New Developments in International Norms and Governance at the United Nations

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I. Capital punishment and the Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, A/HRC/36/26

The report examines the consequences arising at various stages of the imposition and application of the death penalty on the enjoyment of the human rights of those facing the death penalty. It pays specific attention to the right to equality and non-discrimination in the context of the use of the death penalty. The report also highlights the discriminatory application of the death penalty to foreign nationals. . . .

III. Equal access to justice and the right to fair trial

A. Disproportionate impact of the use of the death penalty on poor or economically vulnerable individuals

11. International law recognizes the right to legal representation as an essential component of fair trial in criminal matters. In particular, in capital cases, States are required to provide adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases, including during detention and arrest.[1]

12. The availability and quality of legal representation is a key factor in determining whether a defendant receives a death sentence. Due to limited or inadequate legal aid services, poor or less privileged individuals often do not have access to effective legal representation and run a higher risk of being subject to the death penalty, leading to inherent bias in their experience of the criminal justice system. The Special Rapporteur on extrajudicial, summary or arbitrary executions has noted that failure to provide an adequately funded State-wide public defender has the predictable result of poor legal representation for defendants in capital cases,[2] and has recommended that authorities should ensure such services are made available.

13. The law in several retentionist States requires that defendants in death penalty cases be provided with a lawyer, including at the State's expense if necessary.[3] Unavailability of effective legal representation in capital cases thus not only leads to violations of the right to a fair trial and the right to life, but also increases social inequality in the criminal justice system.[4]

14. A large number of death row prisoners come from economically disadvantaged backgrounds. For example, reportedly 74 per cent of the prisoners sentenced to death in India are economically vulnerable; nearly 90 per cent of the 300 people on death row in Malaysia live below the poverty line, and 58 per cent of death row inmates in the United States of America are from African American, Hispanic or other communities with economically vulnerable backgrounds.29 Switzerland reported that underprivileged people and marginalized groups face a higher risk of being sentenced to death and/or executed, as they rarely have the resources required for a proper defence.30 In other cases, serious concern over the adequacy of legal aid lawyers causes families to hire private lawyers at great expense, resulting in debts. In India, for example, reportedly over 70 per cent of prisoners represented by private lawyers in the trial courts and High Courts were economically vulnerable.

15. Inadequacy of defence counsel in capital cases has a detrimental impact on the fairness and integrity of the legal process. The Inter-American Commission on Human Rights stated that the right to legal representation must be guaranteed in a manner that renders it effective and therefore requires not only that counsel be provided, but that defence counsel be

1. See United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

2. See UN Document A/HRC/11/2/Add.5, para. 15.

3. The Special Rapporteur on extrajudicial, summary or arbitrary executions reviewed the extent to which violations of safeguards designed to regulate the death penalty particularly impact foreign nationals (including migrant workers) and what additional responsibilities States have in that regard. The Special Rapporteur concluded that in States that have not yet abolished it, the impact of the death penalty on foreign nationals draws attention to various structurally discriminatory dimensions to its application, including financial or linguistic barriers, which may also impact domestic defendants. At the same time, the direct responsibilities that other States have with respect to the protection of the right to life of their nationals to intervene via consular services implies a duty of due diligence with respect to nationals potentially facing the death penalty overseas. The Special Rapporteur recommended that States that had abolished the death penalty should take all reasonable steps to ensure that their citizens do not face the death penalty overseas

4. See also Strickland v. Washington 466 U.S. 688 (1984), in which the Supreme Court of the United States decided that the purpose of the effective assistance guarantee was not to improve the quality of legal representation, but rather to ensure a fair trial.

competent in representing the defendant. National authorities are required, under article 8 (2) (c) of the American Convention on Human Rights, to intervene if a failure by legal aid counsel to provide effective representation is manifested. Some jurisdictions practise both civil and traditional justice systems where legal representation is not provided in the latter, and some jurisdictions face severe institutional challenges in which defence lawyers are often impaired by inexperience and lack of training.

16. The link between a defendant's socioeconomic background and the adequacy of his or her legal defence can amount to unequal access to justice and examples of that can be found in various jurisdictions that have retained the death penalty. In the Philippines, for example, the Commission on Human Rights has claimed that the justice system is biased against those who cannot afford to hire competent legal representation. Records show that most of the people subjected to the death penalty are poor. As they are usually financially unable to pay for counsel, the court appoints counsel de officio for them who are often inexperienced, and in some cases, have proved themselves ineffective. As a result, the Commission stated in 2016 that "while the law is not discriminatory, the practical effect of the death penalty is discrimination [sic] against the poor". . . .

20. In Wiggins v. Smith, the United States Supreme Court spelled out standards for "effectiveness" in the constitutional right to legal counsel guaranteed by the Sixth Amendment. Previously, the court had determined that the Sixth Amendment included the right to "effective assistance" of legal counsel, but it did not specify what constituted "effective", thus leaving the standards for effectiveness vague. In Wiggins v. Smith, the court set forth the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, as a specific guideline by which to measure effectiveness and competence of legal counsel. The guidelines aim to provide guidance and establish standards of practice for defence lawyers to ensure high quality legal representation for all persons facing a death sentence. The guidelines offer practical advice to lawyers from the moment the client is taken into custody through to pretrial proceedings, trial, post-conviction review, clemency proceedings and other connected litigation.

21. Reinforcing the link between poverty and access to justice and fair trial, there have been an increasing number of examples where the socioeconomic circumstances of a defendant in a death penalty case have been used as a mitigating factor to reduce a death penalty sentence. For example, the Supreme Court of India considered that "poverty or socioeconomic, psychic or undeserved adversities in life shall be considered as mitigating factors" in a capital case, if those factors had "a compelling or advancing role to play in the commission of the crime or otherwise influencing the criminal". In Malawi, the High Court developed a set of core principles to guide mitigating factors in capital cases,[5] including, inter alia, factors relating to the background of the accused such as socioeconomic status. In China, the Supreme People's Court considered the low income of a defendant's family as a mitigating factor to reduce the penalty in a drug-related death penalty case.

B. Disproportionate impact of the use of the death penalty on foreign nationals

22. International standards and safeguards relating to death penalty cases apply equally to persons facing the death penalty abroad. Those persons can be disproportionately affected by the death penalty because they are not familiar with the laws and procedures in the prosecuting State. They may have limited access to legal aid and inadequate, low quality legal representation. They may not understand or speak the language in which proceedings are conducted, in particular when denied the free assistance of an interpreter which is required in accordance with article 14 (3) (f) of the International Covenant on Civil and Political Rights.

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23. Access to consular assistance for foreign nationals is an important aspect of the protection of those facing the death penalty abroad and is provided for in the Vienna Convention on Consular Relations. In its resolution 71/187, the General Assembly called upon States to respect the right of foreign nationals to receive information on consular assistance when legal proceedings are initiated against them. The requirement that foreign nationals must be informed without delay after their arrest of that right was confirmed by the International Court of Justice, which has provided for remedies in cases where that right was violated. The Inter-American Court of Human Rights ruled that the denial of the right to consular notification constituted a violation of due process and the execution of a foreign national deprived of his or her right to consular services constituted arbitrary deprivation of life.[6]

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25. The Committee on the Elimination of Racial Discrimination has also addressed the issue of disproportionate use of the death penalty against foreign nationals. For instance, the Committee raised concerns at allegations that a disproportionate number of foreigners were facing the death penalty in Saudi Arabia. The Committee encouraged the State party to cooperate fully with the Special Rapporteur on extrajudicial, summary and arbitrary executions who had requested information on several cases of migrant workers who had not received legal assistance and had been sentenced to death.

26. Staff of the Mexican Capital Legal Assistance Program had intervened in 1,128 cases of Mexicans facing legal proceedings in the United States of America for the crime of homicide, and avoided or reversed the application of the death penalty in 990 cases. According to the Program directors, that success shows that the active defence of people facing the death penalty can have a measurable and significant impact in reducing the application of the death penalty. The Program's capacity to provide assistance from the earliest stages of a case is crucial, which in turn depends largely on prompt consular notification whenever a Mexican national is arrested and faces capital charges.

27. In Indonesia, a significant number of death row prisoners are foreign nationals, particularly those convicted of drug-related offences. Twelve out of fourteen executions in 2015 were of foreign nationals. Reportedly, several death penalty cases involving foreign nationals in which the Indonesian authorities had failed to correctly identify or verify the identity and nationality of the defendants resulted in those defendants not being able to exercise their right to seek

6. Article 10 of the Convention on the Rights of Persons with Disabilities provides that every human being has the inherent right to life and that States parties will take all necessary measures to ensure the effective enjoyment of that right by persons with disabilities on an equal basis with others. In its resolution 2005/59, the Commission on Human Rights urged all States that still maintain the death penalty not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute such a person (para. 7 (c)). 50. That prohibition is firmly rooted in the customs and practices of most legal systems. For instance, the European Union has affirmed that "capital punishment shall not be imposed on persons suffering from any mental illness or having an intellectual disability".87 However, a challenge remains with regard to determining to whom that prohibition will apply. 51. Thus, in practice, many elements subjectively assessed can result in sentencing persons with mental disabilities to death, starting with the lack of a clear definition and understanding of "mental disability" and other terms. In the United States of America, despite Supreme Court rulings 88 prohibiting the execution of "insane prisoners" or those suffering from "mental retardation", the absence of a definition of those terms has resulted in the sentencing and execution of numerous persons with mental disabilities, leaving federal States to determine "appropriate ways to enforce the constitutional restriction upon [the] execution sentence".

assistance from the consular authorities of their States of origin. In other cases, where the nationality of the individuals concerned was known, defendants in death penalty cases have reportedly been denied the right to contact their embassy or contact has been delayed.

28. Furthermore, some countries place explicit limits to a foreign national's access to legal representation and support. For example, in Indonesia, article 51 (1) of Law No. 24/2003 on the Constitutional Court stipulates that an application for a constitutional review of any provisions in a law can only be made by an Indonesian national. That has resulted in the Constitutional Court rejecting applications for constitutional review submitted by foreign nationals who were facing the death penalty. In Kenya, under section 36 of the Legal Aid Act 2016, some categories of foreign nationals are excluded from access to State-funded counsel, and in Uganda, foreign nationals are allegedly not provided with a lawyer when they are charged with an offence against the security of the State, which is punishable by death.

C. Disproportionate impact of the application of the death penalty on individuals exercising the right to religion or beliefs and freedom of expression

29. Article 18 (2) of the International Covenant on Civil and Political Rights prohibits coercion that would impair the right to have or adopt a religion or belief. According to the Human Rights Committee, that includes the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to religious beliefs and congregations, to recant their religion or belief or to convert. The same protection is enjoyed by holders of all beliefs of a non-religious nature. According to the Committee, freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including, inter alia, the right to replace one's current religion or belief with another or to adopt atheistic views or to retain one's religion or belief.

30. As highlighted by several human rights treaty bodies, the death penalty can never be applied as a sanction against religious conduct and non-religious forms of beliefs, the very criminalization of which violates international human rights law. Furthermore, the Human Rights Committee has stated that States parties that retain the death penalty for such conduct commit a serious violation of their obligations under article 6 of the International Covenant on Civil and Political Rights read alone and in conjunction with article 2 (2).

31. Nevertheless, laws carrying the death penalty are disproportionately used against persons exercising their rights to freedom of expression, peaceful assembly and association in some countries, in particular individuals belonging to minority groups…

43. In 2014, The Human Rights Committee expressed its concern about the continuing use of the death penalty in the United States of America and, in particular, the disproportionate application of the death penalty amongst African American defendants. The Committee recommended that the United States of America should take measures to effectively ensure that the death penalty was not imposed as a result of racial bias. The Committee on the Elimination of Racial Discrimination expressed similar concerns. According to the report of the Working Group of Experts on People of African Descent on its mission to the United States of America in January 2016, the racial composition of the jury is one of the main identified causes of racial bias in the application of the death penalty. . . .

47. The imposition of the death penalty for offences relating to consensual homosexual conduct continues to be provided for in the legislation of many States. While few cases of executions for consensual same-sex conduct have been carried out recently, the existence of such laws discriminates against the conduct of lesbian, gay, bisexual and transgender persons. Those laws also send a social message. They have an intimidating effect and can create an enabling environment for acts of violence and stigma.

48. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have expressed concern at the fact that consensual same-sex relations remain a crime punishable by death in some countries and have concluded that the application of the death penalty in that context represents a grave violation of human rights, including the rights to

life, privacy and non-discrimination.[7] The Special Rapporteur on extrajudicial, summary or arbitrary executions has reiterated that death sentences may be imposed only for the most serious crimes and that offences related to homosexual conduct and sexual relations between consenting adults do not meet that threshold.[8] The European Union guidelines on the death penalty also emphasize that the death penalty must not be applied or used in a discriminatory manner on any ground, including sex or sexual orientation.[9]

7. See communication No. 488/1992, Toonen v. Australia, Views adopted on 31 March 1994. See also UN Documents CCPR/C/YEM/CO/5, CCPR/C/IRN/CO/3 and E/C.12/IRN/CO/2.

8. See UN Document A/67/275, paras. 36–38. See also UN Document A/HRC/27/23, para. 28.

9. See https://eeas.europa.eu/sites/eeas/files/guidelines_death_penalty_st08416_en.pdf

II. Regulatory Actors and Service Providers for Safe Drinking Water and Sanitation, A/HRC/36/45, Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights to safe drinking water and sanitation, prepared pursuant to Council resolutions 27/7 of 2014 and 33/10 of 2016. The focus of the report is service regulation and its role in the progressive realization of the human rights to water and sanitation. The Special Rapporteur begins the report by outlining the human rights obligations of States, regulatory actors and service providers in the context of service regulation. He provides an overview of the role of regulation in water and sanitation services, identifies different types of regulatory frameworks and discusses how they relate to the human rights standards. He discusses the core functions of regulatory actors. Finally, he presents recommendations to States and regulatory actors regarding those issues.

B. Types of regulatory frameworks

29. States have interpreted the role of regulation in various ways, depending largely on the norms applicable to their particular context and the needs that correspond to that context, which leads to a range of different regulatory models and institutional arrangements. The most appropriate approach differs from country to country and depends on the general regulatory framework, the levels of institutional capacity and the types of problems that must be addressed.

1. Self-regulation

30. In some countries, regulatory frameworks include the model of self-regulation, whereby public service providers regulate their own activities, set tariffs and quality standards and monitor their own performance. Many countries with public service providers have not seen the necessity of creating a separate regulatory function for the water sector. In El Salvador, the National Water Mains and Sewers Administration, the main service provider in urban areas, sets its own quality of service standards, while the Ministry of Health monitors the quality of drinking water and the Ministry of Economics approves changes to water rates (see A/HRC/33/49/Add.1, para. 25). In Tajikistan, the Ministry of Energy and Water Resources has the overall responsibility for guaranteeing the national drinking water supply and coordinating relevant actors in the water sector (see A/HRC/33/49/Add.2, para. 10). It is also responsible for the adoption and implementation of State programmes for the development of drinking water supply systems, the establishment and regulation of water tariffs and the provision of public information.

31. Self-regulation raises significant human rights challenges in terms of guaranteeing independent monitoring and providing reliable accountability mechanisms. Regulatory principles such as impartiality, accountability, transparency and good governance can potentially be compromised by self-regulation as there is no separation between policy, regulation and service provision. Benchmarking and user consultation and participation also seem to be less common. Self-regulation can also lead to a lack of uniformity in performance, including in tariff-setting, with different service providers abiding by different standards.

2. Regulation by contract

32. Regulatory frameworks may also be characterized by a broad spectrum of contractual arrangements between governments which formally delegate service provision, and third parties. In such cases, the instrument delegating service provision defines the relationship between the public asset owner and the service provider and sets service standards. In the case of State-owned companies, management will usually be delegated via legislation, decrees or contracts, while public authorities will often enter into contracts with private providers. Contracts may differ according to the ownership of assets, the responsibility for capital investments, the allocation of risks, the responsibility for operations and maintenance, and the typical contract duration.

France is a country with a long history of this type of regulation, established through private-sector participation contracting with local government.

33. A number of human rights challenges arise when regulating service provision by contract, particularly when non-State actors are involved. Such challenges include guaranteeing transparent and democratic decision-making, addressing power asymmetries in the bidding and negotiation process, ensuring affordable services, avoiding disconnections in cases of inability to pay, ensuring monitoring and accountability, and addressing corruption. It is also important that contracts, which are normally valid for decades, can be reviewed and adapted over time.

34. Meaningful public participation and access to information are human rights principles that often tend to be overlooked by States and service providers during the process of tendering, bidding and contract negotiation. From a human rights perspective, it is crucial that governments ensure that contractual arrangements include the necessary human rights safeguards, and that overall they contribute to, rather than undermine, the realization of the human rights to water and sanitation, without discrimination.

35. Regulation by contract can be combined with supervision by regulatory actors. In these cases, service standards and tariffs agreed upon by the parties to the contract have to be approved by the regulatory actor. The intervention and the oversight of the contract by a regulatory actor, if oriented by the human rights framework, can contribute to the realization of the rights to water and sanitation.

3. Regulation by a separate regulatory body

36. In the past two decades, a general trend in many countries in terms of regulation has been the establishment of public entities that are expected to be independent from providers, governments and the direct administration of the State, designated as independent regulatory bodies. The need for autonomous regulatory bodies has been reinforced by the belief that policy, regulation and provision of services should preferably be separated to ensure maximum benefit from the expertise required and to provide transparency.[1]

37. The functions of these bodies include standard-setting, examining water and sanitation services for compliance with relevant standards, providing a forum for complaints by individuals, and setting or signing off on tariffs. When the exercise of these functions is guided by the human rights framework, this regulatory model can contribute significantly to the progressive realization of the human rights to water and sanitation. However, in the absence of a strong national policy and legal framework on the human rights to water and sanitation, these bodies also face challenges in realizing these rights.

38. The International Water Association's Lisbon Charter underscores the importance of ensuring an adequate level of institutional, functional and financial independence of regulatory bodies.[2] Some of the features that would characterize independent regulatory bodies include: (a) a stable mandate, which does not depend on either the electoral cycle or changes of government; (b) autonomy in exercising their regulatory functions; (c) the definitive nature of their decisions, which can only be challenged in the courts; and (d) substantial administrative autonomy in their human and budgetary resource management.[3]

39. However, some argue that independence from the government may be both unrealistic and in some situations undesirable.[4] In essence, regulatory bodies must ensure the implementation of public policies defined by the government for the regulated sectors. This means that in situations where water policy needs to be reconciled or balanced with social and public policy in order to pursue human rights standards (e.g. affordability) or comply with the government's international human rights obligations, regulatory decision-making processes should encourage

1. The Regulation of Water and Waste Services: An Integrated Approach (RITA-ERSAR), p. 42.

2. Lisbon Charter, art. 7.4.

3. The Regulation of Water and Waste Services: An Integrated Approach (RITA-ERSAR), p. 2.

4. Tony Prosser, "Regulation and social solidarity", Journal of Law and Society, vol. 33, No. 3 (2006), pp. 364–387.

the meaningful participation of the relevant governmental sectors (see A/HRC/36/45/Add.1, para. 36). Governments should be able to legitimately influence both the process of regulatory decision-making and its outcomes in cases where regulation by itself is not sufficient to meet the standards of the human rights to water and sanitation. While the independence of regulatory bodies from governments should not be understated, particularly in countries where corruption is rampant, the question should not be considered in isolation from human rights considerations.

40. A growing number of regulatory bodies have been created in recent years. The Palestinian Water Sector Regulatory Council was established by Water Decree by Law No. 14 in 2014, and its mandate includes monitoring the performance of all service providers, approving water prices, issuing licences, setting qualitative standards and handling complaints. Similarly, in Portugal, Law No. 10/2014, establishing the Water and Waste Services Regulatory Authority, confers on the Authority monitoring and enforcement powers and the power to regulate, which apply to all service providers. This is also the case of Brazil, a federal State, which passed a National Water and Sanitation Act in 2007 that establishes guidelines for the creation of regulatory agencies at the municipal, intermunicipal or State level.

IV. Core functions of regulatory actors

A. Setting standards

41. One of the key roles of regulation is to set performance standards. Setting standards for service provision is one of the main functions of the State. The S tate has the duty to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights and must ensure that those carrying out regulatory functions contribute to the progressive realization of the human rights to water and sanitation.[5] This means that the exercise of regulatory functions in general, and the making of regulation in particular, must comply with the human rights framework regardless of the public or State body that is carrying them out.

42. Therefore, in regulating water and sanitation services, it should be recognized, as a starting point, that water and sanitation are human rights derived from the right to an adequate standard of living (see art. 11 of the International Covenant on Economic, Social and Cultural Rights) and are inextricably related to the right to the highest attainable standard of physical and mental health (see art. 12 of the Covenant on Economic, Social and Cultural Rights), as well as to the right to life (see art. 6 of the International Covenant on Civil and Political Rights) and the right to human dignity (see arts. 1 and 22 of the Universal Declaration of Human Rights). According to international human rights law, the human right to water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use. The human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure and socially and culturally acceptable and that provides privacy and ensures dignity. From a human rights perspective, the ultimate objective of regulation is to give practical meaning to the normative content of these rights, as follows:

1. Availability

43. Regulations should give a practical meaning to “availability” and ensure, at least, access to a minimum essential amount of water that is sufficient, reliable and safe for personal and domestic uses to prevent disease. According to the World Health Organization (WHO) guidance, an intermediate level of access, to 50 litres per person per day, represents a low level of health concern (provided that absence of contamination is rigorously assessed), while an optimal level of access, to 100 litres per person per day, represents a very low level of health concern.[6] A regulatory interpretation of “availability” should also consider situations where additional

5. See Committee on Economic, Social and Cultural Rights general comment No. 15, para. 51.

6. World Health Organization (WHO), “Domestic water quantity, service level and health”, available from www.who.int/water_sanitation_health/publications/wsh0302/en/.

supply of water is required due to health issues, climate conditions (i.e. drought), emergency/disaster situations,[7] work conditions, or any other special circumstances; and situations of disruption to water supply.

44. With respect to sanitation, regulatory frameworks should prescribe a sufficient number of sanitation facilities within, or in the immediate vicinity, of each household (see A/HRC/12/24, para. 70). The assessment of the sanitation requirements of any community must be informed by the context, as well as the characteristics of particular groups which may have different sanitation needs (e.g. women, persons with disabilities, children). Where a piped network is not available, regulation should consider the possibility of alternative solutions, such as the construction and maintenance of sanitation facilities, and the disposal and treatment of waste water. In cases where sanitation facilities are shared, regulation should envisage a sufficient number of facilities available.

45. Regulatory standards should prioritize access to both water and sanitation facilities in public places in sufficient numbers; in institutional facilities, including hospitals, schools, public transport hubs, prisons, and places of detention, at the workplace and in rented housing, taking into consideration the special needs of, inter alia, women and girls; and in relation to those without a permanent dwelling, including homeless people and nomadic communities. Regulation should separate access to water and sanitation services from land tenure, often an obstacle to accessing these services in informal settlements.

2. Accessibility

46. A regulatory interpretation of physical accessibility of water and sanitation facilities should provide as minimum standards that these facilities are within safe physical reach or in the immediate vicinity of each household at all times of day and night.[8] In its proposed indicators for monitoring Sustainable Development Goal 6, the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation suggests that a round trip to access an improved drinking water source should not take longer than 30 minutes, including queuing (basic level), and that a basic level of sanitation should provide access to an improved sanitation facility not shared with other households. Furthermore, regulation should specifically address the situation of those with special needs in terms of accessibility, such as children, persons with disabilities, older persons, pregnant women, and people with special health conditions, and advise that the design of sanitation facilities accommodates their specific needs, while being technically safe to use. Places such as schools, preschools, care homes and detention centres require specific regulations to ensure physical accessibility.

