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Human Rights Council Background Guide

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Dear Delegates,

It is a great honor to welcome you to the Human Rights Council of Erfurt Model United Nations 2019.

The topics on the agenda will be:

- I. Protecting the Rights of Migrant Children and Adolescents
- II. Ensuring the Right to Clean Water and Sanitation for All

We hope that this Background Guide will help you with the preparation for the conference. It will give you a comprehensive overview of the committee as well as both topics and will help you to focus your further research on the most relevant aspects. We encourage you to thoroughly delve into your countries' policies and their positions concerning the topics. When preparing for the conference, please keep in mind the mandate of the Human Rights Council.

If you have any questions regarding the conference or your preparation for the Human Rights Council, please do not hesitate to contact mun@uni-erfurt.de.

Sincerely,

Annika Memmel and Johanna Günkel

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ABBREVIATIONS

AVRR	Assisted Voluntary Return and Reintegration Programs
CEDAW	Convention on the Elimination of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRRF	Comprehensive Refugee Response Framework
ECOSOC	Economic and Social Council
GA	General Assembly
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
ILO	International Labour Organization
IMF	International Monetary Fund
JMP	Joint Monitoring Programme
MDGs	Millennium Development Goals
NHRIs	National Human Rights Institutions
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
PPPs	Public-Private Partnerships
SDGs	Sustainable Development Goals
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNDHR	Universal Declaration of Human Rights
UNICEF	United Nations International Children's Emergency Fund

COMMITTEE OVERVIEW

Introduction

One of the key purposes of the United Nations (UN), as mentioned several times in the UN's founding Charter, is the promotion and protection of human rights.¹ Chapter 1, Article 1 of the UN Charter defines the purposes of the UN, explicitly naming the commitment to "respect for human rights" as a guiding intention of the UN's work.² Elaborating on the encouragement for human rights, Chapter 9, Article 55 obliges the UN to also promote observance of human rights.³ As a milestone document in the history of human rights, the UN General Assembly (GA) adopted the *Universal Declaration of Human Rights (UNDHR)* on 10 December 1948. For the first time in history, it set out fundamental human rights to be universally protected.⁴ Today, the promotion and protection of human rights is as important as in 1948, however the definition of human rights has become more complex as human rights law has been extensively expanded by the UN.⁵ In order to define as well as to promote and protect human rights, the UN have established several organs and bodies, including the High Commissioner for Human Rights (OHCHR) and the Human Rights Council (HRC).⁶ Established in 2006, the HRC is an inter-governmental body within the UN system. It is one of the main bodies responsible for the promotion and preservation of all human rights worldwide.⁷ One of its key tasks is addressing situations of human rights violations by recommending further actions regarding the development of human rights law to the GA.⁸

History

In 1946, the UN Commission on Human Rights (UNCHR) was established as a subsidiary body of the UN Economic and Social Council (ECOSOC) to develop the framework for the promotion and protection of all fundamental human rights. Its main tasks were the development of common international policy guidelines regarding human rights, the observation of compliance with international human rights law and the exposure of human rights violations. The UNCHR also served as a panel, where Member States, civil society and international organizations could express their concerns about possible human rights abuses.⁹ The UNCHR drafted the *UNDHR* which was adopted by the GA on 10 December 1948. In the following years, the UNCHR drafted a framework of international human rights law, based on the *UNDHR*. As a result of the UNCHR's standard setting work, the GA adopted two human rights covenants in 1966, namely the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.¹⁰

In 1967, the ECOSOC authorized the UNCHR to concretely address human rights abuses. To this end, the UNCHR has developed a comprehensive system to monitor compliance by

¹ UN, *Charter of the United Nations*, 1945

² UN, *Charter of the United Nations. Chapter 1: Purposes and Principles*, 1945.

³ UN, *Charter of the United Nations. Chapter 9: International and Social Cooperation*, 1945.

⁴ UN General Assembly, *Universal Declaration of Human Rights (A/RES/3/217A)*, 1948.

⁵ UN, *Global Issues. Human Rights*, n.d.

⁶ UN, *What We Do. Protect Human Rights*, n.d.

⁷ UN, *Global Issues. Human Rights*, n.d.

⁸ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

⁹ UN Human Rights Council, *About the Commission. Background Information. Brief Historical Overview of the Commission*, n.d.

¹⁰ *Ibid.*

Member States with international human rights law and to investigate alleged violations of human rights. This included, inter alia, the establishment of fact-finding missions to countries in all parts of the world.¹¹ In the 1990s, the UNCHR focused on the provision of advisory services and technical assistance to Member States that were incapable of safeguarding the enjoyment of human rights within their boundaries. As the affiliation of economic, social and cultural rights on the human rights agenda was largely denied in the 1990s, the UNCHR intensively advocated the importance of these rights.¹² Furthermore, the protection of the rights of vulnerable groups in society and the rights of women and children was addressed by the UNCHR.¹³

In 2006, the UNCHR was replaced by the Human Rights Council. The HRC was created by the GA on 15 March 2006 by *resolution 60/251*. Its first session took place from 19 to 30 June 2006.¹⁴

Governance, Structure and Membership

The HRC consists of 47 UN Member States, which are elected for a period of three years through a majority vote by the GA. Members of the HRC cannot immediately be re-elected after serving two successive terms. Important criteria for the election of Member States are their contributions to the preservation of human rights, as well as their pledges and commitments in this regard.¹⁵ The principle of equitable geographical distribution is also taken into account for the election of Member States to the HRC. African States and Asia-Pacific States are each granted 13 seats, Latin American and Caribbean States are granted 8 seats, Western European and other States obtain 7 seats and Eastern European States obtain 6 seats.¹⁶ The HRC holds three regular sessions every year, and at any time, one third of the HRC's Member States can request "a special session to address human rights violations and emergencies".¹⁷ Each annual series of regular sessions is referred to as a "cycle".¹⁸ At the beginning of each cycle, Member States appoint a President and four Vice Presidents that form the Bureau of the HRC.¹⁹ The President of the current twelfth cycle is Vojislav Suc, a Permanent Representative to the UN from Slovenia.²⁰

On 18 June 2007, one year after its first meeting, the HRC adopted its "Institution-building package", which specifies procedures, mechanisms and structures that form the basis of its work. The subsidiary bodies directly reporting to the HRC are the Universal Periodic Review Group, the Advisory Committee, and the Complaint Procedure. The HRC also established the following subsidiary expert mechanisms: Expert Mechanism on the Rights of Indigenous People, the Forum on Minority Issues, the Social Forum, the Forum on Business and Human Rights, and the Forum on Human Rights, Democracy and the Rule of Law. The expert

¹¹ Ibid.

¹² UN Office of the High Commissioner for Human Rights, *Human Rights Fact Sheet No. 33*, 2008.

¹³ UN Human Rights Council, *About the Commission. Background Information. Brief Historical Overview of the Commission*, n.d.

¹⁴ UN Human Rights Council, *About HRC: History*, 2018.

¹⁵ UN Human Rights Council, *Membership of the Human Rights Council*, n.d.

¹⁶ Ibid.

¹⁷ UN Human Rights Council, *Sessions*, 2018.

¹⁸ UN Human Rights Council, *Institution-building of the United Nations Human Rights Council (A/HRC/RES/5/1)*, 2007.

¹⁹ UN Human Rights Council, *Membership of the Human Rights Council*, n.d.

²⁰ UN Human Rights Council, *President of the 12th Cycle*, 2018.

mechanisms provide the HRC with thematic expertise and forums providing a platform for dialogue and cooperation. These bodies focus mainly on studies, research-based advice or best-practices. They meet and report annually to the HRC. The HRC further established several open-end intergovernmental working groups to elaborate and/or negotiate and finalize new draft legal instruments or to make recommendations on the effective implementation of existing instruments. Finally, the HRC works with the UN Special Procedures established by the former UNCHR.²¹ These Special Procedures are conducted by special rapporteurs, special representatives, independent experts and working groups that monitor, examine, advise and publicly report on thematic issues or human rights situations in specific countries.²²

Mandate, functions and powers

The function of the HRC is to “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon”.²³ The HRC undertakes its work guided by the underlying principles of “universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.”²⁴

Serving as a forum, the HRC should furthermore promote the effective coordination and the mainstreaming of human rights within the United Nations system.²⁵ It was established as a forum for debate and dialogue on all human rights issues, including the tasks to address violations of human rights, to promote cooperation and education on human rights, to review Member States’ track records and to prevent human rights abuses from occurring.²⁶ Partnerships with the civil society, non-governmental organizations and specialized agencies of the UN play a vital role for the effective promotion and protection of human rights by the HRC.²⁷ Universal periodic reviews, complaint procedures and special procedures are the three main features of the HRC’s work.²⁸

Universal periodic reviews

The HRC undertakes universal periodic reviews (UPR) of the fulfillment of human rights obligations by each of the UN Member States.²⁹ These reviews are state-driven under the auspices of the HRC and with the full involvement of non-governmental organizations.³⁰ UPRs are based on reports provided by the State under review, a compilation of United Nations information gathered by bodies of the UN, as well as information from other stakeholders like national human rights institutions or NGOs.³¹ This data is discussed in an interactive dialogue between the State under review and the working group on UPR.³² Any Member States as well as NGOs can also participate in this discussion.³³ UPRs result in reports containing a summary

²¹ UN Human Rights Council, *About HRC: History*, 2018.

²² UN Human Rights Council, *Subsidiary Bodies*, 2018.

²³ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ UN Office of the High Commissioner for Human Rights, *The Human Rights Council and the role of the Office of the High Commissioner for Human Rights*, n.d.

²⁷ UN Office of the High Commissioner for Human Rights, *Civil Society*, n.d.

