilities, and could drive some into hazardous and exploitative work.

16. The implementation of Sustainable Development Goal 8 and other relevant goals and targets must be informed by the human rights framework, including the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights. The respective treaty-monitoring bodies provide guidance on what the right to work and just and favourable conditions of work for persons with disabilities entail. According to key guidance in this area, workers with disabilities should not be segregated in sheltered workshops, should benefit from an accessible work environment and should not be denied reasonable accommodation, such as workplace adjustments or flexible working arrangements. States should also take steps to ensure that workers with disabilities enjoy equal remuneration for work of equal value and to eliminate wage discrimination due to a perceived reduced capacity for work.[105]

C. Migrants in an irregular situation

17. Although reliable data are not readily available, estimates indicate that around 10 to 15 per cent of all international migrants, or 30 million people, are in an irregular situation. Irregular migrants are often vulnerable for a number of reasons, many of which are related to their irregular situation. They are frequently not permitted to work, although, in practice, many do work irregularly and mostly in the informal sector. Irregular migrants are also at high risk of exploitation, particularly given that the sectors in which many work are often unprotected and unregulated, such as the construction, agriculture, food processing and fisheries industries. Their conditions of work are frequently harsh and inhumane, with little provision for occupational health and safety, while many experience abuse, including physical abuse and sexual and gender-based violence.[106]

18. As well as typically earning lower wages compared to nationals and other migrants in similar occupations, legal requirements may limit the ability of migrants in an irregular situation to seek alternative employment, and may actively tie them to a particular employer, which violates the right to freely choose or accept employment. These challenges may be compounded when such migrant workers feel unable to assert their rights and seek the protections available

103. ILO, *The right to decent work of persons with disabilities*, Geneva, 2007.

104. Netherlands Human Rights Institute, Annual status report 2016, "Poverty, social exclusion and human rights."

105. See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016) on the right to just and favourable conditions of work (E/C.12/GC/23), para. 47 (c).

106. OHCHR, *Behind closed doors: Protecting and promoting the human rights of migrant domestic workers in an irregular situation* (New York and Geneva, 2015), p. 3.

to other workers out of fear of detection and possible consequences.[107]

19. The implementation of the Goals and targets of the 2030 Agenda for Sustainable Development relating to the protection of labour rights should involve, in accordance with human rights norms and standards, the adoption of legal and practical measures to prevent discrimination against irregular migrants, the removal of laws and rules that make access to basic services conditional on the production of documents that irregular migrants cannot obtain, and ensuring that irregular migrants have full, non-discriminatory access to appropriate administrative and judicial remedies. It should also entail the development of specific national strategies or plans of action to realize the rights to health, housing, education, social security and decent work of all migrants, ensuring that they pay due attention to the situation of irregular migrants.[108]

20. One positive example of awareness-raising made by the European Union Agency for Fundamental Rights is the Task Force on Combating Human Trafficking, established by the Government of Austria, which provides migrant domestic workers with information about their rights in their first language when applying for a visa.

D. Youth

21. Access to decent work for young people is a global problem. Seventy three million young people worldwide are seeking employment; in Europe, the unemployment rate for those under 25 is 2.6 times higher than for the rest of the population.[109] According to the European Youth Forum, young people often lack the experience they need to be competitive in the global labour market and in Europe, and few employers are willing to engage and invest in young and inexperienced workers. To gain the necessary experience, many have to accept unpaid internships, which excludes the most marginalized who cannot afford to work for free. In this regard, the European Youth Forum has called upon States to regulate internships and to ban unpaid ones to ensure fair access for all young people, regardless of their socioeconomic background. Moreover, cuts to education, especially to support services, made by many States in response to the financial crisis that broke out in 2008, are said to have further reduced access to quality education for many disadvantaged children, and considerably limited their access to decent work.[110]

22. Some States have lowered labour standards and social protection for private actors employing young people**.** The European Committee on Social Rights has criticized States for proposing special apprenticeship contracts that have in effect create a distinct category of workers excluded from the general range of protection offered by the social security system.[111] Some States have set the minimum wage for young people substantially lower than that of the general population,[112] despite indications that, in many States, the legal minimum wage is insufficient to secure an adequate standard of living.[113] Some States have also restricted the social security benefits that young people may receive.[114]

23. Key measures that should be taken in this context include national policies relating to adequate education and vocational training with a view to promoting access to employment opportunities, particularly for young women.[115] As pointed out by the Committee on Economic, Social and Cultural Rights, all workers should be protected against age discrimination, and young workers should not suffer wage discrimination by, for example, being forced to accept low wages that do not reflect their skills. The Committee also emphasized that the excessive

107. Ibid.

108. Ibid., p. 135.

109. Council of Europe, "Youth human rights at risk during the crisis," 3 June 2014.

110. European Youth Forum, *Excluding Youth: A Threat to Our Future*, 2016.

111. Council of Europe, "Youth human rights at risk" (see footnote 24).

112. Ibid.

113. Youth Employment UK, "Living, a wage, and young people," 2016.

114. Joseph Rowntree Foundation 'Young People and Social Security: An International Review (York, October 2015).

115. Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, para. 14.

use of unpaid internships and training programmes, as well as of short-term and fixed-term contracts that negatively affect job security, career prospects and social security benefits, is not in line with the right to just and favourable conditions of work.[116]

24. Given the multifaceted aspects of employment, in Finland, the Ministry of Economic Affairs and Employment and other ministries are developing, under the Youth Guarantee scheme, "one-stop-shop" service points, the aim of which is to bring together service providers and to increase cooperation between administrative bodies.