7. WHO, "How much water is needed in emergencies", July 2013.

8. See Committee on Economic, Social and Cultural Rights general comment No. 15, paras. 12 (c) (i) and 37 (c).

III. Human rights obligations for Environmentally sound Management and Disposal of Hazardous Substances and Wastes. A/HRC/36/41

1. A long-standing request of the Human Rights Council, predating the current Special Rapporteur, is a report on good practices in relation to the human rights obligations related to the environmentally sound management and disposal of hazardous substances and wastes (hereinafter, such substances and wastes are also referred to as "toxics"[9]).

2. The Special Rapporteur wishes to point out that, due to legal developments, political shifts and progress in science, practices in the context of toxics evolve constantly. Accordingly, the present report is not intended to be an exhaustive compilation of good practices. Rather, the Special Rapporteur presents guidelines that can inform good practices of States and businesses in relation to toxics. The report builds on a number of expert consultations held by the Special Rapporteur in 2015 and 2016. The Special Rapporteur has also addressed a questionnaire to States and non-State entities, including businesses and civil society representatives, which remains available online in English, French and Spanish.[10] The Special Rapporteur is grateful for the submissions received (30 in total). . . .

II. Duties of States

A. Respect, protect and fulfil

4. States have an obligation to respect, protect and fulfil recognized rights implicated by the production, use, release, storage and disposal of hazardous substances and wastes. As such, States must:

(a) Refrain from unjustifiable interference with the enjoyment of the rights implicated by toxics;

(b) Protect against abuses by non-State actors, particularly businesses, which requires States to enact and enforce necessary laws and policies on toxics;

(c) Give sufficient recognition of the human rights implications of toxics in laws and policies, and take positive action to facilitate the realization of human rights implicated by toxics, including through budgetary allocations.

5. Furthermore, States must recognize their obligations to respect, protect and fulfil human rights extraterritorially. In fulfilling their obligations, States must refrain from discrimination and ensure substantive equality.[11]

6. Numerous civil, political, economic, social and cultural rights are implicated by toxics. Those rights are interlinked, interdependent and indivisible. As such, in the present section, the Special Rapporteur does not refer to all the rights implicated. For example, while the rights to food, to water and to adequate housing are not discussed specifically, they should be borne in mind, as appropriate, in the context of all considerations discussed in the present report.

Life

7. States must prevent arbitrary deprivation of life resulting from toxics. In line with the concept of "inherent right to life", States are required to adopt positive measures to protect that right,[12] including effective measures to prevent and safeguard against hazards that threaten the lives of human beings.[13] States must take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.[14]

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9. Consistent with the previous reports of the Special Rapporteur and his predecessors, hazardous substances and wastes are not strictly defined; they include, inter alia, toxic industrial chemicals and pesticides, pollution, contamination, explosive and radioactive substances, certain food additives and various forms of waste. For ease of reference the Special Rapporteur refers to hazardous substances and wastes as "toxics", but the term as used in the report includes non-toxic but hazardous substances and wastes as well.

10. See www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/Environmentallysoundmanagementdisposal.aspx.

11. Modified from a framework proposed by the Special Rapporteur on the human right to safe drinking water and sanitation (A/HRC/27/55).

12. See Human Rights Committee, general comment No. 6 (1982) on the right to life, para. 5.

13. See E/CN.4/Sub.2/1994/9 and Corr.1, para. 175.

14. See Human Rights Committee, general comment No. 6, para. 5. While the Committee states that it would be "desirable" for States to take all possible measures, the evidence is now much stronger that States must take all possible measures to respect, protect and fulfil.

8. Pollution is estimated to be one of the leading causes of death and disease worldwide.[15] Exposure to pollution and toxic chemicals is dramatically contributing to infant mortality and reduced life expectancy. The World Health Organization (WHO) estimates that in 2012, the deaths of 12.6 million people (nearly one in four of the total deaths) were attributable to an unhealthy environment, including exposure to toxic and otherwise hazardous substances.[16] Of those deaths, 8.2 million were attributable to non-communicable diseases linked to exposure to toxics. However, owing to information gaps, the figure represents an underestimation; the adverse impacts of only a few substances are accounted for, in a universe of thousands of hazardous substances released by human activities.

Health

9. Everyone has the right to the highest attainable standard of physical and mental health,[17] and thus to be protected from toxic chemicals, pollution and contamination. States, in their obligation to protect the right to health, must prevent and reduce the population's exposure to hazardous substances and wastes that have a direct or indirect impact on human health.[18] States must elevate standards of protection as "expeditiously and effectively as possible"[19] to protect the right to health.

10. The right to health, and the corresponding obligation of States to protect against toxic exposure, is inextricably linked to the rights to safe food, safe water and adequate housing. To this end, in accordance with article 24 of the Convention on the Rights of the Child, on the child's right to the enjoyment of the right to health, States are explicitly required to ensure the provision of adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of pollution and contamination.

11. Exposure to toxic pollution through air, water and food is contributing to an ongoing and increasing global public health crisis of non-communicable diseases. Rates of cancer, chronic respiratory illness, stroke, and heart and other non-communicable diseases have dramatically increased in recent decades. In addition, toxic exposures are linked to birth defects and various mental health impacts, such as reduced intelligence. Increased rates of disease and disability clearly point to environmental contributions.[20] Reductions in exposure are demonstrated to lead to improved health outcomes.[21]

Physical and mental integrity

12. In order to uphold the right to physical and mental integrity, States are required to take positive measures to protect everyone from exposure to hazardous substances. This right encapsulates the right of all human beings, including children, to autonomy and self-determination over their own body; a non-consensual intrusion upon the physical or mental integrity of the person could be considered a human rights violation.

13. This right is well established under international human rights law, including all regional human rights instruments,[22] although underrecognized in the context of toxics. For example, States must protect children from all forms of physical or mental violence, injury or abuse, and neglect

15. See www.commissiononpollution.org/about.

16. See www.who.int/mediacentre/news/releases/2016/deaths-attributable-to-unhealthy-environments/en/.

17. See Universal Declaration of Human Rights, art. 25 (1); Constitution of the World Health Organization; International Covenant on Economic, Social and Cultural Rights, art. 12; Convention on the Rights of the Child, art. 24 (see also art. 17).

18. See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 15.

19. Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.

20. See, for example, www.epa.gov/ace.

21. See, for example, A/HRC/33/41, para. 66 (citing S.D. Grosse and others).

22. See, for example, the American Convention on Human Rights, art. 5 (1); the Charter of Fundamental Rights of the European Union, art. 3; and the African Charter on Human and Peoples' Rights, art. 4.

or negligent treatment.[23] Exposure to hazardous substances can be a violent act. In accordance with the Convention on the Rights of the Child (art. 37), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 2) and the International Covenant on Civil and Political Rights (art. 7), States are required to protect against torture or other cruel, inhuman or degrading treatment or punishment.[24]

14. While the right to physical and mental integrity has traditionally been raised in connection with incarceration, interrogation and medical experimentation, this right is implicated by exposure of humans to toxics. Although cases of acute poisoning and high levels of intoxication present an unquestionable violation of the right to physical integrity, the right also extends to protection against chronic, low-level exposure to toxic substances.[25] Today, children are born "pre-polluted" by dozens, if not hundreds, of toxic chemicals.[26] Every day, everyone is chronically exposed to a multitude of hazardous substances in food, water and air, without their consent. In some areas, typically lower-income communities, exposure rates are extreme.

Non-discrimination

15. States must never discriminate on the basis of income, age, race, colour, ethnicity, gender, religion, origin, disability, or other status. Equality and non-discrimination is fundamental to human rights law.[27] All individuals are equal as human beings and, by virtue of this and the inherent dignity of each person, must have equal protection from toxics.

16. The adverse impacts of toxics on the poor, the young, older persons, minorities, indigenous peoples and other vulnerable groups are unequal, and the different genders are affected in different ways (see section II.B below). In addition to double standards of protection within countries, there are double standards of protection between countries, particularly between developing and industrialized countries, which are often exploited by businesses with global supply and value chains. The transfer of toxic production and disposal processes to the marginalized or the less fortunate is of grave concern.

Accountability, justice and remedy

17. Accountability is a fundamental principle of human rights. States and other duty bearers must be answerable to rights holders for the observance of human rights implicated by toxics. In this regard, duty bearers must comply with the legal norms and standards enshrined in international human rights instruments. Every rights holder is entitled to initiate proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. States must ensure access to justice and provide effective remedies and restitution to victims of those violations occurring as a result of exposure to hazardous chemicals.[28]

18. Most victims of toxics have no access to justice and no semblance of an effective remedy, and most perpetrators of violations relating to toxics are not held accountable. The burden of proving the cause of their illness, the lack of information, the insurmountable costs of judicial remedy, corporate structures, global and devolved supply chains and other factors all obstruct the path to justice and remedy for most victims (see section IV below).

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23. Convention on the Rights of the Child, art. 19. See also Committee on the Rights of the Child, general comment No. 4 (2003) on adolescent health and development in the context of the Convention, para. 8.

24. See also Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, paras. 2 and 5.

25. See A/HRC/33/41, para. 34.

26. Ibid., para. 5.

27. See, for example, Universal Declaration of Human Rights, art. 2.

28. See E/CN.4/2006/42, para. 45.

Information

19. To protect human rights affected by toxics, States are duty-bound to generate, collect, assess and update information; effectively communicate such information, particularly to those disproportionately at risk of adverse impacts; ensure confidentiality claims are legitimate; and engage in international cooperation to ensure that foreign Governments have the information necessary to protect the rights of people in their territory.[29]

20. The enjoyment of the right to information is critical in the context of toxics. Information on toxics is essential in order to prevent adverse impacts, to ensure the realization of freedom of expression and to enable individuals and communities to participate in decision-making processes and to seek and obtain remedy. Health and safety information about toxic chemicals must never be confidential.[30] Information must be available, accessible, functional and consistent with the principle of non-discrimination in order for human rights to be respected, protected, enjoyed and fulfilled.[31] Despite notable improvements in many countries over recent decades, the right to information remains insufficiently realized in the area of hazardous substances and wastes, particularly with respect to protecting the most vulnerable from adverse impacts of exposure, whether from consumer products, at the workplace or via food, water, air or other sources.[32]

29. See A/HRC/30/40, para. 99.

30. See the Stockholm Convention on Persistent Organic Pollutants, the Minamata Convention on Mercury and the Dubai Declaration on International Chemicals Management.

31. See A/HRC/30/40.

32. Ibid.

IV. Minorities in Situations of Humanitarian Crises, A/HRC/34/68

1. In accordance with Human Rights Council resolutions 6/15 and 19/23, the present document contains the recommendations of the ninth session of the Forum on Minority Issues, held on 24 and 25 November 2016, on the theme, "Minorities in situations of humanitarian crises". The work of the Forum was guided by the Special Rapporteur on minority issues, Rita Izsák-Ndiaye. The Chair of the session was Mario Yutzis of Argentina. Some 500 participants attended, including representatives of Member States and minority communities, non-governmental organizations, United Nations specialized agencies, regional and intergovernmental bodies and national human rights institutions.

2. The recommendations incorporate and build on existing recommendations made with regard to humanitarian assistance and protection of minority rights. They are intended to assist Governments, the United Nations, civil society and other humanitarian and development actors in addressing trends towards minority populations that are directly targeted and persecuted, deliberately discriminated against or simply forgotten or neglected, at all stages of the humanitarian response cycle. The expression "humanitarian crisis" in these recommendations refers to any situation of hardship and human suffering arising from events that cause physical loss or damage or social and/or economic disruption with which the country or community concerned is unable to fully cope alone. Such situations may be the direct result of a natural disaster (either high impact, such as an earthquake or floods, or slow onset, such as a drought) or a human-made crisis, such as war or civil unrest.[1]

3. The recommendations are grounded in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,[2] which recognizes that comprehensive implementation of minority rights and adequate institutional and policy frameworks can effectively contribute to the elimination of all forms of discrimination against members of minority communities, as well as promote their full equality before the law without discrimination.

4. The recommendations draw on international human rights law, refugee law, international criminal law, international disaster response laws, international humanitarian law and related standards, including regional instruments…

Inclusion of minority issues in daily governance

22. As a key element of minority protection and good governance, States should implement fully and inclusively the provisions of the Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, including through the adoption of national laws prohibiting discrimination and protecting the rights of minorities.

23. States should at all times include respect, protection and fulfilment of minority rights as essential elements in their daily governance and development programmes. This should serve to, inter alia, defuse potential tensions between the minority and the majority and among minority groups, prevent conflict and foster integrated, resilient and prepared minority communities that are not disadvantaged in relation to other groups in society, particularly when crises occur.

24. States should remove any provision in law or in practice that discriminates against any group on the grounds of their ethnicity or religion and which may render them vulnerable. This includes discriminatory national legislation and policies such as those resulting in the denial or deprivation of citizenship, since stateless minorities are disproportionately affected by humanitarian crises.

25. States should establish an institutional framework to ensure that attention is given to minority issues within relevant national bodies, including those dealing with humanitarian action. National human rights institutions can take on this role at the national level and monitor the efforts

1. See United Nations Children's Fund definition of "emergency", in Inter-Agency Standing Committee Working Group XVI meeting, 30 November 1994, "Definition of complex emergencies", annex I. Available at https://interagencystandingcommittee.org/system/files/legacy_files/WG16_4.pdf.

2. Adopted by the General Assembly in resolution 47/135. Available at www.ohchr.org/Documents/Publications/GuideMinoritiesDeclarationen.pdf.

made by various relevant national bodies and enforce the implementation of policies through accountability mechanisms. Persons belonging to minorities should be represented on the staff of such institutions and United Nations and civil society should support such mechanisms with capacity-building and training.

26. National human rights or other institutions must take appropriate responsibility to ensure that the needs of minorities are properly assessed, including through data collection and analysis, and that targeted programmes are established to better assist minorities in the event of a humanitarian crisis.

27. Relevant data should be collected and responsibly managed according to international standards and disaggregated, where possible, by ethnicity, language, nationality status and religious affiliation, age and gender. Such data should be used in accordance with international standards to contribute to the development of better informed and more effective minority rights projects and programmes. Indicators relevant to minorities should serve as a basis for assessing compliance with the principles of non-discrimination and equality, which in turn can help to identify potential conflicts at their earliest stages.

28. National human rights and other relevant institutions should ensure a targeted focus on minorities in situations of crisis when engaging in monitoring, analysis and reporting, as well as in the exercise of other functions. Such targeted attention is crucial in preventing crises as well as in providing a framework for the protection and non-discrimination of minorities in situations of crisis and in minimizing any disproportionate impact.

29. The Secretary-General should develop a comprehensive strategy to ensure a systematic approach to minority rights in all United Nations programming work, including and in particular in development and humanitarian relief work, further to the Guidance Note of the Secretary-General on Racial Discrimination and Protection of Minorities.[3] A systematic approach to minority rights should be pursued across all related United Nations work, potentially through the development of a tool kit to be applied whenever developing and implementing humanitarian assistance programmes.

30. Governments, the United Nations and other organizations should consider appointing expert staff members as minority focal points within their structures, train humanitarian staff in minority rights issues to ensure that they are able to identify issues relevant to minorities and situations of discrimination in times of crisis and equip them to adequately respond to the needs of minorities.

Preventing crises with early warning and accountability

31. States should employ early warning mechanisms that incorporate minority rights indicators to identify initial signs of crises and deteriorating situations and their impact on minorities. Such mechanisms can help to prevent the escalation of tensions and human rights violations. They should monitor indicators such as a history of ethnic violence; an indication of minorities being targeted or repeatedly displaced; the extent to which the identity of various minority communities is respected and promoted; the level of participation of minorities in political, economic and cultural life; and the degree of equal and effective access to justice and other effective remedies for human rights violations. Efficient early warning is also critical to disaster risk reduction and should include a strong focus on the populations exposed to risks, in addition to scientific and technical considerations. Minority communities and potentially marginalized groups within minorities must be consulted and included in such early warning systems.

32. The Human Rights Up Front initiative should be further strengthened so that it leads to the desired cultural and operational change within the United Nations, together with more proactive engagement with Member States to better prevent large-scale and serious violations of human rights or international humanitarian law.

3. See Guidance Note of the Secretary-General on Racial Discrimination and Protection of Minorities (March 2013), para. 46. Available at www.ohchr.org/Documents/Issues/Minorities/GuidanceNoteRacialDiscriminationMinorities.pdf .

33. States should implement, in accordance with general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations of the Committee on the Elimination of Discrimination against Women, early warning systems and other concrete measures to protect minority women from gender-based violence and sexual abuse, given that women and girls are at a heightened risk of violence, including sexual violence, during and after conflicts.
34. States should take effective measures to prevent the promotion of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In this respect, States should effectively investigate and prosecute individuals for hate crimes, incitement to hatred, persecution, systematic and widespread violence, atrocities, sexual violence and acts of genocide perpetrated against minorities.
35. States should establish a complaint mechanism for minorities to voice their concerns as a minority and ensure that the public is aware of the existence of such a mechanism. This can be established within national human rights institutions established in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). States, as well as the United Nations and civil society actors should work to ensure that minorities are made aware of the existence of such mechanisms.

Planning and preparedness

36. States should, with the effective participation of communities at risk, develop effective and adequate disaster risk prevention programmes. Such programmes should include measures to enhance the preparedness of potentially affected populations and should explicitly address the specific needs of minorities and other vulnerable populations.
37. States, the United Nations and other humanitarian and development actors should proactively collaborate with minority communities, including particularly excluded minorities such as those living in remote areas or in marginalized urban areas (e.g. in slums) or those who may be stateless or at risk of statelessness. They should work together to develop risk assessments and contingency plans to ensure that such communities will receive aid appropriate to their needs if a crisis materializes. Keeping in mind the do-no-harm principle, the United Nations and other international actors should be careful not to put certain communities at risk for collaborating with them, particularly in situations where certain minorities may be targeted by a State or an armed group.
38. States should ensure that, as part of its disaster risk prevention programme, the critical role of local authorities and local civil protection institutions as first responders for minorities is acknowledged and supported with adequate resources and specific training.
39. Local authorities should work together with minority communities to develop and implement efficient and trusted communications tools and consultation mechanisms in order to ensure effective two-way communication of information if and when a crisis occurs. Such tools can also be instrumental for early warning.
40. States should create an enabling environment for civil society organizations to independently monitor the situation of minorities in the given country, including by ensuring their unfettered access to all regions and communities.
41. States, through their local authorities, should implement a community-based approach when planning humanitarian action with a view to creating real partnerships by making initial contact with minority communities and supporting community participation at an early stage.[4]
42. The international community should increase its solidarity efforts before crises occur, by supporting national humanitarian response capacities in other States, both bilaterally and through regional and international organizations, including through training on international

4. For concrete guidance, see UNHCR, A Community-based Approach in UNHCR Operations (January 2008).

minority protection frameworks and technical assistance and strengthening national protection and response mechanisms for minorities in crisis situations.

43. The United Nations and other humanitarian and development actors should systematically conduct research on the situation of minorities, evaluate their needs and capacities and assist them in voicing their concerns in order to prepare risk assessments ahead of potential crises and improve minorities' preparedness for such crises. On this basis, the United Nations and other humanitarian actors should carry out advocacy with national authorities to encourage them to specifically address the situation of minorities and increase their preparedness for potential crises.

44. The United Nations and other humanitarian and development actors should raise awareness among minority populations at risk of displacement about the possibility and the potential benefits of sharing their concerns with national entities, such as national human rights institutions, and with international organizations.

45. The United Nations and other humanitarian and development actors should, within their particular fields of operation, work together with minority communities to assist in developing the communities' preparedness and resilience; share information in a format and language adapted to each community, including detailing and explaining the potential risks they face; and share information with the community about the plans of the Government and other actors should these risks materialize. They should work together with minorities to identify the risks that minorities face and devise strategies to mitigate them.

46. In planning for potential crises, the United Nations and other humanitarian actors should assess potential security and logistic obstacles to the equal distribution of aid. They should find ways to ensure that minority groups receive the aid they need, regardless of how remote these groups are located or how precarious and isolated from the main society they may be, and identify means of keeping delivery channels open, even when security concerns arise.

IV. Recommendations to promote a minority rights-based approach during crises

Compliance with legal standards and incorporation of minority protection into the domestic legal framework

47. States should fully respect human rights law and apply the standards relevant to disaster management, including the international disaster laws, rules and principles of the International Federation of Red Cross and Red Crescent Societies[5] and the Sendai Framework for Disaster Risk Reduction 2015-2030.[6] They should aim to build the capacity of local communities and civil society in order to address the most urgent situations of vulnerability during a disaster and to promote respect for diversity and human dignity and reduce intolerance, discrimination and social exclusion.

48. States must comply with international human rights law, and States and non-State actors must fully comply with international humanitarian law, particularly in zones of armed conflict, in order to protect civilians, including minorities, internally displaced persons, refugees, stateless persons and people suffering in conflict zones.

49. States should incorporate protection against displacement in their legislation and policies and avoid displacement of minority groups, including those with a particular dependency on or attachment to their lands for reasons of livelihood or cultural heritage. When displacement is unavoidable, States should ensure, in consultation with the affected minorities, that assistance and support towards durable solutions fully meet international standards, including with regard to shelter, service provision and livelihood options, and all other aspects.

50. States, as well as the United Nations, other international humanitarian organizations and, as relevant, other non-State actors, should ensure that minorities are adequately represented among the staff of institutions involved in the programming and delivery of humanitarian assistance. They should ensure that minorities are represented among both management and operational staff, including staff who are able, for instance, to communicate in minority languages or who understand the opportunities and constraints of minority cultures and can raise awareness about the particular issues or challenges faced by minority communities.

Collection of accurate information

51. States and the United Nations and other humanitarian and development actors should conduct research to refine the profiling of crisis-affected communities and sharpen the needs and capacity assessments prepared prior to a crisis. It is essential to have at all times a full and accurate picture of affected minority communities, including their composition (e.g. identification of vulnerable persons), their needs and their capacities. Capacity assessments should be carried out in preparation for recovery initiatives.

52. States should guarantee, particularly in times of crisis, the independent work of civil society organizations and national human rights institutions in monitoring and reporting on the situation of minorities in the country. In this respect, civil society should be granted access to the camps housing refugees and internally displaced persons in order to carry out their work.

53. The United Nations and other humanitarian actors should complement and support the work of civil society and seek to identify the causes and triggers of displacement of minority communities and assess whether the cause of displacement is linked to their minority status. The specific experience of minorities in humanitarian crises should be documented and publicized with the aim of raising the awareness of national governments and the international community and fostering greater recognition, political support and commitment of resources for the situation of minorities in crises.

54. National human rights institutions should engage in independent monitoring, analysis and reporting and other functions to ensure protection for and non-discrimination of minorities in crisis situations and to prevent a disproportionate impact of the crisis on minorities.

5. See www.ifrc.org/what-we-do/disaster-law/about-disaster-law/international-disaster-response-laws-rules-and-principles/.

6. See www.unisdr.org/we/coordinate/sendai-framework.

Data collection

55. States should ensure that data collection and analysis, including profiling and assessments, are carried out in a non-discriminatory manner, regardless of nationality or lack thereof, and in a manner that captures the needs and vulnerabilities of those affected or displaced by crises while ensuring their protection. Data, disaggregated by age, sex, diversity and location, should be collected for the protection of human rights, the implementation of durable solutions to displacement and the assessment of specific needs and vulnerabilities of affected minority populations.[7] During any data-collection process, all persons should be free to specify any characteristic relating to their identity, including multiple identities, and to choose whether or not they wish to be identified as belonging to a minority group.

