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SIPA Capstone Project Report

Combating Racism and Discrimination through the United Nations

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CONTENTS

Executive Summary 4

Introduction 6

Chapter 1: Case Study Selection and Rationale 7

Chapter 2: Equality and Non-Discrimination within the Human Rights Framework 10
- The human rights framework within the United Nations 10
- Principle of equality and non-discrimination 10
- Differentiation of purpose and effect 11
- Group rights within the international human rights framework 12

Chapter 3: Summaries of Case Studies 13
- Apartheid in South Africa 13
- Discrimination Against the Rohingya in Myanmar 15
- Discrimination Against the Uighurs in China 18
- Discrimination Against Black Americans in the U.S. Criminal Justice System 20
- Discrimination Against the Roma 24
- Discrimination Against People with Albinism 26
- Discrimination Against LGBTI People 28

Chapter 4: Application and Analysis of Mechanisms Across Cases 31
- Mapping of mechanisms 32
- Security Council 33
- General Assembly 34
- Secretariat 37
- UN agencies, funds, and programs 40
- Human Rights Council 42
- Treaty bodies 48
- Mapping of mechanisms across cases 54

Chapter 5: Lessons Learned 55

Chapter 6: Recommendations 65
- Working to overcome geopolitics and sovereignty concerns 65
- Strengthening compliance with and implementation of treaties 67
- Mainstreaming equality and non-discrimination across the UN 70
- Improving the implementation and coordination of mechanisms 70
- Building local capacity 71
- Improving data collection, measurement, and transparency 72
- Rebalancing of priorities across UN pillars with greater focus on human rights 73

Conclusion **74**
Works cited **75**
Annex: **86**
Annex 1: Relevant UN and regional resolutions and declarations 87
Annex 2: Mechanisms applied in the cases of genocide in the Sudan and Myanmar 90
Annex 3: Case studies 93
Apartheid in South Africa 94
Discrimination Against the Rohingya in Myanmar 107
Discrimination Against the Uighurs in China 119
Discrimination Against Black Americans in the U.S. Criminal Justice System 130
Discrimination Against the Roma 154
Discrimination Against People with Albinism 178
Discrimination Against LGBTI People 187

ABBREVIATIONS

BLM	Black Lives Matter
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CED	International Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
CSW	Commission on the Status of Women
DPPA	Department of Political and Peacebuilding Affairs
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, gay, bisexual, transgender, and intersex
OHCHR	Office of the High Commissioner for Human Rights
PWA	People with albinism
SOGIESC	Sexual Orientation, Gender Identity and Expression, and Sex Characteristics
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

Executive Summary

Responding to systemic forms of racism and violence against people of color, the Black Lives Matter movement has drawn worldwide attention to issues of racial justice in the U.S. and beyond. Calls for action at the international level have increased, with a renewed interest in the potential role of the United Nations in pushing for a more ambitious anti-discrimination agenda. With its founding purpose to promote and protect the fundamental rights of all people, the UN is committed to the elimination of racism and is a constant advocate for greater accountability for all forms of discrimination. How might the UN take advantage of this moment in history to advance its anti-discrimination and racial justice agenda? What instruments and processes exist within the UN system to combat racism and discrimination, and what factors enable or inhibit the Organization from having a greater impact?

This report takes on the question of the UN's effectiveness in combating systemic forms of discrimination by comparing seven case studies. Four cases were specific to one country: discrimination against Black Americans in the U.S., against non-whites in apartheid South Africa, against the Rohingya in Myanmar, and against the Uighurs in China. Three cases were thematic and multinational: discrimination against the European Roma, against persons with albinism in Africa, and against LGBTI individuals worldwide. The cases offered examples of the full range of UN mechanisms, including fact-finding, awareness raising, public declarations, legal forums, and international enforcement.

On the basis of cross-case comparison, the report finds that the UN can be a constructive partner in addressing systemic forms of discrimination, challenging the notion that the Organization is simply a toothless watchdog or otherwise unable to take effective action. Though many mechanisms are non-binding and change may take place gradually, many of the UN's interventions have helped to raise awareness, improve coordination in response, press for domestic legislation, and at times lead to accountability for systemic discrimination. The report identifies the key conditions that inhibit greater effectiveness of the UN, including: (1) sovereignty concerns, (2) lack of compliance with treaty obligations, (3) local capacity constraints, and (4) data and transparency issues.

Recommendations

To overcome these challenges, and drawing on the lessons learned from the case studies, the report offers the following recommendations for the UN and Member States seeking to advance the anti-discrimination agenda:

1 Work to overcome geopolitics and sovereignty constraints

Member States should lead with humility on the international stage, speaking openly about their domestic shortcomings on discrimination to maintain credibility on human rights within geopolitically-charged UN forums. They should also leverage coalitions to advance stalled or polarized issues in order to overcome political obstacles to addressing anti-discrimination at the UN. In scenarios where sovereignty constraints restrict action at the national level, governments supportive of UN anti-discrimination initiatives should seek to uphold international commitments through local diplomacy. Finally, where urgent issues involving serious violence against minority groups cannot be advanced in forums like the Security Council due to geopolitical

constraints, Member States can turn to the Unite for Peace resolution under which the General Assembly can authorize enforcement actions.

2 Strengthen compliance with and implementation of treaties

UN actors should urge national governments to sign and fully implement treaties. Steps should also be taken by committee chairs to coordinate and harmonize treaty body jurisprudence on issues of discrimination, and with regional organizations, facilitate convergence in international approaches to human rights law and regional and sub-regional mechanisms. Committees should prioritize the promotion of underutilized mechanisms, such as the Inter-state Complaints Mechanism, and work to increase knowledge of and access to treaty bodies more broadly among marginalized groups. The General Assembly and treaty bodies should also consider adopting additional optional protocols and general recommendations to address normative and implementation gaps in the human rights framework.

3 Mainstream equality and anti-discrimination across the UN

Coordination should be enhanced between human rights bodies and mechanisms within the UN. To that end, a Diversity, Equity, and Inclusion unit should be created within the UN Secretariat to further institutionalize and prioritize the UN's work around equality and non-discrimination.

4 Improve the implementation and coordination of mechanisms

Our research indicates a need to improve system-wide decision-making, including greater cohesion within the UN system. The UN should work to bolster the capacity of country team offices, which are key for addressing discrimination on the ground.

5 Build local capacity

UN agencies and bodies should ensure that states are provided with sufficient resources and technical assistance to implement UN-led recommendations and action plans. They should foster collaborative relationships with national organizations and institutions. In addition, the Secretary-General should consider establishing a Trust Fund to support victims of systemic forms of discrimination.

6 Improve data collection, measurement, and transparency

UN agencies and bodies should encourage Member States to increase systematic, disaggregated data collection. The UN should also fund the development of an independent international index on equality and non-discrimination, which could include indicators from the SDG framework. OHCHR should develop and promote a system of standardized guidelines to assist Member States in implementing policy reforms around census surveys.

7 Rebalance priorities across the UN pillars with a greater focus on human rights, including equality

The General Assembly should work to rebalance the regular budget and shift funding within the UN system to reallocate resources in support of anti-discrimination work. The Secretary-General should also use his influence to re-prioritize the distribution of funds by underscoring the organizational priorities of the UN and signaling the importance of a better balance across the three pillars.

Introduction

The mass protests led by the Black Lives Matter movement in the summer of 2020 and the United States' historical reckoning with structural racism and violence have reverberated strongly throughout the world, effectively putting racial justice on the global agenda. This renewed attention in the American context exemplifies the persistence of structural racism and discrimination affecting marginalized groups across the world. Calls for the United Nations to investigate racially motivated police violence in the United States and other cases of targeted violence are a reminder that one of the founding purposes of the United Nations was to promote and protect the fundamental human rights of all people. However, these efforts have often fallen short of their aspirations and the commitment of the international community to these principles. In the 1947 petition to the UN, "An Appeal to the World," W.E.B DuBois poignantly reaffirmed the role of the international community in responding to cases of discrimination, which are "not merely an internal question," asserting that "it is a basic problem of humanity," and as such, demanding of international attention and action.[1]

This report will assess how issues of racism and discrimination are addressed within the UN context. Drawing on current and historical case studies it will: 1) examine the basis for UN engagement on these issues and under what circumstances the UN has the mandate to act; 2) provide a mapping of mechanisms and processes that engage on issues of racism and discrimination; 3) determine enabling and inhibiting factors in the use of these instruments in particular circumstances; and 4) assess the effectiveness and impact of these mechanisms and processes, including their comparative strengths and limitations. From this analysis, the report will seek to assess what issues have triggered step changes in the development of international norms and how these mechanisms have evolved over time, from the UN's response to apartheid and colonialism in the mid-twentieth century to the many prevailing forms of racism and discrimination that exist today.

> *" Discrimination is not merely an internal question. It is a basic problem of humanity. "*

This year marks the 50th anniversary of the International Year to Combat Racism and Racial Discrimination, as well as the 20th anniversary of the Durban World Conference against Racism. In recognition of the "ever-growing struggle" against racism and discrimination "in all its forms and manifestations, and in the name of international solidarity with those struggling against racism"[2] and discrimination, this report will conclude with actionable recommendations for UN entities, regional organizations, Member States, and civil society actors for strengthening international engagement to address racism and discrimination in all its contemporary forms.

[1] National Association for the Advancement of Colored People and W. E. B. Du Bois, *An Appeal to the World: A Statement on the Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress*, New York, October 1947.

[2] General Assembly Resolution 2544, *Programme for the observance in 1971 of the International Year for Action to Combat Racism and Racial Discrimination*, A/RES/2544, December 1969.

Chapter 1: Case Study Selection and Rationale

The overall purpose of this study is to offer a comparison of various mechanisms the UN has used to combat systemic forms of discrimination. To that end, we selected seven cases that illustrate the diverse array of tools used within and across different country-specific and thematic contexts. Four cases are specific to one country: racial discrimination against Black Americans in the United States, non-whites in apartheid South Africa, and ethnic and religious discrimination against the Rohingya in Myanmar and the Uighurs in China. Three cases are thematic in nature and span internationally: discrimination against the European Roma, persons with albinism in Africa, and LGBTI individuals.[3]

The seven cases were also selected for their important distinctions in terms of the nature of discrimination, the societal position of the marginalized group, the status and influence of the state(s) in question, and the level and duration of UN engagement. The cases involve discrimination based on race (South Africa and the U.S.), ethnicity (Roma), SOGIESC[4] (LGBTI), as well as intersectional forms of discrimination—namely ethnic-religious discrimination against the Muslim Rohingya and Uighurs, and color- and disability-based discrimination against people with albinism in Africa. While some cases involve discrimination against a relatively small minority (people with albinism, the Roma, Rohingya, and Uighurs), others involve discrimination against a larger, more influential minority (U.S.) or even a majority (South Africa). This range also allows for a dynamic comparison between settings where the UN is able to engage with relatively less influential states (Myanmar and several sub-Saharan African states in the case of albinism) and with extremely influential states which hold permanent seats on the Security Council (China and the U.S.). Furthermore, the use of both country-specific and thematic cases allows for a comparison of the UN's ability to combat discrimination when a particular state is implicated versus when the discrimination occurs on a regional or global basis. Finally, the case selection allows for an evaluation of how these UN mechanisms to combat discrimination have evolved and expanded throughout the Organization's history. We examine a few cases that span several decades (apartheid in South Africa and racial discrimination in the U.S.) as well as cases that have only recently emerged onto the UN's agenda (LGBTI, the Uighurs, and albinism).

Recognizing that violence against marginalized groups can be a product of the discrimination they face in society, it is important to note that physical violence was not a criterion used in the selection of these cases. While many of the cases involved have historically or still do involve forms of violence, and at least two are believed to have escalated to crimes against humanity, this study seeks only to examine the UN's engagement in those cases on the basis of anti-discrimination. We do not evaluate the use of UN mechanisms intended to prevent genocide or ethnic cleansing in these cases, nor did we select cases where the UN intervened to address the aftermath of a genocide (e.g., Rwanda, Guatemala), as there

[3] We also considered 20 additional cases of discrimination that do not receive a full case study some of which are drawn upon for specific points throughout the study.