²⁸ UN Office of the High Commissioner for Human Rights, *Civil Society Working with the United Nations Human Rights Program - A Handbook for Civil Society*, 2008, p. 75.

²⁹ UN General Assembly, *Human Rights Council (A/RES/60/251)*, 2006

³⁰ UN Human Rights Council, *About the UPR*. 2018. ; UN Office of the High Commissioner for Human Rights, *Universal periodic review- a practical guidance for civil society*, 2014, p. 3.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

of the situation as well as comments and recommendations made by Member States to the Member State under review and the responses by the reviewed Member State.³⁴ The reviewed State then has the responsibility to implement the recommendations agreed on in the final outcome and to report about these efforts in the next UPR.³⁵

Complaint procedures

Complaint procedures “address consistent patterns of gross and reliably attested violations of human rights occurring in any part of the world and under any circumstances in an impartial, objective, efficient and victims-oriented manner”.³⁶ With a view to enhancing cooperation with the State concerned, complaint procedures are confidential nature.³⁷ Individuals, groups or non-governmental organizations that claim to be victims of human rights violations or that have direct, reliable knowledge on such violations of human rights and fundamental freedoms can submit a communication to the HRC.³⁸ The working group on communications of the HRC undertakes an initial screening to check the admissibility of such communications. The admission of a communication depends on criteria. Only to name a few the communication shall not be manifestly politically motivated or based exclusively on reports disseminated by mass media and domestic remedies have to be exhausted. Furthermore the communication has to be consistent with the Charter of the United Nations and a factual description of the alleged violations including the rights in concern is required.³⁹

If the communication is not screened out based on these criteria the communication is transmitted to the Member State concerned.⁴⁰ When the working group on communications is convinced that the communication appears to reveal a consistent pattern of gross and reliably attested violations of human rights the matter is transferred to the working group on situations.⁴¹ The working group on situations presents the council with a report on the matter. In a draft resolution the working group makes recommendations to the Council on the course of action to take, usually in the form of a draft resolution or decision with respect to the situations referred to it.⁴²

Special procedures

Special procedures are mechanisms designed to examine, monitor, advise and publicly report on human rights situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates).⁴³ Each special procedure’s mandate is defined in the resolution that created it.⁴⁴ Mandate holders are either an individual (special rapporteur, special representative of the Secretary-General or

³⁴ Ibid.

³⁵ UN Human Rights Council, *About the UPR*, 2018.

³⁶ UN Human Rights Council, *Institution building of the United Nations Human Rights Council* (A/HRC/RES/5/1), 2007.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ UN Office of the High Commissioner for Human Rights, *Civil Society Working with the United Nations Human Rights Program - A Handbook for Civil Society*, 2008, p. 10.

⁴⁴ Ibid.

independent expert) or a working group.⁴⁵ In June 2007, *HRC resolution 5/2* defined a code of conduct for Special Procedures mandate-holders to strengthen their capacity, credibility, and visibility.⁴⁶ By August 2017 there were 44 thematic and 13 country mandates.⁴⁷ An example is the special procedure on the right to development, established with *HRC resolution 33/14*.

The procedures can encompass fact-finding country or field visits, communications on individual cases of human rights violations, consults with experts, advocacy efforts, communication with governments, press releases to raise awareness for human rights standards as well as thematic studies to counsel governments and civil society on the normative content and implementation of human rights.⁴⁸ Different from complaint procedures, special procedures also act on individual cases and it is not necessary to have exhausted legal domestic remedies.⁴⁹ Mandate holders of special procedures report annually to the HRC and the GA on regular activities under their mandate as well as specific thematic trends and phenomena including recommendations.⁵⁰

Recent sessions and current priorities

In its 38th regular session in June/July 2018, the HRC dealt with gender equality, precisely with the “Elimination of all forms of discrimination against women and girls” as well as the “Elimination of female genital mutilation” violence against women and girls in digital contexts.⁵¹ Furthermore, *resolution 38/7* for the promotion, protection and enjoyment of human rights on the internet was adopted.⁵² Bearing in mind its function as a coordination mechanism, resolutions concerning the “enhancement of international cooperation in the field of human rights”, “Human rights and international solidarity” and the engagement with international and regional civil society organizations were adopted.⁵³ The special rapporteur on the rights to freedom of peaceful assembly and of association presented its report which resulted in a resolution for “the promotion and protection of human rights in the context of peaceful protests”.⁵⁴ Furthermore, the human rights situations in the Syrian Arab Republic, Belarus and Eritrea were assessed.⁵⁵ Another subject was technical assistance to the Democratic Republic of Congo reacting to the events in the Kasai region.⁵⁶ Additionally, 14 outcome documents of universal periodic reviews were adopted.⁵⁷

⁴⁵ Ibid, p. 108.

⁴⁶ Ibid. p. 83.

⁴⁷ UN Office of the High Commissioner for Human Rights, *Special Procedures*, n.d.

⁴⁸ UN Office of the High Commissioner for Human Rights, *Civil Society Working with the United Nations Human Rights Program - A Handbook for Civil Society*, 2008, p. 114.

⁴⁹ Ibid. p.108.

⁵⁰ UN Office of the High Commissioner for Human Rights, *Special Procedures*, n.d. ; UN Office of the High Commissioner for Human Rights, *Civil Society Working with the United Nations Human Rights Program - A Handbook for Civil Society*, 2008, p. 110.

⁵¹ UN Human Rights Council, *Report of the Human Rights Council on its 38th session (A/HRC/38/2)*, 2018.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

On May 18th, the 28th special session of the HRC was held on the occasion of the deteriorating human rights situation in the occupied Palestinian territory, including East Jerusalem.⁵⁸ The session ended with the adoption of *resolution S-28/1* establishing an independent, international commission of inquiry to investigate all violations of international humanitarian law and international human rights law in the context of large-scale civilian protests in the occupied Palestinian territory.⁵⁹

Conclusion

The HRC aims to safeguard for everyone all human rights articulated by international law on global, national and international levels. Nevertheless, there are still large groups of marginalized people that cannot enjoy all human rights. According to that it is now the biggest tasks for the HRC to see human rights issues from different perspectives in order to address everyone. Moreover cooperation with the civil society as well as NGOs and other UN organs must be enhanced in order to further examine the specific situations of vulnerable groups so that the HRC can respond to the factors that impair the fulfillment of human rights for everyone.

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⁵⁸ UN Office of the High Commissioner for Human Rights, *News and Events, Human Rights Council decides to dispatch a commission of inquiry to investigate violations in the occupied Palestinian territory in the context of large-scale civilian protests, 2018*.

⁵⁹ Ibid..

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<https://www.ohchr.org/EN/HRBodies/UPR/Documents/PracticalGuideCivilSociety.pdf>

I. PROTECTING THE RIGHTS OF MIGRANT CHILDREN AND ADOLESCENTS

Introduction

Migration is an age-old phenomenon, people migrate out of various reasons such as conflict, persecution, environmental degradation and poverty.⁶⁰ Throughout globalization and mass migration this phenomenon became a political challenge in matters such as integration, displacement, save migration and border management.⁶¹ In order to assess the various challenges, migration theories group migrants according to their extent of self- agency.⁶² Self- agency indicates migrants abilities to make and act upon independent decisions concerning whether to migrate , whether to migrate regularly or irregularly and how to do that. High pressure to migrate due to conflict, persecution natural catastrophes etc. as well as limited financial means or limited chances to get a visa in a country of destination are main factors for the lack of self- agency. They are urged to undertake migration journeys full of risks and uncertainty, vulnerable to crimes and human rights abuses, including theft, kidnapping and extortion, violence and physical abuse, forced labor and/or sexual exploitation and abuse. as well as denial of access to health services, education, food, water, and housing.⁶³ This applies in particular to children due to the immanent restriction of choices they have on whether and how to migrate.⁶⁴ Although by the End of 2015, 15 % of all international migrants lived outside their country of birth, and half of the refugee population was constituted by children below the age of 18 in 2017 , the protection of their rights in the light of their special vulnerability has only recently been tackled by the United Nations.⁶⁵ In resolution 33/7, the HRC expressed deep concern on their situation and highlighted the fact that protection and assistance of many migrant children cannot yet ensure the most basic needs such as education, health, shelter, nutrition, water and sanitation as well as legal and psychological support have not yet been met.⁶⁶ Hence, the international community must take action for the these the enjoyment of human rights by migrant children in countries of origin, transit and destination.⁶⁷

This guide provides an overview of the legal regime governing the human rights of migrant children on the international and regional level, followed by an illustration of the role of the international system. In the subsequent main violations of migrant children’s rights in the countries of origin, transit and destination are outlined.

⁶⁰ International Organization for Migration, *World Migration Report 2018*, 2018, p. 13.

⁶¹ Ibid.

⁶² Ibid. p. 173.

⁶³ UN Office of the High Commissioner for Human Rights, *Panel discussion on unaccompanied migrant children and adolescents and human rights - Summary report of the United Nations High Commissioner for Human Rights (A/HRC/36/21)*, 2017.

⁶⁴ UN Office of the High Commissioner for Refugees, *UNHCR: Global trends, forced displacement in 2017*, 2018.

⁶⁵ UN International Children’s Emergency Fund, *Uprooted, the growing Crisis for Refugee and Migrant Children*, 2016, p. 5.; UN Office of the High Commissioner for Refugees, *Global trends, forced displacement in 2017*, 2018.

⁶⁶ UN Human Rights Council, *Global issue of unaccompanied migrant children and human rights - Final report of the Human Rights Council Advisory Committee (A/HRC/36/51)*, 2017; UN International Children’s Emergency Fund, *Uprooted, the growing Crisis for Refugee and Migrant Children*, 2016, p. 5.