56. The United Nations and other humanitarian actors should promote and support comprehensive profiling and collection of disaggregated data on minority groups in shelters, refugee camps or camps and settlements of internally displaced persons, as well as in other settings, to identify problems which may otherwise not be apparent owing to the marginalization of these communities and to help inform solutions.

Protecting persons belonging to minorities

57. All parties to armed conflicts must fully respect the presumption of civilian status of members of minority groups on an equal footing as persons belonging to the majority community or communities and ensure that members of minority groups receive the same protection from attacks, summary or arbitrary execution, arbitrary detention or any other human rights violation as other civilians at all times, without any discrimination.

58. States should not place restrictions on the freedom of movement of particular individuals or groups of civilians on the sole basis that the individual or group shares ethnic, religious, linguistic or other characteristics with other parties to a conflict. In particular, under no circumstance should States restrict access to safe locations on the basis of discrimination against minorities or other grounds prohibited by international human rights or humanitarian law. No measures should be taken which unduly limit or restrict the enjoyment of all human rights of minorities, including their right to freedom of expression or association.

59. When deploying security services to protect populations at risk, States should give special consideration to issues and concerns of communities and the possible lack of trust of some minority groups with regard to security forces. Responses to a crisis must therefore be appropriate and culturally sensitive and seek to establish a link with the particular community or communities where such operations take place. Any laws or measures brought into effect with a view to addressing a humanitarian crisis must comply with the State's obligations under international human rights law, including the conditions and limits to the scope of derogating measures in situations of emergency, and should not, by intention or in effect, unjustifiably expose members of minorities or minority communities to increased vulnerability vis-à-vis security forces.

60. States should ensure that protection responses are participatory, non-discriminatory and sensitive to the specific needs of minorities.[8] They should provide the necessary support to traumatized minorities and include a psychosocial dimension in their protection responses.

61. The United Nations and other international actors should identify and implement measures to provide additional appropriate protection during crises to those who may have suffered traumatization or persecution either before or as a result of the crisis.

7. Governments are encouraged to use the services of the Joint Internally Displaced Person Profiling Service which has been set up to offer technical support in this regard, as recommended by the Human Rights Council in resolutions 20/9 and 32/11, and by the General Assembly in resolutions 68/180 and 70/165.

8. See, UNHCR, A Community-based Approach in UNHCR Operations (January 2008).

62. States should implement, in accordance with general recommendation No. 30 (2013) of the Committee on the Elimination of Discrimination against Women, special security measures to protect minority women from gender-based violence and sexual abuse, given that women are at a heightened risk of violence, including sexual violence, during and after conflicts.
63. States should make every effort to preserve family unity and to enable family reunification for minorities affected by crises.
64. States must refrain from and prohibit forced eviction, demolition of houses, destruction of agricultural areas and arbitrary confiscation or expropriation of land as acts of discrimination, punitive measures or means or method of war directed against certain minority groups.[9]
65. The United Nations and other international actors should take all necessary precautions to understand and address any issues or tensions arising from the changing dynamics between different minority groups or with a majority group when a displaced population arrives. This applies notably in camps for internally displaced persons and in areas where internally displaced populations reside with a host community. They should also take into account the dynamics between the various groups and the Government or other parties to the conflict.
66. The United Nations and other international actors should pay particular attention to minority persons who may be subjected to multiple and intersecting forms of discrimination in situations of crisis, including unaccompanied children, women, persons with disabilities, older persons and lesbian, gay, bisexual, transgender and intersex persons. They should also be prepared to intervene on behalf of minority refugees experiencing protection problems because they lack identity documents or are stateless.

Distribution of humanitarian assistance and access to basic services
68. In practice, it is often local civil society organizations and volunteer groups that actually provide assistance and support to members of minorities in situations of humanitarian crisis. States should guarantee access by all actors involved in the provision of humanitarian assistance to all regions and populations requiring assistance, without discrimination and with due attention given to minority groups and cultural disparities among the population. The United Nations and other humanitarian actors should ensure that minorities are not discriminated against in the distribution of humanitarian relief, including food and basic services, in particular health care, potable water and education. They should also ensure that social services are equally accessible by and appropriate to the specific needs of women and men as well as girls and boys belonging to minorities.
69. Humanitarian assistance, including distribution of food and first necessity items, and the provision of basic services, such as education, medical and psychosocial support, should, where possible, be culturally adapted and tailored to the specific needs of minority communities (as pre-identified at the prevention stage). This assistance should be made accessible by other potentially marginalized groups within the minority community, such as women, children, older persons, persons with disabilities or lesbian, gay, bisexual, transgender and intersex persons.
70. States should ensure that adequate and culturally appropriate education is made available to minority communities, where possible, in their mother tongue.
71. The United Nations and other humanitarian actors should ensure that humanitarian assistance is not limited to those in the most easily accessible areas and should find solutions to reach more remote areas where minority groups often live.
72. States, the United Nations and other humanitarian actors must ensure that strategies, programmes and activities do not inadvertently lead to or reinforce discrimination against or exclusion of different groups, but instead promote equality and respect for the rights of all.

9. See the principles on housing and property restitution for refugees and displaced persons (E/CN.4/Sub.2/2005/17, annex).

73. The United Nations and other humanitarian actors should work in complementarity with local governmental and non-governmental actors to ensure that the delivery of aid is facilitated by the minority communities' knowledge and understanding of population dynamics and geographical or other local factors.
74. The United Nations and other actors should ensure that all strategies and interactions are coordinated with various minority groups to ensure effective communication and complementary strategies in delivering the necessary goods and services. Meaningful engagement and communication with minority leaders, in minority languages, are key to achieving this goal.
75. States should establish or continue to maintain open communication channels with affected communities and provide timely information in minority languages. In the context of refugee or internally displaced persons camps, they should seek to ensure that ad hoc representative committees, such as volunteer committees, are truly representative of the wider camp population and include representatives of all minorities, including minority women.
76. States and, when applicable, non-State actors should take all possible measures to protect the cultural heritage of minority communities affected by humanitarian crises. With regard to conflict, States should ratify and implement the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.
77. The United Nations and States should seek to ensure that minorities in situations of protracted displacement are able to maintain their culture or religion, for instance, by providing space for practising cultural traditions or religious ceremonies.
78. States should ensure that minorities under their jurisdiction are not deprived of their political rights, including their voting rights, during protracted crises or displacement. Non-State actors should also make similar provisions, as relevant.

Displacement
79. States should ensure that the Guiding Principles on Internal Displacement and other international, regional or national legislative standards are fully respected, including for displaced persons belonging to minorities.

Personal documentation
80. States should guarantee the issuance or renewal to minorities, without discrimination or undue administrative or financial obstacles, of the necessary civil status documentation to access basic services, including when the affected individual is stateless.
81. States should ensure that minorities and their specific needs are incorporated in all mechanisms that facilitate the issuance of documentation necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth and marriage certificates, as well as replacement of lost documentation.

Accountability
82. States should ensure that accountability mechanisms are available and that minority groups have access to such mechanisms at all stages of the humanitarian relief cycle.[10] They should ensure that anyone who lodges a complaint against the handling of a situation by the State, a non-State actor or the United Nations or another humanitarian actor is protected against possible reprisals.

V. Recommendations to ensure durable solutions for minorities after crises

Safety and protection of minorities
83. The international community has a moral and legal duty and share the global responsibility with regard to the flow of refugees and migrants caused by crises around the world. All States should

10. See, in this respect, IASC Operational Framework on Accountability to Affected Populations.

contribute to hosting refugees, migrants and asylum seekers and should take all the measures necessary to ensure that these new minorities are given a chance to recover from their trauma and to rebuild their lives.

84. States should uphold the international legal principle of non-refoulement. Where circumstances have changed in the country of origin and in consultation with UNHCR, refugee status shall be ceased for a particular displaced population and the parties may, with the cooperation of UNHCR, start the process to return those persons previously recognized as refugees to their country of origin. In this process, the potential challenges of minorities in their country and place of origin must be assessed and carefully evaluated. Every displaced person has the right to challenge the cessation of refugee status as it applies to him or her, where there are compelling reasons, such as previous persecution in his or her country of origin, for refusing to accept the protection of his or her country of nationality or habitual residence. Similar procedures, with oversight by UNHCR, should apply where a State claims that it is safe for internally displaced persons to return home.

85. States hosting asylum seekers, migrants, refugees and stateless persons should facilitate their integration and pay particular attention to the situation and needs of minorities, including minority women and children who may be particularly vulnerable or face multiple forms of discrimination.

Personal documentation

86. States, the United Nations, other development actors and, as relevant, non-State actors should ensure the restitution or reissuance of identity documents to persons belonging to minorities after a crisis, including documents such as birth certificates or nationality documentation, so that the risk of statelessness is prevented.

87. States must provide the necessary documentation to all persons affected by crises, in particular minority communities who are often excluded, so that they may access public assistance and services and, where applicable, claim their political rights. If such provisions are not possible, States should not make possession of such documentation a prerequisite to accessing services or exercising rights.

Assessment of the needs and capacities of minorities

88. Governments should carry out an economic, social and environmental mapping exercise, with the contribution of civil society, to assess the general and specific needs and capacities of minority populations after a crisis and review all the various racial, ethnic, religious, national, age and gender components of the population. Such an exercise should then serve as the basis for coordinating the programmes of the various national and international actors involved at the recovery stage.

89. The United Nations and other international humanitarian and development actors should continue to monitor the situation of displaced communities, refugees and other groups affected by crises, with particular attention to persons belonging to minorities. They should engage with the States concerned in order to assist in finding durable solutions for these communities and support the work of local civil society through funding and training and reference to their monitoring work.

90. National human rights institutions should ensure independent monitoring, analysis and reporting on the situation of minorities to ensure the continued protection for and non-discrimination of minorities following situations of crisis and in the search for durable solutions.

91. Regional organizations should support States and the international community in monitoring the situation of displaced communities or communities recovering from a crisis in their region and should draw attention to situations where displaced, host or recovering communities are excluded from national or international support. They should also reinforce national capacities through technical assistance, in particular with regard to assistance to minorities in the recovery stage of crises.

Durable solution options

92. States should fully comply with the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons, paying particular attention to minorities. Minorities displaced internally or internationally during a crisis should be enabled and supported, without discrimination, to achieve long-term safety and security, enjoyment of adequate standards of living, access to livelihood and employment, effective and accessible mechanism to restore housing, land and property, access to personal and other documentation, family reunification, participation in public affairs and access to effective remedies and justice. Minorities should be provided assistance to return to their initial location as soon as circumstances allow, in a voluntary, safe and dignified manner, or be given the option to obtain alternative durable solutions for local integration or resettlement.

93. States should support minorities recovering from a crisis by carrying out a survey of intent on how they wish to re-establish their lives, whether by returning to their place of origin, staying in the present location or moving to an alternate place of their choice. Such surveys of intent should take into account varying opinions within each community, including the voices of women, the best interests of the child, the views of youth and older persons as well as of all persons still awaiting resolution of their displacement.

94. States should identify suitable and dignified alternative locations, including local integration and resettlement within the country, for minorities who cannot or do not wish to return to their original location owing to continuing hazards or threats or for other reasons. Alternative locations should enable the community to retain its integrity and, as far as possible, to continue their traditional means of livelihood.

95. States should ensure that, when resettlement of a population is unavoidable, they comply with all human rights standards and international humanitarian norms[11] and that the place of resettlement and ways of resettling are decided together with the population directly affected by the crisis as well as with the host community that is affected. When the host community is a minority in the country, it is particularly important to ensure that it is given a meaningful voice in the resettlement of other populations into their community and provided appropriate compensation and support. All parties should comply with the comprehensive refugee response framework annexed to the New York Declaration for Refugees and Migrants, in particular with regard to support for host countries and communities.[12]

96. States should, with the support of civil society and the international community, ensure that communities and countries are appropriately prepared to host displaced populations, which could, in some cases, become new minorities. They should discuss the possible change in dynamics in their country or area, as well as potential benefits, in order to thwart xenophobia, racial discrimination and intolerance.

97. The United Nations and other development and humanitarian actors should support States in analysing local dynamics within host communities so as to anticipate any possible change in dynamics with the arrival of new communities displaced by crises. Both displaced and local host communities should be incorporated into the post-crisis programming of the United Nations and other international development partners.

98. Where applicable, States should ensure that all necessary steps are taken for the environmental and developmental rehabilitation of areas to which displaced persons are returning.

99. States should ensure that minority groups affected by displacement are adequately included in any durable solution, strategy or displacement-focused policy developed following the displacement of a population. Such strategies and policies should contribute to shaping a comprehensive response that includes protection and humanitarian and developmental considerations. Comprehensive profiling activities can be helpful for informing the implementation of such processes.

11. See 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 49; Additional Protocol I (1977), arts. 54 and 59; and Additional Protocol II (1977), art. 17.

12. See General Assembly resolution 71/1, annex 1, para. 8.

100. States should ensure effective and comprehensive monitoring of recovery and progress towards durable solutions for all communities, including persons belonging to minorities who may face specific obstacles or discrimination hindering them from re-establishing their lives or reaching a durable solution after a crisis.

Access to services

101. States should plan and implement psychosocial support programmes for persons belonging to minorities who are recovering from a crisis. Such programmes should be sensitive to the culture, religion, age and gender of the beneficiaries. States should ensure that minorities are informed of the existence of such services that are specifically designed for them.

102. Minority children in post-crisis situations should be guaranteed equal access to quality education that promotes an intercultural approach that values cultural diversity.[13]

103. No discriminatory practice should prevent members of minority communities from accessing the labour market, employment or any livelihood opportunities following a crisis. Where previous livelihoods cannot be re-established, States should provide and promote new employment or livelihood opportunities for recovering communities via training, education and positive measures to ensure their full recovery, and protect them from further marginalization.

104. Targeted attention must be paid to minorities who may be subject to multiple and intersectional forms of discrimination at the post-crisis stage. All service providers must take into account that some groups within minority communities, such as women, children, older persons, persons with disabilities or lesbian, gay, bisexual, transgender or intersex persons may need special support in order not to be excluded from the delivery of such services.

Claiming minority rights

105. States, the United Nations, international and other actors should work at all stages, but in particular at the recovery stage, to empower minorities so as to enable them to know and to claim their rights and raise awareness about their own situation. In this respect, minority activists and civil society organizations should be supported, in particular at the post-crisis stage.

106. States should implement the principles on housing and property restitution for refugees and displaced persons,[14] ensure that restitution claim procedures are physically, linguistically and economically accessible and that special measures are taken, where necessary, to ensure that marginalized groups and vulnerable persons are able to benefit from such procedures in an equitable and just manner.

109. States should ensure that minorities recovering from a crisis are able to exercise their freedom of religion by guaranteeing their access to places of worship.

110. States should plan and carry out appropriate and meaningful consultation with minorities affected by crises and make available a complaint mechanism for minorities to seek an effective remedy in situations where they think they may have been discriminated against at any stage of the delivery of humanitarian assistance or they may not have received the support or protection to which they are entitled. States should ensure that minorities do not suffer reprisals for seeking remedy.

111. The United Nations, in collaboration with national human rights institutions and others, should provide technical assistance in respect of complaint mechanisms that can be safely accessed by persons belonging to minorities to enable them to voice their concerns regarding relief and recovering efforts. Organizations or individuals responsible for human rights violations, including acts of discrimination or neglect, must be held accountable. Organizations should ensure timely and thorough reporting of their activities to foster transparency and accountability for their actions. Minority communities and local non-governmental organizations should engage with accountability and quality standards for humanitarian assistance in order to better hold humanitarian actors accountable.

13. See the recommendations of the first session of the Forum on Minority Issues (A/HRC/10/11/Add.1).

14. E/CN.4/Sub.2/2005/17, annex.

112. The United Nations and other international humanitarian and development actors should carry out a transparent evaluation of their programmes, with the participation of minority communities, with a view to drawing lessons learned to feed into planning for future operations.

Building fair and inclusive societies

113. States, the United Nations and other development and humanitarian actors should engage as early as possible with support programmes specifically designed for minorities in post-crisis situations and with projects to promote community cohesion.

114. The United Nations should ensure that development and humanitarian partners, taking account of the New York Declaration for Refugees and Migrants of September 2016, move rapidly beyond the emergency response phase and ensure that minorities are not discriminated against and are fully included and consulted in post-crisis development and redevelopment programmes.

115. Minorities should be fully involved in peacebuilding and transitional justice processes aimed at creating stability and avoiding future crises. Peace agreements and justice processes, including truth commissions, criminal prosecutions, reparations for victims and institutional reforms, must adopt a minority rights-based approach in order to ensure the rights of minorities and promote coherent and inclusive societies. Minority rights-based approaches should also be applied to national reconstruction and rehabilitation efforts after a disaster.

116. Regional organizations should engage in the longer term with minority communities in the context of post-crisis development programmes, referring to UNDP resource guide and toolkit, *Marginalised Minorities in Development Programming* (2010).

V. Parliamentary Action for State Commitments to Human Rights, A/HRC/35/16…

33. Mr. Hunt acknowledged the fact that the balance between national sovereignty and legislative application was a sensitive matter. However, he noted that, in view of the fact that the primary obligation of States was to implement the human rights standards they had committed to through the ratification process, it was possible to transfer the responsibility of implementation of recommendations from United Nations human rights mechanisms from the international sphere to the national parliaments. He confirmed that the adoption of a set of human rights principles and guidelines was still at an early stage and that countries should go through the process themselves and adopt the most appropriate format for themselves. The principles and guidelines would emanate from successful national experiences.

34. Mr. Benchamach noted that the role of parliaments in the promotion of human rights needed no further evidence, although the extent to which such a role was played was dependent of national contingencies and national culture. According to him, OHCHR and IPU were best placed to help strengthen that role by building the capacity of parliaments and ensuring a space for parliamentary involvement at the international level.

35. He suggested that there be a United Nations analysis on the level of implementation by States of the Belgrade Principles. On the basis of the positive experience of Morocco, he also suggested that parliaments be trained and assisted in mainstreaming human rights into the internal rules and procedures.

36. Ms. Ocles Padilla stated that training for parliamentarians would result in greater engagement, as demonstrated in Ecuador. The positive impact of effective monitoring and information technology platforms supporting human rights was highlighted. She stated that technological platforms were useful for the legislator and the executive office to provide clear follow up to the implementation of human rights laws.

37. Mr. Colmenares encouraged OHCHR and IPU to organize intergovernmental dialogues to share best practices on the involvement of parliaments in human rights. In that regard, he recommended that the proposal be considered for the Council to establish a special rapporteur focusing on parliamentary involvement. He encouraged the involvement of parliaments in States' human rights reporting and monitoring. Indeed, he indicated that the monitoring by parliament of the implementation of States' human rights commitments could overcome potential institutional complications, such as a hardly accessible judicial system. According to him, Congressional inquiries, especially during the budgetary allocation period, could be an important step to monitor the actions by the executive branch. The institutionalization of human rights did not involve only the mere knowledge of human rights, but also the understanding of the implications of the rights and the consequences of their violations.

38. Ms. Jabre indicated that an effective engagement of parliaments in the work of human rights mechanisms would entail that such a space for engagement be created. The engagement should also be systematic and constant. In addition, she made an appeal to permanent missions in Geneva to take more systematically and constantly these messages of engagement back to their parliaments, in order to build on the momentum.

39. She acknowledged that such a systematic and constant engagement should emanate from parliaments themselves. Institutionalization was a good idea, either by building a separate body focusing on engagement, or developing methodologies and procedures that require parliaments to systematically and constantly engage on human rights matters.

40. In conclusion, Ms. Jabre informed the Council about the research carried out jointly by IPU and the Geneva Graduate Institute on the level of implementation of the Belgrade Principles worldwide.

49. The concluding remarks made by the panellists included the following:

(a) The need for parliamentarians to mainstream human rights international norms in their national legislation;

(b) The need for parliamentarians to identify adequate resources and expertise to be involved in the international human rights arena;

(c) The implementation of the Belgrade Principles and the important role to be played by civil society in support of parliaments to ensure compliance of national legislation with international human rights norms and standards;
(d) The fact that, while parliamentarians should be more proactive in their engagement in the work of the universal periodic review and other human rights mechanisms, the Council should ensure their protection in the discharge of their mandate;
(e) The need for parliamentarians to participate actively in national mechanisms for reporting and follow-up and resulting national human rights action plans, and to contribute to the implementation of recommendations for which legislative action is required;
(f) The need for more proactive engagement of parliamentarians in the work of human rights mechanisms through the development of a set of principles and guidelines;
(g) The need for parliaments — especially existing human rights committees — to oversee human rights policies and actions by Governments — especially the implementation of recommendations resulting from international human rights mechanisms.

VI. Disability Committee's General Comment No. 5 (2017) on living independently and being included in the community, CRPD/C/GC/5. . . .

38. The Committee finds it important to identify core elements of article 19 in order to ensure that the realization of a standardized minimum support level sufficient to allow the exercise of the right to live independently and be included in the community is carried out by every State party. States parties should ensure that the core elements of article 19 are always respected, particularly in times of financial or economic crisis. These core elements are:

(a) To ensure the right to legal capacity, in line with the Committee's general comment No. 1, to decide where, with whom and how to live for all persons with disabilities, irrespective of impairment;

(b) To ensure non-discrimination in accessing housing, including the elements of both income and accessibility, and adopting mandatory building regulations that permit new and renovated housing to become accessible;

(c) To develop a concrete action plan for independent living for persons with disabilities within the community, including taking steps towards facilitating formal supports for independent living within the community so that informal support by, for example, families is not the only option;

(d) To develop, implement, monitor and sanction non-compliance with legislation, plans and guidance on accessibility requirements for basic mainstream services to achieve societal equality, including participation by persons with disabilities within social media, and secure adequate competence in information and communications technologies to ensure that such technologies are developed, including on the basis of universal design, and protected;

(e) To develop a concrete action plan and take steps towards developing and implementing basic, personalized, non-shared and rights-based disability-specific support services and other forms of services;

(f) To ensure non-retrogression in achieving the content of article 19 unless any such measures have been duly justified and are in accordance with international law;

(g) To collect consistent quantitative and qualitative data on people with disabilities, including those still living in institutions;

(h) To use any available funding, including regional funding and funding for development cooperation, to develop inclusive and accessible independent living services.

III. Obligations of States parties

39. The obligations of States parties must reflect the nature of human rights as either absolute and immediately applicable (civil and political rights) or progressively applicable (economic, social and cultural rights). Article 19 (a), the right to choose one's residence and where, how and with whom to live, is immediately applicable as it is a civil and political right. Article 19 (b), the right to access individualized, assessed support services, is an economic, social and cultural right. Article 19 (c), the right to access service facilities, is an economic, social and cultural right, as many mainstream services, such as accessible information and communications technologies, websites, social media, cinemas, public parks, theatres and sports facilities, serve both social and cultural purposes. Progressive realization entails the immediate obligation to design and adopt concrete strategies, plans of action and resources to develop support services as well as making existing, as well as new, general services inclusive for persons with disabilities.

40. The obligation to respect does not only have a negative aspect; its positive aspect requires States parties to take all necessary measures to ensure that no rights enshrined in article 19 are violated by the State or by private entities.

41. In order to achieve the progressive realization of economic, social and cultural rights, States parties must take steps to the maximum of their available resources.[1] These steps must be

1. See article 2 (1) of the International Covenant on Economic, Social and Cultural Rights and article 4 (2) of the Convention on the Rights of Persons with Disabilities.

taken immediately or within a reasonably short period of time. Such steps should be deliberate, concrete, targeted and use all appropriate means.[2] The systematic realization of the right to independent living in the community requires structural changes. In particular, this applies to deinstitutionalization in all its forms.