[4] Sexual orientation, gender identity and expression, and sex characteristics.

is already a large and established body of research on those mechanisms.[56]

Analytical objective and methodology

At the heart of this study is the question of effectiveness: which UN instruments have been particularly effective at addressing systemic discrimination, and why? Rather than attempting to provide definitive evidence of impact, this study relies on expert opinion and a range of qualitative data to assess how and whether UN mechanisms were seen to have achieved their stated objectives.[7] Wherever possible, the authors spoke directly to those leading UN processes and experts who could provide informed decisions about the role of the UN in pushing forward the anti-discrimination agenda. Taken together, these interviews and the literature review offer insights into what practices and processes were seen as particularly effective in a range of settings and the main factors that enabled or inhibited their success.

It can be difficult to assess effectiveness across different instruments and settings, particularly given that some instruments have far more ambitious mandates than others, while some settings present much more complex challenges. For example, the Centre against Apartheid within the Secretariat was established primarily to raise public awareness of discrimination in South Africa. In contrast, other mechanisms may have mandates to conduct fact-finding missions, issue reports to UN bodies, provide technical assistance to states, or even help develop binding legislation against discrimination. Even more challenging is the assessment of progress towards eliminating discrimination. In some cases, raising awareness can be considered an important success (e.g., in the case of albinism), while in others, the goal may be a reduction in violence, legislative reforms, or even criminal accountability. Indeed, even where progress is measurable, it can be difficult to isolate the extent to which the UN has contributed to change, given that it is often a relatively small player among others to combat discrimination.

This report recognizes that the UN is not the only intermediary to address racism and discrimination. In many of the case studies, regional bodies played a significant role in progressing international norms and pressuring domestic actors to take substantive steps to end discrimination. In our case studies, while focusing on the UN mechanisms specifically, we analyze the contexts in which the UN and other actors have interacted, inclusive of actions to build consensus positions and create joint leverage.

We recognize that the seven case studies do not address the full range of ways in which the UN may address forms of discrimination. Still, they do illustrate the principal instruments available to the UN and the common challenges that arise in most settings. By comparing across the cases, we offer insights into how the UN has overcome recurrent challenges such as sovereignty barriers while also making broad recommendations on how the UN might approach systemic discrimination in other contexts, including possibly in the U.S.

Intersectionality and Gender Discrimination

It is important to note that our case studies involve many overlapping forms of discrimination. These intersecting

[5] For example, see: Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, Brookings Institution Press, 2009.

[6] For an analysis of the mechanisms applied in cases of genocide and ethnic cleansing in the Sudan and Myanmar, see annex 2.

[7] The authors conducted 23 interviews, including at the Assistant Secretary-General level, Special Procedures Mandate Holders, representatives of national governments, civil society and NGO staff, international human rights law experts, academics, and activists.

identities—for example the status of the Uighurs and Rohingya as both ethnic and religious minorities in China and Myanmar, respectively—present challenges for assessing efforts at the international level to address multiple layers of discrimination. This study recognizes the need to identify the various forms of social injustice involved in these cases to understand discrimination on a deeper level. With this in mind, whenever possible, our analysis examines the mechanisms that the UN has employed through an intersectional approach.

Gender discrimination and sexual violence are other intersecting forms of discrimination that were observed across our cases. For example, Romani and Uighur women have faced multiple forms of gender-based violence, such as forced sterilization. In Myanmar, conflict-related sexual violence has been pervasive, with military forces targeting Rohingya women and girls, as well as men and boys.[8] The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been central to UN efforts to address intersectional gender discrimination within the selected cases while acknowledging its limitations in responding to incidents of sexual violation against individuals who do not identify as female.

Beyond CEDAW, we also acknowledge that the UN has developed and utilized several mechanisms and fora to promote gender equality, such as the establishment of UN Women, the creation of policies on gender mainstreaming, and the advancement of the SDGs that are aimed at reducing gender discrimination. While the UN's gender equality agenda may provide points of comparison with our selected case studies, it is ultimately more suitable as a separate area of study due to the extensive scholarship and global scope of the agenda.

[8] Women's Refugee Commission, "It's Happening to Our Men as Well: Sexual Violence Against Rohingya Men and Boys," WRC, November 2018.

Chapter 2: Equality and non-discrimination within the international human rights framework

The human rights framework within the United Nations

The promotion and protection of the fundamental human rights of all people, in accordance with the principle of equality and non-discrimination, has been central to the purpose of the United Nations since the organization's founding, with the UN Charter (1945) beginning, "we the peoples of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom."[9] The Universal Declaration of Human Rights (1948) further underscores that the principle of equality and non-discrimination is fundamental to human rights, recognizing that "all human beings are born free and equal in dignity and rights," and are entitled "to equal protection against any discrimination and against any incitement to such discrimination."[10]

In addition, the Vienna Declaration and Programme of Action (1993) strengthened the human rights framework by expanding upon the universal and inalienable nature of human rights and fundamental freedoms, noting that "all human rights are "universal, indivisible and interdependent and inter-related."[11] It also affirmed the role of international action in promoting and protecting human rights: "human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation," as "the promotion and protection of all human rights is a legitimate concern of the international community."[12]

> *" The promotion and protection of all human rights is a legitimate concern of the international community. "*

The principles reflected in the UN Charter and the Declaration of Human Rights, therefore, assisted with setting standards on human rights at the international level and effectively laid the foundation for subsequent treaties directed at the elimination of discrimination.

Principle of equality and non-discrimination

According to core international human treaties, "there is no universally accepted definition of discrimination,"[13] with the various covenants and conventions failing to define discrimination, and instead providing non-exhaustive lists of the grounds on which discrimination is to be prohibited. Standard accounts, however, hold that discrimination

[9] United Nations, *Charter of the United Nations*, 1 UNTS XVI, October 1945.
[10] General Assembly, *Universal Declaration of Human Rights*, 217 A (III), December 1948.
[11] General Assembly Resolution 157/23, *Vienna Declaration and Programme of Action*, A/CONF.157/23, July 1993.
[12] Ibid.
[13] Wouter Vandenhole, "Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies," Intersentia, Antwerpen, 2005.

can be considered as "the act of making unjustified distinctions between human beings based on the groups, classes, or other categories to which they are perceived to belong,"[14] which can involve the unjust or prejudicial treatment of different categories of people on the grounds of a protected class, such as race, ethnicity, gender, or sexual orientation. The first human rights treaty to specifically deal with discrimination, and racial discrimination, in particular, was the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in 1965. Article 1(1) of the Convention defines racial discrimination as "any distinction, exclusion, restriction or preference" based on the protected classes of "race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms."[15]

In addition to addressing racism and discrimination, this report examines cases of multiple discriminations stemming from intersecting identities, a principle which has come to be known as intersectionality, underscoring the interconnected nature of social identities such as race, class, and gender as they apply to a given individual or group, creating overlapping and complex experiences of discrimination or disadvantage.[16]

While the principle of equality and non-discrimination is embedded within the human rights framework, it represents an underlying and subsidiary principle, operating alongside the fundamental rights laid out in human rights law. The right to equality and non-discrimination can therefore be seen as a parallel, accessory right, in accordance with the doctrines of universality, indivisibility, interdependence, and inter-relatedness (e.g., the right to non-discrimination vis à vis other fundamental and substantive human rights, such as the right to life or to education). In addition, the right to equality and non-discrimination is a separate and autonomous human right, which should be protected in and of itself. "Equality and non-discrimination have three distinct meanings in the human rights system. They are a general principle, a separate autonomous right, and an accessory right. The second form is important, as even absent another right, you can claim that your right to non-discrimination has been violated on the grounds of a protected characteristic."[17] It is therefore now established in international law that "the prohibition of racial discrimination exists independently of the general obligation to respect human rights and is part of *ius cogens*."[18]

Differentiation of purpose and effect

A further distinction to be made is between the right to non-discrimination or equality as consistency and equal treatment versus substantive equality, which corresponds to ICERD's differentiation of purpose and effect. Measures to ensure equality as consistency and equal treatment address intentional and direct forms of discrimination, while measures to advance substantive equality include efforts to address indirect forms of discrimination to ensure adequate protections and remedies related to

[14] Amnesty International, "What drives discrimination and how do we stop it?" Amnesty International.
[15] The ICERD, however, does not define race. General Assembly Resolution 2106, *International Convention on the Elimination of All Forms of Racial Discrimination*, A/RES/2106, January 1969.
[16] Kimberlé Crenshaw coined the term intersectionality in 1989. UN Women, "Intersectional feminism: what it means and why it matters right now," *Medium.com*, July 2020.
[17] Dimitrina Petrova, Founding Director, Equal Rights Trust, personal interview, March 4, 2021.
[18] Kevin Boyle and Anneliese Baldaccini, "A Critical Evaluation of International Human Rights Approaches to Racism," in Sandra Fredman (ed.), *Discrimination and human rights: the case of racism*, 2001.

the racially disparate impact of "neutral" policies and practices, in addition to positive, or special measures,[19] to address often deeply rooted forms of structural and institutional discrimination (e.g., through redistributive and restructuring measures, such as affirmative action).

Group rights within the human rights framework

The international human rights framework is "built on the notion of individual rights," (see for example, the wording in Art 27 of the ICCPR).[20] This can make group rights and group discrimination more difficult to address, except as it relates to the right of a group to self-determination. At the same time, human rights law recognizes the concept of protected status, which means that individuals cannot be discriminated against because of their ethnicity, race, gender, or other group identification. "Group rights have often been recognized as rights that are irreducible to the sum of the rights of the respective group members,"[21] reflecting a growing understanding that rights also adhere to groups.

While there are several examples of effective remedies to racial discrimination experienced by groups within the individual rights paradigm, where collective rights are involved—such as in the case of the Roma, indigenous peoples, or other minority groups that have been subject to deeply rooted and systemic racism—individual complaints "with a view of obtaining reparation are unlikely to secure structural changes in economic and social life,"[22] at least in the near term. The "group rights" model can, therefore, be seen "as a more robust form of non-discrimination"[23] aimed at addressing more systemic, structural forms of unequal treatment. "However, the acceptance of group rights as a better framework for articulating rights is not dominant," and "many experts would say that the dichotomy of individual versus group rights should not be emphasized, as in practice, one can claim a certain right" either as belonging to a group, or as belonging individually as a member of that group.[24]

While group rights were recognized in the 1992 Declaration on the Rights of Minorities, it has not been transformed into a legally binding set of obligations under international law. As such, the ICERD and the ICCPR offer the most important legal reference points for addressing group rights, even though they are not specifically focused on minority groups as such and often take an indirect route to the protection of their rights. The case studies in this report indicate a growing consensus and practice around the concept of group rights, despite the lack of a treaty focused on minority groups with binding authority to date.

[19] ICERD, Article 2(2) notes that "special and concrete measures" should be taken "to ensure the adequate development and protection of certain racial groups or individuals belonging to them." General Assembly Resolution 2106, *International Convention on the Elimination of All Forms of Racial Discrimination*, A/RES/2106, January 1969.

[20] "Article 27 of ICCPR is the most widely accepted legally binding provision on minorities and provides the basis and inspiration for the UN Declaration on Minorities." OHCHR, "International standards on minority rights," https://www.ohchr.org/en/issues/minorities/srminorities/pages/standards.aspx

[21] Dimitrina Petrova, Founding Director, Equal Rights Trust, personal interview, March 4, 2021.

[22] Joshua Castellino, Global Minority Rights, Routledge, 2017.

[23] Dimitrina Petrova referencing Nathan Glazer, in "Racial Discrimination and the Rights of Minority Cultures," In Sandra Fredman (Ed), *Discrimination and Human Rights: The Case of Racism*, Oxford: Oxford University Press, 2004.

[24] Dimitrina Petrova, Founding Director, Equal Rights Trust, personal interview, March 4, 2021.

Chapter 3: Case Studies

Country-specific cases

This chapter provides both country-specific case studies (South Africa, Myanmar, China, and the U.S.) and thematic studies (anti-Roma discrimination, albinism, LGBTI rights), identifying the principal UN mechanisms employed in each case and the enabling/inhibiting factors for the UN's effectiveness. This offers a basis for the subsequent case comparison in Chapter 4.

Apartheid in South Africa

Apartheid, South Africa's system of racially segregationist policies, was the subject of concerted activity from nearly every mechanism within the United Nations system from 1948-1994. Engaging on the grounds that apartheid violated human rights and, eventually, that it posed a threat to international peace and security, the UN developed a sustained campaign in concert with a growing international anti-apartheid movement to exert many forms of pressure on the South African government to bring out the abandonment of apartheid, while also working to create the conditions for democratization.