E. Older persons

25. The number of persons aged 60 and over is rising at an unprecedented rate, and is expected to increase from the estimated number of 962 million for 2017 to 1.4 billion by 2030.[117] By 2050, all regions of the world (except Africa) will have nearly a quarter or more of their populations at ages 60 and above.[118]

26. Older persons face numerous challenges in their access to the right to decent work, such as age-based discrimination in both the job market and at work. Older people may face prejudice when applying for jobs, seeking promotions or undertaking training, or may be subject to harassment in the workplace. One common complaint made to national human rights institutions by ageing and older persons was that of having been refused employment, interviews or other opportunities to find work because of their age.[119]

27. Most older women are excluded from formal social security and health insurance schemes, as they are linked to paid, formal-sector employment. In developing countries, the great majority of women work all their lives in the informal sector or doing unpaid activities. In developed countries, older women are more likely than men to be poor. On average, in European Union countries, older women have a poverty risk rate of about 22 per cent, compared to a rate of 16 per cent for older men. They are less likely to receive a large contributory pension since they are more likely to have stopped working at some point over their lifetime to take on the responsibilities of child rearing, and are also more likely to have received lesser wages for their work than men.

28. The protection of the right of older persons to work hinges to a great extent on measures to address discrimination in access to work and in the workplace. The measures should be coupled with interventions to address gender discrimination, and other forms of discrimination that have an impact on access to employment and the enjoyment of the right to just and favourable working conditions. States should give due consideration to establishing non-contributory pensions as a means of ensuring the right to social security for older women and compensating them for their years of unpaid or inadequately paid work. In order to ensure equal access by older women to a social pension, however, special measures should be taken to overcome possible barriers caused by structural discrimination, such as lack of access to adequate documentation and identification, difficulties approaching administrations, or lack of gender-sensitive social services (A/HRC/33/44, paras. 51-57).[120]

29. According to information received from the European Union Agency for Fundamental Rights, some States (such as Denmark) have abolished the upper age limits for employment, thereby allowing those who were above the limit beforehand to continue to work or to seek employment. Furthermore, dismissal or the withholding a job offer on the basis of a person's age would constitute age discrimination. Several European States have also made financial incentives available to employers for hiring older workers.

116. Committee on Economic, Social and Cultural Rights general comment No. 23 (2016) on the right to just and favourable conditions of work, para. 47 (b).

117. Department of Economic and Social Affairs, World Population Prospects: 2017 Update.

118. Ibid.

119. Ibid.

120. See also Committee on Economic, Social and Cultural Rights general comment No. 19 (2007) on the right to social security (art. 9), para. 32.

V. Issues relevant to the implementation of the right to work and the Sustainable Development Goals

A. Adequate and accessible social security

30. The right to decent work includes adequate and accessible social protection. This is also included in Sustainable Development Goal 1 (on ending poverty in all its forms everywhere), which includes target 1.3 that requires States to implement nationally appropriate social protection systems and measures for all, including floors. Under article 9 of the International Covenant on Economic, Cultural and Social Rights, States are required to ensure the right to social security, which includes both social insurance and assistance.[121]

31. The politically determined trend currently witnessed in many States to reduce the role of the State, including in response to the recent debt crisis, however, has led to a reduction in social security, particularly assistance. States have both reduced the amount received by recipients and/or reduced coverage by making eligibility rules tighter (see A/HRC/17/34 and E/2013/82). Measures taken have also increased sanctions for non-compliance with specific conditions. In addition, politicians and the media increasingly stigmatize those on benefits, thereby discouraging many from claiming their entitlements.[122]

32. In its general comment No. 19 (2007), the Committee on Economic, Social and Cultural Rights stated that Governments should ensure that social security is financially accessible, namely, affordable. This includes social insurance. However, low and irregular wages, exacerbated by the "flexibilization" of labour markets worldwide, make it difficult for many to contribute to social insurance schemes.[123] Women are particularly disadvantaged by interrupted work histories due to traditionally assigned caregiver roles.[124]

33. States should also ensure accessible and adequate social protection in accordance with human rights law and the ILO Recommendation No. 202 concerning National Floors of Social Protection. Inadequate and/or inaccessible social protection systems, including those that can stigmatize recipients can "entrench socio-economic inequalities."[125] States should thus continually assess the goods and services people need to able to move out of poverty, and to monitor them accordingly.

B. Informal economy

34. Target 8.3 of the Sustainable Development Goals calls upon States to support decent job creation. The informal economy, which is generally neither taxed nor monitored by any form of government, however, is growing. Workers in the informal economy are typically excluded from various legal protections. They often earn lower average wages, and are rarely provided with social security coverage or any other form of social protection by their employers or the Government, such as health care, pensions, education, skill development, training or child care. They may also be outside the reach of health and safety standards, and their work place may be unsafe, hazardous or unhealthy.

35. Labour market discrimination in the formal job market often forces certain groups, such as indigenous peoples, persons with disabilities, women, and particular ethnic groups, into working in the informal economy. Given the lack of protection in the informal economy and low wages, this often entrenches their poverty and marginalization even further, and makes them more likely to be left behind.

36. The informal sector could expand further owing to future employment developments, such as non-standard forms of employment facilitated by increases in digital technology, or a drop in the availability of more traditional jobs, especially for the low-skilled. While the rise in non-

121. Ibid.

122. Frances Ryan, "On Benefits and Proud: The show where 'deserving taxpayers' stalk 'proud benefit claimants,'" *NewStatesman*, 15 October 2013.

123. Sandra Fredman, "Engendering socio-economic rights," *South African Journal of Human Rights*, vol. 25, part 3 (2009), p. 412.