⁶⁷ UN Human Rights Council, *Unaccompanied migrant children and adolescents and human rights (A/HRC/Res/36/5)*, 2017.

International Framework

Universality of human rights

One of the cornerstones of human rights law is its claim to universality.⁶⁸ This principle, which states that human rights are inherent to all human beings, has been enshrined in the preamble of the *Universal Declaration of Human Rights (UDHR)*, the first international commitment to core human rights.⁶⁹ These core human rights, such as the right to live, the prohibition of torture, the freedom of thought and the right of recognition everywhere as a person before the law are ensured by two legally binding treaties derived from the UDHR: *The International Covenant on Civil and Political Rights (ICCPR)* and in the *International Pact on Economic, Social and Cultural Rights (ICESCR)*.⁷⁰

Treaties addressing the specific needs of children

Besides the general treaties on human rights, children's rights are enshrined in the *UN Convention on the Rights of the Child (CRC)* adopted in 1990, taking into account their specific vulnerabilities and needs.⁷¹ The most important principle of this Convention is the principle of the best interest of the child in Article 3: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".⁷² The rights in this Convention apply to every person under the age of eighteen.⁷³ "For the purpose of monitoring the realization of the obligations in the Committee on the Rights of the Child (CRC) was established.⁷⁴

Due to Migrant Children's susceptibility to discrimination and the fact that they are often denied education according to their migration status, *UNESCO's Convention against Discrimination in Education*, is also relevant to migrant Children's rights although it does not exclusively address children.⁷⁵ It encompasses the promotion of education for everyone and the prohibition of any kind of discrimination.⁷⁶ Besides the treaties with special relevance for children and adolescents, migrant children and adolescents are entitled to further specific rights relating to them being migrants.

Treaties ensuring the Rights of Migrants

Two main categories of migrants are international migrants and internally displaced persons.⁷⁷ Internal displacement refers to the forced movement of people within the country they live in.⁷⁸ Examples among the various possible reasons are indigenous communities forced from their ancestral lands, people whose livelihoods are decimated due to natural disaster, or conflict.⁷⁹ Some of the typical risks that arise in internal displacement include family

⁶⁸ UN, *Human Rights Law*, n.d.

⁶⁹ UN General Assembly, *Universal Declaration of Human Rights (A/RES/3/217 A)*, 1948.

⁷⁰ Ibid; Max Planck Encyclopedia of Public International Law, Nollkaemper, Alexander: *Universality*, 2011.

⁷¹ UN General Assembly, *United Nations Convention on the Rights of the Child (Res. 44/25)*, 1989.

⁷² Ibid. Article 1.

⁷³ Ibid.

⁷⁴ Ibid. Art. 43

⁷⁵ UN Human Rights Council, *Unaccompanied migrant children and adolescents and human rights (A/HRC/Res/36/5)*, 2017.

⁷⁶ UN Educational, Scientific and Cultural Organization, *Convention Against Discrimination in Education*, 1962.

⁷⁷ Internal Displacement Monitoring Centre, *About IDMC: What is Internal Displacement?* 2018.

⁷⁸ Internal Displacement Monitoring Centre, *About IDMC*, 2018.

⁷⁹ UN Office of the High Commissioner for Refugees, *Internally displaced people*, n.d.

separation, loss of documentation, freedom of movement in and out of camps, loss of property, and further exposure to the risk of secondary or onward displacement.⁸⁰ Internally displaced people (IDPs) remain under the protection of their government, even if that government is the reason for their displacement.⁸¹ Even though IDPs do not have a special status in international law, the *1998 Guiding Principles on Internal Displacement*, developed by the UN Office for the Coordination of Humanitarian Affairs and reaffirmed at the World Summit 2005, set out the rights of IDPs and the responsibilities of governments towards them.⁸² Furthermore, there are regional protection mechanisms such as the *African Union Convention for the Protection and assistance of internally displaced persons in Africa (Kampala Convention)*.⁸³

An international migrant is defined as any person who changes his or her country of usual residence.⁸⁴ Migrants can be distinguished in sub categories such as refugees, people in refugee-like situations or labor migrants.⁸⁵ Those distinctions are important in determining the Conventions that apply to them.⁸⁶ Art. 1 of the *1951 Refugee Convention* defines refugees as people in well-founded fear of persecution in their State of origin that is unwilling or unable to protect them.⁸⁷ Whether or not a person falls under this situation is decided in domestic status determination procedures that are sometimes advised by the UNHCR.⁸⁸ The most important provisions of this convention are that refugees have the right to Asylum and are not to be punished for illegally entering the country as well as the entitlement to the same basic help and rights that any other foreign legal residents enjoy.⁸⁹ Persons that left their homes due to war or natural catastrophes don't fall under the definition of Refugees, they are referred to as people in a refugee-like situation. Many provisions of the 1951 Refugee Convention are also ensured to them in virtue of general humanitarian considerations and customary international law.⁹⁰ The core principle of *the 1951 Refugee Convention* that always applies is non-refoulement. Since it is now considered a rule of customary international law, the core principle of *the 1951 Refugee Convention*, non-refoulement always applies. It asserts that not anyone shall be returned to a country where they face serious threats to their life or freedom.⁹¹

Another merit of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons besides the 1951 refugee Convention is the Principle of Unity of the Family. The unity of the family is acknowledged as an essential right of the refugee which is constantly threatened. Governments are urged to codify policies in domestic law, especially with regard to the protection of minor refugees and guardianship of these

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Internal Displacement Monitoring Centre, *About IDMC: What is Internal Displacement?* 2018.

⁸³ Von Arnould, Andreas, *Völkerrecht*, 3. Auflage, 2016, RN 781- 792

⁸⁴ International Organization for Migration, *Key Migration Terms*, 2018.

⁸⁵ Von Arnould, Andreas, *Völkerrecht*, 3. Auflage, 2016, RN 781- 792

⁸⁶ UN International Children's Emergency Fund, *Uprooted, the growing Crisis for Refugee and Migrant Children*, 2016, p. 20.

⁸⁷ UN General Assembly, *Convention Relating to the Status of Refugees*, 1951.

⁸⁸ UN Office of the High Commissioner for Refugees, *Protecting Refugees, Questions and Answers*, 2002.

⁸⁹ Von Arnould, Andreas, *Völkerrecht*, 3. Auflage, 2016, RN 781- 792

⁹⁰ Ibid.

⁹¹ UN, *The 1951 Refugee Convention*, 1951.

children.⁹² Besides the treaties applicable to refugees and people in refugee-like situations, there are more legal institutions protecting the rights of all international migrants. Addressing criminal threats, the GA adopted *the Protocol Against the Smuggling of Migrants by Land, Sea and Air* as well as the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* adding onto the *United Nations Convention Against Transnational Organized Crime*. Smuggling is defined as obtaining a financial benefit of the illegal entry of a person into a State Party, whereas trafficking is defined as the recruitment of a person for the purpose of exploitation.⁹³

In September 2016, the GA adopted the *New York Declaration for Refugees and Migrants*, a political document in which Member States expressed their commitment to strengthen the international migration regime.⁹⁴ Member States affirmed that children should not be criminalized or subject to punitive measures because of their migration status.⁹⁵ The commitments include the protection of human rights of all migrants, regardless of status; education for all migrant children and adolescents within a few months after arrival; and ending the practice of detaining children for the purposes of determining their migration status.⁹⁶ Therefore, guidelines on the treatment of migrants in vulnerable situations meaning Migrants with low or no self- agency were decided to be developed by the Global Migration Group (GMG). This decision resulted in the “*GMG Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*”, addressing all Migrants with low or no self-agency.⁹⁷ Furthermore, the international migration regime shall be enhanced in a whole of society, multi stakeholder approach, meaning that national and local authorities, international organizations, international financial institutions, regional organizations, regional coordination and partnership mechanisms, civil society partners, the private sector, media and the refugees themselves shall be included.⁹⁸

There are three Cornerstones for the Strengthening of the international migration regime. Firstly, the New York Declaration sets a *Comprehensive Refugee Response Framework (CRRF)* that shall be individually implemented to large-scale movements of refugees and protracted refugee situations. The CRRF is aimed at more extensive responses to such situations and enhanced international cooperation to share the responsibility to address these situations.⁹⁹ Since Refugee situations differ, Member States shall, with the help of the UNHCR as well as other relevant partners such as civil society organizations, assess the required assistance for refugees and national and local authorities in the specific situation.¹⁰⁰ Furthermore, strategies concerning reception and admission, the humanitarian needs as well as measures to be taken

⁹² Ibid.; UN General Assembly: *Final act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, recommendation B*, 1951,

⁹³ UN General Assembly, *Protocol Against the Smuggling of Migrants by Land, Sea and Air* (Resolution 55/25),2000, Art. 3(a); United Nations General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (Resolution 55/25),2000, Art. 3(c).

⁹⁴ UN Office of the High Commissioner for Refugees, *New York Declaration*, 2018.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Global Migration Group, *Global Migration Group (GMG) Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, 2018, p. 6.

⁹⁸ UN General Assembly, *New York Declaration for Refugees and Migrants (A/Res/71/1)*,2016.

⁹⁹ UN Office of the High Commissioner for Refugees, *UNHCR: Comprehensive Refugee Response Framework, 2018*.