The General Assembly, and by extension the Special Committee against Apartheid, were instrumental in maintaining constant pressure on South Africa, isolating the regime from the UN system, and providing assistance to the victims of apartheid. Powered by a growing coalition of newly independent African states and unrestrained by a veto, the General Assembly adopted numerous resolutions that became steadily more frequent and more forceful in their demands—from condemnations against the regime to calls for stronger measures like economic and petroleum sanctions. The GA was also instrumental in pushing the Council to recognize the apartheid system as a threat to international peace and security and subject to Chapter VII measures. The 11-member Special Committee, established in 1962, served as the UN's central arm for promoting the international campaign against apartheid and, importantly, in convening a diverse array of organizations, groups, and individuals involved in the movement.[25,26] The creation of the Special Committee was fundamental to the UN's ability to ensure both that the UN remained at the fore of anti-apartheid activity, and that apartheid remained at the forefront of the UN agenda.

Often at the urging of the General Assembly and the Special Committee, the Security Council adopted many resolutions condemning the regime for its racist laws and violent, repressive behavior. Its most forceful action, however, was the adoption of a mandatory arms embargo against South Africa in 1977—the first time the Council had ever taken action under Chapter VII of the Charter against a Member State.[27] The arms embargo, which replaced the Council's voluntary arms embargo of 1963,[28] was made possible by the support or abstention of Western powers, and an intensifying international anti-apartheid campaign. South Africa's rapid build-up of a domestic arms industry, and the lax enforcement of the embargo in certain Western countries, however, limited its overall effectiveness in pressuring the South African regime to

[25] General Assembly, *General Assembly Resolution 1761 (XVII)*, A/RES/1761(XVII), November 1962.
[26] Richard Knight, personal interview, March 2021.
[27] Security Council, *Resolution 418 (1977)*, S/RES/418, November 1977.
[28] Security Council, *181 (1963)*, S/RES/181. August 1963.

abandon the system of apartheid.[29] The Council also never adopted enforceable economic sanctions against the regime, going only as far as to call on Member States in 1985 to adopt a series of cultural and economic restrictions.[30] Although these measures were not mandatory, they represented the closest the Council ever got to adopting Chapter VII economic sanctions and significantly tightened pressure around South Africa.[31]

Unique among the selected cases and in the organization's history, the International Labor Organization also played a critical role in creating conditions for the elimination of apartheid on the grounds of South Africa's discriminatory and forced labor practices—enabled by South Africa's withdrawal in 1964. The ILO carried out sustained monitoring and reporting of the apartheid system as it related to labor conditions, provided technical assistance to trade unions and employer organizations outside and eventually within South Africa, and mobilized other political and material support for South Africa's labor unions.[32]

The now defunct Commission on Human Rights also took up the issue of apartheid beginning in 1967, with a particular focus on the torture and ill-treatment of political prisoners in South Africa. It established an Ad Hoc Working Group of Experts to investigate the matter, and appointed a Special Rapporteur on apartheid.[33] As a result of the Commission's attention to the treatment of political prisoners and the Working Group's investigation, the South African Government invited the International Committee of the Red Cross to visit the prisons and also made some improvements in the conditions of political prisoners.[34] The Commission also prepared the draft of the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly in 1973, and monitored its implementation.[35] The Commission was limited in its ability to engage in South Africa for many reasons, however. It initially lacked the authority to consider human rights situations in individual countries, and even after procedural changes that allowed for greater engagement, states—including South Africa—found avenues to evade censure by the Commission.[36]

Ultimately, the mobilization of such a vast array of UN entities was critical to sustain a mounting pressure campaign against South Africa and ultimately contributed to bringing about the end of apartheid. The leading engagement of the aforementioned bodies was supplemented by numerous others, including UNESCO, UNHCR, and offices within the Secretariat. This UN-wide approach also reflects the wide diversity of issues and spheres through which the UN and the international anti-apartheid movement were engaged—from economic and cultural boycotts, among many others. In this regard, through the Special Committee's coordination with and support for non-governmental organizations, the UN both sought to guide and benefit from the vast international anti-apartheid movement. This symbiotic relationship acted as a force multiplier to the UN's efforts, enabling groups around the world to "do what UN

[29] Neta Crawford, personal interview, March 2021.
[30] Security Council, *Resolution 569 (1985)*, S/RES/569, July 1985.
[31] Boutros Boutros-Ghali, *The United Nations and Apartheid*, 1948-1994, UN Department of Public Information 1994, 40.
[32] Kari Tapiola, personal interview, February 2021.
[33] Boutros Boutros-Ghali, *The United Nations and Apartheid*, 1948-1994, UN Department of Public Information 1994, 41.
[34] Ibid.
[35] International Convention on the Suppression and Punishment of the Crime of Apartheid. Adopted by the *General Assembly of the United Nations*, November 1973.
[36] Nazila Ghanea, "From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways?," The International and Comparative Law Quarterly 55, no. 3, 2006: 695-705.

organs could not."[37] Former UN Secretary General Boutros Boutros Ghali cites this unprecedented level of coordination with non-governmental organizations as having enabled anti-apartheid groups to counter vested interests in Western countries, in particular.[38]

> *"The mobilization of such a vast array of UN entities was critical to bringing about the end of apartheid."*

Except in the Security Council, which refused to expel South Africa from the UN system writ large, the expulsion of or non-participation of the South African government in numerous UN bodies played an important part in the emergence of increasingly forceful measures against the regime. Beginning in 1955, the UN's scrutiny of apartheid compelled South Africa to briefly withdraw its delegation to the UNGA in 1955 and announce in 1956 that it would maintain only "token representation" in New York.[39] Though South Africa had returned to the UNGA a few years later, the General Assembly voted in 1974 to suspend the regime's participation—the first time it had taken such an action.[40] The strong and active role of the liberation movement within certain UN processes, including the GA and the ILO, was also essential in maximizing the apartheid regime's isolation and diminished political support.[41]

The fundamental obstacle to the UN's anti-apartheid campaign was the omnipresent threat of a veto in the Security Council by France, the U.S., and the U.K,[42] whose opposition to stronger measures against South Africa was fueled both by economic relationships and by Cold War concerns. Indeed, the UN's campaign against apartheid took place against a backdrop of U.S. containment policy driven by underlying fears that communism could take root in a post-apartheid South Africa.[43] Consequently, Western states in the Council effectively blocked the adoption of any enforceable measures aside from the 1977 arms embargo. The protection afforded to Pretoria by the continuation and even intensification of foreign trade and investments in South Africa by the West is well documented elsewhere. Outside of the Security Council in fora like the ILO and the GA, where the West wielded relatively less power and influence, the UN was able to make significant contributions to the anti-apartheid campaign.

Discrimination Against the Rohingya in Myanmar

Myanmar has opened its doors to a succession of Special Rapporteurs over the years, while its internal conflict has been on the agenda of the UN General Assembly (UNGA) and former UN Commission of Human Rights, and now the UN Human Rights Council (UNHRC), since the early

[37] E.S. Reddy, "The Struggle against Apartheid: Lessons for Today's World."
[38] Boutros Boutros-Ghali, *The United Nations and Apartheid*, 1948-1994, UN Department of Public Information 1994, 45.
[39] *The New York Times*, "South Africa Tie to UN Slashed; Nation Says It Will Retain Only Token Representation Because of Racial Stand," November 1956.
[40] Boutros Boutros-Ghali, *The United Nations and Apartheid*, 1948-1994, UN Department of Public Information 1994, 19.
[41] Kari Tapiola, personal interview, February 2021.
[42] Richard Knight, personal interview, March 2021.
[43] Paul Rich,"United States Containment Policy, South Africa and the Apartheid Dilemma," Review of International Studies 14, no. 3, 1988: 179-94.

1990s.[44] Both UN bodies have continually called for Myanmar to be held accountable for its human rights violations against the Rohingya, a Muslim ethnic minority group[45], which advocacy organizations and several UN Member States have also insisted upon.[46] The iniquitous attacks on the Rohingya enacted by state security forces, referred to as the Tatmadaw, during the 'clearance operations' on August 25, 2017, have prompted public statements and visits by the Secretary-General and special procedures mandate holders, investigative independent missions by human rights experts, detailed recommendations from the Committee on the Elimination of Discrimination against Women, as well as spurred the independent investigation underway by the International Criminal Court. Additionally, evidence from the 15-month long examination conducted by the Independent International Fact-Finding Mission established by the UNHRC on the atrocities committed in Rakhine State has been instrumental in the ongoing proceedings in the International Court of Justice.[47]

In response to reports by various UN mechanisms, including the Independent International Fact-Finding Mission on Myanmar, the UNHRC established the Independent Investigative Mechanism for Myanmar (Mechanism) in September 2018 in resolution 39/2. The Mechanism has been mandated to collect, analyze, and preserve evidence of the most serious international violations such as crimes against humanity, genocide, and war crimes.[48] The UNHRC also adopted resolution L.19 on the situation of human rights in Myanmar in 2019, urging the government to review the 1982 Citizenship Law that has led to human rights violations; eliminate statelessness against the Rohingya; and amend all policies that uphold institutionalized discrimination.[49] Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, has echoed these recommendations by encouraging the government to lift the repressive policies against the Rohingya that have restricted their freedom of movement and access to citizenship.[50] Andrews also requested that the government conduct impartial and independent investigations into abuses that have been committed and ensure perpetrators are held accountable in trials that align with international human rights standards. Similarly, Special Envoy on Myanmar Christine Schraner Burgener has advocated for criminal liability along with accountability that includes the participatory involvement of victims in initiatives focused on national reconciliation.[51]

Myanmar has acknowledged the need for international cooperation in order to advance its economic prosperity, which has enabled a select few UN agencies to enter the country, each with different levels of engagement. However, persistent mistrust of external actors by both the civilian and military branches of the government has foiled more pronounced human rights advocacy by the UN and has resulted in UN country officials being subjected to harassment, intimidation, and scrutiny. These dynamics have caused certain UN bodies to face significant

[44] Gert Rosenthal, *A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018*, May 2019.
[45] United Nations Human Rights Office of the High Commissioner, "Myanmar report details ongoing human rights violations," September 2020.
[46] Eleanor Albert & Lindsay Maizland, "The Rohingya Crisis," *Council on Foreign Relations*, January 2020.
[47] United Nations Human Rights Council, "Myanmar: UN Fact-Finding Mission releases its full account of massive violations by military in Rakhine, Kachin and Shan States," September 2018.
[48] Nadira Kourt, "Rohingya Genocide: Strengthening the U.N. Response Three Years On," *Newlines Institute for Strategy and Policy*, August 2020.
[49] General Assembly, *Situation of human rights in Myanmar*, A/HRC/40/L.19, March 2019.
[50] General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, A/75/335, September 2020.
[51] *United Nations*, "Security Council Briefing on Myanmar, Special Envoy Christine Schraner-Burgener," February 2019.

challenges in entering the country. For instance, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has struggled to get visa authorization for its staff, while certain missions mandated by the UNHRC have been banned entirely.[52]

The UN Security Council (UNSC) has notably not played a central role in Myanmar due to the government inhibiting political involvement from other UN Member States.[53] It is also why UN mechanisms with broader mandates than the OHCHR and special procedures have opted for quiet diplomacy so as not to deepen the divide between the opposing branches of government, and to allow space for the UN to objectively promote its principles in the country. The dichotomy of those practicing quiet versus public diplomacy was evidenced in the conflicting analyses of events reported by the country team, with some official reports framing the situation in Rakhine State as 'stable' and others depicting the conflict as indicative of 'impending disaster.'[54] This discord in reporting may have led to faulty decision-making on the part of officials at the UN headquarters.[55]

The discord within the departments of the Secretariat has also been prevalent among the five permanent members of the UNSC, with China and Russia using their veto power to block a 2007 resolution drafted by the U.K. and the U.S. China has insisted the strife in Myanmar does not pose a threat to international peace and security and therefore should be handled domestically,[56] providing the government of Myanmar grounds to disregard the provisions in the resolutions adopted by the UNGA and UNHRC. The lack of collective support by the UNSC to establish a presence in Rakhine State has also impeded the Secretariat from moving forward with its mission to abate violence in the area and possibly prevent the atrocities that took place on August 25, 2017.[57] The UNSC's resistance to taking on a more authoritative stance even after its presidential statement in 2017 and visits to Bangladesh and Myanmar in 2018 has severely encumbered the national reconciliation initiatives of other UN instruments.