124. See ILO, "Gender equality at the heart of decent work," International Labour Conference, 98th session, 2009.

125. Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press, 2008), pp. 226 and 232.

standard forms of employment can be seen as an opportunity, unless properly regulated, it may jeopardize the 2030 Agenda for decent work.[126]

C. Precarious contracts

37. Target 8.8 of the Sustainable Development Goals urges States to protect labour rights. Efforts in many countries to dismantle or limit regulation aimed at protection workers right have, however, resulted in reduced protection of workers, increasing the number of insecure or precarious contracts. Such a deregulation has also been pushed by international financial institutions, which have also promoted precarious contracts and facilitated dismissals as part of austerity-related law reforms.[127]

38. According to trade unions, deregulation has resulted in contracts where employers are not required to provide any minimum working hours, while employees must be available for work as and when required. Such contracts are used by employers to avoid recruitment and agency costs, and are associated with low pay, income insecurity and insufficient working hours, despite the obligation of employees to be continuously available for work. Deregulation can limit other work possibilities, and the ability to earn enough to cover the costs of living.[128] Other casual contracts might provide for minimal hours but may be subject to last-minute changes and reductions. Such insecure contracts are likely to increase in the future with the rise of the "gig economy."[129]

39. The above-mentioned types of contracts are said to place workers at a higher risk of poverty.[130] Given "the market power of employers over employees [,]employers are able to glean all the flexible benefits associated with zero-hours contracts; whilst all the financial and security risks are transferred to the workers."[131] They therefore undermine the realization of the Sustainable Development Goals and violate the right to decent work, as contained in the International Covenant on Economic, Social and Cultural Rights.[132] This has also led to calls for a different assessment of the implications of the indicators under Goal 8: "High levels of underemployment and precarious work mean that the standard unemployment rate is inadequate as a sole measure of the condition of the labour market."[133]

40. The establishment of ombudspersons can be helpful for the resolution of work-related grievances, including on salaries and benefits. In Australia, the Fair Work Ombudsman helps employers and employees to resolve workplace issues, and provides clear information on their rights and obligations. The Ombudsman of the Republic of Latvia has been constantly involved in the protection of the interests of persons at risk of poverty, including the "working poor" and those suffering from insufficient minimum wages and unfair remuneration.

D. Occupational health and safety

41. Target 8.8 of the Sustainable Development Goals also calls upon States to promote safe and secure working environments. Despite this, continuing deregulation has led many Governments to remove "red tape" around health and safety regulations that are often perceived as unfairly hindering business and restricting economic growth. In reality, the economic burden of poor occupational safety and health practices is estimated at 4 per cent of global gross

126. ILO, *Non-standard employment around the world: understanding challenges, shaping prospects*, Geneva, 2016.

127. Stefano Sacchi, "Conditionality by other means: EU involvement in Italy's structural reforms in the sovereign debt crisis," *Comparative European Politics*, vol. 13, No. 1 (2015), pp. 82–83 and 89. See also A/HRC/34/57.

128. Trades Union Congress, Ending the abuse of zero-hours contracts—TUC response to BIS consultation, Equality and Employment Rights Department, London, March 2014.

129. Forms of work in the "gig economy" include "crowdwork" and "work-on-demand via apps," under which the demand and supply of working activities is matched online or via mobile apps. See Valerio De Stefano, "The rise of the 'just-in-time workforce': on-demand work, crowdwork and labour protection in the 'gig-economy,'" ILO, Conditions of Work and Employment Series No. 71, 2016.

130. Netherlands Human Rights Institute, Annual status report 2016: "Poverty, social exclusion and human rights."

131. Trades Union Congress, Ending the abuse of zero-hours contracts (see footnote 43).

132. See Committee on Economic, Social and Cultural Rights general comment No. 23 (2016) on the right to just and favourable conditions of work (art. 7).

133. Kristy Jones, *Tough Jobs: The Rise of an Australian Working Underclass*, Construction, Forestry, Mining and Energy Union, September 2016.

domestic product each year.[134] Unhealthy and/or hazardous working conditions significantly undermine people's ability to work and to provide for themselves and their families.

42. In addition to ensuring adequate regulation, States should also guarantee appropriate inspection and monitoring systems. Article 9 of the ILO Occupational Safety and Health Convention, 1981 (No. 155) specifies that "the enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection" and "the enforcement system shall provide for adequate penalties for violations of the laws and regulations." Such systems should be adequately combined with prevention policies aimed at helping employers and workers to avoid or eliminate the risk of occupational accidents and diseases. There are also many other ILO conventions governing labour inspections, such as the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

43. While target 8.8 calls upon States to protect labour rights, it only urges States to "promote safe and secure working environments for all workers." This falls short of human rights standards and the numerous ILO conventions and recommendations specifically dealing with occupational safety and health.

E. Trade unions

44. While the Sustainable Development Goals, and in particular target 8.8, acknowledge the importance of protecting labour rights, there is no mention of the role of trade unions. Moreover, many States, often strongly encouraged by international financial institutions, have implemented austerity-related labour measures aimed at weakening trade unions, targeting collective bargaining systems by, inter alia, limiting extension agreements between different sectors (see A/HRC/34/57). They have undermined collective labour rights, including the right to form and join trade unions (A/HRC/34/57, para. 29). In some cases, Governments have imposed stricter regulation of the content of collective agreements, procedures for bargaining, and regulation of trade unions.[135] Multilateral financial institutions have also conditioned loans on recipient States, thereby weakening labour protections, denying workers a voice in the process and moving employment towards informality (A/71/385, para. 85).

45. Trade union protection is a key factor in ensuring access to decent work and equality. Unions can assist women workers, especially household, domestic or migrant workers, in claiming their labour rights by providing access to online information, and offer opportunities to organize online to improve laws, wages and working conditions and report abuses.[136] There is an historic link between strong trade unionism and more equal societies.[137]

46. Trade unions have also adapted to the changing nature of employment and helped to address issues relating to self-employed workers. With the emergence of new forms of work, it is important to have a democratic process of dialogue between workers and employers to mediate control of the gains of production.[138]

47. To achieve the Sustainable Development Goals and ensure that no one is left behind, States must guarantee conditions necessary for workers to join and form trade unions. It is essential that trade unions be able to operate freely. Building a future economy where the benefits of work and profit are shared requires legal reform in support of effective trade unions.[139]

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134. ILO, Occupational Safety and Health, available at www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_OSH_EN/lang--en/index.htm.

135. Jones, *Tough Jobs* (see footnote 48).

136. United Nations Non-Governmental Liaison Service, Recommendations on Women's Human Rights and Gender Equality, Policy Brief #7.

137. Lydia Hayes and Tonia Novitz, *Trade Unions and Economic Inequality*, Institute of Employment Rights, 2014. See also A/HRC/34/57, para. 11.