42. States parties have the immediate obligation to enter into strategic planning, with adequate time frames and resourcing, in close and respectful consultation with representative organizations of persons with disabilities, to replace any institutionalized settings with independent living support services. The margin of appreciation of States parties is related to the programmatic implementation, but not to the question of replacement. States parties should develop transitional plans in direct consultation with persons with disabilities, through their representative organizations, in order to ensure full inclusion of persons with disabilities in the community.

43. When a State party seeks to introduce retrogressive measures with respect to article 19, for example, in response to an economic or financial crisis, the State is obliged to demonstrate that such measures are temporary, necessary and non-discriminatory and that they respect its core obligations.[3]

44. The duty of progressive realization also entails a presumption against retrogressive measures in the enjoyment of economic, social and cultural rights. Such measures deprive people with disabilities of the full enjoyment of the right to live independently and be included in the community. As a matter of consequence, retrogressive measures constitute a violation of article 19.

45. States parties are prohibited from taking retrogressive measures with respect to the minimum core obligations of the right to live independently within the community as listed in the present general comment.

46. States parties are under an immediate obligation to eliminate discrimination against individuals or groups of persons with disabilities and to guarantee their equal right to living independently and participation in the community. This requires States parties to repeal or reform policies, laws and practices that prevent persons with disabilities from, for example, choosing their place of residence, securing affordable and accessible housing, renting accommodation or accessing such general mainstream facilities and services as their independence would require. The duty to provide reasonable accommodation (art. 5 (3)) is also not subject to progressive realization.

A. Obligation to respect

47. The obligation to respect requires States parties to refrain from directly or indirectly interfering with or in any way limiting the individual exercise of the right to live independently and be included in the community. States parties should not limit or deny anyone's access to living independently in the community, including through laws which directly or indirectly restrict the options of persons with disabilities to choose their place of residence or where, how and with whom to live, or their autonomy. States parties should reform laws that impede the exercise of the rights enshrined in article 19.

48. The obligation also requires States parties to repeal and refrain from enacting laws, policies and structures that maintain and create barriers in access to support services as well as to general facilities and services. It also entails the obligation to release all individuals who are confined against their will in mental health services or other disability-specific forms of deprivation of liberty. It further includes the prohibition of all forms of guardianship and the obligation to replace substituted decision-making regimes with supported decision-making alternatives.

49. To respect the rights of persons with disabilities under article 19 means that States parties need to phase out institutionalization. No new institutions may be built by States parties, nor

2. See Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 2.

3. Letter dated 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights, available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx? symbolno=INT%2fCESCR%2fSUS%2f6395&Lang=en.

may old institutions be renovated beyond the most urgent measures necessary to safeguard residents' physical safety. Institutions should not be extended, new residents should not enter when others leave and "satellite" living arrangements that branch out from institutions, i.e., those that have the appearance of individual living (apartments or single homes) but revolve around institutions, should not be established.

B. Obligation to protect

50. The obligation to protect requires States parties to take measures to prevent family members and third parties from directly or indirectly interfering with the enjoyment of the right to live independently within the community. The duty to protect requires States parties to put in place and implement laws and policies prohibiting conduct by family members and third parties, service providers, landowners or providers of general services which undermines the full enjoyment of the right to be included and live independently within the community.

51. States parties should ensure that public or private funds are not spent on maintaining, renovating, establishing building or creating any form of institution or institutionalization. Furthermore, States parties must ensure that private institutions are not established under the guise of "community living".

52. Support should always be based on individual requirements, not on the interests of the service provider. States parties should establish mechanisms for monitoring service providers, adopt measures which protect persons with disabilities from being hidden in the family or isolated in institutions and children from being abandoned or institutionalized on the grounds of disability, and establish appropriate mechanisms to detect situations of violence against persons with disabilities by third parties. States parties should also prohibit directors and/or managers of residential institutions from becoming guardians of residents.

53. The duty to protect also includes the prohibition of discriminatory practices such as the exclusion of individuals or groups from the provision of certain services. States parties should prohibit and prevent third parties from imposing practical or procedural barriers to living independently and being included in the community, for example by ensuring that services provided are in line with living independently in the community and that persons with disabilities are not denied the possibility to rent or are not disadvantaged in the housing market. General community services open to the public such as libraries, swimming pools, public parks/spaces, shops, post offices and cinemas must be accessible and responsive to the requirements of persons with disabilities, as enshrined in the Committee's general comment No. 2 (2014) on accessibility.

C. Obligation to fulfil

54. The obligation to fulfil requires States to promote, facilitate and provide appropriate legislative, administrative, budgetary, judicial, programmatic, promotional and other measures to ensure the full realization of the right to live independently and be included in the community as enshrined in the Convention. The obligation to fulfil also requires States parties to take measures to eradicate practical barriers to the full realization of the right to live independently and be included in the community, such as inaccessible housing, limited access to disability support services, inaccessible facilities, goods and services in the community and prejudices against persons with disabilities.

55. States parties should empower family members to support the family members with disabilities to realize their right to live independently and be included in the community.

56. While implementing legislation, policies and programmes, States parties must closely consult and actively involve a diverse range of persons with disabilities through their representative organizations in all aspects concerning living independently in the community, in particular, when developing support services and investing resources in support services within the community.

57. States parties must adopt a strategy and a concrete plan of action for deinstitutionalization.

It should include the duty to implement structural reforms, to improve accessibility for persons with disabilities within the community and to raise awareness among all persons in society about inclusion of persons with disabilities within the community.

58. Deinstitutionalization also requires a systemic transformation, which includes the closure of institutions and the elimination of institutionalizing regulations as part of a comprehensive strategy, along with the establishment of a range of individualized support services, including individualized plans for transition with budgets and time frames as well as inclusive support services. Therefore, a coordinated, cross-government approach which ensures reforms, budgets and appropriate changes of attitude at all levels and sectors of government, including local authorities, is required.

59. Programmes and entitlements to support living independently in the community must cover disability-related costs. Furthermore, ensuring the availability of a sufficient number of accessible and affordable housing units is crucial for deinstitutionalization, including housing for families. It is also important that access to housing not be made conditional upon requirements that reduce the autonomy and independence of persons with disabilities. Buildings and spaces open to the public and all forms of transport must be designed in a way that accommodates the requirements of all persons with disabilities. States parties must take deliberate and immediate steps to reallocate funding towards realizing the right of persons with disabilities to living independently in the community.

60. Disability support services must be available, accessible, affordable, acceptable and adaptable to all persons with disabilities and be sensitive to different living conditions, such as individual or family income, and individual circumstances, such as sex, age, national or ethnic origin and linguistic, religious, sexual and/or gender identity. The human rights model of disability does not allow the exclusion of persons with disabilities for any reason, including the kind and amount of support services required. Support services, including personal assistance, should not be shared with others unless it is based on a decision based on free and informed consent.

61. States parties shall incorporate the following elements into the eligibility criteria for access to assistance: the assessment should be based on a human rights approach to disability; focus on the requirements of the person that exist because of barriers within society rather than the impairment…

VII. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association on his Mission to the United States of America, A/HRC/35/28/Add.2. . . .

36. The Special Rapporteur heard numerous complaints that the police had used excessive force to arbitrarily arrest protesters for minor acts, such as stepping off crowded sidewalks, and had targeted them based on their race or ethnicity. Many protesters also said they had been arrested for or charged with offences, such as obstructing traffic, failure to obey a police officer and resisting arrest in dubious circumstances, that suggested police abuse of power. Other common complaints mentioned — and in some instances observed by the Special Rapporteur — included an overwhelming police presence during protests; confiscation of devices used to record potentially unlawful police behaviour and deleting of recordings; infiltration of protests by plain clothes police officers; and pre-emptive home visits by law enforcement agents to warn against attending protests. Some potential protesters were also threatened with the resurrection of previous charges as a means of intimidation.

37. The Special Rapporteur is also concerned to learn that it has become commonplace for police to respond to peaceful demonstrations with military-style tactics, full body armour and an arsenal of weaponry better suited to a battlefield than a protest. While he is sensitive to police concerns that they must be properly equipped to deal with potentially unlawful activity, he is convinced that the widespread militarization of police needlessly escalates tensions and provokes equally aggressive reactions. Protesters are not enemies and should never be treated as such. It is ill-advised to use military equipment to manage activities so fundamental to democratic societies. The Special Rapporteur believes more facilitative and collaborative approaches would lead to better management of protests overall. He is encouraged, however, by the attempts made by the previous administration to scale back the Department of Defence 1033 programme, which allows the transfer of military equipment to state and local law enforcement agencies, some of which is used to police peaceful protests.[1]

38. It was reported to the Special Rapporteur that demonstrations by different communities were policed differently, with a racial, ethnic, cultural and class-based bias. The curfew imposed in Baltimore, ostensibly to quell protests after the death of Freddie Gray, was aggressively enforced in black communities, but not in predominantly white ones. Stop-and-search tactics, implemented as part of the "broken windows" approach to policing adopted in New York City and elsewhere, predominantly target minority individuals. The Special Rapporteur also heard reports of Immigration and Customs Enforcement agents conducting surveillance at assemblies focused on migrant issues. The agency has no role to play in managing assemblies; the presence of its agents only instils fear and chills the exercise of assembly rights. Moreover, migrants are often excluded from other forms of democratic participation, such as the right to vote, leaving peaceful assemblies as one of the only tools they have to voice their concerns (see A/HRC/26/29, para. 25). The Government should encourage the exercise of this right by everyone, especially marginalized groups.

39. Aggressive street policing also affects assembly rights: young African Americans who met with the Special Rapporteur in a number of cities described their inability to meet in public places, even within their own communities, without police harassment. The effects of such encounters, repeated over a lifetime, can snowball: a minor criminal offence, or even an arrest without substantiated charges, can show up on a background check, making it difficult to find a job, secure a student loan or find a place to live. That marginalization in turn makes it more likely that a person will turn to crime, for lack of any other option, and the vicious cycle continues.

40. The Special Rapporteur observed a distinct lack of independent and effective oversight of law enforcement, particularly regarding the broad discretion the police are given to arrest and investigate suspects. While there are benefits to granting law enforcement agencies autonomy,

1. See www.whitehouse.gov/the-press-office/2015/01/16/executive-order-federal-support-local-law-enforcement-equipment-acquisit and www.justice.gov/sites/default/files/criminal-afmls/legacy/2015/05/21/05-18-15-wire.pdf.

that autonomy has in many instances morphed into overreach. The Special Rapporteur found that one of the most effective ways to address such abuses is the use of "consent decrees", which allow the federal Department of Justice to identify systemic problems with local enforcement and supervise reforms.[2] The Special Rapporteur was thus disappointed to learn in April 2017 that the Attorney General had ordered a review of all consent decrees, in effect prioritizing respect for law enforcement over accountability for abuses.[3] This is troubling, since true respect can only be achieved through trust and accountability.

41. To that end, the Special Rapporteur is concerned about the Law Enforcement Officers' Bill of Rights (and its variants), which prevents prompt and effective investigation into possible misconduct by police and creates an impression that police officers deserve privileged status not granted to others facing similar investigations. The lack of federally collected, publicly available and comprehensive data on many issues related to police abuse of power prevents an accurate assessment of the scope of the problem. The Special Rapporteur is encouraged, however, by the recent decision of the Department of Justice to collect statistics of all deaths that occur at the hands of the police.

IV. Freedom of association

42. The right to freedom of association is implicitly guaranteed by the first and fourteenth amendments of the Constitution, read together, which protect the rights of free speech and assembly and due process, as affirmed by the Supreme Court in a number of cases.[4]

A. Workers' rights

43. Workers' right to freedom of association is guaranteed in various international human rights instruments. The United States is obliged by virtue of its membership of ILO to respect, promote, facilitate and realize the rights enshrined in ILO conventions, including the right to freedom of association and to collective bargaining. The Special Rapporteur is encouraged by the positive role that the United States plays internationally by regularly championing those rights. He is particularly pleased to note that the Government played a leading role in defeating efforts at ILO to roll back the right to strike.

44. That stands in stark contrast to the situation domestically. Interlocutors expressed a range of concerns, both in relation to the legal framework and the practical reality of exercising the right to freedom of association in the workplace, portraying a dismal picture for workers.

45. Workers' rights to associate, organize and act collectively are regulated by several pieces of legislation at the federal, state and local levels. Those laws are supplemented by court and tribunal decisions that establish related standards and principles. The Special Rapporteur's primary focus was on the federal statute, the National Labour Relations Act. Overall, he finds that the legal framework legalizes practices that severely infringe workers' rights to associate. It also provides few incentives for employers to respect workers' rights. That is largely due to the fact that enforcement is weak and underfunded, particularly when compared to the massive resources dedicated to other law enforcement functions in the United States. This is shameful, considering that various forms of wage theft by employers cost American workers as much as $50 billion dollars annually, more than three times the $14.3 billion that Americans lost to common property crimes in 2015.

46. The National Labour Relations Act governs labour relations in the private sector, guaranteeing employees the right to form and join trade unions, collectively bargain and engage in concerted activities. However agricultural workers, domestic workers in private homes, managers, supervisors, independent contractors and others are excluded from coverage by this law. Employers increasingly categorize workers under these groupings in order to prevent them

2. See www.justice.gov/crt/special-litigation-section-cases-and-matters0.

3. See www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html.

4. See for example, the cases of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537 (1987) and NAACP v. Patterson, 357 U.S. 449 (1958).

from organizing and to avoid the demands of improved working conditions. Such workers have no recourse under the Act for violations of their rights. Some might have coverage under state laws, but protection is often inadequate because of ineffective redress mechanisms.

47. Strikes are among the concerted activities protected by the National Labour Relations Act. The law prohibits secondary boycotts, however, preventing workers from soliciting and expressing solidarity for strikes among workers of different employers. Employers can permanently replace employees engaged in economic strikes (concerning higher wages, shorter hours or better working conditions), but not employees striking against unfair labour practices (such as interfering with an employee's right to organize, join or assist a union). Moreover, replacement workers can vote to decertify a union on strike. In the Special Rapporteur's view, the permanent replacement of striking workers negates the right to strike, stripping employees of their strongest tool for pressing their demands. While the right to strike can be restricted in international law, such restrictions cannot be aimed at the destruction of the right itself, which permanent replacement effectively achieves…

B. Migrant workers' rights

56. The plight of migrant workers, both documented and undocumented, further highlights the appalling situation of workers in the United States. Guest workers are particularly vulnerable to exploitation and violation of their rights because of their precarious immigration status. They are the most in need of the benefits that organizing and collective action offer, yet are the least able to take advantage of the rights to association. The potential that lies in using the rights to association as a vehicle for improved working conditions cannot be understated, as the Special Rapporteur saw at first hand during a meeting with teachers from the Philippines who had been trafficked to work in Louisiana. The teachers were cheated out of tens of thousands of dollars and forced into exploitative contracts by an international trafficking ring. Despite tremendous odds, they had managed to organize, expose the wrongdoing of the traffickers and improve their conditions of work.

57. The abuses suffered by migrant workers often start before they even arrive in the United States, when they go into debt to pay exorbitant fees to recruitment agencies. The debt leaves them vulnerable to further exploitation and less likely to complain about or report abuse, such as terms of employment which are significantly worse than promised; confiscation of passports; unsafe working conditions; appalling housing conditions; denial of their freedom of movement; denial of their right to organize, associate and assemble; physical, psychological and sexual harassment; unpaid or underpaid wages; denial of access to recourse; and the threat of deportation or actual deportation.

58. A key driver behind the injustices facing documented migrants is the H-visa regime that ties the legal immigration status of a worker to a single employer. This ensures that the balance of power favours the employer and has profound consequences for workers in precarious and exploitative working environments. The arrangement is not dissimilar to the *kafala* system of bonded labour practised in a number of countries in the Middle East. Workers who attempt to organize or otherwise seek remedies to labour-related issues jeopardize their continued and future employment, as they may be terminated, deported and blacklisted for future opportunities.

59. Undocumented workers in Arizona bore witness to the grave situation they and other workers face. They described being subjected to stop-and-search actions based on racial profiling, surveillance, arbitrary raids, illegal arrests, arbitrary detention, denial of food and medical attention, denial of access to family and lawyers during detention and solitary confinement. Partly as a result of those measures, many undocumented migrant workers are fearful of exercising their association rights in general and even more so in the workplace. The Special Rapporteur emphasizes that under international law all workers, regardless of nationality or immigration status, are entitled to their human rights, including the right to freedom of association. Crossing national borders, whether legally or otherwise, does not take away those rights….

C. Counter-terrorism

62. The Special Rapporteur acknowledges the responsibility of governments to ensure national security and the difficulty of this task. However, he remains deeply concerned that some measures instituted in the United States may impermissibly infringe upon the right to freedom of association.

63. The Special Rapporteur would like to commend the United States for the pivotal role it, together with a coalition of civil society organizations, played in recently securing a revision of recommendation 8 of the Financial Action Task Force. The original version of the recommendation implied that the non-profit sector was inherently vulnerable to exploitation as a conduit for money laundering or terrorist financing. That language has now been changed. The Task Force now advocates a more nuanced approach to counter-terrorism and measures to combat money laundering.

64. In his discussions with interlocutors, the Special Rapporteur was informed that both the United States legal framework relating to counter-terrorism and its implementation raise concerns for the work of non-profit organizations, particularly those working in the humanitarian field in conflict areas.

65. Concerns over the legal framework include:

(a) That the definition and description of what constitutes "material support" to terrorists or terrorist organizations are overly broad. They potentially criminalize legitimate activities by non-profit organizations, if support provided by these groups, humanitarian or otherwise, reaches the hands of terrorists, even if inadvertently. Thus, the provision of water, medical care or human rights training in conflict areas becomes nearly impossible, as it might directly or indirectly benefit terrorists. The intention of the organization is immaterial to the crime. Furthermore, the fact that according to the United States Government, inadvertent provision of material support is not criminalized under relevant laws does not provide adequate protection for legitimate humanitarian activities….

VIII. Contributions of Arts and Culture to Sustaining Societies Protecting Human Rights, A/HRC/37/55

(This)…report of the Special Rapporteur in the field of cultural rights, Karima Bennoune, pursuant to Council resolution 19/6.

In her report, the Special Rapporteur in the field of cultural rights addresses how actions in the field of arts and culture can make significant contributions towards creating, developing and maintaining societies in which all human rights are increasingly realized.

By engaging people and encouraging their interaction through artistic and cultural expression, actions in the field of culture can open a space in which individuals and groups can reflect upon their society, confront and modify their perception of one another, express their fears and grievances in a non-violent manner, develop resilience after violent or traumatic experiences, including human rights violations, and imagine the future they want for themselves and how to better realize human rights in the society they live in. The increased social interactions, mutual understanding and trust that can be built or rebuilt through these initiatives are essential to achieve a range of human rights goals and to respect cultural diversity.

The Special Rapporteur considers how cultural rights, and other human rights, are exercised through and affected by these actions in the cultural field; the specific challenges artists and cultural workers face when engaging in initiatives that question the representation of society and seek to address its contemporary challenges of discrimination, exclusion and violence; the specific contribution these initiatives make to society; and the responsibilities of State and non-State actors in creating and maintaining the conditions for actions in the field of culture that contribute to achieving societies more respectful of human rights…

Exploring key questions

63. For actions in the field of culture to contribute to creating, developing and maintaining peaceful and inclusive societies in which all human rights can find fuller realization, those involved, including artists, cultural workers and other stakeholders such as institutions and local populations, need to be recognized and legitimized. They must also be provided with the conditions necessary to exercise their right to take part in and contribute, through these actions in the field of culture, to shaping the societies they live in. It is essential that States respect and ensure their human rights, including their cultural rights.

A. Recognizing the roles of the principal stakeholders

64. Artists and cultural workers who seek to address social challenges of discrimination, exclusion, human rights violations and violence through the exercise of their cultural rights face many challenges. One such challenge concerns the risk of being politicized or seen as aligned with a party to a conflict. This is particularly true if funds for initiatives come from public agencies. In some cases, artists and cultural workers have been able to increase their credibility, reinforce the legitimacy of their actions and protect themselves from instrumentalization by grounding their work in cultural rights and human rights norms and standards.

65. In the aftermath of violent conflict, in deeply divided societies, in societies governed by repressive and/or fundamentalist regimes or where fundamentalist and extremist non-State actors are prevalent, artists, cultural workers and all participants in their actions face risks of harm because of their visibility and the attention that arts and cultural projects invite. Artists face risks of exile, imprisonment, torture and assassination; successful and visible institutions face risks of extremist attacks.[1] They need to conduct careful assessments of risk impacts on the choice of venues and security arrangements for the organizers themselves, but also for participants who might need to travel through zones unsafe for them. Some artists and cultural workers engaging in

1. A recent example of attacks on artists working in this field, their audiences and the cultural institutions that host them was witnessed on 11 November 2017 in Bangui, when 7 persons were killed and 20 injured, including 6 musicians, when persons on motorcycles threw grenades into the audience at a café where a peace and reconciliation concert was being held. See Freemuse, "Central African Republic: seven killed, 20 injured after concert attack", 16 November 2017.

such endeavours function as, and see themselves as, human rights defenders; their efforts should be fully protected in line with 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 (Declaration on Human Rights Defenders).

66. Artists and cultural workers engaged in this field may face increased difficulty in communicating about their work. This comes in part from the fact that the methods and language used in one context can often be misunderstood elsewhere, and that the impact of their work may be difficult to measure using traditional indicators. Artists and cultural workers too often feel isolated, without opportunities for rigorous, critical reflection, for knowledge sharing and reflection on ethical dilemmas, all of which are crucial for the advancement of their own practice and for the field. This is further accentuated by the lack of appropriate and shared assessment schemes to evaluate their actions and demonstrate the positive contribution they can make to society.[2]

67. Many artists, cultural workers and cultural organizations — even those engaged in globally recognized, groundbreaking and effective initiatives — face enormous difficulties in generating needed financial resources, especially for the long-term commitments that are necessary to address sensitive issues and contribute to trust building. They may also face threats to their livelihoods, economic rights and social security.

68. Accordingly, international agencies, States and local governments, transitional justice entities such as truth commissions, NGOs and cultural institutions need to recognize the potential contributions of artists and cultural workers to creating, developing and maintaining societies in which all human rights can find increased realization and take steps to support their efforts as well as to create more conducive conditions for them to do their creative work, including full respect for their human rights.

B. Enabling and maximizing the positive impact of socially engaged cultural initiatives

69. Under what conditions can actions in the fields of arts and culture make the greatest contribution to the exercise of cultural rights and to achieving more inclusive, peaceful and human rights-respecting societies? The following are a few significant contributing factors to be considered.

1. Respect for human rights

70. For such initiatives to be possible, the right of each person to freedom of artistic expression and creativity must be respected and ensured, in accordance with international standards. Accordingly, right-respecting public policies and vibrant institutions that support cultural engagement and political participation in accordance with international norms are essential. These are necessary preconditions for nurturing best practice in the field. Violation of the human rights, including cultural rights, of those working in the fields of arts and culture, including because of their socially engaged work, are intolerable and must be ended as a matter of urgency. The Special Rapporteur echoes the "call to action" on the issue of attacks on artists recently issued by new Director-General of UNESCO, Audrey Azoulay, who noted the rise in the number of such attacks from a documented 90 in 2014 to 340 in 2015 to 430 in 2016.[3]

71. Initiatives such as the Artists at Risk Connection, a collaborative project led by PEN America to increase resources available to at-risk or persecuted writers and artists, heighten awareness about their situation and build networks, should be supported and multiplied.[4] The Special Rapporteur likewise endorses the suggestion made by Freemuse that international donors should establish specific support programmes for artists and cultural industries victimized by terrorism.[5]

2. Some efforts have been made to gather scientific research demonstrating the impact of artistic and cultural work. See culturalcase.org for examples.