UNSC members have remained passive on the crisis in the region in their response to the recent military coup, requesting the release of detainees and stressing the need to uphold the rule of law while reasserting their "strong commitment to the sovereignty [and] political independence of Myanmar."[58] Conversely, other UN entities have urged for more resolute action with regard to the insurrection. The UNHRC has called for the restoration of the democratically elected government, Special Rapporteur Andrews has pushed for an arms embargo and sanctions,[59] and the President of the General Assembly, Volkan Bozkir, has "condemned the coup...and called for unrestricted humanitarian access to Rakhine State."[60]

Ultimately, the polarization in approaches in handling the situation in Myanmar has resulted in "the UN system following a fragmented strategy rather than a common plan of action."[61] In his report entitled, "A Brief and Independent Inquiry into the Involvement of the United Nations in

[52] Gert Rosenthal, *A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018*, May 2019.
[53] Ibid.
[54] Ibid..
[55] Ibid.
[56] Ibid.
[57] Ibid.

[58] *UN News*, "Security Council calls for release of Aung San Suu Kyi, pledging 'continued support' for Myanmar's democratic transition," February 2021.
[59] Rebecca Barber, "UN Security Council Won't Respond to Myanmar's Coup, But the General Assembly Can," *Just Security*, February 2021.
[60] *UN News*, "Security Council unity 'crucial' to support democracy in Myanmar," February 2021.
[61] Ibid.

Myanmar from 2010 to 2018," Gert Rosenthal indicates that this lack of unity among different UN agencies and officials has contributed to its systemic failure in addressing discrimination against the Rohingya.[62]

> *" The lack of unity among different UN agencies and officials has contributed to the systemic failure in addressing discrimination against the Rohingya. "*

Discrimination Against the Uighurs in China

The human rights abuses taking place in the Xinjiang Uighur Autonomous Region of western China have elicited a range of responses from the UN in the form of statements by the Secretary-General, the High Commissioner of Human Rights, and special procedures mandate holders, as well as concluding observations made by various treaty bodies, namely CAT, CEDAW, and ICERD. UN member countries have been at odds on the issue of the treatment of the Uighurs, complicating the UN's engagement in China. On July 8, 2019, 22 countries, mainly European, sent a letter to the president of the UNHRC expressing concerns "about credible reports of the arbitrary detention and restrictions particularly targeting Uighurs and other minorities in Xinjiang, China."[63] A counterstatement was submitted to the UNHRC four days later in which 37 countries, across continents including several Muslim-majority countries, noted how they "commend China's remarkable achievements in the field of human rights."[64] Although the U.S. was not a signatory to the letter denouncing China's actions, Germany and the U.S. sharply criticized China for detaining and depriving Uighurs and other Muslim ethnic minorities of their rights in an internal UNSC meeting held on July 2, 2019.[65]

Statements made during the three cycles of the Universal Periodic Review (UPR) have further demonstrated how politicized the issue is within the broader UN system. Condemnation by advocacy organizations and heightened media attention on this issue has reinforced the denouncements of UN Member States, which have urged UN entities to take incisive action to prevent any further abuses in Xinjiang. Furthermore, the recommendations of the UPR[66] and treaty bodies[67,68,69] have promoted China to develop human rights policies and a National Human Rights Action Plan, yet the application of these provisions has been woefully lacking.

While the divide between UN Member States on the situation in Xinjiang has created tension on how to proceed with addressing

[62] Ibid.
[63] United Nations Human Rights Council, Joint Statement, July 2019.
[64] United Nations Human Rights Council, Joint Counterstatement, July 2019.
[65] Ben Blanchard et al, "U.S., Germany slam China at U.N. Security Council over Xinjiang: diplomats," *Reuters*, July 2019.
[66] Working Group on the Universal Periodic Review, *Compilation on China: Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/WG.6/31/CHN/2, November 2018.
[67] Ibid.
[68] Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of China*, CEDAW/C/CHN/CO/7-8, November 2014.
[69] Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China*, CERD/C/CHN/CO/14-17, September 2018.

the repression of the Uighurs, pressure from countries condemning China's actions has resulted in the government finally acknowledging the existence of its detention facilities. However, China has assiduously referred to them as re-education labor centers during the interactive dialogue sessions of the UPR and in press releases, asserting they are part of its national preventive antiterrorism measures. At each of the UPR cycles, the delegation of China has denied perpetrating abuses against the Uighurs and other ethnic minorities. The 2018 UPR report noted that "China resolutely opposed and would never accept the practice of using human rights as an excuse to interfere in its internal affairs and undermine its sovereignty and territorial integrity."[70] Wide-spread restrictions on freedom of expression, press freedom, internet censorship, and media access continue to pose challenges in ascertaining the conditions in the autonomous region.

Given these circumstances, there has been a heavy reliance on advocacy organizations, leaked documents, and Uighurs living abroad to provide details about the violations taking place in Xinjiang. While the Chinese government has accepted visits by the special procedures for debt, discrimination against women, extreme poverty, and food, it has rejected visits by rapporteurs tasked with investigating infractions on civil and political rights. It has also denied several requests for unfettered access by the High Commissioner for Human Rights since 2005.[71] The 2019 visit by Vladimir Voronkov, Under-Secretary-General of the United Nations Office of Counter-Terrorism, sparked controversy among diplomats from many countries considering how High Commissioner Bachelet has yet to be granted access to the region. A UN Security Council diplomat stated that the visit by Under-Secretary-General Voronkov "validates [China's] narrative that this is a counterterrorism issue when we would see it more as a human rights issue."[72] On March 2, 2021, China announced that it was working with High Commissioner Bachelet to negotiate access to Xinjiang under the premise that her visit would facilitate exchanges and cooperation with the UN and not an investigation into its domestic affairs.[73] This selectivity in accommodating UN special procedures is an indication that the government complies with visits when it foresees positive reviews on its practices.[74]

"There has been a heavy reliance on advocacy organizations, leaked documents, and Uighurs living abroad to provide details about violations taking place in Xinjiang."

Xi Jinping, General Secretary of the Chinese Communist Party and Chairman of the Central Military Commission has continued to emphasize the need to respect state sovereignty, further thwarting UN

[70] Working Group on the Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review*, A/HRC/40/6, December 2018.
[71] *Human Rights Watch*, "The Costs of International Advocacy: China's Interference in United Nations Human Rights Mechanisms," September 2017.
[72] Michelle Nichols, "U.S., others object to U.N. counterterrorism chief visit to China's Xinjiang. *Reuters*," June 2019.
[73] Stephanie Nebehay, "China says door to Xinjiang 'always open', but U.N. rights boss should not prejudge," *AP News*, March 2021.
[74] *Human Rights Watch*, "The Costs of International Advocacy: China's Interference in United Nations Human Rights Mechanisms," September 2017.

engagement in the country.[75] Under Xi, China has formed strong alliances with developing countries against Western countries' criticisms about their human rights legislation, allowing China to weaken the UN's human rights framework.[76] It has used its election to the UNHRC and the withdrawal of the U.S. to its advantage by strengthening its coalition of non-Western states willing to endorse or at least not condemn its policies.[77] China has advanced its agenda to strengthen ties with its allies at UN events, as well as introduced its concept of "building a community of shared future" in two UNHRC resolutions adopted in 2017.[78] The Member State's considerable influence in the UN is equally discernible in the Security Council, which is restricted in addressing the situation in Xinjiang because of China's role as one of the organ's permanent five members. China has decisively blocked all discussions on the Security Council drafting any resolutions on the Uighurs, declaring that it is an internal matter.[79]

Discrimination against Black Americans within the U.S. Criminal Justice System

Discrimination in the criminal justice system, including the disproportionate application of lethal force by law enforcement, is a systemic and widespread problem throughout the United States, with Black Americans representing approximately 28% of total deaths by police between 2013 and 2020, despite being only 13% of the population.[80] Furthermore, charges are rare, with the overwhelming majority of law enforcement officers never charged, let alone convicted, for using excessive force against civilians.[81] The disproportionate application of lethal force and the extrajudicial killings of Black Americans and other people of color, including George Floyd and Breonna Taylor in 2020, has led to a moment of reckoning for racial justice in the U.S.

The most significant challenge to implementing the necessary reforms for addressing discrimination in the criminal justice system has, up until recently, been the lack of political will by many representatives of the U.S. government, which has been exacerbated by the fact that the issue has become highly politicized. In addition, there is the general sentiment that these issues should be handled internally, with the U.S. often asserting that its own domestic legislation is sufficient to comply with international treaties. Given the standing of the U.S. as the largest global power in a world that has largely been unipolar, little has been done to effectively challenge this on the international stage, particularly given the veto the U.S. wields within the Security Council and its influence on Member States in the General Assembly. Additionally, the UN does not have a country office presence in the U.S., despite the NYC-based UN Headquarters. As a result, international and regional organizations "have very limited tools vis à vis the United States."[82]

[75] Joseph Yu-shek Cheng, "The Policy Programme and Human Rights Position of the Xi Jinping Administration," *Contemporary Chinese Political Economy and Strategic Relations, 4* (2), 319-347, VIII-IX, July/August 2018.
[76] Ibid.
[77] Ted Piccone, "Order from Chaos: UN Human Rights Council: As the US returns, it will have to deal with China and its friends," February 2021, *Brookings.*
[78] Joseph Yu-shek Cheng, "The Policy Programme and Human Rights Position of the Xi Jinping Administration," *Contemporary Chinese Political Economy and Strategic Relations, 4* (2), 319-347, VIII-IX, July/August 2018.
[79] Alina Rizvi, "Uighur Crisis Highlights Flawed Structure of UN Security Council," *Jurist,* July 2020.
[80]Mapping Police Violence, "Police Violence Map," https://mappingpoliceviolence.org.
[81] Of the officers involved in the deadly shootings of unarmed Black people over the last five years, only 13 were charged with murder. Cheryl Thompson, "Fatal Police Shootings of Unarmed Black People Reveal Troubling Patterns," *National Public Radio,* January 2021.
[82] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.

Notwithstanding this significant challenge, the UN has been able to engage on the issue through various mechanisms outside the Security Council. Special Procedures mandate holders of the Human Rights Council have been particularly instrumental in shining a light on the issue of discriminatory and excessive use of force by police. Shortly after the mandate's creation in 1993, the first country visit of the Special Rapporteur on contemporary forms of racism was to the U.S. the subsequent year, following the beating of Rodney King, a Black American, by police in 1991 and the acquittal of the white officers in 1992. The Special Rapporteur was given the mandate to undertake a fact-finding mission to investigate racial discrimination in the administration of criminal justice and police brutality. The subsequent report confirmed the discriminatory and excessive use of force against minority groups, noting "it is one of the most pressing human rights problems facing the United States."[83] The Working Group of Experts on People of African Descent and the Special Rapporteur on extrajudicial killings also conducted several fact-finding missions to the U.S. and issued a number of statements calling on the U.S. to address the issue.

While the U.S. signed the ICERD in 1966 and the ICCPR in 1977, it would be several decades before the U.S. would ratify the treaties. It was amidst the tensions related to the beating of Rodney King by police and the widespread demonstrations across the country that the U.S. ratified the ICCPR in 1992 and the ICERD and UNCAT in 1994. The CERD and Human Rights Committee of the ICCPR have subsequently addressed the issue in a number of Concluding Observations to Periodic Reports of the U.S. However, given the number of Reservations, Understandings, and Declarations (RUDs) upon which the U.S. conditioned its ratification of the treaties, the legislative frameworks have had little to no effect in the U.S. Specifically, the narrow judicial interpretation of racial discrimination in the U.S. continues to be a major impediment towards full implementation of its obligations under the various treaties, as racial discrimination is understood to mean both intentional and de-facto discrimination under the ICERD.[84] As a result, U.S. legal frameworks lack adequate protections for racially disparate impacts of "neutral" policies and practices. The U.S. has also failed to systematically collect and report nationwide data on civilian deaths by police in accordance with its obligations under the ICERD, which makes it difficult to identify discriminatory patterns, including as it relates to the use of force.[85] More significantly, the legal framework in the U.S. regulating the use of force by law enforcement officials does not meet international standards,[86] including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.