138. See ILO, *The Future of Work We Want: A global dialogue*, Geneva, 2017.

139. Hayes and Novitz, *Trade Unions and Economic Inequality* (see footnote 52).

VI. Participation and accountability

48. The 2030 Agenda for Sustainable Development is an agenda "of the people, by the people and for the people," in which States committed to instituting a revitalized Global Partnership for Sustainable Development, based on a spirit of strengthened global solidarity, focused in particular on the needs of the poorest and most vulnerable and with the participation of all countries, all stakeholders and all people.[140] This pledge evokes a fundamental human rights norm, that of participation, which recognizes that stakeholders have a right to participate meaningfully in the development, implementation and monitoring of policies that affect them.[141]

49. The principle of participation has a distinct application for the collective dimension of the right to work, particularly the right to form and join trade unions. As noted by ILO, the right to organize and bargain collectively provides an essential foundation for social dialogue, effective labour market governance and the realization of decent work.[142] Social dialogue includes all types of negotiation, consultation or exchange of information between or among representatives of Governments, employers and workers on issues of common interest relating to economic and social policy.[143] It should ensure the inclusion of representatives of groups that are underrepresented in formal work, such as women, migrants, older persons and persons with disabilities, and a number of prerequisites need to be fulfilled in order to support robust social dialogue mechanisms and processes. These include strong, independent representative workers' and employers' organizations with the necessary technical capacity and access to relevant information, respect for the fundamental rights of freedom of association and collective bargaining, political will and commitment to engage in good faith in social dialogue on the part of all parties, and appropriate institutional support.[144] Crucially, through social dialogue and collective bargaining, workers and their organizations improve their working conditions and wages and, in many instances, have successfully expanded the scope of collective bargaining to include questions of workers protection, such as safety and health at the workplace and social security schemes, workers' education and training, and even the participation of workers in the management of enterprises.[145]

50. Social dialogue also allows for accountability and may be an important means for holding States accountable for delivering on their obligations with regard to the right to work. In the specific context of the Sustainable Development Goals, OHCHR has urged States to establish a participatory national follow-up and progress review process, which should be based on the relationship between Governments and the people. The country-led component for accountability should be built on existing national and local mechanisms and processes, with broad, multi-stakeholder participation, and should establish benchmarks, review the national policy framework, chart progress, analyse lessons learned, consider solutions and ensure that policies and programmes are on the right track for meeting the Goals and targets of the 2030 Agenda. Finally, national reviews of progress in the implementation of the Goals should also integrate reports and recommendations of existing human rights review processes, as well as information from existing national mechanisms for oversight and review on matters relating to the Goals, including the parliament or other legitimate decision-making body, local government authorities and national human rights institutions.[146]

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140. General Assembly resolution 70/1, para. 52.

141. Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, para. 42.

142. ILO, *Fundamental principles and rights at work: From challenges to opportunities*, Geneva, 2017, para. 12.

143. See ILO, *Social dialogue: Finding a common voice*, Geneva (undated).

144. Ibid.

145. Ibid.

146. OHCHR, Integrating Human Rights into the Post-2015 Development Agenda, Follow-up and Review: Ensuring Accountability for the SDGs, available from www.ohchr.org/Documents/Issues/MDGs/Post2015/AccountabilityAndThePost2015Aagenda.pdf.

51. National human rights institutions can play an important role in monitoring the right to work. In the United Kingdom of Great Britain and Northern Ireland, the Equality and Human Rights Commission is an independent and non-departmental public body that has the power to intervene in court proceedings in human rights and equality cases. The Commission has moreover developed a measurement framework covering six domains, including work. Indicators include earnings, occupational segregation and levels of employment, which overlap with, and help to reinforce, the aims of Sustainable Development Goals 5 (target 5) and 8 (target 5). . . .[147]

147. See www.equalityhumanrights.com/en/britain-fairer.

X. Draft Guidelines for States on Effective Implementation of the Right to Participate in Public Affairs A/HRC/39/28

The present draft guidelines, submitted to the Human Rights Council pursuant to its resolution 33/22, provide a set of orientations for States on the effective implementation of the right to participate in public affairs. The draft guidelines refer to a number of basic principles that should guide the effective implementation of the right to participate in public affairs. Various dimensions of that right are covered, with a focus on participation in electoral processes, in non-electoral contexts and at the international level, and recommendations have been formulated. . . .

III. Dimensions of the right to participate in public affairs: forms and levels of participation

A. Participation in elections

1. Article 21 of the Universal Declaration of Human Rights highlights the role of periodic and genuine elections in ensuring that everyone is able to participate in the public affairs of his or her country. Article 25 (b) of the International Covenant on Civil and Political Rights provides citizens with the right and the opportunity to vote and to be elected at genuine periodic elections which are to be by universal and equal suffrage and are to be held by secret ballot, guaranteeing the free expression of the will of the electors. Elections lie at the heart of democracy, and remain the primary means through which individuals exercise their right to participate in public affairs.

2. In addition to allowing rights holders to take part in the conduct of public affairs as voters or candidates for election, thereby permitting participation through chosen representatives, certain electoral processes enable direct participation, as in the case of referendums. Genuine electoral processes are also essential to ensure accountability of representatives for the exercise of the legislative or executive powers.

3. International law does not impose any particular electoral system and there is no "one size fits all" model or solution to guarantee successful electoral processes. States enjoy a large margin of appreciation in this context. However, genuine elections should be held in an environment of general respect for and the enjoyment of human rights, on an ongoing basis, without discrimination and without arbitrary or unreasonable restrictions.

4. ICTs may provide tools to improve participation in elections and enhance their transparency. States considering the introduction of technological innovations in order to improve participation in electoral processes should do so only after broad outreach and consultations with all stakeholders, as well as comprehensive and consultative feasibility studies, have been conducted. Digital innovations may be best introduced as a solution to problems that might hinder the credibility of the process or the acceptance of results, not as an end in itself.