¹⁰⁰ UN General Assembly, *New York Declaration for Refugees and Migrants (A/Res/71/1)*,2016. Appendix I.

for durable solutions mark the key elements of the *CRRF*.¹⁰¹ As of February 2018, the *CRRF* is formally applied in a dozen countries, as well as two regional contexts in Africa and Central America.¹⁰² Secondly, In the *global compact on refugees*, that will be presented in the High Commissioner's 2018 Annual Report to the General Assembly, the *CRRF* shall be complimented with a Program of action to ensure its full implementation.¹⁰³ Thirdly, through the New York Declaration the adoption of a *global compact for migration* in December 2018 is decided. This second, non-legally binding compact is consistent with target 10.7 of the 2030 Agenda for Sustainable Development to "facilitate safe, orderly and regular migration."¹⁰⁴

Regional framework

Besides the international treaties, there are several regional mechanisms for the protection of human rights in general as well as for the rights of the child and the protection of migrants, for example the *European Convention on Human Rights*, as well as the *1969 Organization of African Unity (OAU) Convention* and the *1984 Cartagena Declaration* as well as bilateral agreements concerning migration.

The Role of the International System

Addressing the specific needs and vulnerabilities of unaccompanied children and adolescents is new on the Agenda of the United Nations. The matter was first brought up in *GA resolution 69/187* of December 18, 2014 referring to the General Comment No. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin and the general discussion of the Committee in 2012 on the rights of all children in the context of international migration.¹⁰⁵

In December 2016, with *resolution 71/177* the General Assembly encouraged Member States to ratify the optional protocol to the Covenant on the Rights of a Child which includes a communications procedure allowing individuals as well as States to complain about the violation of the CVC. The Protocol went into Force in December 2014 and the current 41 pending cases before the Committee on the Rights of the Child show that this instrument to ensure the rights is significant.¹⁰⁶ The UN Special Representative of the Secretary-General on Violence against Children is campaigning towards universal ratification of the CRC and its optional protocols.¹⁰⁷

In order to protect the rights of migrant children, a comprehensive analysis of the situation is required. Therefore, at its twenty-ninth session in June 2015, the Human Rights Council adopted *resolution 29/12* on unaccompanied migrant children and adolescents and human rights, mandating the Advisory Committee to develop a study on the global issue of unaccompanied migrant children and adolescents and human rights.¹⁰⁸

¹⁰¹ Ibid.

¹⁰² UN Office of the High Commissioner for Refugees, *New York Declaration*, 2018.

¹⁰³ UN, *United Nations Refugees and Migrants: Global Compact for Refugees*, 2018.

¹⁰⁴ Ibid.

¹⁰⁵ UN Human Rights Council, *Unaccompanied migrant children and adolescents and human rights (A/HRC/RES/29/12)*. 2015.

¹⁰⁶ UN Office of the High Commissioner for Human Rights, *Table of pending cases before the Committee on the Rights of the Child*, 2018.

¹⁰⁷ UN Special Representative of the Secretary General on Violence against children, *Campaigns*, n.d.

¹⁰⁸ UN Human Rights Council. *United Nations Human Rights Council Advisory Committee: Mandate*, 2018.

Besides documentary research, the study is based on a questionnaire addressed to States, national human rights institutions and NGOs.¹⁰⁹

The situation of migrant children is also analyzed by the special rapporteur on human rights of migrants whose mandate was established in 1999 by the human rights commission. Other institutions that lately contributed to an assessment of the human rights situation of migrant children are the International Organization for Migration (IOM) with its special section on migrant children in its world migration report of 2018 as well as the United Nations International Children's Emergency Fund (UNICEF) collecting data specifically on uprooted children.¹¹⁰

UNICEF has developed an agenda for action for the protection of refugee and migrant children including six goals and practical suggestions for their fulfillment. UNICEF provides lifesaving humanitarian supplies in refugee camps, runs child-friendly safe spaces and supports governments to put in place laws, policies, systems and public services that are inclusive of refugee and migrant children.¹¹¹ Protecting migrant children from violence, end the detention of children seeking refugee status or migrating, promoting measures to combat xenophobia and discrimination as well as pressing for action on the underlying causes of large scale movements of refugees and migrants are some of the actions that UNICEF wants to take together with governments and civil society organizations.¹¹²

The Office of the High Commissioner for Refugees (UNHCR), a subsidiary organ of the General Assembly has the mandate to lead international action to safeguard the rights and well-being of refugees, to protect them and to seek international solutions.¹¹³ Since 2008, the UNHCR is applying guidelines on determining the best interest of the child.¹¹⁴ In these guidelines It is emphasized that in each decision affecting children, attention must be given to their specific situation and protection risks.¹¹⁵ Furthermore UNHCR applies the principle of the best interest of the child by assessing the individual child's best interests and making them a primary consideration before taking action.¹¹⁶

In January 2018, the UNHCR completed the task it was given in the New York declaration and released the "zero draft" for the global compact on refugees, drawing from experiences of former implementations of the CRRF.¹¹⁷ A special merit of the global compact on refugees for migrant children is the establishment of multiple-stakeholder response teams to support national authorities in countries of destination.¹¹⁸ These teams are aimed to support the fostering of best interests assessment according to the guidelines by the Principles the UNHCR applies. Furthermore multi-stakeholder teams are intended to provide support concerning

¹⁰⁹ Ibid.

¹¹⁰ UN International Children's Emergency Fund, *Children Uprooted*, n.d.

¹¹¹ Ibid.

¹¹² UN International Children's Emergency Fund, *Uprooted, the growing Crisis for Refugee and Migrant Children*, 2016.

¹¹³ UN General Assembly, *Refugees and stateless persons*(Resolution 319 (IV)), 1949.

¹¹⁴ UN Office Of the High Commissioner for Refugees, *UNHCR Guidelines on Determining the Best Interests of the Child*.2008.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ UN Office of the High Commissioner for Refugees, *News, UNHCR releases draft outlining a new global refugee deal*, 2018.

¹¹⁸ UN Office of the High Commissioner for Refugees, *The global compact on refugees zero draft*, 2018, para 42.

care arrangements for unaccompanied migrant children as well as the eventual inclusion of these children in state child protection systems and social services.¹¹⁹ Moreover, UNHCR wants to convene an ad-hoc global platform of states discussing financial mechanisms and emergency response once a state has problems handling its refugee situation.¹²⁰ Additionally, solidary conferences around one particular event shall be held to comprehensively encompass all the support measures to a country of destination at the example of the three conferences in Kuwait, London, and Brussels about the situation in Syria.¹²¹ These actions to strengthen the mechanics of responsibility sharing could make it easier for states to maintain special attention on the needs of migrant children even if they face a large scale influx of refugees or encounter a protracted refugee situation.¹²² Following formal consultations with Member states the UNHCR will finalize the draft and present it in his 2018 report to the UN General Assembly at the end of 2018.¹²³ Besides its work on the global compact for refugees, the UNHCR formulated a framework for the Protection of Children in 2012 which is underpinned by global strategies on education, detention, sexual and gender-based violence and a global plan to end statelessness.¹²⁴

Concerning Education for example, the UNHCR works on solutions to ensure education within the first three months of displacement noting that 4 million refugee children are currently unable to attend school.¹²⁵ Partnerships with *Educate a Child* operating in Africa, Asia and the middle east as well as the Accelerated Education Working Group, focused on assuring access to school for children and adolescents who have missed out on substantial amounts of schooling help the UNHCR to ensure access to education.¹²⁶ Other measures that the UNHCR takes are cash grants, capacity building for teachers as well as the expansion of safe learning spaces.

Although only 27 States participated in 2018, the UNHCR resettlement program is a significant effort taking into account the special vulnerability and specific needs of refugee children since 51 percent of refugees submitted to resettlement in 2018 were children.¹²⁷ Resettlement is “the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement” one of the three traditional solutions for refugees: voluntary repatriation, local integration and resettlement.¹²⁸ “Children and adolescents at risk” as well as “family reunification” are categories in the UNHCR handbook on resettlement management, meaning that people belonging to that category qualify to be submitted to resettlement.¹²⁹

¹¹⁹ Ibid.

¹²⁰ Ibid, para 16.

¹²¹ Ibid, para 17; News Deeply Refugees Deeply, *U.N. Official: Refugee Compact Will Meet Fear and Ignorance With Facts*, 2018.

¹²² Ibid.

¹²³ UN General Assembly, *New York Declaration for Refugees and Migrants (A/Res/71/1)*, 2016.

¹²⁴ UN Office of the High Commissioner for Refugees, *Framework for the Protection of Children*, 2012.

¹²⁵ UN Office of the High Commissioner for Refugees, *What we do: Education*, 2018.

¹²⁶ UN Office of the High Commissioner for Refugees, *What we do: Primary and Youth Education*, 2018.

¹²⁷ UN Office of the High Commissioner for Refugees, *Resettlement at a Glance*, 2018.

¹²⁸ UN Office of the High Commissioner for Refugees, *What we do: Resettlement*, 2018; International Organization for Migration: *World Migration Report 2018: making sense of Migration in an increasingly interconnected world* IOM World, 2018, p. 34.

¹²⁹ UN Office of the High Commissioner for Refugees, *UNHCR Resettlement Handbook*, 2011, Chapter 6.

The financial, administrative and organizational burden of repatriation that migrant children and adolescents face when they cannot stay in host or transit countries is very high which is why support is critical for them being a specifically vulnerable group of migrants.¹³⁰ The IOM, a UN-related Agency providing migration management runs assisted voluntary return and reintegration programs (AVRR).¹³¹ These programs provide that support which can include pre departure counselling, family tracing, the purchase of flight tickets, administrative assistance, travel assistance as well as reintegration assistance. In 2016, 27 per cent of the AVRR beneficiaries were children.¹³²

The IOM furthermore contributed to the preparatory process for the global compact on migration through its policy forum, the International Dialogue on Migration (IDM).¹³³ Intergovernmental negotiations resulted in the zero draft of the Global Compact for Migration including 22 actionable commitments for safe and orderly migration such as the utilization of migration detention only as a last resort and work towards alternatives.¹³⁴ It is planned that Member States discuss and share progress on the global compact on migration in an *International Migration Review Forum* taking place every fourth session of the GA as well as in *Regional Migration Forums*.¹³⁵ The compact shall be adopted by December 2018.¹³⁶

The *Global Migration Group* (GMG), an interagency coordination mechanism encompassing 16 entities of the United Nations system has the aim to promote the wider application of international and regional instruments and norms relating to migration and to encourage the adoption of more coherent, comprehensive and better coordinated inter-agency approaches.¹³⁷ The GMG worked out the principles on the human rights protection of migrants in vulnerable situations mentioned above.¹³⁸ The guidelines are complemented with a regularly updated inventory of "practical guidance" meaning that every principle is illustrated with pilot practices for its implementation.¹³⁹ As outlined in the Report of the high-level panel discussion on unaccompanied children and adolescents in 2017, the Office of the High Commissioner for Human Rights was leading the development of these principles within the GMG.¹⁴⁰

¹³⁰ International Organization for Migration, *Assisted Voluntary Return and Reintegration, Key Highlights*, 2017, p. 11.