The lack of political will by the U.S. increasingly became an issue under the Trump administration, which not only opposed U.S. obligations within the international system, but challenged the entire multilateral rules-based order, effectively pulling the U.S. out of several international organizations, treaties, and accords, including the UNHRC in 2018. Further, the U.S. under Trump failed to

[83] UN Human Rights Council, *Report of the Special Rapporteur Maurice Glélé-Ahanhanzo on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to the United States*, E/CN.4/1995/78/Add.1, January 1995.

[84] UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, December 1965.

[85] UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston - Addendum - Mission to the United States of America*, May 28, 2009, A/HRC/11/2/Add.5.

[86] *Harvard University*, "A conversation with Dr. Agnès Callamard, UN Special Rapporteur on extrajudicial, summary or arbitrary executions," November 2017.

comply with its obligations under the treaties it has ratified, neglecting to submit its required biennial reports to the CERD, the Human Rights Committee, and UNCAT. The Trump administration also ceased cooperation with UN special rapporteurs, denying them access to the U.S. by failing to respond to country visit requests.

In 2020, following the killings of George Floyd and Breonna Taylor by law enforcement officials, a wave of demonstrations calling for racial justice took place around the world, with "the international platform of the Black Lives Matter movement effectively putting racial justice on the global agenda."[87] UN agencies responded to the issue on a number of fronts, including statements issued by the High Commissioner for Human Rights, Michelle Bachelet, on May 28 and June 3, which was followed by a Joint-Statement by forty-seven Special Procedures mandate holders on the Protests against Systemic Racism in the United States on June 5, calling attention to the national uprising in the United States against systemic racism in law enforcement.

> *" The international platform of the Black Lives Matter movement effectively put racial justice on the global agenda. "*

Under CERD's Early Warning and Action Procedures, the Committee issued a Statement on June 12, in which it noted with concern "the continuing practice of racial profiling, the brutality and excessive use of force by law enforcement officials" and "the recurrence of killings of unarmed African Americans by police officers and individuals over the years."[88] The African Union, the Inter-American Commission for Human Rights, and the European Union also issued a series of statements condemning police brutality in the U.S., with coordination between the UN and the various regional organizations likely contributing to the effectiveness of their messaging.

In addition, the UNHRC held an Urgent Debate on racially inspired human rights violations, systemic racism, and police brutality on June 17, 2020. While several States expressed their support for the establishment of an independent commission of inquiry, with special authority to investigate systemic racism in policing in the U.S., appeals for the commission were withdrawn from the resolution due to pushback from the U.S. The final Resolution 43/1[89] was adopted by consensus, with some countries expressing their reservations on paragraphs singling out particular countries. While the resolution did not include an international commission of inquiry, the debate brought heightened attention to the issue. The resolution also requested that the High Commissioner, with the assistance of relevant Special Mandate Holders, prepare a report on systemic racism and human rights violations by law enforcement agencies, with the final report to be presented to the Council at its 47th session in June 2021.

[87] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.
[88] UN International Convention on the Elimination of All Forms of Racial Discrimination, *Early Warning and Action Procedures: United States, Statement 1*, June 12, 2020.
[89] UN Human Rights Council, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, A/HRC/RES/43/1, June 2020.

The issue was also raised during the Universal Periodic Review of the U.S. in November 2020, with several major powers, including American allies, criticizing the U.S. for its human rights record, calling on the government to "take serious measures to address structural racism and police violence. Russia and China, which have long used the U.S. record on race to push back against its criticism of their human rights abuses, also levied criticism on the U.S., "calling on the United States to root out racism and police violence."[90]

Looking ahead, the Biden-Harris administration has "recommitted the United States to a foreign policy centered on democracy, human rights, and equality, adding that, "the effective use of multilateral tools is an important element of that vision."[91] In this regard, it has indicated its plans to "reengage immediately and robustly with the UNHRC," first with observer status ahead of running for Council election at the end of 2021.[92] Leading up to the elections, the U.S. is likely "to face an examination by the organization of violations in its own country, including re-engagement around Resolution 43/1."[93] Secretary of State Antony Blinken, in a statement to the Council on February 24, "acknowledged systemic racism and economic injustice in the U.S. and spoke of action by President Biden to tackle their root causes, adding that the U.S. is "eager to find a more effective and inclusive way to put 'fighting racism' at the top of the global human rights agenda;"[94] however, "the administration's credibility on international human rights will be judged by how close it will match its rhetoric with concrete actions to advance human rights at home and abroad."[95]

The intention of the U.S. to rejoin the UNHRC in the fall presents an opportunity for Council members and the General Assembly to work closely with the Biden-Harris administration to engage on these issues. The Council could use the momentum around the elections to work with the administration to more effectively and inclusively put racism and discrimination "at the top of the global human rights agenda," including "treating the implementation of the resolution [43/1] as a process to address a common problem, manifested in different ways in different countries."[96] The recent Joint Statement on Racism at the Council's 46th Session, put forward by the U.S., alongside over 155 co-sponsoring countries, signals that this moment could be a turning point for constructive international engagement toward "countering racism and racial discrimination, xenophobia, and related intolerance, and tackling racial inequality" "through solidarity and cooperation."[97]

> *" The U.S. is eager to find a more effective and inclusive way to put 'fighting racism' at the top of the global human rights agenda. "*

[90] UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: United States," December 15, 2020.
[91] The U.S. mission in Geneva sponsored an online discussion on March 17 on "addressing racial justice as a US foreign policy imperative."
[92] Antony J. Blinken, Secretary of State, "U.S. Decision to Reengage with the UN Human Rights Council," February 2021.
[93] Peter Splinter, "Advice for America's Return to the Human Rights Council, Starting With the Issue of Racism," Pass Blue, March 2021.
[94] UN Human Rights Council, 46th regular session of the Human Rights Council, February 2021.
[95] *France 24*, "US to 're-engage' with UN rights council after Trump pullout," February 2021.
[96] Peter Splinter, "Advice for America's Return to the Human Rights Council, Starting With the Issue of Racism," Pass Blue, March 2021.
[97] UN Human Rights Council, *Joint Statement on Racism at the Human Rights Council 46th Session*, March 19, 2021.

Thematic cases

Discrimination Against the Roma

The Roma represent Europe's largest minority group, with a population estimated at 10 to 12 million people.[98] Over the centuries, Roma have faced persistent discrimination, marginalization and forced assimilation within Europe, with nine out of 10 Roma living below national poverty lines.[99] Due to the pervasive and deeply-rooted structural discrimination and extreme marginalization historically experienced by Romani communities, the racism experienced by the Roma can be seen to represent a specific form of racism—anti-Gypsyism.[100] Anti-Roma sentiment and intolerance is also widespread, with many Roma subjected to forced expulsions and racially motivated attacks, including by law enforcement officials

The response of the UN to-date has primarily been through the work of the human rights treaty bodies and the Human Rights Council, including the Special Procedures mandate holders. The CERD has been particularly important in moving forward the understanding that anti-Romani sentiment is racism, including in its General Recommendation XXVII on Discrimination Against Roma (2000),[101] which outlines measures states parties should take to eliminate racial discrimination against Roma. Through dialogue with states in their Concluding Observations to Periodic Reports, the various treaty bodies have also focused on the issues of forced expulsions in France and Italy, and the sterilization of Romani women, in the Czech Republic, Hungary, and Slovakia, as well as racially motivated violence and the segregation of the Roma in schooling and housing.

Under the Individual Communications Procedures, Committees of the ICERD, ICCPR, CAT, and CEDAW have also successfully adjudicated a number of cases brought by Roma against member States for issues ranging from the sterilization of Romani women,[102] forced expulsions,[103] police brutality,[104] and requirements of Roma to carry travel cards.[105] Progress, although still slow, is beginning to take shape, with legislation leading to changes on the ground in many countries, not only for individual complainants, but also in terms of policy more broadly, most notably in terms of school desegregation, with the various Roma education cases leading to tangible developments at the national level. Following Oršuš and Others v. Croatia, the Croatian Ministry of Education amended its Education Act and issued measures in compliance with the National Programme for Roma and the Decade Action Plan for Roma Inclusion. Three Roma education cases in Greece, also led to changes in practice, including the adoption of Ministerial Order 1540/2007 and

[98] European Commission, "Roma equality, inclusion and participation in the EU," *European Commission*, 2021.

[99] FRA and UNDP, "The situation of Roma in 11 EU Member States - Survey results at a glance," FRA and UNDP, 2012.

[100] The Roma community has been pushing for greater recognition of anti-Gypsyism as a specific form of racism. "This is something that I would like to be better understood, because racial discrimination against Roma is a specific type of discrimination. This is something that is missing from a strong understanding of why Roma are treated the way they are." Senada Sali, personal interview, February 26, 2021.

[101] CERD General Recommendation No. 27 on Discrimination Against Roma, adopted by the Committee in 2000.

[102] See for example, A.S. v. Hungary (2006), CEDAW Communication, Communication No. 4/2004, CEDAW/C/36/D/4/2004.

[103] Antonios Georgopoulos, Chrysafo Georgopoulou (2010), CCPR/C/99/D/1799/200, 2010; Liliana Assenova Naidenova et al. v Bulgaria (2014), CCPR/C/106/D/2073/2011; S. I. D. et al. v Bulgaria (2014), CCPR/C/111/D/1926/2010; "I Elpida" v Greece" (2017), CCPR/C/118/D/2242/2013; S.N. and E.R. v North Macedonia (2020), CEDAW/C/75/D/107/2016; and L.A. et al. v North Macedonia (2020), CEDAW/C/75/D/110/2016.

[104] Andreas Kalamiotis v Greece (2008), CCPR/C/93/D/1486/2006; Nikolaos Katsaris v Greece (2012) CCPR/C/105/D/1558/2007; Dragan Dimitrijevic v Serbia (2002) CAT/C/33/D/207/2002; Danilo Dimitrijevic v Serbia (2005) CAT/C/35/D/172/2000; and Jovica Dimitrov v Serbia.

[105] Claude Ory v France (2014), CCPR Communication, CCPR/C/110/DR/1960/2010.

Notification 28463/2010, regarding Segregation of Roma in Education.

In addition, Roma have featured prominently in the Universal Periodic Reviews of Member States before the Council, with over twenty-five percent of all minority rights recommendations in the first cycle of reviews referring to the situation of Roma.[106]

Special Procedures mandate holders have also been instrumental in bringing attention to issues affecting the Roma, with the Special Rapporteur on minority issues and the Special Rapporteur on contemporary forms of racism regularly undertaking country visits, monitoring cases of concern through communications procedures, and issuing thematic and country reports, with the Special Rapporteur on contemporary forms of racism carrying out a regional mission to Hungary, the Czech Republic, and Romania in 1999, motivated by allegations received of systematic discrimination against Roma citizens in these countries.[107] Further, the Special Rapporteur on minority issues conducted several Studies on the Protection of the Roma, including a Global Study on the situation of Roma worldwide (2015),[108] which was also instrumental in bringing increased understanding around anti-Gypsyism as a specific form of racism.

“ Anti-Gypsyism represents a specific form of racism due the deeply-rooted structural discrimination experienced by Roma over centuries. ”

A significant enabling factor has been the coordination of UN and regional organizations, including the Council of Europe, the European Union, and the Organization for Security and Co-operation in Europe, which have often worked in mutually reinforcing ways as part of a supra-national system to advance Roma rights, often building on the standards and legal precedents of one another.[109] The recognition of and general adherence to human rights norms in Europe has also been a significant enabling factor, which has contributed to every country in Europe ratifying the majority of the core international human rights treaties, in addition to several countries signing onto the optional individual complaints procedures of the treaties. In addition, Civil Society Organizations, have been instrumental in addressing anti-Roma discrimination, with the European Roma Rights Centre, bringing a number of successful cases before the European Court of Human Rights and the various UN treaty committees. Independent Equality bodies—public institutions established at the national level to promote equality and address issues of discrimination—have also played a fundamental role in the enforcement of legislation and in providing independent assistance to victims of discrimination.