3. The call to action was on Twitter, on the @unescoNOW page on 14 December 2017, citing Re|Shaping Cultural Policies: Advancing Creativity for Development 2018 (Paris, UNESCO, 2017), p. 29.

4. See https://artistsatriskconnection.org/. See also www.icorn.org for another laudable example and links to similar networks.

5. Statement by Freemuse at the interactive dialogue with the Special Rapporteur in the field of cultural rights, held during the thirty-fourth session of the Human Rights Council, 3 March 2017.

72. With regard to infrastructure, public and outdoor spaces have to be made or kept accessible so that a variety of artistic and cultural initiatives can become part of the ordinary flow of people's lives. This contributes to artistic and cultural education and fosters the development of a range of capacities for expression and building bridges across divisive lines in society. States have a specific role in ensuring that both institutional and public spaces are made available for a plurality of cultural initiatives, including those that may express critical views, and that increased opportunities exist for people from a diversity of backgrounds to engage with each other through these spaces. Promoting the notion that public space "has to be inclusive, egalitarian, and guided by issues that revolve around the common good" helps to ensure that a democratic debate takes place among citizens.[6]

73. Increasingly, stakeholders in the field recognize the extent to which effectiveness depends on collaboration and an "ecosystem" of interdependent actors with complementary approaches. Funding schemes that instigate competitive rather than cooperative relationships among local players seeking access to the same pools of money are detrimental. The need for adequate funding in this area is critical, as engaged artists report that funders sometimes shy away from them.

2. Recognition of the importance of participation and contextualization

74. While an international figure with star appeal can attract more attention and funding in the short term, commitment to local forms of expression and artistic production fosters a more sustainable process and sources of resilience, and helps strengthen local means of expression.

75. Participation is a key factor in any human rights approach and is particularly critical to ensure ownership of any cultural processes seeking to address societal challenges of discrimination, human rights violations, exclusion and violence. The forms and levels of participation in artistic and cultural initiatives can vary greatly. For many of these initiatives, the impact does not stop at the end of the performance: people continue to internalize, reflect and feel emotions that may change their perception. Being part of the audience, receiving and witnessing cultural and artistic actions should therefore also be considered an important part of taking part in cultural life. This too is a core part of freedom of artistic expression.

3. Cultivating diversity and combating discrimination at various levels

76. Many successful initiatives benefit from thoughtful integration of diversity: diversity of actors and disciplines, members of concerned groups and local partners, and collaborations between institutions in the fields of the arts, culture, education, truth and reconciliation, human rights, peacebuilding and development, all bringing different perspectives to the process and lifting up dignity. Outsiders can also help local actors take a step back and learn from different experiences. Because people have different sensibilities, diversity is also needed in the means of expression, spaces and opportunities for exploration, encounter and discussion in order to involve a larger number of people.

77. A prerequisite for the needed diversity is actively combating discrimination in the field of cultural rights in accordance with international standards, including discrimination on the bases of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, sexual orientation, gender identity, age, migrant status, disability or poverty. There is also a need to ensure involvement of rural people. Furthermore, the Special Rapporteur recognizes the need for future work on the rights of persons with disabilities to participate fully in such initiatives.

78. One key concern is that of pervasive gender discrimination. For example, UNESCO has noted that a "multifaceted gender gap persists in almost all cultural fields in most parts of the world".[7] This must be tackled so that women can be equal participants in socially engaged

6. See A/HRC/25/49, para. 72.

7. A. Joseph, "Gender equality: missing in action", in Re|Shaping Cultural Policies: Advancing Creativity for Development 2018 op. cit., p. 189.

artistic and cultural initiatives. Required initiatives include the full recognition of and encouragement for women as creative persons, the removal of impediments in their paths towards fully participating in and enjoying arts and culture, and the prevention of gendered attacks on artistic freedom. Such gender-specific attacks include women performers being penalized for their dress, banning of women performing or of broadcast of their performances, particular attacks on feminist art, and suppression of art and culture with lesbian, gay, bisexual or transsexual themes.[8]

79. Another essential step is effectively and urgently combating sexual harassment in the fields of art and culture, which has begun to come to light in part through the brave #MeToo, #BalanceTonPorc, #AnaKaman, #YoTambien and other related social media campaigns in diverse languages around the world, through which many women in the fields of arts and culture have spoken out. These are crucial campaigns for equal cultural rights. In order to promote socially engaged arts and culture that can have a positive impact on society and the enjoyment of human rights, the production practices in these sectors must themselves respect human rights and equality. In the words of Mexican actor Salma Hayek, writing of the sexual harassment she faced while filming the story of socially engaged artist Frida Kahlo, "why do so many of us, as female artists, have to go to war to tell our stories . . .? Why do we have to fight tooth and nail to maintain our dignity? I think it is because we, as women, have been devalued artistically to an indecent state. . . . Until there is equality in our industry, with men and women having the same value in every aspect of it, our community will continue to be a fertile ground for predators."[9]

80. The Special Rapporteur salutes initiatives such as #WakingTheFeminists in Ireland which challenged the dearth of female directors and playwrights represented in the commemoration of the 1916 rising by the Irish national theatre, the Abbey.[10]

8. Ibid., p. 199.

9. S. Hayek, "Harvey Weinstein is my monster too", New York Times, 12 December 2017.

10. Joseph, "Gender equality", p. 193.

IX. Cultural Rights Promotion for Peacebuilding in Serbia and Kosovo, A/HRC/37/55/Add.1
This is the report of the Special Rapporteur in the field of cultural rights on her mission to Serbia and Kosovo from 3 to 14 October 2016. During her visit, she addressed key issues related to the right of people to participate in cultural life, including the right to access and enjoy cultural heritage, without discrimination and irrespective of group affiliations.

The report contains recommendations addressed to the Government of Serbia and the Kosovo authorities, as well as to other stakeholders. . . .
51. Kosovo is a culturally diverse society still recovering from the effects of conflict, with a committed civil society and growing cultural institutions. The majority of the people in Kosovo today are Albanians, with a minority population which includes Serbs, Bosniaks, Gorani, Roma, Ashkali and Egyptians, and Turks. Islam is the majority religion with Serbian Orthodox, Roman Catholic and non-religious minorities, as well as some Muslim minority groups, including Shia. Much has been achieved in the field of cultural rights, but there are also many outstanding problems.

C. Specific issues of concern
1. Funding
52. The Special Rapporteur heard repeated concerns that culture is not prioritized in the budget. There are many excellent ideas and initiatives in Kosovo civil society that could be carried out, but the lack of funds remains the main obstacle for many of them. This means that more adequate allocations by national and municipal authorities are necessary, as well as greater international funding for culture in Kosovo.

2. Protecting cultural spaces
53. The Special Rapporteur heard particular concerns about the impact of privatizations — and the way in which they had been conducted — on public spaces and cultural sites, which are critical to the enjoyment of cultural rights. In Mitrovica/Mitrovicë, the Special Rapporteur was informed that there were no cinemas, except for one space in the cultural centre, which is only sporadically used as a movie theatre. However, she was very pleased to hear that civil society campaigning in Prizren under the rubric "Lumbardhi public again" had been successful in saving the Lumbardhi cinema, and she commends the relevant authorities for responding to this demand.
54. The Special Rapporteur received reports about the lack of adequate consultations with the concerned population about cultural projects. This was reported to be the case regarding the refurbishment of the Mitrovica/Mitrovicë bridge, which is in an area that is especially important for joint cultural programming. However, others insisted that such consultations had been conducted, but that people did not take part. The response to this was that there was a lack of public confidence that input would be heeded. Authorities need to continue to engage in consultations, and in an inclusive and meaningful way.

3. Equality and inclusion
55. Displaced Serbs originally from Kosovo and wishing to return there recounted the difficulties they experienced due to the lack of adequate educational opportunities in the Serbian language. This sometimes results in youth having to use military transport to travel to school and to do so over long distances. Consequently, families have had to move to allow for the schooling of their children. The equal enjoyment of cultural rights is also a critical component of enabling sustainable return.
56. The Special Rapporteur notes with satisfaction the adoption of the law on gender equality, and the quotas for women's participation in public institutions. To date, however, no significant steps have been taken to reach this goal, and the Special Rapporteur regrets that the authorities have declared that these standards are only "guidance", rather than binding provisions. Women's equal cultural rights, including their right to access and enjoy cultural

heritage, must be fully implemented. Indeed, the Special Rapporteur was pleased by the large number of highly qualified women cultural heritage experts with whom she was able to meet, including from the Ministry of Culture, Sports and Youth, as well as from the Prizren Council on Cultural Heritage, among museum professionals and in the civil society sector.

57. Likewise, the Special Rapporteur welcomes the strategy on the rights of persons with disabilities. However, she hopes that in addition to its full implementation, greater attention will be given to their access to cultural life and heritage. The Mitrovica/Mitrovicë cultural centre, which she visited, does not have an elevator, so that the very meeting room used for her civil society consultations would not have been accessible to participants in wheelchairs. The main meeting room at UNMIK itself is not accessible by elevator.

4. Fundamentalism

58. Diverse stakeholders, including religious leaders, officials and women human rights defenders, shared their preoccupations about the impact of radicalization and religious fundamentalism.[1] This was reportedly due in part to funding coming from Gulf countries.[2] Women human rights defenders noted pressure on women in some cases to change their mode of dressing and adopt veiling, and that some individuals now refused to shake the hand of a person from another religion.[3] Members of the Muslim clergy who spoke out against extremists sometimes received threats or were attacked. Many said that a preventive approach and education were key to tackling this problem and protecting the traditionally more tolerant approach to religion. This is not only a security issue but a question of human rights, including cultural rights, and should be addressed as such, in accordance with international standards and as a matter of urgency.

V. Right to access and enjoy cultural heritage in Serbia and in Kosovo

A. General issues

59. During the mission, the Special Rapporteur paid particular attention to the right to access and enjoy cultural heritage. A human rights approach to cultural heritage focuses on relationships between people and heritage, as well as on prevention of its destruction, education about the importance of the heritage of all and support for cultural heritage defenders.

60. Cultural heritage is to be understood as encompassing the resources enabling the cultural identification and development processes of individuals and groups, which they, implicitly or explicitly, wish to transmit to future generations.[4] It must be understood in a holistic way, including the perspectives, contributions and practices of all persons and groups. In Serbia and Kosovo, as important as they are, cultural heritage is not composed only of monasteries and mosques; it also includes artistic, historic and other cultural sites and practices in all their diversity. There should be no monolithic view of what constitutes or can constitute cultural heritage, and cultural heritage should never be used to construct discourses or policies aimed at the exclusion of others. Cultural heritage is, as one local expert underscored, "multilayered".

61. All persons, whether members of ethnic or religious minorities, secular people, women, lesbian, gay, bisexual and transgender people, persons with disabilities or people of mixed identities, have the right to make significant contributions to how cultural heritage is understood, developed and integrated in cultural practices.

62. With regard to the tensions surrounding cultural heritage arising between Serbia and Kosovo in general, the Special Rapporteur wishes to make the following points. Perhaps unsurprisingly, narratives and perspectives about heritage were quite dissimilar depending on where they were expressed and by whom. The Special Rapporteur is concerned about the human rights impact of the perception gap regarding the meaning and importance of different aspects of cultural heritage.

1. On the cultural rights impact of fundamentalism and extremism, see A/HRC/34/56.

2. Carlotta Gall, "How Kosovo was turned into fertile ground for ISIS", New York Times, 21 May 2016.

3. On the impact of fundamentalisms on the cultural rights of women, see A/72/155.

4. See A/HRC/17/38, paras. 4-5; and A/71/317, para. 6.

63. She deeply regrets discourses disputing the importance of the cultural heritage of the Serbian Orthodox Church in Kosovo, or intentionally omitting mention of the specific relationship of the Serbian Orthodox Church with certain sites. Conversely, she greatly regretted encountering discourses minimizing the importance or even the existence of the cultural heritage of Kosovo Albanians. Both discourses are damaging to human rights and offensive, and must evolve in accordance with cultural rights standards.

64. Fortunately, some people in civil society from diverse backgrounds are eager to combat such perspectives. The Special Rapporteur appreciated those who echo such universalist views as "culture can never be divided". This mirrors the historical practice of sometimes shared protection and repair of heritage sites in the region, which reflected coexistence. One positive current example was the organization of joint events by a civil society group in Mitrovica/Mitrovicë, with people of mixed backgrounds to visit each other's sites of cultural significance. Such activities were curtailed due to lack of funding and need all possible support, from Serbia, from Kosovo, and from the international community.

65. While particular aspects of heritage have special resonance for and connections to specific groups, it is critical to enhance the notion of heritage as a shared common good important for all. The Special Rapporteur was glad to hear some official rhetoric in this regard. The challenge before people in Serbia and Kosovo is for everyone to equally embrace the heritage of "the other".

66. The Special Rapporteur is encouraged by the fact that she met people from all backgrounds who care deeply for cultural heritage, including that of others. They must overcome obstacles posed by the current situation to realize such views. For example, a Serb academic indicated that he would like to be able to take his students to visit monuments in Kosovo but was not sure that it would be possible given the political climate. Some Kosovo Albanians indicated that they felt unwelcome at Serbian Orthodox sites. Exchanges and visits must be organized and encouraged.

67.Some stressed to the Special Rapporteur the importance of adopting a regional approach to cultural heritage which would be inclusive, could transcend political limitations and promote interactions around heritage.

Legacy and impact of "destructions"[5]

68. The UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage defines "intentional destruction" as "an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience". The label of intentional destruction may also apply in cases of wilful neglect.

69. The mandate of the Special Rapporteur on cultural rights is not designed to protect culture and cultural heritage per se, but the conditions allowing all people without discrimination to access, participate in and contribute to cultural life in a continuously developing manner. These conditions are greatly jeopardized when cultural heritage is at risk or destroyed. Therefore, prima facie, destruction of cultural heritage must be considered as a violation of cultural rights.[6]

70. The histories of widespread destruction of cultural heritage in Serbia and Kosovo during and after the conflict of 1998/99 are appalling. Many accounts and statistics are available on

5. As in her previous report, the Special Rapporteur has used the term "destructions" in certain circumstances to underscore the multiplicity and diverse nature of the phenomenon.

6. See A/71/317, para. 13.

the harm done to cultural heritage associated with either Serb or Kosovo Albanian sites.[7] Religious sites and cemeteries, as well as entire villages, have reportedly been destroyed. However, the Special Rapporteur did not receive any encompassing local accounts of the overall destruction in Serbia and Kosovo acknowledging the harm done to sites associated with all parts of the population. A holistic approach is crucial.

71. There is also a need for mutual acknowledgment of the harm that has been done in the past by attacking heritage related to various groups and the suffering this has caused. Serbs and Kosovo Albanians must recognize that they have been both victims of the destruction of cultural heritage and its perpetrators, and transcend simplistic victim narratives which overlook the violations of the cultural rights and the suffering of others. Lasting peace and reconciliation require no less. The Special Rapporteur refers to the many reports of widespread attacks against and destructions of mosques, historic centres, *kullas* (traditional houses) and cultural sites such as archives committed by Serbian security forces and paramilitaries in 1998/99 in Kosovo, as well as against churches committed by the Kosovo Liberation Army and others in the summer of 1999. She also refers to the intentional destruction of, or damage to, in particular, at least 35 listed Orthodox monuments and churches between 17 and 19 March 2004,[8] followed by numerous attacks and incidents against Serbian Orthodox cultural heritage, reportedly including cemeteries and icons, since then; and retaliatory attacks during and after the events of March 2004. . . .

7. From a Serb perspective, see Branko V. Jokić and others, The March Pogrom 2004-2014: Ten Years Later, Office for Kosovo and Metohija, Government of the Republic of Serbia, 2014 (detailing destruction or damage to 35 heritage-listed Orthodox churches, burning of 800 Serb homes, killings of several dozen people and expulsions of thousands "as an orchestrated process of cultural engineering for which there has been impunity"). See also Ljubiša Folić, Crucified Kosovo: Desecrated and Destroyed Orthodox Serbian Churches and Monasteries in Kosovo and Metohija (June 1999–May 2001), 3rd ed., Serbian Orthodox Church, Diocese of Raška and Prizren, 2001 (alleging a "systematic strategy" of "annihilation of all traces" of Serb and Christian culture in Kosovo and Metohija along with the mass exodus of Serbs from the territory and detailing attacks against Serbian Orthodox religious sites, and listing several cases of murder of Orthodox clergy). From a Kosovo Albanian perspective, see Ditunia Islame, Serbian Barbarities Against Islamic Monuments in Kosova (February '98–June '99), 2000 (detailing "planned" destruction of Islamic monuments, including mosques and Islamic community councils, and killing of imams, alleged to be part of a "Serbian genocide" and "culturocide").

8. Some Serb interlocutors argued that these events were concerted, not spontaneous, something which some Kosovo Albanian interlocutors denied. There have been some trials related to these events in Kosovo courts. These have been criticized by the Organization for Security and Cooperation in Europe (OSCE) for, inter alia, failure to account for the "ethnic motive" and lenient sentences for setting religious monuments on fire. See OSCE, Four Years Later: Follow Up of March 2004 Riots Cases by the Kosovo Criminal Justice System, 2008.

X. Witchcraft and Human Rights Protection, A/HRC/37/57/Add.2

The expert workshop on witchcraft and human rights took place on 21 and 22 September 2017 in Geneva. Its objective was to advance the discourse on the phenomena of witchcraft and its various manifestations, both generally and in the context of harmful practices, to ultimately ensure the enjoyment of human rights by all victims. The workshop's outcomes, summarized in the present document, indicate a rich plurality of experiences around the phenomena and a consensus condemnation of the common issues of harm and impunity, among others. Participants adopted concrete recommendations on the way forward, in the framework of international human rights law. . . .

8. In her capacity as overall moderator, Kirsty Brimelow QC, Chair, Bar Human Rights Committee of England and Wales, opened the meeting by thanking the sponsors. She highlighted the historic nature of the event as the first international, in-depth exploration of the nature and impact of witchcraft on human rights, the result of collaboration between United Nations experts, academics and civil society organizations.

9. The Deputy High Commissioner for Human Rights in her statement highlighted that the purpose of the workshop was to alleviate human suffering, which could and must be prevented. In that regard, the workshop's aim of creating a visible pathway towards ending the egregious bodily harm perpetrated in connection with witchcraft was vital. The core concern was with harm, not belief, and with deeds, not thoughts. Whatever the justification — witchcraft, spirituality, religion, political ideology, ignorance, tradition or fad — beatings, banishment, cutting off body parts of people with albinism, amputation of limbs, torture and murder constituted appalling violations of human rights.

10. The Deputy High Commissioner referred to the many courageous human rights defenders who had addressed the issue and sought local solutions. And yet, robust State-led responses were still missing. In such a context, an accusation of witchcraft provided a convenient justification for community and social exclusion. Such exploitation was a consequence of the failure of the State to provide necessary health, education and justice services and community strengthening for those most at risk from catastrophe. In conclusion, she stressed that efforts to address those issues had to rely on the existing conceptual and practical building blocks of the human rights framework and be guided by the voices of those who had borne the brunt of institutional failure, bigotry and fear.

11. The Permanent Representative of Sierra Leone to the United Nations Office at Geneva, drew attention to her country's role in raising the issues under discussion at the Human Rights Council and in supporting the creation of the mandate of the Independent Expert on the enjoyment of human rights by people with albinism, whose work she applauded. She also drew attention to the need to address the connection between albinism and related misbeliefs — both positive and negative — in witchcraft. In that context, she highlighted the need for clarity of definitions and distinctions, for example, between witch doctors, traditional healers and fortune tellers.

12. The Deputy Permanent Representative of Portugal to the United Nations Office at Geneva echoed the previous presentations on the historical significance of the meeting, the focus upon harm rather than beliefs and the need to deliver a set of workable and comprehensive recommendations. Finally, a representative of the Permanent Mission of Israel congratulated the organizers and reaffirmed its support to the mandate of the Independent Expert on the enjoyment of human rights by persons with albinism. The representative recognized that witchcraft beliefs and practices led to serious human rights violations, in particular of vulnerable groups such as children, women, the elderly, persons with disability and persons with albinism. In order to ensure their protection, the workshop was expected to further help the United Nations, States and civil society to further comprehend and tackle the issue. In this endeavour, Israel believed in the fundamental role of education and the role of the State.

64. A main outcome of the expert workshop is the identification of a variety of impacts of witchcraft beliefs, all amounting to serious human rights violations. These include attacks and

mutilation, human trafficking and human sacrifice. In this regard, many experts confirmed that the number of cases reported are often significantly lower than the reality, since many instances of these human rights violations are unreported or unmonitored by official entities.

65. The expert workshop also provided insights on the definition or conceptualization of "witchcraft", recommending the use of an umbrella definition at the international level that covers the plurality of manifestations of witchcraft, with a focus on harmful practices and States' obligations as defined by international human rights law. The workshop recognized the need for awareness-raising about the practical consequences of language and the need to focus on harm, not on beliefs — even though the latter may also be addressed through public education and similar activity that enhance the conditions for human rights to thrive.

66. In an effort to identify what to include or encompass in the term "witchcraft", the following elements were brought to the fore. Witchcraft is a deeply rooted reality, engrained in societies that serve as a system of explanation as well as of exploitation of misfortune. It is fuelled by misbeliefs in supernatural powers and misconception of public health issues. Witchcraft is a global phenomenon that is part of a wider system of oppression that often amounts to a criminal enterprise.

67. The experts recognized that witchcraft involves harmful practices in breach of international human rights standards and obligations, notably regarding human trafficking, violence against women, the duty of due diligence, the right to life and the duty of protection requiring firm and immediate action, and the duty to prevent and prosecute harmful practices and hate crimes. In this respect, international human rights law provides a robust framework to address harmful practices and other human rights violations resulting from witchcraft beliefs and practices. Children are particularly vulnerable and need safeguarding, including early interventions to tackle risks of witchcraft accusation or ritual killings. The latter are motivated by financial gain and amount to extreme violence, essentially targeting some of the most vulnerable such as persons with albinism in sub-Saharan Africa.

68. The expert workshop recognized that witchcraft-related human rights violations are occurring in all regions of the world, although manifestations vary. Likewise, the expert workshop acknowledged the relevance of religious beliefs and the role of religious institutions representing all confessions in understanding and addressing the issue. In the course of deliberations, it was noted that there were no experts at the workshop from the region of Latin America and from the religion of Islam. For future work, further attention to these areas are needed. Another area of deep concern that emerged during the workshop and that require attention in the future is the use of witchcraft-related practices as a coercive force in the context of human trafficking.

69. The expert workshop identified a range of practical recommendations to address human rights violations caused by witchcraft beliefs and practices. The experts recommended a comprehensive and multilevel response, notably based on a number principles and priority areas of intervention. These would require the competent agents to:

(a) Use the international human rights framework;
(b) Adopt legislative and institutional measures;
(c) Ensure access to justice, including increased budgets for the judiciary;
(d) Carry out education and awareness campaigns, including health awareness;
(e) Undertake data collection and monitoring;
(f) Support participatory research to better understand the causes;
(g) Establish vigilance committees to ensure community-level protection;
(h) Foster respect for international, national and local leaders;
(i) Ensure official records of birth and death;
(j) Promote the engagement of faith leaders to address the issue;
(k) Address risk factors, including improving access to basic social services and protection services;
(l) Initiate reviews of and amendments to legislation, including specific witchcraft acts that reflect human rights standards;
(m) Ensure the recovery and reintegration of victims, in particular children.