¹³¹ International Organization for Migration: *World Migration Report 2018: making sense of Migration in an increasingly interconnected world* IOM World, 2018, Chapter 2, p. 15.

¹³² Ibid.

¹³³ International Organization for Migration, *International Dialogue on Migration 2017: Strengthening International Cooperation on and Governance of Migration Towards the Adoption of a Global Compact on Migration in 2018*, 2018.

¹³⁴ International Organization for Migration, *Global Compact for Migration zero draft*, 2018.

¹³⁵ Ibid.

¹³⁶ International Organization for Migration, *Global Compact for Migration*, 2018.

¹³⁷ International Organization for Migration, *United Nations High Level Dialogue on International Migration and Development*,

¹³⁸ UN Office of the High Commissioner for Human Rights: *Global Migration Group (GMG) Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, 2018.

¹³⁹ Global Migration Group: *Inventory of practical guidance*, 2018.

¹⁴⁰ UN High Commissioner of Human Rights, *Panel discussion on unaccompanied migrant children and adolescents and human rights, Report of the United Nations High Commissioner for Human Rights (A/HRC/36/21)*, 2017.

According to the final document of the HRC advisory committee on the problem of unaccompanied migrant children and adolescents, NGOs have demonstrated a far better level of coordination and cooperation on migration issues than States, many countries have strengthened the relationship between government and civil society organizations (CSOs).¹⁴¹ CSOs acting for the protection of the rights of unaccompanied children are the Migrants Rights Network which comprises networks of civil society stakeholders Amnesty International and Human Rights Watch as well as the Platform for International Cooperation on Undocumented Migrants that advocate for human rights and CSOs providing direct assistance concerning the immediate needs of migrant children and adolescents such as *Terre des Hommes*.¹⁴² Many countries with serious migration issues have strengthened the relationship between government and civil society.¹⁴³ On the other hand some reports, such as the one presented by Caritas Myanmar, still perceive a lack of collaboration between government organizations, international and national NGOs and United Nations organizations.¹⁴⁴

On the regional level, many countries work with multi-agency coordination mechanisms, involving the authorities of the public administration, international organizations, academics and civil society organizations to eliminate factors that hinder the realization of migrant children's rights.¹⁴⁵ Among Member States several good practices to meet the needs of migrant children have been specified in the 2017 final report of the Human Rights Council Advisory Committee and the GMG practical guidance complementing the principles on the human rights protection of migrants in vulnerable situations.¹⁴⁶ Examples are decrees giving rights and protected legal status to every migrant child irrespective of his or her origin or well-defined reception systems that encounter teams that are specialized on migrant children.¹⁴⁷

Major violations of the rights of migrant children and adolescents

Already in countries of origin many rights and principles under the *CRC* are violated which often leaves them no choice but to leave their home countries hence deprives them of their self-agency.¹⁴⁸ Those violations can include the lack of opportunities and poor access to education as well as poor access to health services, violent threats, child abuse, the recruitment of child soldiers or any kind of intimidation or insecurity.¹⁴⁹ Besides the violation of human rights, family reunification is a major reason for children to leave their countries of origin on their own.¹⁵⁰ Since these children and often their parents are pushed to decisions

¹⁴¹ UN Human Rights Council, *Global issue of unaccompanied migrant children and human rights - Final report of the Human Rights Council Advisory Committee* (A/HRC/36/51), 2017, lit. 86.

¹⁴² Unicef Innocenti Research Centre, *The Role of Civil Society in implementing the general measures on the Convention on the rights of the child*, 2010. ; Migrants Rights Network, *About*, n.d. ; Terre des Hommes, *What we do*, n.d. ; United for Human Rights, *Human Rights Organizations*, (n. d.) ; Platform of International Cooperation on Undocumented Migrants, *Our Vision*, n.d.

¹⁴³ UN Human Rights Council, *Global issue of unaccompanied migrant children and human rights - Final report of the Human Rights Council Advisory Committee* (A/HRC/36/51), 2017, lit 81.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid. lit 74.

¹⁴⁶ Ibid. lit 89 ; Global Migration Group: *Inventory of practical guidance*, 2018.

¹⁴⁷ Ibid.

¹⁴⁸ UN Office of the High Commissioner for Human Rights, *Global Migration Group (GMG) Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*, 2018.

¹⁴⁹ Ibid.

¹⁵⁰ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* (A/HRC/33/55), 2016.

they would have never chosen freely, migratory policies based on detention and deportation have failed to discourage irregular migration, it only made migrants travel via less well guarded and riskier areas depending on smugglers.¹⁵¹ Research on the decision-making on such movements finds that in many cases the risks involved are well-known a priori but that in many cases there are no alternative options.¹⁵² Besides natural dangers migrant and refugee children are especially vulnerable to human trafficking. According to the most recent available data, one in three detected victims of trafficking is a child.¹⁵³ Moreover, especially unaccompanied migrant children are vulnerable to all kinds of physical violence such as sexual or economic exploitation or surgical removal of organs.¹⁵⁴ and even when they don't directly experience violence the process of displacement and resettlement is a huge burden for the mental health of these children.¹⁵⁵ Uncertain legal status, language barriers, limited social networks as well as active xenophobia are only few other dangers that these children face.¹⁵⁶

In countries of transit and destination, the reception conditions usually impair the fulfilment of migrant children's rights.¹⁵⁷ Authorities treat irregular entry as a criminal activity rather than as mere violation of administrative regulations.¹⁵⁸ First, authorities try to determine the age to see whether the rights of minors are applicable.¹⁵⁹ Age determination by means of medical examinations shall be the last resort, nevertheless it is carried out routinely, without respect for the dignity or rights of the child and although medical age determination procedures are unreliable.¹⁶⁰ Contrary to the GMG principles on the human rights protection of migrants in vulnerable situations children and adolescents often face detention and deportation, particularly if they are not recognized as children.¹⁶¹

Once minority is ascertained, unaccompanied and separated children have the right to be assisted by a legal guardian, to be hosted in a reception center, and to receive legal assistance if they apply for asylum. The appointment of legal guardians however takes long and constitutes a major obstacle to access to child protection mechanisms.¹⁶² Moreover child protection systems discriminate between children on the basis of their age.¹⁶³ The disappearance of child migrants is a major problem as well. In 2016, nearly one in three migrant children tracked by a refugee charity had gone missing in the Camp of Calais, France.¹⁶⁴ That year in total 10 000 unaccompanied migrant children went missing in Europe.

¹⁵¹ UN Human Rights Council, *Global issue of unaccompanied migrant children and human rights - Final report of the Human Rights Council Advisory Committee* (A/HRC/36/51), 2017, lit. 26.

¹⁵² International Organization for Migration, *Key Migration Terms*, 2018. p. 345.

¹⁵³ UN International Children's Emergency Fund, *Uprooted, the growing Crisis for Refugee and Migrant Children*, 2016, p. 37.

¹⁵⁴ UN Human Rights Council, *Global issue of unaccompanied migrant children and human rights - Final report of the Human Rights Council Advisory Committee* (A/HRC/36/51), 2017, lit. 52.

¹⁵⁵ *Ibid.*

¹⁵⁶ International Organization for Migration, *Key Migration Terms*, 2018. p. 345.

¹⁵⁷ UN Human Rights Council, *Global issue of unaccompanied migrant children and human rights - Final report of the Human Rights Council Advisory Committee* (A/HRC/36/51), 2017.

¹⁵⁸ *Ibid.* lit. 29.

¹⁵⁹ *Ibid.* lit. 24.

¹⁶⁰ *Ibid.* lit. 29.

¹⁶¹ *Ibid.* lit. 29.

¹⁶² *ibid.* lit. 11.

¹⁶³ *Ibid.* lit. 25.

¹⁶⁴ Thomson Reuters Foundation, Tabary, Zoe, *One in three child migrants missing after Calais Jungle closure: charity*, 2016.; International Organization for Migration, *International Organization for Migration. Key Migration Terms*, 2018, p. 347.

When it comes to denouncing a human rights violation, migrant children may lack proper documentation or not speak the local language.¹⁶⁵ Furthermore, in almost every country there is a lack of data about human rights violations faced by unaccompanied migrant children.¹⁶⁶

Conclusion

Although the international legal framework provides a solid foundation for the protection of the rights of migrant children and adolescents, many factors impair the enjoyment of these rights. The specific problem of migrant children has come to the attention of the international system a lot later than other issues concerning migration, hence a lot has been done to analyze the situation of these children and adolescents. Now however, it is time to act and build upon the existing institutional and legal framework, to provide that children benefit from the progress concerning migration and refugees envisaged in the New York declaration. Cooperation with CSOs and the exchange of ideas on good practices can help to meet the special needs of migrant children and adolescents as and to respond to the challenges that migration imposes.