While a number of these measures have led to positive legislative changes and efforts in practice, with formal equality existing in

[106] UN Human Rights Council, “Minority Issues in the First Cycle of the Universal Periodic Review (UPR): An analysis by the UN Special Rapporteur on minority issues, Rita Izsák,” Sept. 2014.
[107] Commission on Human Rights, "Report by Mr. Glélé-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1998/26,” January 15, 1999, E/CN.4/1999/15.
[108] UN Human Rights Council, “Report of the Special Rapporteur on minority issues, Rita Izsák: Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism,” May 11, 2015, A/HRC/29/24.
[109] Claude Cahn, OHCHR Officer, personal interview, Feb, 2021.

most national legislation in Europe, progress in the social inclusion of Roma has been limited, with efforts "yet to overcome the really deep systemic issues that are driving the exclusion of the Roma community."[110] As a result, Roma communities still face situations of extreme poverty and marginalization.[111] Lack of political will, including a reluctance to address structural discrimination, has been the most recurring factor inhibiting the effectiveness of the mechanisms.[112] This has contributed to significant implementation gaps related to the judicial interpretation of legislation by national courts and the enforcement of anti-discrimination laws. There is also a lack of a proactive policy at national, regional, and local levels, which is particularly important given the deeply structural issues Roma face. In addition, many EU states do not collect data on ethnicity, so Roma remain undercounted, with discrepancies between official statistics and unofficial estimates ranging from 45 to 99%.[113] An additional challenge is related to the lack of access to and knowledge of justice mechanisms, including the individual complaints procedures, as well as a lack of trust and confidence in the system among the Roma.

While the UN and regional organizations have been comparatively strong in engaging on these issues, the continued marginalization of Roma communities therefore reflects the inherent limitations of these measures, given the deeply structural and systemic discrimination Roma face, which is so considerable in several countries, that it will require sustained political commitment and proactive policies to effectively remedy these issues over time.

Discrimination Against People With Albinism

Albinism—a rare genetic disorder characterized by a lack of pigment in the skin, hair, and eyes—is a profoundly misunderstood condition that has led to various forms of stigma and discrimination against people with albinism (PWA). Though albinism affects people around the world, the issue is of particular concern in many parts of Africa, where stark differences in pigmentation between PWA and black Africans fuels the perpetuation of myths and witchcraft practices that lead to the marginalization and social exclusion of PWA, as well as brutal attacks including dismemberment, rape, and killings. Under the Same Sun (UTSS), an NGO focused on albinism rights, has documented 215 killings and 405 attacks against PWA across 29 African countries since 2008, though UTSS suspects these attacks are widely underreported.[114]

The United Nations began to officially engage on the issue of albinism in 2013, employing numerous mechanisms—most importantly the establishment of an Independent Expert—to combat discrimination against PWA and uphold their human rights.

After a concerted lobbying campaign led by Peter Ash, founder of UTSS, the Human Rights Council began to engage on the issue of albinism with the adoption of two preliminary reports on the human rights situation of PWA, one of which calls for creating a dedicated mechanism to address

[110] Ibid.
[111] UN Human Rights Council, "Report of the Special Rapporteur on minority issues, Rita Izsák: Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism," May 11, 2015, A/HRC/29/24.
[112] Ibid.
[113] Open Society Foundations, "No Data No Progress," Open Society Foundations, 2012.
[114] Under The Same Sun, "Reported Attacks of Persons with Albinism – Most Recent Attacks," March 2021.

violence against them.[115] The General Assembly also proclaimed in 2013 the adoption of an International Albinism Awareness Day.[116] In 2015, the HRC decided to establish the office of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, later appointing Nigerian-Canadian lawyer Ikponwosa Ero to the position.

Ero has enjoyed remarkable success in creating widespread awareness of the issue of albinism, mainstreaming the issue within the UN's human rights framework, and leading national and regional action to address violence against PWA. She has used her mandate to consult with and provide assistance to states, regional bodies, and other groups; collect information on violations and attacks against PWA, including through country visits and fact-finding missions; and make recommendations in this regard. Ero cites as her most significant achievement the formulation of the Regional Action Plan[117] to end attacks and violations against PWA in Africa, which in 2020 earned the endorsement of the African Union as a continent-wide policy.[118]

Several treaty bodies—CPRD, ICERD, CEDAW, CRC, UN CAT—have also engaged on the issue of albinism due to the intersecting forms of discrimination that PWA face.[119] Several of these treaty bodies have issued recommendations regarding the protection of PWA to multiple countries, including countries like Kenya, Ethiopia, and Uganda.

The main factors enabling the UN's successful engagement on albinism have resulted primarily from the establishment of a dedicated mechanism in the form of the Independent Expert's office. Ikponwosa Ero stressed that Member States were largely cooperative with her mandate, and that the level of access she was given in some countries even surpassed her expectations. Indeed, Ero cited these country visits as one of the most impactful elements of her mandates, especially in helping countries to comprehend albinism as a human rights issue. Her visit to Malawi, for instance, helped leaders to broaden their definition of discriminatory violence against PWA and to even disclose a large number of new cases.[120]

Secondarily, the presence of a highly active and influential civil society network has been essential for not only bringing the issue onto the UN agenda initially but for reporting attacks, assisting victims, and holding national governments accountable, especially in Tanzania and Malawi. Civil society groups have also played a key role in changing discriminatory attitudes toward PWA by elevating and mainstreaming their status within African societies. Peter Ash has especially emphasized the outreach being conducted by NGOs at the village level in African countries aimed at changing attitudes and behaviors, which he says has been tremendously successful. "Once you change the mind of the father and grandfather, the mind of elders, then you have changed the mind of the community for generations." Ash also describes how his organization has focused in particular on providing private education to children with albinism as a way

[115] General Assembly, "Report of the Human Rights Council Advisory Committee on the study on the situation of human rights of persons living with albinism, A/HRC/28/75, February 2015.
[116] General Assembly, "Resolution adopted by the General Assembly on 18 December 2014," A/RES/69/170, February 2015.
[117] General Assembly, "Regional Action Plan on Albinism in Africa (2017-2021)," A/HRC/37/57/Add.1, December 2017.
[118] Ikponwosa Ero, personal interview, March 2021. The policy is to be adopted as the AU Plan of Action to End Attacks and Other Human Rights Violations Targeting Persons with Albinism in Africa (2021-2031).
[119] General Assembly, "Report of the Independent Expert on the enjoyment of human rights by persons with albinism," A/72/131, July 2017.
[120] Ikponwosa Ero, person interview March 2021.

to "change the face of albinism" within Tanzania.

The Independent Expert also argues that the novelty of albinism in the UN system and its intersectional nature—both as a physical disability and as discrimination on the basis of race—have helped to spur action on the issue. Indeed, Peter Ash and Ikponwosa Ero have asserted the importance of treating albinism as primarily an issue of colorism, and secondarily as a health issue: "A person with a wheelchair doesn't get attacked because of witchcraft beliefs." For people with albinism in Africa, Ash said, "it is because of their whiteness."[121] On the other hand, insistence on the part of the UN and national government that albinism is primarily a disability issue has hindered progress. Ash said he had argued strenuously for the issue not to be placed under the UN's disability rubric, while Ikponwosa Ero also underlined that the consideration of albinism as a disability issue has led some to refuse to view her mandate as legitimate. Emphasizing the importance of having the issue treated as one of racial discrimination, she said that "if we let it go with one billion other disability issues, nothing is going to happen with these genocides."

Collection and verification of attacks against albinism remains a challenge given the highly secret and taboo nature of witchcraft rituals across Africa, even among political leaders, and given that PWA often experience social exclusion and abandonment. With the support of the Independent Expert and UN, states have taken important steps in recent years to address these information gaps. A recent initiative in Kenya, for example, to register PWA as part of the national census was introduced in 2019 after lobbying led by OHCHR Kenya in partnership with the country's human rights commission and the bureau of statistics.[122] More like these are needed.

Finally, though the Independent Expert has typically enjoyed cooperation and political will from Member States where attacks are frequent, such as Malawi, a lack of resources and weak rule of law have hindered the implementation of national legislation and action plans on albinism. Poverty within these countries has, however, simultaneously inhibited and enabled progress. The presence of Western-led NGOs and the credibility conferred upon the Independent Expert compelled cooperation from Malawi and Tanzania for fear of losing critical international aid.[123] On the other hand, the individual desire to escape poverty and promises of "getting rich" through witchcraft rituals have fueled desperate attacks against PWA across Africa.[124]

> *" Once you change the mind of the father and grandfather, the mind of elders, then you have changed the mind of the community for generations. "*

[121] Peter Ash, personal interview, February 2021.
[122] Office of the High Commissioner for Human Rights, "Counting groups left behind: a stellar step for inclusion in Kenya," November 2019.
[123] Peter Ash, personal interview, February 2021.
[124] Interview conducted on background, March 2021.

Discrimination Against LGBTI People

"No set of human rights advanced faster than LGBTI rights for the past 20 years," Andrew Gilmour, Former Assistant Secretary-General for Human Rights at OHCHR.[125] An increasing number of countries are decriminalizing consensual same-sex relations, legalizing same-sex marriage, and bolstering LGBTI rights[126] as the LGBTI movement becomes stronger across the world. Although some Member States continue to push back on so-called "gender ideology," LGBTI rights have made significant progress in terms of gaining recognition and awareness after over 20 years of discussions at the UN. While numerous UN mechanisms have been used to reaffirm and promote LGBTI rights, the UNHRC, OHCHR, and treaty bodies have played a particularly integral role in this case.

After Member State and civil society advocacy dating back to the mid-1990s, the UNHRC finally adopted a series of breakthrough resolutions specifically focused on sexual orientation and gender identity (SOGI) in 2011, 2014, and 2016. Additionally, in 2019, UNHRC made the first resolution on the rights of intersex persons. In comparison to UNHRC, the UNSC and UNGA[127] addressed LGBTI rights less actively as several Member States argue that acknowledging LGBTI rights is not aligned with their societal and cultural values. However, the U.S. has played an integral role in bringing LGBTI rights to the UNSC and UNGA agenda through coordination with supportive allies, particularly Latin American Member States. In UNSC, the U.S. spearheaded both the ISIL-related Arria meeting in 2015 and the Pulse shooting statement in 2016. Similarly, in the UNGA, U.S. President Obama broke new ground by including the first references to LGBTI human rights in his 2011 speech.

Although LGBTI rights remain a sensitive issue with many UN Member States, the Secretary Generals Ban and Guterres have both leveraged their administrative authority, 'bully pulpit,' and annual reports in support of identifying and combating discrimination and violence against the LBGTI community. The UN Secretariat continues to mainstream LGBTI considerations into programming, particularly within OHCHR, UNDP, and UNHCR.[128] Meanwhile, LGBTI rights within the Secretariat itself were augmented by Secretary Ban's internal extension of employee benefits to the same-sex spouses of UN civil servants in 2014.

The 2016 UNHRC resolution mandated the adoption of the Independent Expert on Sexual Orientation and Gender Identity (IE-SOGI). IE-SOGI is mandated to deliver annual reports both to the Human Rights Council and to the General Assembly but has also spoken with numerous UN fora, including the CEDAW committee. IE-SOGI not only documents human rights violation practices in relation to LGBTI individuals but also sets international guidance and the UN-wide Work Plan on LGBTI rights protection. Even before the establishment of IE-SOGI, LGBTI rights have increasingly been mentioned in other UN procedures, such as Universal Periodic Review and concluding

[125] Andrew Gilmour, personal interview, March 2021.

[126] In this report, we chose to use the terminology LGBTI, the acronym for Lesbian, Gay, Bisexual, Transgender and Intersex, which may exclude populations that are not identified under these terms. Although the term sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) is more inclusive in that it does not refer to a specific identity of people, we call this case 'LGBTI case' for convenience. We acknowledge that this terminology can be subject to criticism.

[127] UNGA has included sexual orientation in its biennial resolution on extrajudicial, summary, or arbitrary executions since 2002, and gender identity since 2012.

[128] Albert Trithart, "A UN for All? UN Policy and Programming on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics," *International Peace Institute*, February 2021.

observations of treaty bodies.