5. The following recommendations should contribute to addressing the obstacles some individuals and groups, in particular women, facing discrimination or marginalization may encounter in the exercise of their right to vote and to stand for election and to ensuring more inclusive electoral processes.

Practical recommendations

6. States should develop an effective legal framework for the exercise of electoral rights, including with respect to the electoral system and electoral dispute mechanisms, in compliance with their international human rights obligations and through a non-discriminatory, transparent, gender-responsive and participatory process.

7. States should take proactive measures to strengthen the representation and equal participation of women, and groups that are discriminated against, in electoral processes. These include the following:

(a) Where such measures can be shown to be necessary and appropriate, States should introduce and effectively implement quota systems and reserved seats in elected bodies for

women and underrepresented groups, after an in-depth assessment of the potential value of different kinds of temporary special measures, including of their possible impact in the particular local context and of potential, unintended side effects;

(b) When appropriate, States should adopt other temporary special measures to increase the participation of women, including: training programmes that build their capacity to be candidates; adjustments to campaign finance regulations that level the playing field for women candidates; financial incentives for political parties that achieve preset targets for gender-balance among their nominated or elected candidates; and parental health programmes supporting women's participation in public and private life;

(c) When binding quotas or reserved seats are introduced, effective and transparent mechanisms for monitoring compliance and the imposition of sanctions for non-compliance should be envisaged.

8. Any legal or policy measure to increase the representation of women and groups that are discriminated against should be accompanied by initiatives to challenge discriminatory attitudes and practices, including harmful gender stereotypes, and negative assumptions around the capacity of women, young people, minorities and persons with disabilities to contribute to public affairs.

9. Training for journalists and other media workers should be promoted in order to challenge gender stereotyping and misrepresentation of women in the media, and to sensitize the media and the electorate on the need and benefits of women in leadership positions.

10. Public-service broadcasting and media regulations should provide for equitable opportunity for all candidates to have access to significant airtime and space in the public media during electoral campaigns.

11. Within the confines of their electoral systems, States should ensure equal conditions for independent candidates to stand for elections and not impose unreasonable requirements on their candidacies.

12. States should remove unreasonable barriers to voter registration, including onerous or burdensome administrative requirements for accessing the necessary documentation to exercise the right to vote, particularly for women, minorities, indigenous peoples, those living in remote areas and internally displaced persons.

13. States should take measures to protect the safety of candidates, particularly women candidates, who are at risk of violence and intimidation, including gender-based violence, during the electoral process.

14. States should amend their national legal provisions that limit the right to vote on grounds of legal capacity and adopt the legal measures necessary to ensure that all persons with disabilities, especially those with intellectual or psychosocial disabilities, may exercise their right to vote.

15. States should take measures to ensure full accessibility for persons with disabilities in all aspects of the electoral process by, inter alia:

(a) Guaranteeing the free expression of the will of persons with disabilities as electors and to that end, for those who cannot exercise their right to vote independently, and at their request, allowing assistance in voting by a person of their own choice;

(b) Ensuring accessible voting procedures and facilities, and when full accessibility cannot be guaranteed, providing reasonable accommodation in order to ensure that persons with disabilities can effectively exercise their right to vote;

(c) Providing training for electoral officials on the rights of persons with disabilities in elections;

(d) Ensuring that electoral and voting materials are appropriate, accessible to the diversity of persons with disabilities and easy to understand and use.

16. States should consider aligning the minimum voting age and the minimum age of eligibility to stand for elections, to encourage the political participation of young people.
17. States should not exclude persons in pretrial detention from exercising the right to vote, as a corollary of the right to be presumed innocent until proven guilty according to law.
18. States should not impose automatic blanket bans on the right to vote for persons serving or having completed a custodial sentence, which do not take into account the nature and gravity of the criminal offence or the length of the sentence.
19. When appropriate, States should remove the practical obstacles that may hinder the exercise of the right to vote by persons serving a custodial sentence.
20. States should facilitate the independent scrutiny of voting and counting, including by providing access to places of voting, counting and tabulation of results.
21. Electoral management bodies should be able to function independently and impartially, irrespective of their composition. Such bodies should be open, transparent and maximally consultative in their decision-making and provide access to relevant information for all stakeholders.
22. States should ensure that their legal framework provides for the right of candidates to effectively challenge elections results and for remedies that are prompt, adequate and effective, and enforceable within the context of the electoral calendar.
23. States should consider, on the basis of appropriate national consultations and consultations with host States, and taking into consideration all relevant factors, allowing citizens who are abroad or temporarily out of the country to exercise their right to vote.
24. States should consider extending the right to vote to non-citizens after a period of lawful and habitual, long-term residence, at least for local elections.

B. Participation in non-electoral contexts

25. In its general comment No. 25 (1996), the Human Rights Committee states that the conduct of public affairs is a broad concept that covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. In that same general comment, the Committee also recognizes the right to participate directly in the conduct of public affairs.
26. There are several ways in which the right of direct participation in the conduct of public affairs can be exercised. Direct participation may take place when, for example, rights holders choose or change their constitutions or decide public issues through a referendum.
27. In general comment No. 25, the Human Rights Committee recognizes that direct participation is engaged in by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community, and in bodies established in consultation with government. In addition, participation in the conduct of public affairs can be realized by exerting influence through public debate and dialogue with elected representatives or through the capacity of rights holders to organize themselves.
28. The consultation process conducted in preparation for the present draft guidelines revealed that a number of direct participation initiatives, which contribute to and complement participation through elected representatives, are being implemented around the world.
29. Participation in decision-making processes may happen at different levels, from provision of information, through consultation and dialogue, to partnership or co-drafting. These levels relate to the degree of involvement or the "intensity" of participation of rights holders in the different steps of the decision-making process (i.e., agenda setting, drafting, decision-making, implementation, monitoring and reformulation).
30. Modalities of participation, namely, the tools to facilitate participation, such as websites, campaigns, multi-stakeholder committees, public hearings, conferences, consultations and working groups, may vary in function of the level of participation and the step of the decision-making process. While participation should be secured at all stages of decision-making, no specific set of modalities can be recommended in all contexts.
31. The following recommendations provide States with some guidance on how to ensure that rights holders can participate and exercise a meaningful influence in decision-making that may affect them.