Further Research

To prepare themselves for this topic, delegates should focus on the following questions:

- In your country, are there issues to implement the applicable treaties applicable to the rights of migrant children and adolescent in your country? Who could help? How?
- What good practices have been implemented in your country? How could this practice help to solve the problems relating to the protection of the rights of migrant children and adolescents in other parts of the world?
- How can a perspective on migrant children be implemented or enhanced in mechanisms for the rights of migrants such as the global forum, the GMG or IOM?
- Which CSOs are active in your country? What is your Government doing to cooperate with CSOs?

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¹⁶⁵ United Nations Human Rights Council, *Global issue of unaccompanied migrant children and human rights - Final report of the Human Rights Council Advisory Committee (A/HRC/36/51)*, 2017.lit. 32.

¹⁶⁶ Ibid. lit 51.

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II. ENSURING THE RIGHT TO CLEAN WATER AND SANITATION FOR ALL

Introduction

"The children who have no clean water to drink, the women who fear for their safety, the young people who have no chance to receive a decent education have a right to better, and we have a responsibility to do better. All people have the right to safe drinking water, sanitation, shelter and basic services."¹⁶⁷

Ban Ki-moon, former UN Secretary-General

Access to safe drinking water and sanitation is a prerequisite for the safeguarding of life, health, and the dignity of all.¹⁶⁸ Still, 2.1 billion people worldwide do not have access to safely managed water, which is defined as “drinking water from an improved water source that is located on premises, available when needed and free from [...] contamination”.¹⁶⁹ These 2.1 billion include 844 million people who need more than 30 minutes to reach an improved source of drinking water.¹⁷⁰ Furthermore, 4.5 billion people lack access to safely managed sanitation, meaning the possibility to use “improved facilities that are not shared with other households and where excreta are safely disposed”.¹⁷¹ Out of these, 2.3 billion still do not have basic sanitation services, meaning that they do use safely managed sanitation facilities, which are shared with other households.¹⁷²

Billions of people have gained access to drinking water and sanitation services since 2000, but these services do not necessarily provide safe water and sanitation, as water is often not free from contamination and sanitation often lacks safe disposal of excreta.¹⁷³ Many homes, healthcare facilities, and schools still lack soap and water for handwashing. This puts the health of all people – but especially young children – at risk for diseases, such as diarrhea. As a result, every year, 361 000 children under 5 years of age die due to diarrhea even though it is largely preventable. The number of diarrheal deaths could be cut by a third if risk factors, such as contaminated water and poor sanitation, were addressed.¹⁷⁴ Poor sanitation and contaminated water are also linked to transmission of diseases such as cholera, dysentery, hepatitis A, and typhoid.¹⁷⁵ In many parts of the world, insects that live or breed in contaminated water carry and transmit diseases such as dengue fever. Furthermore, 240 million people worldwide are affected by schistosomiasis – an acute and chronic disease caused by parasitic worms contracted through exposure to infested water. Good hygiene is

¹⁶⁷ UN International Decade for Action. *Water for Life 2005-2015*, n.d.

¹⁶⁸ UN Office of the High Commissioner for Human Rights. *United Nations Human Settlements Programme and World Health Organization, The Right to Water Fact Sheet No. 35*, 2010.

¹⁶⁹ World Health Organization and UN International Children’s Emergency Fund, *Progress on Drinking Water, Sanitation and Hygiene 2017 Update and SDG Baselines*, 2017.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² World Health Organization, *2.1 billion people lack safe drinking water at home, more than twice as many lack safe sanitation*, 2017.

¹⁷³ World Health Organization and UN International Children’s Emergency Fund, *Progress on Drinking Water, Sanitation and Hygiene 2017 Update and SDG Baselines*, 2017.

¹⁷⁴ World Health Organization, *Drinking-water Key facts*, 2018.

¹⁷⁵ World Health Organization, *2.1 billion people lack safe drinking water at home, more than twice as many lack safe sanitation*, 2017.

one of the simplest and most effective ways to prevent the spread of disease. However, where access to clean water is limited, people often decide handwashing is not a priority, thereby adding to the likelihood of preventable diseases.¹⁷⁶

The lack of access to clean water and sanitation does not only have serious repercussions for the right to health and life, but also puts at risk the enjoyment of other fundamental human rights, such as the right to housing, the right to privacy, the right to equality and non-discrimination, and the right to education. For example, the right to housing includes, by definition, access to “safe drinking water” and “adequate sanitation”.¹⁷⁷ The right to equality and non-discrimination includes State’s obligations to aim at eliminating inequalities, which exist regarding the access to safely managed water and sanitation.¹⁷⁸ Safely managed water is often unaffordable to many people, resulting in de facto inaccessibility of water despite sufficient amounts of water available.¹⁷⁹ People with disabilities and older people often experience barriers in accessing water sources and sanitation facilities, while people living with chronic illness often require a higher amount of water than they can afford.¹⁸⁰ Furthermore, the right to education is often violated when girls drop out of school because of a lack of sanitation and menstrual hygiene facilities.¹⁸¹ The right to water and sanitation is therefore also crucial to ensure gender equality and to eradicate discrimination. The close connection between the right to clean water and sanitation and other fundamental human rights is of major importance and needs to be kept in mind when developing sustainable solutions.¹⁸²

Though progress in provision of water and sanitation has been made during the last decades, access to safe drinking water and sanitation is still far from becoming reality in many parts of the world.¹⁸³ In light of growing challenges, like climate change, increasing water scarcity, population growth, demographic changes and urbanization, the World Health Organization (WHO) estimates that by 2025, half of the world’s population will be living in water-stressed areas.¹⁸⁴ In those areas, the use of water is either restricted by poor quality or by less supply than demand.¹⁸⁵ In figures, water stress occurs when water supplies drop below 1,700 m³ per capita per year.¹⁸⁶ Immediate action has to be taken by the international community in order to sustainably provide access to clean water and sanitation to everybody.¹⁸⁷

¹⁷⁶ World Health Organization, *Drinking-water Key facts*, 2018.

¹⁷⁷ UN Office of the High Commissioner for Human Rights, *United Nations Human Settlements Programme. The Right to Adequate Housing Fact Sheet No. 21*, 2009.

¹⁷⁸ The Rights to Water and Sanitation. *Information portal on the human rights to water and sanitation. Underlying Principles*, n.d.

¹⁷⁹ The Rights to Water and Sanitation, *Information portal on the human rights to water and sanitation. Right to Water*, n.d.

¹⁸⁰ WaterAid, *Post 2015 toolkit. WASH and inequalities*, n.d.

¹⁸¹ The Rights to Water and Sanitation. *Information portal on the human rights to water and sanitation. Right to Water*, n.d.

¹⁸² UN Office of the High Commissioner for Human Rights Special Rapporteur on the human right to safe drinking water and sanitation, *On the right track. Good practices in realising the rights to water and sanitation*, 2012.

¹⁸³ Our World in Data, *Water Access, Resources & Sanitation*, 2018.

¹⁸⁴ World Health Organization, *Drinking-water Key facts*, 2018.

¹⁸⁵ Green Facts, *Facts on Health and the Environment Water Stress*, n.d.

¹⁸⁶ UN Water, *Water Facts Water Scarcity*, n.d.

Key Aspects of the Right to Water

In January 2003, the Committee on Economic, Social and Cultural Rights (CESCR) adopted *General Comment No. 15* on the right to water, defining the right to water as the right of “everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”.¹⁸⁸ The right to water hence contains freedoms, such as the protection against arbitrary and illegal denial of access to water, as well as the prohibition of illicit contamination of water resources.¹⁸⁹ Another key element of the right to water is the protection of people when accessing water or sanitation facilities. Pollution or contamination of water resources affecting human health are prohibited. As asserted in *General Comment No. 15*, States are required to ensure that everyone has access to adequate sanitation which is fundamental for human dignity and privacy, but also for protecting water quality.¹⁹⁰

The right to water also contains entitlements, such as to access to a minimum amount of safe drinking water to sustain life and health, and to meet fundamental needs. However, the right to water does not entitle individuals to infinite access to water. According to the WHO, between 50 and 100 liters of water per person per day are needed to ensure that most basic needs are met and few health concerns arise. Access to 20-25 liters per person per day represents the minimum, but this amount raises health concerns because it is insufficient to meet basic hygiene and consumption requirements.¹⁹¹ While the right to water does not imply that everyone should have access to water and sanitation at home, it requires such facilities to be in close proximity to each house.¹⁹² Water and sanitation should be provided in schools and hospitals, at the workplace, in detention centers, as well as in camps for refugees and internally displaced persons (IDPs).¹⁹³ Finally, no individual group should be denied access to safe drinking water because they cannot afford to pay.¹⁹⁴ Accordingly, all direct and indirect costs related to water and sanitation should not prevent anyone from accessing these services and should not compromise their ability to enjoy other human rights, such as the rights to food, education, adequate housing or health. When individuals or groups have been denied their right to water, they should have access to effective judicial or other appropriate remedies, including adequate reparation. Individuals and groups should also have full and equal access to information concerning water, water services and environment held by public authorities and third parties.¹⁹⁵

International and Regional Framework

The necessity to provide access to clean water and sanitation systems to people all over of the world has been on the UN’s agenda for over 40 years. A number of humanitarian and environmental law treaties entail specific provisions related to access to safe drinking water

¹⁸⁸ UN Office of the High Commissioner for Human Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 2002.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ Office of the High Commissioner for Human Rights. *United Nations Human Settlements Programme and World Health Organization The Right to Water Fact Sheet No. 35*, 2010.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

and sanitation. For instance, the *Geneva Conventions* and their *Additional Protocols* outline the importance of access to safe drinking water and sanitation for health and survival, especially in extreme situations of armed conflicts.¹⁹⁶ Article 54 of the *Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)*, specifically prohibits the attack, destruction or removal of “objects indispensable to the survival of the civilian population”, including “drinking water installations and supplies”.¹⁹⁷