A coalition of supportive UN actors has been effective in raising awareness across the UN bodies. Numerous Member States, OHCHR, and CSOs formed the LGBTI Core Group, which has continuously raised awareness, engaged allies, and built consensus on resolution language within the UN arena. Since many founding Member States were Latin American, the LGBTI Core Group is grounded in support from the Global South and continues to operate on a 50-50 Global South-Global North membership rule, thus undermining the argument that LGBTI rights are inherently Western.[129]

CSOs have been central in raising voices from the ground, playing a central role in raising awareness of LGBTI rights at the UN. CSOs, having their "finger on the pulse of the [LGBTI] community," direct "Member States and UN's attention to community needs."[130] A number of CSOs and Member States host LGBTI-related side events at the UN meetings. The side events normalize and socialize UN Member States to the idea of LGBTI rights, making the most of limited or informal speaking opportunities to ensure the voices of marginalized LGBTI communities are heard. The informal nature of these sessions allows advocates to circumvent procedural rules that would otherwise constrict discussion of LGBTI issues in UN fora. The number of countries that criminalize consensual same-sex sexual acts between adults is decreasing. In 2011, the year the first UNHRC resolution on SOGI passed, homosexual acts were considered illegal in 76 countries,[131] and in 2020, the number decreased to 69 countries.[132] Additionally, 29 UN Member States have legalized same-sex marriage as of 2020.[133] However, it is difficult to find a significant correlation between UN resolutions and legal changes in Member States' national legislation, illustrating the "limitations of the UN in amplifying legal changes that made progress with human rights."[134]

> *"No set of human rights advanced faster than LGBTI rights for the past 20 years."*

[129] Ibid.
[130] Jessica Stern, Executive Director at Outright International, personal interview, February 2021
[131] Eddie Bruce-Jones & Lucas Paoli Itaborahy, "State-sponsored Homophobia," ILGA World, May 2011.
[132] Lucas Ramon Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Ilia Savelev and Daron Tan, "State-Sponsored Homophobia 2020: Global Legislation Overview Update," Geneva: ILGA, December 2020.
[133] Ibid.
[134] Jessica Stern, Executive Director at Outright International, personal interview, February 2021

Chapter 4: Application and Analysis of Mechanisms Across Cases

The following section provides an analysis of the various UN mechanisms and processes available for addressing discrimination, with effectiveness evaluated in terms of the ability of the mechanisms and processes to advance equality and non-discrimination in accordance with their respective mandates. This section also seeks to assess the impact of the mechanisms and processes, including their successes and limitations, as well as their comparative advantages. In cases where it is difficult to isolate the impact and effectiveness of the mechanisms when applied simultaneously with other international, regional, or national mechanisms, we will attempt to attribute impact in accordance with the relative contributions of the mechanisms involved.

"UN actions have been divided between those that are based on the Charter (mainly political) and those that are treaty-based (where legal remedies have been developed)." UN action to combat discrimination has, therefore "followed a twin-track approach."[135] Prior to the analysis, Table 1 provides an overview of the UN mechanisms to address racism and discrimination in multiple contexts. Mechanisms range from affirming international norms, requiring no obligatory actions, to enforcement activities that involve institutionalized international decision-making with binding results on Member States. Broadly, the mechanisms can be categorized into five categories, though often they will touch on more than one: (1) fact-finding, (2) awareness-raising, (3) declaratory statements, (4) legal forums, and (5) international enforcement. These mechanisms include both the fora that the Member States participate and make decisions in and the UN systems under the Secretary-General.

Fact-Finding	This includes activities to investigate and respond to situations of serious violations of international humanitarian law and to promote accountability for human rights violations and counter impunity. These international investigative bodies have been established by the Security Council, the General Assembly, the Human Rights Council, the Secretary-General and the High Commissioner for Human Rights.
Promotional/Awareness	This includes international exchanges of information, the publication of international norms, assistance, and some initial monitoring efforts. These measures works to foster communication and to bring attention to issues so as to improve understanding and bring about changes in attitudes and behaviors.
Declaratory	This includes Declarations which are generally not legally binding; however, they represent the development of international norms and standards and reflect the commitment of states to move in certain directions, abiding by certain principles.
Legal	A series of international human rights treaties and other instruments adopted since 1945 have conferred legal form to inherent human rights with international human rights law laying down obligations States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights.
Enforcement	Enforcement activities involve institutionalized international decision-making and are binding on member states. Only the Security Council is authorized under the Charter to issue binding decisions and only when the situation being addressed represents a "threat to the peace, breach of the peace, or act of aggression."

[135] Michael Banton, "Extending the rule of law," in David Keane and Annapurna Waughray, Fifty Years of the International Convention on the Elimination of All Forms of Racial Discrimination: A Living Instrument, Manchester University Press, 2017.

Table 1. Mapping of available UN mechanisms to combat discrimination

	Fact-Finding	Promotional/ Awareness	Declaratory	Legal	Enforcement
Security Council	Commissions of Inquiry Fact-Finding Missions Visiting Missions		Presidential Statements Press Statements		Resolutions Sanctions Chapter VII Decisions
General Assembly	Fact-Finding Missions	High-Level Speeches Side Events	Resolutions Declarations Durban Programmes of Action		Membership/ Credentials
Secretariat Secretary General	Fact-Finding Missions Special Envoys	Reports Special Envoys	Statements Private Advocacy Special Envoys		
OHCHR	Fact-Finding Missions	Reports Campaigns	Statements Private Advocacy		
DPPA	Special Political Missions	Special Political Missions			
Human Rights Council	Fact-Finding Missions Commissions of Inquiry Independent Investigations	Universal Periodic Reviews	Resolutions	Complaint Procedures	
Special Procedures	Fact-Finding Missions Country Visits	Thematic & Country Reports Communications to States Expert Consultations	Statements		
Treaty Bodies*	Inquiry Procedures	Periodic Reports General Recommendations & Comments	Early Warning & Urgent Action Procedures	Individual Complaints Procedures Interstate Mechanisms	
UN Agencies, Funds, Programs	ILO	Trust Funds ILO UNESCO		ILO	

*The mechanisms listed under the treaty bodies do not apply to all committees.

This table was adapted from: Namie Di Razza, "The Accountability System for the Protection of Civilians in UN Peacekeeping," International Peace Institute, December 2020.

Security Council

The UN Security Council is entrusted with maintaining international peace and security, one of the UN's three pillars alongside human rights and development. The UNSC is the principal UN inter-governmental body able to issue binding decisions, granting outsized impact to Council proceedings. The UNSC lacks explicit authority over human rights, however, except in cases considered to be a broader threat to international peace and security.[136] Nevertheless, in the course of considering international conflicts, issues of discrimination have come into formal and informal Council meetings.[137] Typically, Russia, China, and a range of non-permanent Council members have sought to exclude discrimination-based considerations from the formal UNSC agenda, arguing that they should be addressed exclusively by human rights-focused UN bodies. Given the lack of agreement across the P-5 on using the Security Council for anti-discrimination, binding resolutions and/or sanctions remain largely aspirational tools to date. Indeed, even Presidential Statements or Statements to the Press by the Council rarely touch on issues of discrimination, given the need for consensus. Informal 'Arria-formula' meetings have thus been held more frequently to highlight cases of anti-discrimination for Security Council members and the broader Member State audience.[138]

As a result of these dynamics, the Council has engaged minimally and made relatively weak contributions to broader anti-discrimination efforts within the cases selected for this study.

In South Africa, China, and Myanmar, the Council's failure to take stronger measures to address apartheid or discrimination against the Uighurs or Rohingya stems primarily from the threat or exercise of a veto by at least one permanent member with a vested interest in the case. In South Africa, support for the regime by France, the United Kingdom, and the United States prevented the Council from adopting binding economic sanctions, which many believe would have forced South Africa's capitulation several years sooner. Even the mandatory arms embargo—the only Chapter VII action taken in any of the cases examined—was severely limited in its effectiveness given that the Council's delay had allowed the build-up of a domestic arms industry in South Africa, and given its lax enforcement by Western powers. In contrast, a weaker Council resolution in 1985 calling for the first time for voluntary economic measures against South Africa effectively signaled growing consensus in the Council around Chapter VII sanctions, which significantly elevated pressure against the regime.

Today's Security Council—with Russia and China aligned on numerous issues, especially on state sovereignty and human rights—is similarly divided. In an acute example of the virtual infeasibility of Council action in discrimination cases affecting a member of the P5, China has consistently resisted attempts to consider the Uighur issue in the Council, insisting that the issue is an internal matter and therefore outside the Council's international peace and security mandate. Though the Council has been marginally more active on the human rights situation in

[136] *United Nations Office on Genocide Prevention and the Responsibility to Protect*, "Responsibility to Protect," Accessed April 2021.

[137] For example, the UNSC has discussed discrimination against the Rohingya as a component of broader security and governance issues within Myanmar. See "Myanmar Chronology of Events," *Security Council Report*, Accessed April 2021.

[138] For example, the U.S. convened an unprecedented Arria meeting to spotlight ISIL violence against LGBTI individuals in 2015. More recently, the U.S., United Kingdom, Estonia, and Norway co-hosted an Arria focused on religious discrimination in March 2021. See "Table 1: Arria-Formula Meetings," *The Procedure of the UN Security Council*, Accessed April 2021.

Myanmar, with the U.S. addressing it as an official agenda item since 2006,[139] Myanmar's allies in Russia and China have repeatedly boycotted or blocked efforts within the Council to hold meetings and take stronger measures—including blocking a draft resolution warning of economic sanctions, or trying to stop a Council briefing by the Fact-Finding Mission's chair.[140] Russia has also prevented movement in the Council on LGBTI rights, pushing back on any language referring to "vulnerable" populations in resolutions, which it interprets as a euphemism for LGBTI individuals.

Even in cases of staunch P5 opposition, the Council has found creative ways to circumvent its own disunity. The Western members of the Council have used a closed-door meeting on Central Asia to exert private pressure on China to end its discriminatory practices against the Uighurs and other Muslim ethnic minorities.[141]

In 2014, the Council similarly used an informal Arria meeting—which has the benefit of being confidential and not requiring full Council participation—to highlight ISIS persecution of LGBTI individuals, effectively linking a global anti-discrimination issue and the Council's peace and security mandate without needing to secure Russian cooperation.[142] In a similar manner, the U.S.—by being willing to expose and critique discrimination within its own borders—was able to earn support from Russia and China in adopting a presidential statement condemning the Pulse nightclub attack, setting an important Council precedent for condemning violence on the basis of sexual orientation.[143]

General Assembly

In contrast to the strict focus of the Security Council, the UN General Assembly is empowered to discuss and make recommendations on any matters within the scope of the Charter. Although UNGA decisions are non-binding, General Assembly meetings and resolutions can direct international attention and pressure toward cases of discrimination. The UNGA's purview is as broad as its membership, where each of the 193 Member States gets one vote and the opportunity to shape assembly activities. Annual UNGA sessions include a high-level week, when world leaders gather to deliver speeches and conduct diplomacy; working sessions of the six main UNGA committees, including the Third Committee on human rights and the Fifth Committee on budgetary matters; and a range of special committees, ad-hoc meetings, and conferences. The UNGA high-level week provides opportunities for heads of state to shine a light on issues of anti-discrimination for both domestic and international audiences. The UNGA Third Committee produces an array of resolutions on anti-discrimination and human rights issues, while the Fifth Committee allocates funding for any UN Secretariat anti-discrimination mechanisms or programming. Within the UNGA, regional coalitions hold significant influence as voting blocs. The Africa Group and Non-Aligned Movement, in particular, have been active on issues of anti-discrimination on the General Assembly agenda.

[139] Security Council Report, *Security Council, In Procedural Action, Votes To Include Human Rights Situation In Myanmar On Its Agenda*, September 2006.
[140] Security Council, *Letter dated 18 October 2018 from the Permanent Representatives of Bolivia (Plurinational State of), China, Equatorial Guinea and the Russian Federation to the United Nations addressed to the President of the Security Council*, S/2018/938, October 2018.
[141] Ben Blanchard et al, "U.S., Germany slam China at U.N. Security Council over Xinjiang: diplomats," *Reuters*, July 2019.
[142] *UN News*, "LGBT in the Middle East under the spotlight at the UN," August 2015.
[143] Jessica Stern, Executive Director at Outright International, personal interview, February 2021.