70. This comprehensive and multilevel response also needs to include specific actions by Governments in line with international human rights obligations. Governments are therefore urged to:

(a) Initiate reviews of and amendments to legislation, including witchcraft acts that reflect human rights standards.

(b) Develop programmes of awareness-raising to combat harmful practices and to support a process of social change to promote positive practices and beliefs;

(c) Engage and empower all concerned, particularly women, children, persons with disabilities and, in particular, persons with albinism and other vulnerable groups such as the elderly;

(d) Adopt a national plan to end the discrimination and harmful practices related to beliefs in witchcraft;

(e) In sub-Saharan Africa, adopt the Regional Action Plan on Albinism (A/HRC/37/57/Add.3) to end attacks and related human rights violations against persons with albinism;

(f) Build capacities and undertake training of the judiciary and law enforcement agencies on witchcraft-related harmful practices;

(g) Prohibit and/or regulate advertisement of witchcraft practices, particularly in the media;

(h) Improve primary health care and health education about disease to reduce the belief in witchcraft as a cause of illness;

(i) Regulate religious activities to prevent related harmful practices, in the absence of self-regulating mechanisms;

(j) Carry out multi-stakeholder campaigns to dismantle myths that promote witchcraft-related harm;

(k) Foster collaboration between faith-based organizations and non-faith-based organizations.

71. Some ways forward in addressing the issue of witchcraft and human rights are to:

(a) Launch a global movement against harmful practices related to beliefs in witchcraft;

(b) Address the beliefs and motivation behind witchcraft accusations and ritual attacks;

(c) Further engage regional mechanisms, in particular in Africa and South Asia;

(d) Promote United Nations resolutions on witchcraft and human rights to prompt an international response;

(e) Establish an international fund at the United Nations to address these issues and support civil society organizations and victims;

(f) Engage with the 2030 Agenda for Sustainable Development under the principle of leaving no one behind, starting first with the victims of witchcraft-related harmful practices as they are among the furthest behind.

XI. Principles and Practical Guidance on the Protection of the Human Rights of Migrants in Vulnerable Situations, A/HRC/37/34/Add.1

Principle 1
Ensure that human rights are at the centre of efforts to address migration in all its phases, including responses to large and mixed movements.
Principle 2
Counter all forms of discrimination against migrants.
Principle 3
Ensure that migrants have access to justice.
Principle 4
Protect the lives and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance.
Principle 5
Ensure that all border governance measures protect human rights
Principle 6
Ensure that all returns fully respect the human rights of migrants and comply with international law.
Principle 7
Protect migrants from torture and all forms of violence and exploitation, whether inflicted by State or private actors.
Principle 8
Uphold the right of migrants to liberty and protect them from all forms of arbitrary detention. Make targeted efforts to end unlawful or arbitrary immigration detention of migrants. Never detain children because of their migration status or that of their parents.
Principle 9
Ensure the widest protection of the family unity of migrants; facilitate family reunification; prevent arbitrary or unlawful interference in the right of migrants to enjoy private and family life.
Principle 10
Guarantee the human rights of all children in the context of migration, and ensure that migrant children are treated as children first and foremost.
Principle 11
Protect the human rights of migrant women and girls.
Principle 12
Ensure that all migrants enjoy the highest attainable standard of physical and mental health.
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.
Principle 16
Uphold migrants' right to information.
Principle 17
Ensure that all responses to migration, including large or mixed movements, are monitored and accountable.
Principle 18
Respect and support the activities of human rights defenders who promote and protect the human rights of migrants.
Principle 19
Improve the collection of disaggregated data on the human rights situation of migrants while protecting personal data and their right to privacy.

Principle 20

Ensure human rights-based and gender-responsive migration governance.

1. The Principles in the present document are derived from international human rights law and related standards. Selected extracts of relevant international law as well as relevant regional standards are listed.
2. The Principles also draw on the general comments of international human rights law treaty bodies, United Nations resolutions and international and regional case law. While these documents are referenced in the annotations to the Principles and Guidelines, they are not separately referenced for reasons of space. The international bill of rights (UDHR, ICCPR and ICESCR) distinguishes between nationals and non-nationals with respect to only two rights, and only in limited circumstances. Article 25 of ICCPR reserves to citizens the right to vote and take part in public affairs, and article 12 reserves the right to freedom of movement within a country to foreigners who are lawfully present within the country. However, in its general comment No. 15 (1986) on the position of aliens under the Covenant, the Human Rights Committee has stated that a foreigner may enjoy the protection of article 12 even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise (para. 2). Article 2 (3) of ICESCR establishes one limited exception to the principle of non-discrimination on grounds of nationality in the enjoyment of the rights of the Covenant. This provision states: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." However, article 2 (3) must be narrowly construed, and the exception applies only to developing countries and it only concerns economic rights. Under ICESCR, a State may not discriminate on grounds of nationality or legal status. Any distinction, exclusion, restriction or preference, or other differential treatment on grounds of nationality or legal status, should be in accordance with the law, pursue a legitimate aim and remain legitimate to the aim pursued. See the statement by CESCR, "Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2017/1), paras. 3, 5, 6 and 8; Human Rights Council resolution 32/14, "Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements"; and report of the Special Rapporteur on the human rights of migrants, "Regional study: management of the external borders of the European Union and its impact on the human rights of migrants" (A/HRC/23/46), paras. 36, 42 and 82. Similarly, it is accepted in international law that international treaties apply to all individuals in the territory of a State. See Declaration on the Human Rights of Individuals Who are not Nationals of the Countries in which they Live, General Assembly resolution 40/144, annex, art. 1. See also Beijing Platform for Action adopted at the Fourth World Conference on Women, paras. 58 (k) and 147 (h); Durban Programme of Action, para. 26; New York Declaration for Refugees and Migrants, General Assembly resolution 71/1, para. . . .

The principle of non-discrimination is central to all international human rights instruments (see in this document "How international law informs the principles"). The rights guaranteed in international human rights treaties apply to everyone, including migrants and other non-nationals, without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including immigration status. The prohibition of discrimination in the workplace is also affirmed in two fundamental conventions of the International Labour Organization (ILO): the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Paragraph 28 of the resolution concerning a fair deal for migrant workers

in a global economy, adopted by the International Labour Conference at its 92nd session in 2004, affirms: "It is important to ensure that the human rights of irregular migrant workers are protected. It should be recalled that ILO instruments apply to all workers, including irregular migrant workers, unless otherwise stated." See also Human Rights Committee, general comment No. 15, paras. 1–2; Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, paras. 3 and 10; E/C.12/2017/1, paras. 3, 5, 6 and 8; CESCR, general comment No. 20, throughout but particularly paras. 11, 12, 24, 30 and 39; CERD, general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination; CERD, general recommendation No. 30, paras. 7–9 and, generally, CEDAW, general recommendation No. 26, paras. 1 and 5; CEDAW, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, paras. 12 and 18; CEDAW, general recommendation No. 32, para. 6; CWM, general comment No. 2, paras. 2, 8, 12, 18–20 and 76; CRPD, general comment No. 1 (2014) on equal recognition before the law, paras. 4–7, 25 and 32–35; CRPD, general comment No. 2 (2014) on accessibility, para. 13; CRPD, general comment No. 3 (2016) on women and girls with disabilities; United Nations Principles for Older Persons, General Assembly resolution 46/91, annex, principle 18; Beijing Declaration, para. 32, and Platform for Action, para. 225; Durban Declaration, paras. 2, 12, 48, 49 and 51, and Programme of Action, paras. 24, 26–27 and 30–31; Commission on the Status of Women, agreed conclusions of the sixtieth session.

XII. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/37/53

In the present report, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context provides States and other actors with concrete guidance on implementing effective rights-based housing strategies. The report explains the difference between a housing strategy and housing policy. It outlines the value of a human rights-based approach to housing strategies and describes the key principles upon which effective rights-based housing strategies must be based. While there is no "one size fits all" housing strategy, the Special Rapporteur identifies the most important requirements of each principle that should be shaped to fit specific national and local contexts. These draw both on human rights norms — as articulated by United Nations treaty bodies, courts and human rights institutions — and on the practical experiences of the Special Rapporteur, various levels of government, civil society, experts and other actors. The report also provides examples of how these key principles have been implemented in practice, in diverse national or local contexts. The report concludes with a checklist to facilitate the design, monitoring, financing and implementation of human rights-based housing strategies. . . .

IV. Key Principles of Rights-Based Housing Strategy

Principle 1: based in law and legal standards

16. The right to housing should be recognized within housing strategies as a legal right, subject to effective remedies. Rights-based housing strategies should be based in legislation that recognizes the right to adequate housing in all of its dimensions. In addition to relying on constitutional or legislative recognition of the right to housing, strategies should reference and adhere to the right to housing as it is guaranteed in international human rights law. . . .

In practice

23. Different legal traditions and policy contexts allow for a range of articulations of the right to housing. Many national constitutions now recognize it explicitly; others affirm governments' responsibility to adopt policies to promote or ensure access to housing. Elsewhere, courts have adopted inclusive interpretations of other constitutional rights, such as the right to life, to guarantee the right to housing. Some States rely primarily on legislation to protect the right to housing. . . .

Principle 2: prioritize those most in need and ensure equality

29. The right to equality and non-discrimination must be protected in all aspects of housing strategies. Guaranteeing these rights and ensuring effective remedies are immediate obligations. . . .

In practice

41. In many cases, although strategies claim to prioritize those most in need, they impose requirements that serve to disqualify them. For example, requirements such as cash down payments, personal identification, documentary proof of title or zoning approval, or historical occupancy, all act as barriers to many people in need of adequate housing. . . .

Principle 3: comprehensive and whole-of-government

48. Rights-based housing strategies must ensure that all dimensions of the right to adequate housing are addressed in diverse contexts. The Committee on Economic, Social and Cultural Rights has defined the right to adequate housing as the right to live in security, peace and dignity. Within that broad definition, the Committee has identified seven key features of adequate housing in its general comment No. 4: legal security of tenure; affordability; habitability; availability of services; accessibility; location; and cultural adequacy. Other dimensions of "adequacy" have been articulated to ensure coverage, for example, of the housing experiences of persons with disabilities and women.[1]

1. See A/72/128, paras. 8–32; and A/HRC/19/53, paras. 12–13.

In practice

56. Many national housing strategies have adopted a rights-based framework in some respects but have lacked comprehensiveness and, on that account, have been less effective. . . .

Principle 4: rights-based participation

61. Rights-based housing strategies must firmly commit to ensuring meaningful participation of affected persons at every stage, from design to implementation to monitoring. Participation is central to human rights-based housing strategies because it challenges exclusion and silencing. Strategies must recognize that violations of the right to housing and other human rights emanate from failures of democratic accountability to people. . . .

In practice

68. In establishing a framework for dialogue between local governments and communities affected by eviction and displacement, the South African Constitutional Court has developed the concept of "meaningful engagement", where the parties make decisions together based on compliance with the right to housing.[2]

Principle 5: accountable budgeting and tax justice

73. Strategies will not be successful if governments fail to allocate reasonable budgets and resources for their implementation. Housing strategies must include both short- and long-term commitments of adequate resources. . . .

In practice

85. In Kenya, where participation in public financial management is included in the Constitution, participatory budgeting is being tested to implement the provision. The initial results indicate greater participation, particularly by women, and budget allocations have shifted to a focus on upgrading facilities rather than flagship projects.[3]

Principle 6: human rights-based goals and timelines

89. Rigorous human rights-based goals and timelines are required to ensure that housing strategies move as expeditiously as possible toward the goal of adequate housing for all and realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.[4]

In practice

98. Though many States and local governments have committed to ending homelessness, successes are few and far between. The city of Medicine Hat, in Alberta, Canada, proclaimed in 2015 that it had ended homelessness, by which it meant that no one there lived in a homeless shelter for more than 10 days before being allocated permanent housing. In Spokane, United States, a plan was adopted to end chronic homelessness by 2017 and family homelessness by 2018. The plan is based on the belief that access to housing is a basic human right. However, the goal has not been achieved. . . .

Principle 7: accountability and monitoring

101. Effective monitoring of the implementation and outcomes of housing strategies is a firm obligation of States.[5]

In practice

107. In Spain, the Ombudsman has the authority to make recommendations to public authorities and the legislator and may generate or propose modifications to legislation. The ombudsman

2. See L. Chenwi and K. Tissington, "Engaging meaningfully with government on socioeconomic rights: A focus on the right to housing" (University of the Western Cape, 2010), p. 10. Available from https://docs.escr-net.org/usr_doc/Chenwi_and_Tissington_-_Engaging_meaningfully_with_government_on_socio-economic_rights.pdf.

3. See http://blogs.worldbank.org/governance/citizen-engagement-kenya-law-practice.

4. See general comment No. 3, para. 9; and general comment No. 4, para. 14.

5. See general comment No. 20, para. 11.

analysed the causes of the mortgage crisis in Spain and its consequences for vulnerable groups and made extensive recommendations.[6]

Principle 8: ensuring access to justice

110. Rights-based strategies must include effective claiming mechanisms that guarantee access to remedies where a violation is found. Such mechanisms can play a vital role in ensuring that housing systems operate inclusively and effectively. They allow marginalized groups to identify unmet housing needs, draw attention to circumstances that have been neglected or ignored and identify laws, policies or programmes that deny access to adequate housing. They provide rights holders with the opportunity to identify appropriate remedies or solutions to their housing problems. . . .

In practice

115. In France, the "DALO" law establishes amicable settlement procedures and litigation options in the case of a violation. In one case, the Government was fined 12.9 million euros for failing to provide housing in compliance with the law.[7]

Principle 9: clarify the obligations of private actors and regulate financial, housing and real estate markets

118. In most countries, the private sector plays a predominant role in the production and provision of housing and related services. Housing strategies are therefore likely to be ineffective if they ignore the significant role of private actors. Relevant private actors range from small-scale landlords to real estate developers and construction companies to multinational corporate landlords, and AirBnB and other short-term rental providers. They also include banks and other financial institutions, international hedge funds and multibillion dollar private equity firms. . . .

In practice

127. In Argentina, the Fair Access to Habitat Law requires large property developments, such as country clubs and gated communities, to relinquish 10 per cent of the land or of the cost of property to be used for social housing. The law also prohibits evictions from informal settlements and allows for an increase in taxes on property when its value increases because of neighbourhood development. The funds collected are applied to upgrade informal settlements and improve precarious housing conditions. . . .

Principle 10: implement international cooperation and assistance

131. Housing strategies are primarily focused on realizing the right to housing within States and ensuring that domestic policies and programmes are designed and implemented to ensure adequate housing for all, in line with commitments made in the New Urban Agenda and the 2030 Agenda. At the same time, however, States must recognize that many of the challenges addressed in housing strategies are global in nature and also require international action. . . .

In practice

139. In 2013 in Nigeria, during a period in which Lagos State was receiving World Bank funding for infrastructure and upgrading, the Government forcibly evicted 9,000 people from the Badia East community. The eviction was contrary to World Bank safeguard policies with which the Government had agreed to comply. The Social and Economic Rights Action Center submitted a request to the World Bank Inspection Panel asking it to investigate the evictions. Instead, the Panel initiated a pilot approach to pursue negotiated solutions with the community. This resulted in a resettlement action plan that provided some compensation and a grievance mechanism. Members of the community involved in the original

6. See www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/Ndp_hipotecas_en.pdf.

7. See C. Lévy-Vroelant, "The Right to housing in France: Still a long way to go from intention to implementation", in Osgoode Hall Journal of Law and Social Policy, vol. 24 No. 5, p. 102. Available from http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1210&context=jlsp.

complaint were not satisfied with the agreement. However, the Panel declined to proceed with the investigation.[8]

Conclusions and recommendations

144. In the revision or development of housing strategies necessary to meet the commitments contained in the New Urban Agenda and the 2030 Agenda, the Special Rapporteur recommends that the following human rights-based strategy "checklist" be used in conjunction with the specific measures identified above:

(a) Is there legislation to give the housing strategy legal effect? Does it recognize the primacy of the right to housing as a legal right subject to effective remedies? Does it map a process for its realization, identifying both immediate and progressive obligations consistent with maximum of available resources?

(b) Does the strategy prioritize those most in need, ensure substantive equality and respond to the particular circumstances of groups facing discrimination? Are the effects of colonization addressed in a manner consistent with the United Nations Declaration on the Rights of Indigenous Peoples?

(c) Is the strategy comprehensive, including all dimensions of the right to housing and addressing all relevant issues, policies, groups and regions? Does it engage all levels and spheres of government?

(d) Does the strategy ensure rights-based participation through specific mechanisms? Is meaningful participation guaranteed in the design, implementation and monitoring of the strategy, and is support provided for the participation of marginalized groups?

(e) Does the strategy ensure the allocation of maximum available resources? Does it include measures to address inequalities and injustices in the tax system, including tax avoidance, and does it ensure that taxation promotes the realization of the right to housing?

8. See World Bank, "Lagos Metropolitan Development and Governance Project" (Washington, D.C., 2015). Available from http://projects.worldbank.org/P071340/lagos-metropolitan-development-governance-project?lang=en.

XIII. Report on the third session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, Chair-Rapporteur: Guillaume Long, A/HRC/37/67

1. The open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights was established by the Human Rights Council in its resolution 26/9 of 26 June 2014, and mandated to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises with respect to human rights. In the resolution, the Council decided that the Chairperson-Rapporteur should prepare elements for the draft legally binding instrument for substantive negotiations at the commencement of the third session of the working group, taking into consideration the discussions held at its first two sessions.1

2. The third session, which took place from 23 to 27 October 2017, opened with a video statement by the United Nations High Commissioner for Human Rights. He congratulated the former Chair-Rapporteur for successfully steering the first two sessions in a manner that laid fertile ground for the preparation of the elements and recognized that the treaty process had entered a new phase to discuss such elements. He noted that the Guiding Principles on Business and Human Rights were an important step towards extending the human rights framework to corporate actors. He stated that there was no inherent dichotomy between promoting the Guiding Principles and drafting new standards at the national, regional or international level aimed at protecting rights and enhancing accountability and remedy for victims of corporate-related human rights abuses. He reiterated his commitment and full support to the working group, and expressed his hope that the recommendations from the accountability and remedy project of the Office of the United Nations High Commissioner for Human Rights (OHCHR) could provide useful contributions to the discussion during the third session.

3. The High Commissioner's remarks were followed by a statement of the President of the Human Rights Council, who emphasized the role that human rights must have in relation to business in a globalized world. He noted that seeking consensus and engaging in constructive cooperation and dialogue was the spirit of the first two sessions and would be key to fulfilling the mandate provided by resolution 26/9. The President further recalled the close link between the 2030 Agenda for Sustainable Development and the development of human rights, which justified its use as a starting point to form the objectives of the working group process.

4. The Director of the Thematic Engagement, Special Procedures and Right to Development Division referred to the recommendations of the accountability and remedy project, aimed at enhancing the effectiveness of national judicial systems in ensuring accountability and access to remedy, including in cross-border cases, which could inform the working group process. She expressed the willingness of OHCHR to provide further substantial or technical advice to the working group as appropriate. . . .

Panel IX. Mechanisms for promotion, implementation and monitoring

117. The first panellist suggested that drafters focus on four principles in that section. First, accountability, lessons on which could be drawn from processes regulating business conduct outside of the human rights context, such as the World Bank Inspection Panel. Second, transparency, given the importance of access to information. Third, participation, although caution should be exercised regarding abuse by the private sector. Fourth, cooperation, which should be ensured at the national, regional and international levels.

118. The second panellist discussed cases in which victims were unable to access justice through existing institutions. She argued for the creation of an international court for affected individuals and communities to hold transnational corporations accountable. While supportive of the creation of an ombudsman, as proposed in the elements, she claimed that that would not be an adequate substitute for an international judicial body.

119. The third panellist welcomed that section in the elements document and noted that international mechanisms were needed. Implementation lay foremost with national jurisdictions,

but a complementary, properly resourced international court should exist when national jurisdictions fail. The treaty body proposed in the elements would also be welcome and should be endowed with the ability to make recommendations, as well as referrals to the international court.

120. Several delegations and NGOs welcomed the inclusion of that section and the creation of mechanisms to promote, implement and monitor a future instrument. Many called for the ability of victims to directly access those mechanisms, and an additional provision to protect against retaliation by those who engaged those mechanisms was mentioned. Some argued that, without enforcement mechanisms, the instrument would not be properly implemented. Other delegations questioned the usefulness of creating a new mechanism, arguing that the focus should be on strengthening existing institutions. One delegation reiterated that States had the prerogative to decide on how to enforce its treaty commitments. It was also noted that there should be more reliance on national action plans in order to bring the treaty to the national level. One delegation asked how the instrument could strengthen non-judicial mechanisms and what the role of national human rights institutions could be in that regard.

121. Several delegations approved of the establishment of an international judicial mechanism to hear complaints regarding violations by transnational corporations, including through the establishment of special chambers in already existing regional courts, noting that victims and certain States had been calling for the creation of such institutions for some time. However, questions were raised as to whether an international court could be effective or delay negotiations for years, and there were concerns regarding budgetary and political issues involved with establishing a court. A question was asked whether that referred to past deliberations over the International Criminal Court, whether it was an appeal to broaden the jurisdiction of the Court and whether the proposal was feasible.

122. Delegations expressed support for the creation of an international committee to monitor the treaty, and it was noted that the creation of a committee would not preclude the creation of other institutions or the involvement of national human rights institutions and ombudspersons. Some delegations approved of the proposed functions of that committee in the elements, including examining periodical reports and individual and collective communications. It was suggested that that body should consider victims as its centre of attention, and that it could foster international cooperation, technical assistance and share best practices. An expectation for a draft text of the treaty by the Chair-Rapporteur in the next session was highlighted.

123. Additionally, some delegations proposed the establishment of a non-judicial, peer review mechanism, and some NGOs suggested creating a monitoring centre that could be jointly run by States and civil society.

J. Panel X. General provisions

124. One NGO welcomed a provision in the section on general provisions regarding the primacy of a future instrument over other obligations from trade and investment legal regimes. It also stressed the importance of allowing for the participation of civil society and affected communities.

K. Panel. Victims' voices

125. Five panellists provided introductory remarks, commenting on a range of issues, including violations of indigenous peoples' rights, abusive practices in drug patenting and pricing, harm caused by agricultural projects, impunity relating to toxic pollution, development projects displacing communities and the role of international financial institutions in supporting harmful practices.

126. The panellists' presentations were followed by interventions from delegations and NGOs, highlighting specific cases of abuse and State failure to implement existing human rights obligations. Some delegations defended the adoption of a balanced, victim-centereddocument. It was highlighted that States should participate in that process and not stop codifying just because existing treaties were not implemented. There was a call for strengthening existing institutions and implementation of existing instruments, such as the Guiding Principles; guidance in that regard could be drawn from initiatives such as the OHCHR accountability and remedy project.

Others expressed the view that existing institutions and instruments were failing to ensure the protection of victims, and that the creation of a legally binding instrument to oblige States and transnational corporations and other business enterprises to comply with human rights standards, and the creation of mechanisms to enforce such obligations, were necessary to address shortcomings in the current system. Delegations and NGOs stressed the importance of victims' participation in those processes, the need to ensure that they obtained redress when their rights were violated, and the importance of protecting human rights defenders. One regional organization stated that those who had suffered human rights violations by States, as well as those that were victims of abuses by non-State actors, had a right to access justice and a right to effective remedy, and insisted that States must implement existing obligations. . . .