The concept of basic water provision to meet fundamental human needs was first established at the 1977 United Nations Water Conference in Mar del Plata, Argentina. Its Action Plan asserts that all peoples have the right to access to drinking water in quantities and of quality equal to their basic needs. The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, the *Convention on the Rights of the Child (CRC)*, and the *Convention on the Rights of Persons with Disabilities (CRPD)* explicitly refer to water, sanitation and hygiene (WASH) as a human right.¹⁹⁸ These conventions request Member States to take measures to ensure equal access to water and sanitation facilities to all.¹⁹⁹ Subsequently, a number of other plans of action have referred to safe drinking water and sanitation as a human right. For example, the Habitat Agenda, adopted by the United Nations Conference on Human Settlements in 1996, recognized water and sanitation as part of the right to an adequate standard of living.²⁰⁰

In July 2005, the *Draft Guidelines for the Realization of the Right to Drinking Water and Sanitation* were adopted in the Sub-Commission on the Promotion and Protection of Human Rights. They assist government policymakers, international agencies and members of civil society working in the water and sanitation sector to implement the right to drinking water and sanitation.²⁰¹ According to the Draft Guidelines, States are obliged to ensure that access to sanitation facilities is granted in an equal and non-discriminatory manner and that no population group is excluded from sanitation services. States should give priority to those without basic access, the most vulnerable groups and ensure that sanitation is affordable to everyone and that no one should be deprived of the minimum access to basic sanitation services.²⁰²

In its *Decision 2/104* from November 2006, the HRC requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to conduct a study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and

¹⁹⁶ Ibid.

¹⁹⁷ International Committee of the Red Cross, *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 1977.

¹⁹⁸ UN Office of the High Commissioner for Human Rights, *Consultation on Human Rights and Access to Water and Sanitation*, 2007.

¹⁹⁹ UN Office of the High Commissioner for Human Rights. (1981). *Convention on the Elimination of All Forms of Discrimination against Women*, 1981; UN Office of the High Commissioner for Human Rights, *Convention on the Rights of the Child*, 1990; UN, *Convention on the Rights of Persons with Disabilities*, 2006.

²⁰⁰ UN Office of the High Commissioner for Human Rights, *United Nations Human Settlements Programme and World Health Organization The Right to Water Fact Sheet No. 35*, 2010.

²⁰¹ UN, *The Human Right to Water and Sanitation Milestones*, n.d.

²⁰² UN Economic and Social Council, *Draft Guidelines for the Realization of the Right to Drinking Water and Sanitation (E/CN.4/Sub.2/2005/25)*, 2005.

sanitation under international human rights instruments.²⁰³ The study stated that “It is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses [...] to sustain life and health”.²⁰⁴ It concludes that issues regarding water and sanitation are not adequately addressed at the international level. Subsequently, the OHCHR encourages the HRC to further consider “human rights obligations in relation to access to safe drinking water and sanitation” and States, organizations, civil society and enterprises to develop strategies for the purpose of making WASH accessible to all.²⁰⁵

Following this recommendation, the HCR adopted *resolution 7/22* in March 2008, appointing an independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation for a period of three years.²⁰⁶ This independent expert should encourage dialogue between UN bodies, Governments, and authorities and institutions connected to WASH. The independent expert was also supposed to carry out a study on obligations related to the human rights to water and sanitation, resulting in specific recommendations on the realization of access to safe drinking water and sanitation. Finally, the independent expert should be in charge of developing “a compendium of best practices”, providing assistance for those actors that are responsible for enabling equal access to WASH.²⁰⁷ Further elaborating on States obligations to combat inequalities regarding the access to water and sanitation, HRC *resolution 12/8* urges Member States to develop national and local actions plans, and to organize “public awareness campaigns promoting behavior change in sanitation”, including hygiene promotion.²⁰⁸

In July 2010, the GA adopted *resolution 64/292*, appealing to Member States and international organizations to provide financial resources to developing countries, and to further assist them through capacity-building and technology transfer.²⁰⁹ In September 2010, the HRC adopted *resolution 15/9*, affirming that the rights to water and sanitation are part of the ICESCR, CEDAW, CRC, and CRPD, and confirming that these rights are legally binding upon State Parties.²¹⁰ It also calls upon Member States to develop appropriate tools and mechanisms to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation.²¹¹ HRC *resolution 18/1*, adopted in September

²⁰³ UN Office of the High Commissioner for Human Rights, *Decision 2/104 on Human rights and access to water*, 2006.

²⁰⁴ UN Human Rights Council. *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, 2007.

²⁰⁵ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, 2007.

²⁰⁶ UN Human Rights Council, *Resolution 7/22 on the Human rights and access to safe drinking water and sanitation*, 2008.

²⁰⁷ UN Human Rights Council, *Resolution 7/22 on the Human rights and access to safe drinking water and sanitation*, 2008.

²⁰⁸ UN Human Rights Council, *Resolution 12/8 on Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*, 2009.

²⁰⁹ UN General Assembly, *Resolution 64/292 on the Human Right to Water and Sanitation*, 2010.

²¹⁰ The Rights to Water and Sanitation, *Information portal on the human rights to water and sanitation. International timeline*, n.d.

²¹¹ UN Human Rights Council, *Resolution 15/9 on Human Rights and Access to Safe Drinking Water and Sanitation*, 2010.

2011, emphasizes the importance of practical solutions to implement the human right to WASH.²¹² The resolution calls on States to ensure as much financing as possible for sustainable delivery of water and sanitation services.²¹³ It also aims at enhanced national monitoring of existing plans and strategies and development of a regulatory framework for the promotion of the human right to water and sanitation.²¹⁴

On the regional level, the African Charter on the Rights and Welfare of the Child requires State Parties to realize children's rights to health by taking measures to ensure the provision of adequate nutrition and safe drinking water.²¹⁵ The African Charter on Human Rights includes the right to "a satisfactory environment" favorable to people's development, which is unattainable without access to water and sanitation.²¹⁶ The European Charter on Water Resources, which was adopted by the Committee of Ministers of the Council of Europe in 2001, confirms that everyone "has the right to a sufficient quantity of water for his or her basic needs".²¹⁷ The Protocol of San Salvador to the American Convention on Human Rights protects "the right to live in a healthy environment and to have access to basic public services".²¹⁸ Finally, the Arab Charter on Human Rights calls upon States to provide safe drinking water and proper sanitation systems for all.²¹⁹ There are also several regional declarations that have recognized the right to water. In 2007, Asia-Pacific leaders agreed to recognize people's right to safe drinking water and basic sanitation as a basic human right and fundamental aspect of human security.²²⁰ In the *Abuja Declaration*, adopted at the first Africa-South America Summit in 2006, Heads of State and governments declared that they would promote the right of their citizens to have access to clean and safe water and sanitation within their respective jurisdictions.²²¹ While these declarations are not legally binding, they do reflect a consensus and a political statement of intent on the importance of recognizing and realizing the right to water.

Role of the International System

In September 2002, the World Summit on Sustainable Development took place with the aim of speedily increasing "access to basic requirements such as clean water [and] sanitation [...]".²²² In order to coordinate the efforts of UN entities and international organizations working on water and sanitation issues, the High-level Committee on Programmes established the inter-agency mechanism UN-Water in 2003.²²³ Besides coordinating the work of UN

²¹² UN Human Rights Council, *Resolution 18/1 on the Human Right to Safe Drinking Water and Sanitation*, 2011.

²¹³ UN, *International Decade for Action. Water for Life 2005-2015*, n.d.

²¹⁴ UN Human Rights Council, *Resolution 18/1 on the Human Right to Safe Drinking Water and Sanitation*, 2011.

²¹⁵ The Rights to Water and Sanitation, *The rights to water and sanitation in regional human rights law*, n.d.

²¹⁶ UN Educational, Scientific and Cultural Organization, *Outcome of the International Experts' Meeting on the Right to Water*, 2009.

²¹⁷ Council of Europe, *Recommendation (Rec(2001)14) Of the Committee of Ministers to Member States on the European Charter on Water Resources*, 2001.

²¹⁸ UN Educational, Scientific and Cultural Organization, *Outcome of the International Experts' Meeting on the Right to Water*, 2009.

²¹⁹ UN Educational, Scientific and Cultural Organization, *Outcome of the International Experts' Meeting on the Right to Water*, 2009.

²²⁰ Asia-Pacific Water Forum, *1st Asia-Pacific Water Summit. Message from Beppu*, 2007.

²²¹ Africa-South America Summit, *Abuja Declaration. ASA/Summit/doc.01*, 2006.

²²² UN, *World Summit on Sustainable Development. Johannesburg Declaration on Sustainable Development*, n.d.