Practical recommendations

(a) Institutional framework to ensure participation in the decision-making of public authorities

32. Formal permanent structures should be developed to ensure that participation in decision-making processes is widely understood, accepted and routinely realized by both public authorities and rights holders. Such structures may include a coordinating body for participation in the Government, participation coordinators or facilitators in ministries, joint public-civil society councils, committees or working groups and other bodies, or framework agreements between public authorities and civil society actors to support participation.

33. Formal participation structures should be accessible to and inclusive of individuals and groups that are marginalized or discriminated against, including those from disadvantaged socioeconomic backgrounds, in particular women and girls. Specific permanent mechanisms for the participation of groups that have been historically excluded, or whose views and needs have been inadequately addressed in decision-making processes, such as indigenous peoples, minorities, and persons with disabilities, should be developed.

34. To ensure that these structures and mechanisms provide meaningful opportunities for participation, they should, at minimum:

(a) Be co-designed with relevant rights-holders;
(b) Impartially channel the views of the rights holders concerned into actual decision-making processes;
(c) Be provided with an adequate budget and human resources with expertise on the different groups for which participation needs to be encouraged and enabled;
(d) Be accessible, inclusive, gender-responsive and representative.

35. When decision-making processes may have an impact on children, States should ensure that the right of children to express their views freely and to be heard is guaranteed, including by establishing child-friendly, age-appropriate, gender-sensitive, inclusive and safe mechanisms for their meaningful engagement.

36. In peace processes and post-conflict and humanitarian situations, States should consider establishing formal structures for the participation of those individuals and groups that are or have been most affected by the conflict, such as children, young people, minorities, persons with disabilities, internally displaced persons, refugees and women and girls, in the development, implementation and monitoring of all relevant legislation, policies, services and programmes. Any such structures should be designed to give effect to the right of those individuals to make a free and informed choice on sustainable solutions concerning them.

37. The institutional framework for participation should make it possible, at all times, to create and use new modalities of participation, including through the use of ICT.

38. The performance of participatory frameworks, including structures and procedures, should be regularly evaluated and assessed in order to adjust and improve them and build in innovative ways of and opportunities for participation, on the basis of the needs of affected rights holders.

(b) Measures to ensure meaningful participation at different stages of decision-making

39. The following recommendations provide guidance for the relevant public authorities of States on ensuring meaningful participation before, during and after decision-making.

Participation before decision-making

40. Rights holders should be given the opportunity to participate in shaping the agenda of decision-making processes in order to ensure that their priorities and needs are included in the identification of the subject matter and content for discussion. This can be done, for example, through online consultations, public hearings or forums, or working groups or committees composed of representatives of public authorities and members of the society. Where working groups or committees are established, the relevant public authorities

should adopt transparent and inclusive criteria and processes for the representation of members of disadvantaged groups.

41. Elected representatives should play a critical role in supporting these processes, including through their participation and their representation of the constituencies to which they are accountable.

42. Rights holders who are directly or likely to be affected by, or who may have an interest in, a proposed project, plan, programme, law or policy should be identified and notified. Notification should be provided to all such rights holders in a timely, adequate and effective manner. In addition, the participation of any other rights holders wishing to participate should be facilitated. When decisions have countrywide or very widespread impact, for example during constitution-making and reform processes, everyone should be identified as potentially affected.

43. Information regarding the decision-making process should contain clear, realistic and practical goals in order to manage the expectations of those participating. Information about the process should include, as a minimum, the following elements:

(a) The type or nature of the decision under consideration. This includes clarity of the subject matter, information on the rationale behind the decisions to be made and the kind of decision(s) that should be taken at each stage of the process;
(b) The range of options to be discussed and decided at each stage, including problems, alternatives and/or solutions, and the possible impact of their outcomes;
(c) The timelines for participation at each stage of the process, which should be adjusted depending on the specific circumstances (e.g., according to the complexity of the issue at stake or the number of rights holders affected by the decision) and should provide sufficient opportunity for rights holders to properly prepare and submit constructive contributions;
(d) The identification of public officials and institutions involved and their capacity to deliver (i.e., their respective roles and various tasks at each stage of the process);
(e) The identification of the public authority responsible for making the decision;
(f) The procedures envisioned for the participation of rights holders, including information regarding:
    (i) The date on which the procedure will begin and end;
    (ii) The time and venue, including information on accessible infrastructure, of any envisaged participatory processes;
    (iii) The modalities and rules of the conduct of the participatory process;
    (iv) The public authority or official body to which comments or questions can be addressed or from which additional information on the decision under consideration can be requested, and the procedure and time frame for the transmittal of their response.

44. Rights holders should be able to access adequate, accessible and necessary information as soon as it is known, to allow them to prepare to participate effectively, in accordance with the principle of maximum disclosure.[148]

45. Relevant information should be proactively disseminated by making it available in a manner appropriate to local conditions and taking account of the special needs of individuals and groups that are marginalized or discriminated against.[149] This should include:

(a) Providing information free of charge or at reasonable cost and without undue restrictions on its reproduction and use both offline and online;
(b) Providing both technical information for experts and non-technical summaries for the general public;
(c) Disseminating information in clear, usable, accessible, age-appropriate and culturally appropriate formats, and in local languages, including indigenous and minority languages.

148. See para. 22 above.

149. See para. 20 above.

This may entail publications in Braille, easy-to-read and plain language formats;

(d) (Disseminating the relevant information as widely as possible, including through the website of the relevant public authority or authorities if that method is effective. Other dissemination channels may include local print media, posters, billboards, mass media (television or radio) and other online sources;

(e) Considering adopting the method of individual notification where appropriate and with due regard to personal data protection.