XIV. Development of a National Action Plan to Implement Recommendations of Human Rights Mechanisms in Haiti, A/HRC/38/30

1. The present report is submitted pursuant to the statement by the President of the Human Rights Council on 24 March 2017 (A/HRC/PRST/34/1), which called upon the Government of Haiti, with the assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the special procedures of the Council, and the Interministerial Human Rights Committee of Haiti, in close consultation with civil society, the Office of the Ombudsperson and other stakeholders, to prepare an action plan to implement the recommendations made by international human rights mechanisms, including those made in the context of the universal periodic review and by the Independent Expert on the situation of human rights in Haiti.[1] In the statement, the President also requested the Government to establish a national mechanism for reporting and monitoring the fulfilment of targets and indicators related to technical assistance programmes in the field of human rights; determine a timeline for achieving the objectives set; and identify resources to implement the plan. The President requested the High Commissioner for Human Rights to submit a written report on the implementation of the plan to the Council at its the thirty-eighth session.

2. In October 2017, the Security Council established the United Nations Mission for Justice Support in Haiti, mandating it to assist the Government in strengthening rule-of-law institutions, supporting the Haitian National Police and engaging in the promotion and protection of human rights (Security Council resolution 2350 (2017)). Through the human rights component of the Mission for Justice Support, OHCHR has been advocating for the appointment of a high-level human rights focal point in the executive branch to facilitate the development of a national human rights action plan. OHCHR has also continued to support the work of the national human rights institution. The present report is based on the monitoring and technical assistance of the human rights component.

3. In the report, the High Commissioner provides an overview of the preparation of a national human rights action plan. He also addresses concerns raised in the statement by the President of the Human Rights Council related to the implementation of key outstanding recommendations made by various international human rights mechanisms, including the former Independent Expert on the situation on human rights in Haiti, to be considered in the elaboration of an action plan (see A/HRC/31/77, paras. 105–111, and A/HRC/34/73, paras. 99–107). Thus, the report includes information and recommendations about the persisting practice of prolonged pretrial detention, efforts towards the adoption of revised drafts of the Criminal Code and the Code of Criminal Procedure, and the need to eradicate illiteracy, provide adequate housing to internally displaced persons and protect the human rights of Haitian migrants.

4. In 2014, the office of the Minister Delegate for Human Rights and the Fight against Extreme Poverty (hereinafter, "Minister Delegate for Human Rights") and the Interministerial Committee on Human Rights produced a first draft of a national human rights plan, identifying recommendations made by United Nations mechanisms and proposing actions to implement them. While this draft document represented a serious first step towards incorporating human rights in government policies, there has been no progress towards finalizing it. Efforts to adopt a human rights action plan could be resumed by building on the considerable preparation accomplished for the elaboration of the 2014 draft.

20. The draft national human rights action plan was not made public, throughout 2014 the Office of the Minister Delegate for Human Rights organized consultations to discuss it with mayors and representatives of local authorities (the Municipal Sections Assemblies and the Boards of Municipal Sections). Representatives of some civil society organizations were also consulted. These consultations were held across the country's 10 departments, and represented a significant effort to engage and obtain the views of a wide range of citizens and incorporate human rights concerns specific to each region.

1. The mandate of the Independent Expert on the situation of human rights in Haiti was established in 1995 by the Commission on Human Rights and was discontinued by the Human Rights Council in March 2017 (A/HRC/PRST/34/1).

21. The Office of the Minister Delegate for Human Rights did not, however, have the opportunity to act upon the outcome of these consultations given its abolition in December 2014. Since then, the Interministerial Committee has not been in a position to finalize the national human rights action plan…
35. While a wide range of factors contribute to the overall inefficiency of the criminal justice sector, which consequently result in human rights violations such as prolonged pretrial detention, outdated criminal legislation is at the core of the many challenges. This was raised in the 2014 draft human rights action plan, in which several relevant recommendations of international human rights mechanisms were highlighted…

C. Lack of accountability for human rights violations committed by the police
39. Noting the recommendations of the universal periodic review of March 2012, the 2014 draft national human rights action plan acknowledged the need for the Haitian National Police to comply with human rights law, including by strengthening the capacity of the Haitian National Police General Inspectorate and ensuring human rights training for new recruits. Nevertheless, operations conducted by the Haitian National Police, which remains the main entity responsible for security in the country, continue to pose serious human rights concerns.
40. In recent years, the police have been responsible for human rights violations on multiple occasions and the judicial authorities have failed to hold the alleged perpetrators accountable. These patterns are illustrated by two incidents that were investigated by the human rights component of the Mission for Justice Support, which occurred in Lilavois in October 2017 and in Grand Ravine in November 2017. The human rights component has documented several other instances of officers of the Haitian National Police having resorted to excessive use of force, which caused civilian casualties, including among children.
41. On 12 October 2017, the Brigade for Departmental Operation and Intervention, a specialized unit of the Haitian National Police, conducted an unauthorized search operation in Lilavois (West Department). The Brigade, which was found responsible for serious human rights violations in the past,[2] appears to have conducted the operation to avenge for the murder of a colleague some hours earlier. After the operation, three civilians were found dead with gunshots to the head, suggesting summary executions. Nine other civilians, including three women, were severely beaten by the Haitian National Police during the operation and at least two of them were threatened with summary execution. The Brigade arrested the nine individuals on charges of the murder of a police officer. During the operation, officers of the Brigade also arbitrarily assaulted local residents, looted shops and burned down three housing complexes.
42. On 13 November, the Haitian National Police, with support from the United Nations police, conducted an operation in Grand-Ravine (West Department) to neutralize gang activity in the area. After the planned operation ended and the United Nations police were preparing to withdraw, an exchange of fire ensued between the Haitian National Police and individuals hiding in the school, which resulted in the death of two policemen and three being injured. During the operation, the Haitian National Police reportedly killed eight unarmed individuals, including 2 women, beat 3 school staff members and arrested individuals. Several of those killed were found with gunshots to the head, suggesting summary executions. One civilian has remained missing following these events, which amounts to a forced disappearance. The use of tear gas in a school in which students and teachers were present further suggests that the Haitian National Police resorted to excessive use of force.
43. The judicial authorities have not yet taken steps to hold those responsible for human rights violations committed in the context of these two operations accountable for their actions. The General Inspectorate conducted administrative inquiries into both incidents. In the case of Lilavois, three officers of the Brigade were placed in administrative confinement on 10

2. See United Nations Stabilization Mission in Haiti and OHCHR, "Rapport sur la situation des droits de l'homme en Haïti: 1er juillet 2015–31 décembre 2016", para. 23.

November 2017. In the case of Grand Ravine, the General Inspectorate inquiries concluded that human rights violations were committed and several administrative measures were taken against some of the implicated officers of the Haitian National Police. These measures included suspension without pay, redeployment or removal from the police force. While the General Inspectorate and judicial authorities have indicated that those responsible are expected to face trial, at the time of drafting the present report, no judicial investigation has been initiated in the case. These incidents are emblematic of wider patterns of violations committed by the police in Haiti and demonstrate the urgent need to ensure accountability.

D. Impunity for past gross human rights violations

44. For almost 30 years, during the Duvalier regime, massive and grave human rights violations were perpetrated, including violations of the rights to life, liberty, integrity, justice, and freedom of expression (see A/HRC/25/71, paras. 58–59). Human rights violations, including civil rights and liberties, persisted after Jean-Claude Duvalier left the country in 1986 (see A/49/513, annex, para. 6). In 1991, the Armed Forces staged a coup d'état that ousted then-President Aristide, the first democratically elected president. Under the military dictatorship, State agents regularly carried out summary executions, forced disappearances, arbitrary arrests and torture (see E/CN.4/1996/94, para. 8). Acts of violence perpetrated by groups supporting or opposing President Aristide were also denounced (see A/HRC/31/77, para. 75). . . .

XV. Situation of human rights in Afghanistan and Technical Assistance Achievements in the field of Human Rights, A/HRC/37/45 21 February 2018

1. The present report, prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA), is submitted to the Human Rights Council pursuant to its decision 2/113 and resolution 14/15. It covers the period from January to November 2017.
2. The report focuses on the five priority areas of work of the UNAMA Human Rights Service, namely, the protection of civilians in armed conflict; the protection of children in armed conflict; the elimination of violence against women and the promotion of gender equality; the prevention of torture; support to civil society and the integration of human rights into peace and reconciliation processes.
3. During the period under review, the Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to provide support to the human rights mandate of UNAM.

II. Context

4. In 2017, the escalation in conflict, military engagement and urban attacks by anti-government elements[1] continued to cause high levels of civilian casualties, even though a decline was recorded. While various initiatives by the Government of Afghanistan, other States and the United Nations continued to pursue a peaceful resolution of the conflict, progress towards initiating a peace process did not materialize. (emphasis added). The Government remained committed to the protection of human rights; Afghanistan was elected to become a State member of the Human Rights Council in January 2018.
5. The new strategy of the United States of America for South Asia, announced in August 2017, resulted in an increase in foreign troops in Afghanistan. Fighting continued in both rural and urban areas, with anti-government elements resorting to indiscriminate and disproportionate attacks that caused civilian casualties and other forms of harm to civilians. The resilience and spread of Islamic State in Iraq and the Levant (ISIL) – Khorasan Province heightened concerns for the protection of civilians and resulted in more targeted attacks, including against the Muslim Shia minority in Kabul and Herat.
6. The political situation remained unstable, with tensions flaring up periodically within the National Unity Government and with Parliament over appointments, the budget, intensive anti-corruption efforts and election preparations. District and legislative elections were announced for July 2018 and presidential elections for 2019.
7. The economic situation remained dire, with little foreign investments and employment opportunities, leading to widespread urban and rural poverty. Large-scale movement of Afghans departing for Europe and returning from Pakistan and the Islamic Republic of Iran was witnessed in 2016. While the number of outgoing Afghans declined in 2017, Afghanistan still received almost 570,000 returnees in 2017, overwhelming social services in certain areas. The returnees added to nearly 435,000 new internally displaced persons.[2]

III. Protection of civilians

8. In 2017, UNAMA/OHCHR continued to document civilian deaths and injuries, which still exceeded 10,000, despite a 10 per cent decrease as against the same period in 2016, the first year-on-year decrease in civilian casualties recorded since 2012. Conflict-related violence continued to destroy livelihoods, homes and property, and restricted access to health, education and other services. UNAMA/OHCHR consistently documented ground

1. A range of groups, primarily the Taliban and the Islamic State in Iraq and the Levant (ISIL) — Khorasan Province, involved in armed conflict with, or in armed opposition against, the Government of Afghanistan and/or international military forces. They include those who identify as "Taliban" and individuals and non-State organized armed groups taking a direct part in hostilities, such as the Haqqani Network, the Islamic Movement of Uzbekistan, the Islamic Jihad Union, Lashkar-e-Tayyiba, Ja-sh-e-Muhammad, groups identifying themselves as "Daesh", and other militia and armed groups pursuing political, ideological or economic objectives, including armed criminal groups directly engaged in hostile acts on behalf of a party to the conflict.

2. Figures provided by the International Organization for Migration and the Office for the Coordination of Humanitarian Affairs. See also www.humanitarianresponse.info/en/operations/afghanistan.

engagements, suicide and complex attacks and improvised explosive devices as leading causes of civilian casualties. Moreover, increased use of aerial operations by pro-government forces, and targeted and deliberate attacks by anti-government elements, continued to cause civilian casualties.
9. From 1 January to 30 November 2017, UNAMA/OHCHR documented 9,687 civilian casualties (3,183 deaths and 6,504 injured). It attributed 65 per cent of these casualties to anti-government elements and 20 per cent to pro-government forces (comprising the Afghan National Defence and Security Forces, pro-government armed groups and international military forces). Some 11 per cent of casualties resulted from ground engagements between anti-government elements and pro-government forces where responsibility could not be attributed to a specific party to the conflict. The remaining 4 per cent resulted mainly from explosive remnants of war not attributable to any party to the conflict.
10. Civilian casualties caused by ground engagement and non-suicide improvised explosive devices decreased. Civilian casualties caused by suicide and complex attacks, however, increased by 8 per cent, and those caused by aerial strikes by 5 per cent.
11. UNAMA/OHCHR documented a decrease in civilian casualties in all parts of the country, with the exception of the south-eastern and western regions. Decreases in civilian casualties from ground fighting between pro-government forces and anti-government elements, mainly due to the decreases attributed to the former, largely contributed to the overall reduction in civilian casualties in most of the country.
12. In 2017, UNAMA/OHCHR documented an 8 per cent increase in civilian casualties resulting from complex and suicide attacks, mainly in the central, south-eastern, southern and western regions. In the south-eastern region, civilian casualties from such attacks increased nearly ninefold, and sevenfold in the southern region.
13. ISIL — Khorasan Province claimed responsibility for 20 incidents that caused 683 civilian casualties, a 9 per cent decrease in casualties from similar incidents in 2016. Of these, 657 casualties resulted from suicide and complex attacks.
14. On 31 May 2017, UNAMA/OHCHR recorded the single largest incident in Kabul, when a vehicle-borne improvised explosive device killed 92 civilians and injured 491. This was also the single deadliest incident registered since systematic recording of civilian casualties by UNAMA began in 2009. No group claimed responsibility for the incident. . . .

VIII. Peace and reconciliation, including accountability and transitional justice

61. In 2017, UNAMA/OHCHR engaged with civil society, human rights defenders and the Afghanistan Independent Human Rights Commission to end impunity for human rights violations, to support efforts to end discrimination, and to promote inclusive peace agreements. In particular, it supported efforts to promote the centrality of the human rights of women, girls, minorities and other vulnerable groups, and their active participation in the political and social spheres, including in peace processes.

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62. Following the agreement reached in October 2016 between the Government and the armed group Hizb-i Islami, the group's leader, Gulbuddin Hekmatyar, returned to Kabul in May 2017. OHCHR remained concerned about provisions in the agreement granting the group's leaders immunity and including the release of its prisoners, which could preclude the prosecution of individuals who may be legally responsible for war crimes, genocide, crimes against humanity and other gross violations of human rights. Two batches of 55 and 13 prisoners were released in 2017, with hundreds more envisaged.

63. UNAMA/OHCHR closely followed developments at the International Criminal Court and the formal request, made on 20 November, by the Chief Prosecutor of the Court to the Pre-trial Chamber for judicial authorization to commence investigation of alleged war crimes and crimes against humanity committed in Afghanistan since 1 May 2003. Owing to the context in Afghanistan, the Pretrial Chamber allowed victims of alleged war crimes and crimes against humanity an extended period, ending on 31 January 2018, to make representations.
64. UNAMA/OHCHR engaged with the 20 organizations grouped in the Transitional Justice Coordination Group to promote efforts for sustainable and justice-based peace and reconciliation processes. In a press statement issued on 26 November 2017, the group expressed its support for the decision of the Prosecutor of the International Criminal Court. Moreover, it requested the Government to fulfil its obligations under the Rome Statute and to support and protect victims, witnesses and personnel of the International Criminal Court visiting the country. The Government renewed its commitment to cooperating with the Court in its voluntary pledges as a candidate to the Human Rights Council (see A/72/377. annex), and invited the Court to visit Afghanistan. . . .

XVI. Unilateral Coercive Measures and Human Rights, A/HRC/RES/37/21 (13 April 2018), Resolution adopted by the Human Rights

The Human Rights Council . . .

11. *Recalls* that, according to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and to the relevant principles and provisions contained in the Charter of Economic Rights and Duties of States, proclaimed by the General Assembly in its resolution 3281 (XXIX) of 12 December 1974, in particular article 32 thereof, no State may use or encourage the use of economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind;
12. *Reaffirms* that essential goods, such as food and medicines, should not be used as tools for political coercion and that under no circumstances should people be deprived of their own means of subsistence and development;
13. *Underlines* the fact that unilateral coercive measures are one of the major obstacles to the implementation of the Declaration on the Right to Development, and in this regard calls upon all States to avoid the unilateral imposition of economic coercive measures and the extraterritorial application of domestic laws that run counter to the principles of free trade and hamper the development of developing countries;
14. *Rejects* all attempts to introduce unilateral coercive measures, and the increasing trend in this direction, including through the enactment of laws with extraterritorial application;
15. *Recognizes* that the Declaration of Principles adopted at the first phase of the World Summit on the Information Society, held in Geneva in December 2003, strongly urges States to avoid and refrain from any unilateral measure in building the information society;
16. *Stresses* the need for an independent mechanism of the United Nations human rights machinery for the victims of unilateral coercive measure to address the issues of remedies and redress, with a view to promoting accountability and reparations. . . .
20. *Decides* to give due consideration to the issue of the negative impact of unilateral coercive measures on human rights in its task concerning the implementation of the right to development;
21. *Welcomes* the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights;[1]
22. *Requests* the Special Rapporteur to identify and propose concrete measures to ensure the removal of unilateral coercive measures affecting the enjoyment of human rights of victims, and to focus on the resources and compensation necessary to promote accountability and reparations for victims in his next reports to the Human Rights Council and to the General Assembly;
23. *Also requests* the Special Rapporteur, taking into account the views of Member States, to identify a set of elements to be considered, as appropriate, in the preparation of a draft United Nations declaration on the negative impact of unilateral coercive measures on the enjoyment of human rights, and to submit those elements to the Human Rights Council in his next report;
24. *Recognizes* the importance of the role of the Office of the United Nations High Commissioner in addressing the challenges arising from unilateral coercive measures and their negative impact on the human rights of peoples and individuals who wish to realize their economic and social rights, including the right to development;
25. *Requests* the High Commissioner, in discharging his functions relating to the promotion, realization and protection of the right to development and bearing in mind

1. A/HRC/36/44.

the continuing impact of unilateral coercive measures on the population of developing countries, to give priority to the present resolution in his annual report;

26. *Calls upon* all States to cooperate with and assist the Special Rapporteur in the performance of his tasks, and to provide all necessary information requested by him;
27. *Urges* the High Commissioner, relevant special procedures of the Human Rights Council and the treaty bodies to pay attention, within the framework of their mandates, to the situation of persons whose rights have been violated as the result of unilateral coercive measures;
28. *Requests* the Secretary-General to provide the assistance necessary to the Special Rapporteur to fulfil his mandate effectively, in particular by placing adequate human and material resources at his disposal. . . .

XVII. Promoting Reconciliation, Accountability and Human Rights in Sri Lanka, A/HRC/37/23

1. The present document is an update on progress achieved in promoting reconciliation, accountability and human rights in Sri Lanka. It is submitted pursuant to Human Rights Council resolution 34/1, which followed the adoption of resolution 30/1. Both resolutions were co-sponsored by Sri Lanka, and were adopted by consensus. It provides an update to the comprehensive report of the United Nations High Commissioner for Human Rights to the Council at its thirty-fourth session (A/HRC/34/20).[1]

2. In its resolution 34/1, the Council took note with appreciation of the High Commissioner's report and requested the Government of Sri Lanka to implement fully the outstanding measures identified by the Council in its resolution 30/1. It also requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) and relevant special procedure mandate holders, in consultation with, and with the concurrence of, the Government of Sri Lanka to strengthen their advice and technical assistance on the promotion and protection of human rights and truth, justice, reconciliation and accountability in Sri Lanka. In the same resolution the Council also asked OHCHR to continue to assess progress in the implementation of its recommendations and other relevant processes related to reconciliation, accountability and human rights in Sri Lanka, and to present a written update to the Council at its thirty-seventh session and a comprehensive report, followed by a discussion on the implementation of Council resolution 30/1, at its fortieth session.

3. In the present report OHCHR reviews progress made by the Government of Sri Lanka during the period from March 2017 to January 2018 on the implementation of resolutions 30/1 and 34/1, in particular regarding the comprehensive recommendations on the judicial and non-judicial measures necessary to advance accountability and reconciliation, and on strengthening the protection of human rights, democracy and the rule of law. The update is based on public information and insights obtained by OHCHR from various governmental and non-governmental stakeholders. . . .

A. Overall developments in transitional justice

9. In resolution 30/1, the Human Rights Council expressed support for the commitment by the Government of Sri Lanka to implement a comprehensive transitional justice agenda that would include the establishment of an accountability mechanism, truth-seeking, reparation programmes and institutional reforms. Through resolution 34/1, the Council granted the Government two additional years to demonstrate progress. While acknowledging that transitional justice processes may need longer periods to fully conclude their identified goals and outcomes, the structures and legislative framework for them to function could realistically have been put in place within a 2 1/2-year time frame.

10. The High Commissioner notes that while the institutional architecture has been established only incipiently to take the transitional justice process forward during this time frame, concrete results have yet to be delivered.

11. In a positive step, in October 2017, the mandate of the Secretariat for Coordinating Reconciliation Mechanisms was extended until March 2019.[2] While recognizing that this entity has acquired expertise and knowledge, it is of concern that neither it nor the Office for National Unity and Reconciliation[3] have significantly grown in strength or resources since the High Commissioner's previous report, of March 2017. The several technical working groups tasked with drafting blueprints for the accountability and reconciliation mechanisms were dismantled after submitting their initial drafts, and the results of their efforts have not been made publicly available. The new Interministerial Coordination Committee put in place last year has met only

1. Sinhalese and Tamil versions of the findings are available at www.ohchr.org/EN/Countries/Asia Region/Pages/LKIndex.aspx.

2. See www.scrm.gov.lk.

3. See www.onur.gov.lk.

once. A committee of senior officials has been established under the Interministerial Committee and reportedly holds regular meetings.

12. A comprehensive transitional justice strategy, including a clearly defined timeline for implementation, has yet to be made publicly available and consulted. The report of the Consultation Task Force on Reconciliation Mechanisms, one of the few positive elements highlighted in the previous reports of the High Commissioner, has not yet been endorsed or officially reviewed by the Government or the Parliament. It is of concern that the implementation of these important commitments remains pending.

13. The High Commissioner welcomes the gazetting of the Office of Missing Persons on 15 September 2017 and progress towards its operationalization, after long delays following the adoption of the original legislation in August 2016. This is the first transitional justice mechanism to be established. Moreover, the allocations in the 2018 national budget indicate that this body will be properly resourced to start operations. As at 15 January 2018, the process of selection and appointment of the commissioners was ongoing.

14. It is to be seen if the new institution will be able to overcome the distrust and frustration that has festered among civil society and victims' groups, particularly in the North, as a result of the multiple delays, amendments and insufficient consultation with respect to the legislation establishing the Office of Missing Persons. An independent and well-resourced Office, with capable, trustworthy and impartial commissioners, appropriate protection mechanisms for victims and witnesses and a clear policy on gender sensitiveness, has the potential to provide a new impetus to the protracted transitional justice process, including the creation of the remaining three mechanisms. An enabling environment will be essential for commissioners and staff, the families of victims, witnesses and civil society aiming to contribute to the objectives of the Office without the risk of reprisals or other threats.

15. The ratification by Sri Lanka of the International Convention for the Protection of All Persons from Enforced Disappearance on 25 May 2016 has yet to be translated into domestic legislation. The enabling legislation was tabled in Parliament on 5 July 2017 and again on 21 September, but the debate was postponed on both occasions. As expressed in the previous reports of the High Commissioner, it is crucial that this legislation be enacted by the time the Office of Missing Persons becomes functional.

16. Progress in the design of a truth and reconciliation commission and of a reparation programme cannot be properly assessed until the Government unveils the drafts prepared by the technical working groups and opens public consultations and discussion on them. OHCHR understands that the proposals of the technical working groups are currently under review.

17. Legislation establishing a truth commission must not be further delayed as it is a key tool for uncovering patterns of serious violations, creating a demand for accountability and fostering consensus around a non-partisan view of victimhood that recognizes that victims of the conflict come from all communities. While the Office of Missing Persons will hopefully contribute to realizing some aspects of the right to truth, only a truth commission with a broad temporal and material scope can attempt to construct a comprehensive narrative that addresses the multiple layers of serious violations and provides sound answers on the number of victims and the root causes of the conflict.