²²³ UN Water, *About United Nations Water*, n.d.

organizations concerning water and sanitation programs, UN Water’s primary objective is to support UN Member States to sustainably manage water and sanitation.²²⁴ UN Water contributes to putting issues connected to WASH on the UN’s agenda by informing policies about emerging issues. UN Water thereby contributed to an enhanced focus on water and sanitation issues in agreements such as the 2030 Agenda for Sustainable Development, the 2015 Paris Agreement, and the 2015-2030 Sendai Framework for Disaster Risk Reduction, which form a common international framework.²²⁵ By launching the Integrated Monitoring Initiative for SDG 6, UN Water furthermore monitors progress on the achievement of SDG 6.²²⁶ The third cornerstone of UN Water’s work consists of campaigns that aim at raising international awareness and action on issues relating to WASH. Those campaigns are launched every year on World Water Day on 22 March, and on World Toilet Day on 19 November, emphasizing different themes every year.²²⁷ For example, the focus of World Water Day 2018 was put on nature-based solutions for challenges faced in the 21st century.²²⁸

In 2015, the UN adopted the *2030 Agenda for Sustainable Development*, including 17 Sustainable Development Goals (SDGs) which calls upon the international community to design innovative and transformative policies and programs towards sustainability, development, and the full realization of human rights for all.²²⁹ SDG 6 addresses the “availability and sustainable management of water and sanitation for all”.²³⁰ It aims at achieving universal and equitable access to safe and affordable drinking water, sanitation and hygiene for all; improving water quality and water-use efficiency; and strengthening participation of local communities in water and sanitation management.²³¹ The Joint Monitoring Programme (JMP) monitors progress on the SDGs. The JMP report, *Progress on drinking water, sanitation and hygiene: 2017 update and Sustainable Development Goal baselines*, presented the first global assessment of “safely managed” drinking water and sanitation services, meaning drinking water free from contamination that is available at home when needed, and toilets whereby excreta are treated and disposed safely. It also documented progress towards ending open defecation and achieving universal access to basic services.²³²

Obligations on States

Through ratifying international human rights treaties, States commit themselves to protect and promote the human rights defined and guaranteed by the respective treaties.²³³ States

²²⁴ UN Water, *About United Nations Water*, n.d.

²²⁵ UN Water, *What We Do. Inform Policies*, n.d.

²²⁶ UN Water, *What We Do. Monitor and Report*, n.d.

²²⁷ UN Water, *What We Do. Inspire Action. UN-Water’s Campaigns*, n.d.

²²⁸ UN Water, *22 March World Water Day. The Answer is in Nature*, 2018.

²²⁹ UN, *Sustainable Development Knowledge Platform. Transforming our world: the 2030 Agenda for Sustainable Development*, n.d.

²³⁰ World Health Organization, *2.1 billion people lack safe drinking water at home, more than twice as many lack safe sanitation*, 2017.

²³¹ UN, *Sustainable Development Knowledge Platform. Sustainable Development Goal 6*, n.d.

²³² World Health Organization, *2.1 billion people lack safe drinking water at home, more than twice as many lack safe sanitation*, 2017.

²³³ UN Office of the High Commissioner for Human Rights, *Indicators. Status of Ratification. Interactive Dashboard. Metadata*, n.d.

Parties to the ICESCR have the obligation to work towards the full realization of the right to water. Simultaneously, the ICESCR recognizes that due to resource constraints and the need for time to ensure full and equal access to WASH, some components are deemed subject to progressive realization. This means that States Parties to the ICESCR are not obliged to immediately grant full access to WASH, but continuously strive towards translating the right to water and sanitation for everyone. However, some components of the right to water, such as non-discrimination, have to be actively assured by States Parties to the ICESCR without delay.²³⁴

The 2006 Human Development Report underlines that governments are responsible for securing the progressive realization of the right to water through a legislative and regulatory framework that applies to all service providers, public and private. The Report also stresses that all governments should go beyond acknowledging the human right to WASH in their constitutions.²³⁵ To maintain and extend the necessary water and sanitation facilities, States must thus actively impose legislation and enable resources.²³⁶

State obligations fall into three categories, namely the obligations to respect, protect and fulfil. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to water, i.e. by arbitrarily and illegally disconnecting water and sanitation services. The obligation to protect requires States to prevent third parties from interfering with the right to water. States should adopt legislation to ensure that private actors comply with human rights standards related to the right to water. The obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to water. States must, progressively and to the extent allowed by their available resources, extend water and sanitation services to vulnerable and marginalized groups, make water and sanitation services more affordable. States must ensure that there is appropriate education about the proper use of water and sanitation, protection of water sources and methods to minimize waste.²³⁷

Monitoring the Right to Water and Holding States Accountable

To ensure that States respect their obligations in relation to the right to water, a range of actors monitors the actions taken by States. Those actors include civil society, national human rights institutions (NHRIs), international organizations, and the States themselves.²³⁸ NHRIs investigate in the implementation of human rights treaties and serve as consultants for governments in developing strategies and mechanisms for further realization of the right to water and sanitation. States need to be held accountable, meaning that States have to disclose their efforts to protect and to provide equal access to water and sanitation.²³⁹

On the international level, committees composed of independent experts monitor the implementation of UN human rights treaties. A core instrument of international evaluation of

²³⁴ UN Office of the High Commissioner for Human Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 2002.

²³⁵ UN Development Programme, *Human Development Reports. Human Development Report 2006. Beyond scarcity: Power, poverty and the global water crisis*, n.d.

²³⁶ Ibid.

²³⁷ UN Office of the High Commissioner for Human Rights, *United Nations Human Settlements Programme and World Health Organization. The Right to Water. Fact Sheet No. 35*, 2010.

²³⁸ Ibid.

²³⁹ Ibid.

progress is the review of State Parties reports, and the formulation of recommendations based upon those. The CESCR works on the monitoring of States Parties' progress towards the realization of the right to water.²⁴⁰ To assist the CESCR's monitoring work, UN-Water has launched the Integrated Monitoring Initiative for SDG 6, which develops special tools for the monitoring of SDG 6 global indicators.²⁴¹

The Privatization of Water

The provision of clean water and sanitation for the world's people is a very expensive task that requires massive investment. The UN report, *Global Analysis and Assessment of Sanitation and Drinking Water 2017*, indicates that despite a global increase of budgets for WASH, the necessary means for meeting nationally-defined targets of water and sanitation related services are still insufficient in many countries.²⁴² The World Bank estimates that investments in infrastructure need to be raised to an annual amount of \$114 billion.²⁴³ In the past years, a debate has risen whether or not the amount of private sector funding should be raised.²⁴⁴ Many different agents play a role in the water and sanitation market, including investors, regional actors, private sector firms, or joint ventures between public and private participants.²⁴⁵ Over the last years, public service provisions were especially inadequate in developing countries in light of rapid population growth and migration in urban areas. Hence, small-scale local actors have compensated the deficiencies in public service provisions by providing WASH related services to large parts of the population.²⁴⁶

As the water sector is chronically under-funded and inefficient in developing countries, a possible mechanism to help governments funding investment and bringing technology that can improve the performance and financial sustainability of the water sector are public-private partnerships (PPPs).²⁴⁷ PPPs allow for greater private-sector participation in the delivery, financing, and operations of public water infrastructure projects. However, they differ from privatization in that the right to use public property is granted to a private partner for a definite period of time.²⁴⁸ The Private sector participation in infrastructure projects is highly controversial, as proponents argue that private investments will contribute to sustainable infrastructure, while opponents fear that the involvement of the private sector will lead to price hikes that make water inaccessible for poor people.²⁴⁹ Because of the increasing relevance and controversy of PPPs, efforts toward the development of general sets of guidelines for PPP contracts have been made. Organizations such as the OECD, the European Commission, the International Monetary Fund (IMF), the World Bank and Regional

²⁴⁰ Ibid.

²⁴¹ UN Water, *About the Integrated Monitoring Initiative for SDG 6*, n.d.

²⁴² UN, *Sustainable Development Goals. 'Radical' investments needed to meet global water and sanitation targets. UN report, 2017.*

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Organization for Economic Co-operation and Development, *Private Sector Participation in Water Infrastructure. OECD Checklist for Public Action, 2009.*

²⁴⁶ Ibid.

²⁴⁷ World Bank Group, *Public-Private-Partnership Legal Resource Center. Legal Issues on Water & Sanitation PPPs, 2018.*

²⁴⁸ Sustainable Sanitation and Water Management Toolbox, *Public Private Partnerships, 2018.*

²⁴⁹ UN Department of Public Information, *International Decade for Action. Water for Life 2005-2015. Backgrounder. Supplying Water – For a Price, 2004.*

Commissions of the UN have issued guidelines and recommendations on the introduction of more transparent accounting and reporting practices for PPPs.²⁵⁰

Conclusion

Since 1977, when access to clean water and sanitation was recognized as a human right for the first time in the Action Plan of the UN Water Conference, a lot of progress has been made to provide people with safe water. However, the JMP report, *Progress on drinking water, sanitation and hygiene: 2017 update and Sustainable Development Goal baselines*, revealed that there were still 844 million people who did not have access to clean water and 2.3 billion people who lacked even a basic sanitation service.²⁵¹ A lot remains to be done in order to improve the water and sanitation situation and to guarantee access to clean water and sanitation for everyone. The fact that, according to the WHO, half of the world's population will be living in water-stressed areas by 2025 counters SDG 6, which is to achieve universal and equitable access to safe and affordable drinking water for all by 2030.²⁵² After increasing focus on the issue of the right to water and sanitation in the early 2000s, the HRC has to take further steps towards the achievement of SDG 6. Equal access to water and sanitation for everybody can only be achieved through new and innovative measures, taken by all States in close cooperation with international bodies such as the HRC.

Further Research

When researching this topic, delegates should consider the following questions: How can existing monitoring systems be improved and better cooperation between States as well as between international bodies be guaranteed? What challenges does the externalization of water and sanitation services to the private sector pose and how can the HRC answer those challenges? How can the international community ameliorate women's and children's access to clean water, especially regarding the access to education and the protection from diseases that are related to water hygiene? How can the HRC contribute to the achievement of SDG 6?

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²⁵⁰ Department of Economic & Social Affairs, *Public-Private Partnerships and the 2030 Agenda for Sustainable Development: Fit for purpose?* 2016.

²⁵¹ World Health Organization and UN International Children's Emergency Fund, *Progress on Drinking Water, Sanitation and Hygiene. 2017 Update and SDG Baselines.*, 2017.

²⁵² World Health Organization, *Drinking-water Key facts*, 2018.

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