Participation during decision-making

46. Rights holders should be able to participate in the decision-making process from an early stage, when all options are still open. This entails, for example, that public authorities refrain from taking any formal, irreversible decisions prior to the commencement of the process. It also requires that no steps be taken that would undermine public participation in practice, for example large investments in the direction of one option, or commitments to a certain outcome, including those agreed with another organ of the State, a non-State actor or another State.

47. Any revised, new or updated draft versions of documents relating to the decision(s) should be made public as soon as they are available.

48. Sufficient time for rights holders to prepare and make their contributions during decision-making processes should be provided. This entails, for example, ensuring that opportunities to participate do not exclusively, or in large part, fall during periods of public life traditionally considered as holidays, such as religious festivals, national holidays or major vacation periods in the State concerned.

49. Rights holders should be entitled to submit any information, analyses and opinions directly to the relevant public authority, either electronically or in paper form. Opportunities to provide comments should be easily accessible, free of charge and without excessive formalities.

50. The possibility to submit written comments through online tools should be combined with opportunities for in-person participation. To this purpose, States should consider establishing, for example, multi-stakeholder committees and/or advisory bodies and organizing expert seminars and/or panels and open plenary sessions to allow meaningful participation in all stages of public decision-making processes. Where such structures are established, transparent and inclusive criteria and processes for the representation of members of disadvantaged groups should be adopted.

51. Participatory events should be free of charge and held in venues that are neutral and easily accessible, including for persons with disabilities and older persons. States should also provide reasonable accommodation, as needed. Depending on local circumstances and the decision concerned, in-person participation may be supplemented with online tools, where relevant.

52. The weight given to contributions received through online platforms should be equal to that given to comments received offline.

53. The technical capacities and expertise of public officials responsible for the conduct of participatory processes should be strengthened, including in the areas of information collection, meeting facilitation, strategy formulation, action planning and reporting on outcomes of the decision-making process.

54. Appropriate data collection and management systems for collecting, analysing, deleting and archiving inputs received both online and offline should be developed, and transparency in how those systems are designed and used, and how data is processed and retained, should be ensured.

Participation after decision-making

55. The outcome of the participation process should be disseminated in a timely, comprehensive and transparent manner, through appropriate offline and online means. In addition, the following should be provided:

(a) Information regarding the grounds and reasons underlying the decisions;
(b) Feedback on how the contributions of rights holders have been taken into account or used, what was incorporated, what was left out and the reasons why. For example, a report can be published, together with the decision(s) made, which may include the nature and number of inputs received and provide evidence of how participation was taken into account. This requires that adequate time be allocated between the end of the participatory process and the taking of the final decision.
(c) Information on available procedures to allow rights holders to take appropriate administrative and judicial actions with regard to access to review mechanisms.

56. Opportunities should be available for those who participated to assess the participatory process in order to document lessons learned for future improvement. To this end, relevant public authorities should consider conducting surveys or focus group discussions, including through the creation of dedicated websites, by phone or in person, in order to collect information on various aspects of participation at all stages of the decision-making process. States should ensure that the information collected in this context is representative of the diversity of all rights holders who participated.

57. In order to allow meaningful participation in assessing the decision-making process, States should provide information on the process, including the following:

(a) The number, and format, of communications used to notify rights holders;
(b) The resources allocated to the process;
(c) The number of people who participated at the various stages of the decision-making process;
(d) Disaggregated data on those participating, with due regard to personal data protection;
(e) Participation modalities;
(f) Accessibility and reasonable accommodation measures.

58. Participation in the implementation of decisions made should be ensured. Accessible and user-friendly information should proactively be disclosed at all implementation stages. This may be achieved, for example, through the creation of dedicated websites and/or email alerts and the organization of events, conferences, forums or seminars.

59. When appropriate, States should consider establishing strategic partnerships with civil society actors, while respecting their independence, to strengthen participation in the implementation of decisions made.

60. Participation and transparency in monitoring the implementation of decisions made should be ensured. Appropriate frameworks should be developed to evaluate States' performance in relation to the implementation of relevant laws, policies, projects or programmes. The frameworks should include objective, measurable and time-bound performance indicators, including on rights holders' participation in tracking implementation activities. Progress reports on implementation should be made public and disseminated widely, including through the use of ICTs and the organization of conferences, forums and seminars.

61. Rights holders should have access to key information to allow effective participation in monitoring and evaluating progress in the implementation of decisions. Information on the implementation process should include the following:

(a) The identification of the authority in charge of the implementation process and its contacts;
(b) The resources, financial and non-financial, to be used for implementation;
(c) Whether the implementation involves a public-private partnership, and if such is the case, all information on the role and contacts of the private actor(s) involved;
(d) Opportunities for participation in the implementation process.

62. Participation in monitoring and evaluation should be considered as a continuum and include the use of social accountability tools, such as social audits, public expenditure tracking surveys, community score cards, social audits, transparency portals, community media and public hearings.

Information and communications technology to strengthen equal and meaningful participation

63. ICT participation tools should be human rights compliant by design, and participation through the use of ICTs should follow the same principles of offline participation.[150] This entails ensuring that the development and deployment of ICTs, including new data-driven technologies for participation, is guided and regulated by international human rights law, with particular regard to gender equality, in order to avoid any adverse human rights impact on individuals and groups that are marginalized or discriminated against, whether the impact is intentional or unintentional.

64. Effective measures to close the digital divides should be developed and implemented, especially for women, persons with disabilities, older persons, persons living in rural areas and indigenous peoples. In this context, proactive measures should be adopted to make ICT widely available, accessible and affordable, including in remote or rural areas, and without discrimination of any kind. This should include, for example, supporting the reduction and, as far as possible, the removal of social, financial and technological barriers restricting public access to the Internet, such as high connection costs and poor connectivity.

65. The involvement of different stakeholders, including civil society actors and business enterprises, in the design, development and use of ICTs for participation should be promoted. In this context, due regard should be given to the Guiding Principles on Business and Human Rights.