18. Reparations, irrespective of the format they take, must be accompanied by an acknowledgement of responsibility that differentiates them from ordinary State responses to social needs. The victims of serious human rights violations and abuses should be acknowledged and provided reparations as such, both individually and collectively, including through memorialization and restitution of rights and property, and with clear links to other elements of truth, accountability and non-recurrence. Reparations should be granted on the basis of having suffered a violation, irrespective of the affiliation of the perpetrator and without discriminating among victims on account of their ethnicity, regional origin, religion or any other factor. Gender aspects should be given particular consideration when developing reparation programmes.

19. With respect to accountability, there has been very little preparatory work for the judicial mechanism envisaged in resolution 30/1. Crimes under international law have not been incorporated into domestic law to allow for their prosecution, and few consistent efforts have been made to strengthen the forensic, investigative and prosecutorial capacities in Sri Lanka. It is critical that the Government move forward in creating these preconditions while at the same time designing the special court and its procedures.
20. For the first time, the 2018 national budget contains a dedicated section related to reconciliation, including allocations for the establishment of the Office of Missing Persons, the resettlement of internally displaced persons, implementation of the Official Language Policy, the Secretariat for Coordinating Reconciliation Mechanisms and special programmes to address the needs of war- and conflict-affected widows and ex-combatants in the Northern and Eastern Provinces and to support differently abled women, among others.
21. On 21 September 2017, the Prime Minister presented the interim report of the Steering Committee on Constitutional Reform. This is a step towards the implementation of commitments under resolution 30/1 "on the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population" (para. 16).
22. The Human Rights Commission of Sri Lanka has continued to work in an independent and competent manner. Thorough and outspoken, it has shown the potential of independent institutions to strengthen the system of protection of human rights. Its participation in the process leading to the establishment of a domestic screening process for potential United Nations peacekeepers has been a positive example of cooperation between State institutions, without compromising independence or commitment. The High Commissioner reiterates the need for all parts of the Government to support independent commissions and fully respect their independence . . .
41. While the situation of human rights in Sri Lanka has improved overall since January 2015, there have been fewer signs of progress since the previous report of the High Commissioner. Several incidents targeting religious minorities, slow government reaction and response to some of those incidents and the controversial statements of some (then) key ministers have eroded the Government's image of being fully committed to improving the human rights situation.
42. The national human rights plan of action for the period 2017–2021, approved by the Cabinet in January 2017, was made public on 1 November. The plan is a welcome step forward, and the Government should ensure its full implementation.
43. The High Commissioner remains gravely concerned that, 2 1/2 years into a reconciliation process, his Office continues to receive reports of harassment or surveillance of human rights defenders and victims of human rights violations. The preconditions of trust and confidence that are needed for a reconciliation agenda to succeed are incompatible with intrusive, and likely unnecessary, surveillance of activists. While the High Commissioner has repeatedly been assured that those incidents were not consistent with the Government's policy, the inability to fully eliminate such practices is alarming. During the period under review, at least two incidents escalated to physical violence against the activist being threatened or kept under surveillance.
44. The use of torture remains a serious concern. The High Commissioner was deeply concerned over serious allegations in foreign media about ongoing abductions, extreme torture and sexual violence, as recently as in 2016 and 2017. OHCHR is exploring options for how best to pursue further investigations of these allegations. The High Commissioner is encouraged by the strong condemnation by the Government of any act of torture, and its assurance that allegations of torture will be properly investigated and prosecuted to the full extent of the law.
45. The High Commissioner is especially concerned with regard to multiple incidents of intercommunal violence, attacks and hate speech against minorities during the course of 2017. They included a series of petrol-bomb attacks against mosques and businesses owned by Muslims across the country around May (more than 30 registered incidents, with a peak of nearly daily attacks during the two first weeks of the month). The attacks were accompanied by anti-Muslim

rhetoric from Sinhala-Buddhist ultranationalist groups and came at around the time the leader of one of these groups (Gnanasara Thero, of Bodu Bala Sena) was awaiting sentencing on a contempt of court charge. On 13 June, the Cabinet issued a statement condemning violence against minorities, noting that "inciting violence against fellow citizens of various ethnic [and] religious backgrounds has no place in Sri Lankan society".

46. On 26 September 2017, a mob led by Buddhist monks reportedly belonging to the organization Sinhalese National Force demonstrated against the presence of Rohingya refugees in Sri Lanka in front of a house in Mount Lavinia, Colombo, where 31 Rohingyas (mostly women and children) from Myanmar were being sheltered by the Office of the United Nations High Commissioner for Refugees and its partner organization, Muslim Aid. Despite police presence, the house was stormed by the crowd and the group of Rohingyas had to be relocated for their protection. In a separate incident, tensions between the Tamil and Muslim communities in Batticaloa led to a temporary local boycott of Muslim businesses in November. In the worst incident of the year, in Gintota (Southern Province), on the evening of 18 to 19 November, more than 70 Muslim homes and businesses were damaged by a mob that formed after an incident arising from a traffic accident involving Sinhalese and Muslim youths. Hate speech over social media, possibly politically motivated, seemed to play a role in the incident. Unlike during the incidents in May, in Gintota, the Government's response was swift, including deployment of special police units and temporary curfews. The Prime Minister visited the site of the crimes and stated that such acts of violence, and incitement to such crimes, had no place in Sri Lanka and would be prosecuted to the full extent of the law. Nineteen alleged perpetrators were arrested and detained.

47. Meanwhile, attacks on Evangelical Christians continued to be recorded. A prominent lawyer and human rights activist who had provided figures on the number of such attacks in a television debate in May 2017 was publicly threatened by the then Minister of Justice with disbarment for making such claims…

XVIII. Report of the Special Rapporteur on a Safe, Clean, Healthy and Sustainable Environment and Children's Rights, A/HRC/37/58

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, on the relationship between children's rights and environmental protection….

B. Environmental harm and the rights of children

31. Environmental harm interferes with the full enjoyment of a vast range of the rights of the child. This section focuses on the effects on children's rights to life, health, development, an adequate standard of living, play and recreation.[1]

1. Rights to life, health and development

32. The Human Rights Committee has stated that the right to life should not be interpreted narrowly, and that the protection of the right requires States to adopt positive measures, such as measures to reduce infant mortality and increase life expectancy.[2] The Convention on the Rights of the Child recognizes that every child has the inherent right to life and provides that States shall ensure to the maximum extent possible not only the survival, but also the development of the child (art. 6). The Convention also recognizes the right to the highest attainable standard of health (art. 24), as do the Constitution of WHO and the International Covenant on Economic, Social and Cultural Rights (art. 12).

33. A healthy environment is necessary for children's enjoyment of the rights to life, development and health.[3] The Convention on the Rights of the Child requires States parties to pursue full implementation of the right to health by appropriate measures that include the provision of nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution (art. 24 (2) (c)). As explained above, environmental harm causes the death of over 1 million children every year, most under the age of 5 years old. It also contributes to lifelong health problems, including asthma and other respiratory diseases, cardiovascular disease, cancer and neurological disorders. Climate change and the loss of biological diversity are long-term environmental crises that will affect children throughout their lives. There can be no doubt that environmental harm interferes with children's rights to life, health and development.

2. Right to an adequate standard of living

34. The Committee on Economic, Social and Cultural Rights has explained that the right to an adequate standard of living is intentionally expansive and that the Covenant includes a number of rights emanating from, and indispensable for, the realization of the right,[4] such as the rights to food, housing and safe and clean water and sanitation. The Convention on the Rights of the Child links the right to the development of children, recognizing the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (art. 27).

35. Environmental degradation obviously interferes with the enjoyment of the rights to food, housing, water and sanitation, and to an adequate standard of living generally. The lack of clean air and water, the exposure to hazardous chemicals and waste, the effects of climate change and

1. This is not an exhaustive list. The enjoyment of other rights, such as the rights to education and culture, are also implicated by climate change, natural disasters and other types of environmental harm. See, for example, A/HRC/35/13, para. 29. And the disproportionate effects on children already vulnerable for other reasons implicate obligations of non-discrimination, as explained below.

2. See Human Rights Committee, general comment No. 6 (1982) on the right to life, para. 5.

3. See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4; Committee on the Rights of the Child, general comment No. 7 (2005) on implementing child rights in early childhood, para. 10; general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 2.

4. See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 3.

the loss of biodiversity not only prevent children from enjoying their rights today; by interfering with their normal development, environmental harm prevents them from enjoying their rights in the future, and often throughout their lives.

3. Rights to play and recreation

36. The Convention on the Rights of the Child recognizes the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (art. 31). As the Committee on the Rights of the Child has explained, play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence and self-efficacy, as well as physical, social, cognitive and emotional strength and skills.[5] In addition to being of intrinsic value to children, play and recreation are critical to development, facilitating children's capacities to negotiate, regain emotional balance, resolve conflicts and make decisions. Through their involvement in play and recreation, children learn by doing; they explore and experience the world around them; experiment with new ideas, roles and experiences and in so doing, learn to understand and construct their social position within the world.[6]

37. Opportunities for play and recreation depend upon access to a healthy and safe environment.[7] Many children, and the vast majority of children living in poverty, face hazardous conditions when they leave their homes, including polluted water, open waste sites, toxic substances and the lack of safe green spaces.[8] While children will seek out opportunities for play and recreation even in dangerous environments, children who cannot play outside without exposing themselves to such environmental harms cannot fully enjoy their right to play and recreation. Even when their immediate surroundings are safe, the millions of children who live in urban settings often lack access to natural environments.

IV. Human rights obligations relating to the protection of children from environmental harm

38. The human rights obligations of States in relation to the environment[9] apply with particular force to the rights of children, who are especially at risk from environmental harm and often unable to protect their own rights. Although these obligations arise from a wide variety of sources, the present report gives particular attention to the Convention on the Rights of the Child because of its focus on children and its near-universal acceptance by States. The present section focuses on key educational and procedural obligations, including with respect to information, participation and remedy; substantive obligations, including the obligation to ensure that the best interests of children are a primary consideration; and obligations of non-discrimination.

A. Educational and procedural obligations

39. The obligations of States in relation to the environment include duties in relation to education and public awareness, to access to public information and assessment of proposed projects and policies, to expression, association and public participation in environmental decision-making and to remedies for harm (see A/HRC/37/59, annex, framework principles 5–10). These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights threatened by environmental harm. Fulfilling these rights helps to ensure that, when possible, children have agency to influence environmental policy and protect themselves from environmental harm.

5. . See Committee on the Rights of the Child, general comment No. 17, para. 9.

6. . Ibid.

7. Ibid., para. 26.

8. Ibid., para. 35.

9. For a summary of the obligations, see the framework principles on human rights and the environment presented to the thirty-seventh session of the Council (A/HRC/37/59, annex).

1. Obligations of environmental education

40. In the Convention on the Rights of the Child, States parties agreed that the education of the child shall be directed to, among other things, the development of respect for the natural environment (art. 29).[10] Environmental education should begin early in the child's educational process, reflect the child's culture, language and environmental situation, and increase the child's understanding of the relationship between humans and the environment (see A/HRC/37/59, annex, framework principle 6). It should help children appreciate and enjoy the world and strengthen their capacity to respond to environmental challenges, including by encouraging and facilitating direct experience with the natural environment.[11]

41. The Committee on the Rights of the Child has stated that in order to develop respect for the natural environment, education must link issues of environment and sustainable development with socioeconomic, sociocultural and demographic issues, and that such respect should be learned by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.[12] The Committee has also stressed that for educational curricula to reflect this and the other principles reflected in article 29 of the Convention, it is essential to have pre-service and in-service training for teachers and others involved in children's education.

2. Obligations of information and assessment

42. The Convention on the Rights of the Child states that the child's right to freedom of expression "shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice" (art. 13). The right to information is particularly important in relation to environmental issues. Public access to environmental information enables individuals to understand the effect of environmental harm on their rights, including their rights to life and health, and supports the exercise of other rights, such as rights to expression, participation and remedy. [13]

43. Access to environmental information has two dimensions: States should regularly collect, update and disseminate environmental information, and they should provide affordable, effective and timely access to environmental information held by public authorities (see A/HRC/37/59, annex, framework principle 7). In situations involving imminent threat of environmental harm, either from natural or human causes, States must ensure that all information that would enable the public to take protective measures is disseminated immediately.

44. The 2016 day of general discussion held by the Committee on the Rights of the Child identified many gaps in information on the effects of environmental harm on children, including: a lack of robust data on actual exposure of children to various types of environmental harm in light of their vulnerabilities and real-life conditions; a lack of longitudinal data on the effects of environmental harm on children's health and development at different ages; a lack of disaggregated data on children most at risk; and a lack of information about the adverse effects of the loss of biodiversity and degradation of ecosystems.[14] In addition to these general gaps, the Special Rapporteur on hazardous substances and wastes has pointed out that information about health risks and possible sources of exposure is neither available nor accessible to parents and guardians for tens of thousands of substances manufactured and used by industries in food and consumer products, which often end up contaminating air and water (see A/HRC/33/41, para. 59). When information about the effects of particular chemicals or other substances is held by corporations, they often argue that it cannot be made public for reasons

10. In addition, target 4.7 of the Sustainable Development Goals calls on States to ensure, by 2030, that "all learners acquire the knowledge and skills needed to promote sustainable development".

11. Committee on the Rights of the Child, "Report of the 2016 day of general discussion", pp. 18–19.

12. See Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education, para. 13.

13. See Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 82.

14. Committee on the Rights of the Child, "Report of the 2016 day of general discussion", p. 16.

of confidentiality. Finally, when information about environmental effects is public, it is often available only in technical terms that are difficult or impossible for non-experts to understand.

45. Much more must be done to collect information about sources of environmental harm to children and to make it publicly available and accessible. The Committee on the Rights of the Child has stressed that information relevant to children should be provided in a manner appropriate to their age and capacities.[15] Because children are exposed to many environmental harms at young ages, or even before birth, information must also be made available to parents or other caretakers in forms that are easily accessible, understandable and relevant. For example, information about chemicals and other hazardous substances should focus not just on those that are the most commonly produced, but also on those that are most likely to affect children, and should include clear descriptions not only of the possible effects, but also of how children may be exposed to them.

46. Obligations concerning environmental information are closely related to the need for assessment of environmental impacts. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of the human rights of children (see A/HRC/37/59, annex, framework principle 8). While environmental impact assessment is now practised throughout the world, most assessment procedures do not address the rights of children, either by taking into account their greater vulnerability to harm or by providing for their participation. To ensure that the best interests of the child are a primary consideration in the development and implementation of policies and projects that may affect children, States should carry out "child-rights impact assessment", which examines the impacts on children of proposed measures and makes recommendations for alternatives and improvements. After implementation, authorities should evaluate the actual impact of the measure on children.[16]

15. See Committee on the Rights of the Child, general comment No. 12, para. 82.

16. See Committee on the Rights of the Child, general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 99; general comment No. 5 (2003) on general measures of implementation of the Convention, para. 45.

XIX. Framework Principles on Human Rights and the Environment, A/HRC/37/59
The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, in which he presents framework principles on human rights and the environment, addresses the human right to a safe, clean, healthy and sustainable environment and looks ahead to the next steps in the evolving relationship between human rights and the environment…

Framework principles on human rights and the environment
1. Human beings are part of nature, and our human rights are intertwined with the environment in which we live. Environmental harm interferes with the enjoyment of human rights, and the exercise of human rights helps to protect the environment and to promote sustainable development.
2. The framework principles on human rights and the environment summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. They provide integrated and detailed guidance for practical implementation of these obligations, and a basis for their further development as our understanding of the relationship of human rights and the environment continues to evolve.
3. The framework principles are not exhaustive: many national and international norms are relevant to human rights and environmental protection, and nothing in the framework principles should be interpreted as limiting or undermining standards that provide higher levels of protection under national or international law.

Framework principle 1
States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.

Framework principle 2
States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.
Commentary on framework principles 1 and 2
4. Human rights and environmental protection are interdependent. A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights, including the rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation, to housing, to participation in cultural life and to development, as well as the right to a healthy environment itself, which is recognized in regional agreements and most national constitutions.[1] At the same time, the exercise of human rights, including rights to freedom of expression and association, to education and information, and to participation and effective remedies, is vital to the protection of the environment. . . .

Framework principle 3
States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.
Commentary
7.The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination[2] apply to the equal enjoyment of human rights relating to a safe, clean, healthy and sustainable environment. States therefore have obligations, among others,

1. See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, art. 1; African Charter on Human and Peoples' Rights, art. 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 11; Arab Charter on Human Rights, art. 38; and ASEAN Human Rights Declaration, art. 28. More than 100 States have recognized the right at the national level.

2. For example, International Covenant on Civil and Political Rights, arts. 2 (1) and 26; International Covenant on Economic, Social and Cultural Rights, art. 2 (2); International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2 and 5; Convention on the Elimination of All Forms of Discrimination against Women, art. 2; Convention on the Rights of the Child, art. 2; Convention on the Rights of Persons with Disabilities, art. 5. The term "discrimination" here refers to any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 7.

to protect against environmental harm that results from or contributes to discrimination, to provide for equal access to environmental benefits and to ensure that their actions relating to the environment do not themselves discriminate. . . .

Framework principle 4

States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.

Commentary

10. Human rights defenders include individuals and groups who strive to protect and promote human rights relating to the environment (see A/71/281, para. 7). Those who work to protect the environment on which the enjoyment of human rights depends are protecting and promoting human rights as well, whether or not they self-identify as human rights defenders. They are among the human rights defenders most at risk, and the risks are particularly acute for indigenous peoples and traditional communities that depend on the natural environment for their subsistence and culture. . . .

Framework principle 5

States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.

Commentary

12. The obligations of States to respect and protect the rights to freedom of expression, association and peaceful assembly[3] encompass the exercise of those rights in relation to environmental matters. States must ensure that these rights are protected whether they are being exercised within structured decision-making procedures or in other forums, such as the news or social media, and whether or not they are being exercised in opposition to policies or projects favoured by the State.

Framework principle 6

States should provide for education and public awareness on environmental matters.

Commentary

15. States have agreed that the education of the child shall be directed to, among other things, the development of respect for human rights and the natural environment.[4] Environmental education should begin early and continue throughout the educational process. It should increase students' understanding of the close relationship between humans and nature, help them to appreciate and enjoy the natural world and strengthen their capacity to respond to environmental challenges. . . .

Framework principle 7

States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.

Commentary

17. The human right of all persons to seek, receive and impart information[5] includes information on environmental matters. Public access to environmental information enables individuals to understand how environmental harm may undermine their rights, including the rights to life and health, and supports their exercise of other rights, including the rights to expression, association, participation and remedy. . . .

3. See Universal Declaration of Human Rights, arts. 19–20; International Covenant on Civil and Political Rights, arts. 19 and 21–22.

4. See Convention on the Rights of the Child, art. 29.

5.See Universal Declaration of Human Rights, art. 19; International Covenant on Civil and Political Rights, art. 19.

Framework principle 8

To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.

Commentary

20. Prior assessment of the possible environmental impacts of proposed projects and policies is generally required by national laws, and the elements of effective environmental assessment are widely understood: the assessment should be undertaken as early as possible in the decision-making process for any proposal that is likely to have significant effects on the environment; the assessment should provide meaningful opportunities for the public to participate, should consider alternatives to the proposal, and should address all potential environmental impacts, including transboundary effects and cumulative effects that may occur as a result of the interaction of the proposal with other activities; the assessment should result in a written report that clearly describes the impacts; and the assessment and the final decision should be subject to review by an independent body. The procedure should also provide for monitoring of the proposal as implemented, to assess its actual impacts and the effectiveness of protective measures.[6]

Framework principle 9

States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process.

Commentary

23. The right of everyone to take part in the government of their country and in the conduct of public affairs[7] includes participation in decision-making related to the environment. Such decision-making includes the development of policies, laws, regulations, projects and activities. Ensuring that these environmental decisions take into account the views of those who are affected by them increases public support, promotes sustainable development and helps to protect the enjoyment of rights that depend on a safe, clean, healthy and sustainable environment. . . .

Framework principle 10

States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.

Commentary

27. The obligations of States to provide for access to judicial and other procedures for effective remedies for violations of human rights[8] encompass remedies for violations of human rights relating to the environment. States must therefore provide for effective remedies for violations of the obligations set out in these framework principles, including those relating to the rights of freedom of expression, association and peaceful assembly (framework principle 5), access to environmental information (framework principle 7) and public participation in environmental decision-making (framework principle 9). . . .

Framework principle 11

States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights.

Commentary

31. To protect against environmental harm and to take necessary measures for the full realization of human rights that depend on the environment, States must establish, maintain and

6. United Nations Environment Programme, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach (2004), p. 42.

7. See Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25.

8. See, for example, Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2 (3).

enforce effective legal and institutional frameworks for the enjoyment of a safe, clean, healthy and sustainable environment. Such frameworks should include substantive environmental standards, including with respect to air quality, the global climate, freshwater quality, marine pollution, waste, toxic substances, protected areas, conservation and biological diversity. . . .

Framework principle 12
States should ensure the effective enforcement of their environmental standards against public and private actors.
Commentary
34. Governmental authorities must comply with the relevant environmental standards in their own operations, and they must also monitor and effectively enforce compliance with the standards by preventing, investigating, punishing and redressing violations of the standards by private actors as well as governmental authorities. In particular, States must regulate business enterprises to protect against human rights abuses resulting from environmental harm and to provide for remedies for such abuses. States should implement training programmes for law enforcement and judicial officers to enable them to understand and enforce environmental laws, and they should take effective steps to prevent corruption from undermining the implementation and enforcement of environmental laws.

Framework principle 13
States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.
Commentary
36. The obligation of States to cooperate to achieve universal respect for, and observance of, human rights[9] requires States to work together to address transboundary and global threats to human rights. Transboundary and global environmental harm can have severe effects on the full enjoyment of human rights, and international cooperation is necessary to address such harm. States have entered into agreements on many international environmental problems, including climate change, ozone depletion, transboundary air pollution, marine pollution, desertification and the conservation of biodiversity. . . .

Framework principle 14
States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.
Commentary
40. As the Human Rights Council has recognized, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population that are already in vulnerable situations.[10] Persons may be vulnerable because they are unusually susceptible to certain types of environmental harm, or because they are denied their human rights, or both. Vulnerability to environmental harm reflects the "interface between exposure to the physical threats to human well-being and the capacity of people and communities to cope with those threats".[11]

Framework principle 15
States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:

9. See Charter of the United Nations, arts. 55–56; International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

10. See Human Rights Council resolution 34/20.

11. United Nations Environment Programme, Global Environment Outlook 3 (2002), p. 302.

(a) Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used;
(b) Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources;
(c) Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;
(d) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.

Commentary

47. Indigenous peoples are particularly vulnerable to environmental harm because of their close relationship with the natural ecosystems on their ancestral territories. The United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as other human rights and conservation agreements, set out obligations of States in relation to the rights of indigenous peoples. Those obligations include, but are not limited to, the four highlighted here, which have particular relevance to the human rights of indigenous peoples in relation to the environment. . . .

States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development.

Commentary

54. The obligations of States to respect, protect and fulfil human rights apply when States are adopting and implementing measures to address environmental challenges and to pursue sustainable development. That a State is attempting to prevent, reduce or remedy environmental harm, seeking to achieve one or more of the Sustainable Development Goals, or taking actions in response to climate change does not excuse it from complying with its human rights obligations.[12]

12. See Paris Agreement, eleventh preambular para.