66. ICTs should be used to create spaces and opportunities for rights holders to participate meaningfully in a variety of activities that extend beyond communication and information-sharing. Technology should provide real opportunities to influence decision-making processes, for example with regard to submitting, and commenting and voting on, legislative and policy proposals. Where appropriate, States should consider providing additional, complementary offline opportunities for participation.

67. Existing ICT tools for participation should be translated into multiple local languages, including languages spoken by minorities and indigenous peoples, and should ensure their accessibility for persons with disabilities.

68. Media education and digital literacy programmes should be included in formal and non-formal curricula to allow meaningful participation online. For example, these programmes should focus, where relevant, on technical fundamentals of the Internet and develop critical thinking to help rights holders to identify and evaluate information and content from different sources.

69. Media and ICT education curricula should address issues related to hate speech, xenophobia, sexism and harmful gender stereotypes, racism and any other form of intolerance as factors that further exacerbate the marginalization and exclusion of some individuals and groups from public life. The role of civil society actors, including the media, in delivering positive counter-narratives online, including against hate speech, should be supported.

70. Comprehensive and forward-looking media and ICT literacy training programmes for public officials responsible for implementing participatory processes should be developed and delivered in order to take full advantage of the potential of ICTs.

C. Right to participate in public affairs at the supranational level, including in international organizations

71. The Human Rights Committee, in its general comment No. 25, recognized that the right to take part in the conduct of public affairs also covers the formulation and implementation of policy at the international and regional levels. Despite the importance of participation at the international level, the workings of international organizations continue to be opaque for most people.[151]

150. See chap. II.

151. In the context of the present draft guidelines, the terms "international organizations", "participation at the international level" and "international meetings and forums" should be understood as including the regional level.

72. Decision-making at the regional and international levels may have a significant effect on the realization of human rights, as such decision-making has an impact on national legislation, policies and practices. It is thus necessary that such decisions are made in a transparent and accountable manner, with the participation of those who will be affected by those decisions, and in an environment respectful of public freedoms, which are fundamental and should also be protected at the international level. Civil society actors choosing to participate in regional and international meetings must be safe and not be subject to acts of reprisal.
73. Those who participate at the supranational level often bring local and national concerns to the attention of the international community, thus connecting the international and local levels. For example, civil society actors have been instrumental in raising awareness at the regional and international levels of the rights of groups that are marginalized or discriminated against, and in empowering and giving voice to them. Such participation has also contributed to challenging social norms and the organizational culture of regional and international organizations.
74. The forms and modalities of the participation of rights holders at the international level might vary according to the format and rules of the international forum concerned, and the nature and phase of the process. Participation may be ensured through different means, including the granting of observer, consultative or participatory status; advisory committees open to relevant stakeholders; forums and dialogues; webcasting of events; and general calls for comments. For rights holders to participate effectively at the international level, access to information is indispensable.

Practical recommendations
75. States should respect, protect and facilitate the rights to freedom of expression and to freedom of peaceful assembly and of association in connection with the exercise of the right to participate at the international and regional levels.
76. Participation of civil society actors in meetings of international organizations, mechanisms and other forums, at all relevant stages of a decision-making process, should be allowed and proactively encouraged.
77. Access to international and regional forums should be provided without discrimination of any kind.
78. States should end all acts of intimidation and reprisals against civil society actors engaging or seeking to engage with international forums, and/or participating in any related event. When acts of intimidation or reprisals take place, States should investigate all allegations, provide effective remedies and adopt and implement preventive measures to prevent their recurrence Understanding and addressing gender-specific forms of reprisal is key in this context.
79. States should establish objective, consistent and transparent criteria for expeditiously granting to civil society organizations observer, consultative or participatory status in international organizations. Organizations having their requests rejected should be provided with the reasons and a means to appeal to a higher or different body.
80. States should refrain from unduly preventing civil society actors from obtaining accreditation with international organizations, arbitrarily withdrawing accreditation or regularly deferring examination of requests for accreditation.
81. Permanent structures for the continuous participation of civil society actors in international forums should be established, for example through the creation of civil society platforms. These structures should be created through impartial, non-discriminatory, transparent and participatory processes, and should be particularly accessible to and inclusive of individuals and groups facing discrimination.
82. The use of innovative, cost-efficient and practical approaches, including through the use of ICTs (e.g., webcasting, videoconferencing and other online tools), should be encouraged in order to foster greater and more diverse participation of civil society actors at the international level.
83. States should facilitate the timely issuance of visas for those wishing to participate in international forums.
84. Funds should be made available to facilitate meaningful and equal participation in inter-

national forums, particularly by women human rights defenders and small, community-based civil society organizations.

85. The capacity of rights holders to participate meaningfully in international forums should be strengthened, in particular among those who are less proficient in procedures governing participation at the international level, such as grass-roots and local civil society organizations working with individuals or groups that are marginalized or discriminated against.

86. States should encourage international forums to develop and make widely available a clear and transparent set of policies and procedures on participation in order to make access more consistent and reliable. Criteria for accreditation to meetings should be objective and broad, and registration procedures should be easy to understand and accessible.

87. Participation of rights holders in meetings in international forums should include access to relevant information, such as documents, drafts for comments and websites relevant to the decision-making process, the possibility to circulate written statements and to speak at meetings, without prejudice to the ability of international forums to prioritize their business and apply their rules of procedure. Any criteria for assessing the appropriateness of materials must be made public and any objection process should be transparent and allow sufficient time for the affected civil society organization to respond.

88. States should request international forums to proactively make available information related to decision-making processes, through the use of ICTs or other appropriate means, in a timely manner and in all official languages of the international organization or forum concerned. Access-to-information policies for international organizations should be adopted through resolutions and other governance mechanisms and be in line with international human rights law.

89. The designation of information officers or contact persons in international organizations charged with facilitating the flow of information to rights holders should be encouraged.

90. States should effectively disseminate, in accessible formats and local languages, the outcomes of decisions made at international forums, including recommendations emanating from United Nations bodies and entities involved in monitoring the implementation of States' obligations under international human rights law.