In a few of the cases examined, the General Assembly (GA) played an important role in building and demonstrating international consensus against a system of racial discrimination, exerting pressure against a state or states, and convening groups and individuals outside the UN system. Because of the GA's voting rules—particularly the lack of veto power held by certain powerful states—the GA is often able to move more quickly and more boldly than the Security Council, though with the obvious limitation that its resolutions are not enforceable.

Uniquely, in the case of the Special Committee on Apartheid, the GA's establishment of a dedicated body to address racial discrimination in South Africa ensured that the issue would remain under constant review by the UN—with or without the support of its Western allies. Though the Committee often sought to consult with Western governments, their non-participation enabled it to act expeditiously and with unanimity,[144] in stark contrast to the paralysis of the Security Council. Through the Committee, the GA was also successful in highlighting the failures of the Security Council by condemning Western states for their "collusion" with South Africa and by keeping constant pressure on the Council to take stronger measures that the Council had no appetite to take on—such as economic and petroleum sanctions.

Critical to the Special Committee's success was the expansion of its mandate over time to both lend its support to and capitalize on the growing international anti-apartheid movement, effectively working to harness and mobilize public outrage, especially in key Western capitals. Perhaps the Committee's most important role was in convening a wide range of non-governmental organizations that were able to supplement and support UN action and do what the UN could not do. The important convening role of the GA continues today in the cases of LGBTI and albinism rights, where GA meetings have been used as opportunities to hold side events aimed at raising awareness and building coalitions among Member States. In this regard, the GA has also provided a platform for states and leaders to elevate causes related to minority rights or discrimination, for example with U.S. President Obama's 2011 speech that included the first references to LGBTI to the UNGA.

Aside from the Special Committee, one of the General Assembly's most important contributions to the anti-apartheid movement was to contribute to the near-total isolation of South Africa within the international system. A full decade before the Security Council issued its first resolution, the GA was issuing a steady stream of resolutions condemning the regime, calling on states to cut off diplomatic, economic, and cultural relations with South Africa. Despite being voluntary, these resolutions succeeded in securing the compliance of a number of Member States, especially in Africa and Asia. Over time, the GA's resolutions demonstrated the growing consensus around the need to dismantle apartheid and, increasingly, served to cast South Africa (and, to some extent, its Western allies) as pariahs. This isolation reached a pinnacle in 1974 when the GA took the unprecedented step of suspending the South African delegation's credentials and blocking its participation for the next 20 years—a move that even the U.S. and South Africa's allies could not prevent.

Though the GA is not immune to divisions, several of the selected cases demonstrate how

[144] Boutros Boutros-Ghali, *The United Nations and Apartheid*, 1948-1994, UN Department of Public Information 1994, 44.

the establishment of broader coalitions can be used to push an issue forward. It cannot be overstated the importance of the African coalition—newly enlarged as a result of the wave of decolonization—in leading nearly every initiative in the GA against apartheid and, over time, winning the support of many Western states. Similarly, in the case of LGBTI rights, Latin American countries have served as "bridge builders" on the issue, adding their support to the U.S. and other leading Western states. And in the case of Myanmar, Muslim countries have been vocal supporters in the Third Committee in defense of the Muslim minority Rohingya. In contrast, however, the GA, with its broad representation, can also be a forum for countries to build coalitions of opposition

Zionism and the Conference against Racism in Durban

No issue in the UN has generated more activity – and division – than the Israel/Palestine question, some of which has revolved around the question of systemic discrimination. In 1975, with the support of Arab- and Muslim-majority as well as several Soviet bloc and African states, the General Assembly adopted Resolution 3379 declaring that "Zionism is a form of racism and racial discrimination."[145] The Resolution was revoked in 1991 through Resolution 46/86 with the support of 111 states—including 90 who sponsored Resolution 3379. Ten years later, the U.S. and Israel walked out of the 2001 World Conference against Racism (WCAR) in Durban, South Africa over the inclusion of language equating Zionism with racism in the Conference's draft outcome documents. Countries supporting the text argued that Israeli occupation of Palestine was racially motivated and should be addressed at Durban, while the U.S., Canada and EU countries argued it was not the right forum to raise the Israeli-Palestinian issue or single out individual countries or conflicts.

Though the outcome documents at Durban did not ultimately equate Zionism with racism, the debate at Durban over Israel reflects the broader question of whether or to what extent the U.S. is willing to engage in the UN system around questions of racism and discrimination, especially within its own borders. For example, at Durban the U.S. opposed language inserted into the drafts by African governments which requested an apology from states involved in the slave trade, as well as compensation and reparations for victims of racial discrimination and slavery. The outcome document ultimately did not explicitly call for reparations or an apology for historic injustices, though it did acknowledge slavery as a crime against humanity.

How the Israel/Palestine question has been addressed within the UN has remained a fraught issue, and one which has had an effect well beyond the country setting. In particular, U.S. positioning vis-à-vis other important UN bodies that address discrimination has been affected by conflicting approaches on Israel/Palestine. For example, U.S. participation in the UN Human Rights Council has been invariably shaped by perceptions of anti-Israel bias stemming from the UNHRC's only permanent agenda item, Agenda Item 7 on the Human Rights Situation in Palestine. To a certain extent, deep divisions amongst major powers over the question of Israel/Palestine can be considered an inhibiting factor on the ability of the UN to address other settings involving discrimination.

[145] UN General Assembly, Resolution 3379, 1975, A/RES/3379.

against efforts to address a system of discrimination. Russia, for example, used the GA to attempt to build a coalition of countries opposed to recognizing LGBTI rights to lead a vote against Secretary-General Ban Ki-moon's extension of UN benefits to same-sex families. In a similar sense, and as mirrored in the Security Council's dynamics, China's insistence that the fate of the Rohingya remains a domestic issue provides Myanmar with the necessary political cover to avoid implementing GA resolutions.

Secretariat

The UN Secretariat's engagement in combating discrimination and violence has been guided by both the UN intergovernmental bodies and the UN Secretary-General. The UN Secretariat has executed various mandates from the Security Council, General Assembly, and Human Rights Council to investigate and report on instances of thematic and country-specific discrimination. Meanwhile, UN Secretary Generals have leveraged their administrative authority and 'bully pulpit' to address discrimination independent of Member State deliberations. The Office of the High Commissioner for Human Rights (OHCHR) is the leading UN entity on human rights within the UN Secretariat. The OHCHR both supports the UN's investigative and reporting activities and acts as an extension of the SG's bully pulpit through its office head, the High Commissioner for Human Rights.

Mandated investigative and reporting mechanisms

The majority of the UN Secretariat's tools for investigating and reporting on discrimination are established at the behest of the Security Council and General Assembly. UNSC and UNGA resolutions can direct the Secretary-General to focus on specific types of discrimination by authorizing the establishment of new UN offices or indicators within the SG's annual country-specific and thematic reports. Additionally, the Secretary-General's country-specific envoys, for example, are "good office engagements" authorized by either the Security Council or General Assembly as Special Political Missions.

The Secretary-General appointed special envoys and representatives as an extension of his good offices in both Myanmar and South Africa. In taking stock of the human rights situation of the Rohingya, Special Envoy Christine Schraner Burgener has sought most immediately to address their plight as refugees while also calling for more systemic change to address discrimination in the country, including by emphasizing the need for inclusive development and urging the government to undertake a "Zero Tolerance for Discrimination" campaign. In her role, Schraner Burgener has acted most importantly as an advocate on behalf of the Rohingya in her reporting to the Security Council. In contrast, in South Africa, where an opening had recently emerged for a democratic transition, consultations held by the special representative and special envoys with a wide variety of officials helped to identify areas of agreement among stakeholders for expediting negotiations under the National Peace Agreement.[146] Critically, the Secretariat mechanisms in the case of apartheid were working with the full support of the Security Council at this point and were harmonized with the activities of the General Assembly, which carried "great weight."[147]

Though Secretary-General Guterres has been directly involved to some extent in Myanmar,

[146] Boutros Boutros-Ghali, *The United Nations and Apartheid*, 1948-1994, UN Department of Public Information 1994, 110-111.

[147] Boutros Boutros-Ghali, *The United Nations and Apartheid*, 1948-1994, UN Department of Public Information 1994.

his engagement pales relative to that of Secretary-General Boutros Boutros Ghali in South Africa, who—after a 29-year lapse in direct engagement from the SG's office toward South Africa—was mandated by the Security Council in 1990 to use his good offices to follow and report on the situation. Despite an increase in violence, this engagement was only made possible by the Security Council's growing consensus against apartheid and the unprecedented international pressure that had brought about a number of positive outcomes in South Africa, such as the release of Nelson Mandela and the progress toward a negotiated settlement. Boutros Ghali considers the use of his good offices as critical to the maintenance of a peace process.

The Secretariat's more public role in both the Myanmar and South Africa cases has not been replicated in China, where Beijing continues to insist that its treatment of the Uighurs is outside the UN's scope of authority. However, while China has blocked visits from offices in the Secretariat focused on human rights—namely High Commissioner Bachelet—it has welcomed a visit from the chief of the UN Counterterrorism Office, which conforms to its narrative regarding the nature of the situation in Xinjiang. On March 2, 2021, China announced it was in discussion with Bachelet to conduct a visit to Xinjiang under the premise that the purpose of the visit is to allow for cooperation and not for investigation based on 'guilty before proven.'[148]

Unique across our cases was the role played by a specially-created body within the Secretariat charged with ensuring maximum publicity about apartheid. The Unit on Apartheid, later subsumed by the Center on Apartheid, prepared and disseminated hundreds of studies and reports from liberation movement leaders, issued pamphlets and brochures, and broadcast thousands of radio programs within South Africa—all in an effort to counter the South African regime's censorship and propaganda.[149] With a similar goal of countering disinformation, raising awareness, and shaping public opinion, OHCHR has adapted its publicity strategy to the 21st century with the website: "People With Albinism: Not Ghosts But Human Beings," which offers resources and information while elevating champions of albinism rights. Similarly, OHCHR has also innovated on raising awareness on LGBTI rights through its UN Free & Equal Campaign, a global UN public information campaign aimed at promoting equal rights and fair treatment of LGBTI people.

Administrative authority

The UN Secretariat has a degree of administrative authority over the UN's anti-discrimination activities. On matters of combating discrimination, this administrative authority pertains largely to the Secretary-General's oversight of human resource policies. The Secretary-General can set the tone on how the UN addresses anti-discrimination within the organization itself through UN human resource policies that secure or restrict rights related to racial justice and anti-discrimination. This administrative authority has played an understated but important role within our case studies, particularly in the context of LBGTI rights and the racial reckoning for Black Americans.

The most critical enabling factor shaping UN human resource policy on anti-discrimination was the support—or threat—of a powerful

[148] Stephanie Nebehay, "China says door to Xinjiang 'always open', but U.N. rights boss should not prejudge," *Reuters*, March 2021.

[149] Boutros Boutros-Ghali, *The United Nations and Apartheid*, 1948-1994, UN Department of Public Information 1994, 65.

Member State. In 2014, Secretary-General Ban drew upon his administrative authority to extend employee benefits to the same-sex spouses of UN civil servants, establishing an inclusive policy applicable to staff from countries with LBGTI-related restrictions.[150] This ground-breaking policy was adopted with dedicated U.S. support, as Ambassador Samantha Power leveraged U.S. multilateral and bilateral relationships to deny Russia the votes needed to overturn the policy within the UNGA. On the other hand, Secretary-General Guterres' original 2020 ban on UN civil servant participation in Black Lives Matter protests illustrates how the threat of U.S. disapproval can shift administrative authority away from combating anti-discrimination. Although Guterres later reversed course, the original protest policy stands as a negative example of the human resource tool. Since then, the Secretary-General has established a Task Force to Address Racism and Promote Dignity for all in the United Nations to engage UN staff on how to address interpersonal and institutional racism within the organization, including conscious and unconscious bias.[151] The task force will identify a number of recommendations on how to create an anti-racist organization, culminating in a Strategic Action Plan to be developed by fall 2021.[152] Although the effectiveness of this initiative remains to be seen, the task force represents a dedicated step toward aligning UN human resource policy with racial justice and anti-discrimination objectives.

Bully pulpit

The Secretary-General is granted a 'bully pulpit' that enables them to speak out independently on behalf of affected populations around the world. The Secretary-General thus leverages the UN's moral authority and international platform to condemn cases of discrimination through remarks and public statements. Within the UN Secretariat, the UN High Commissioner on Human Rights is granted a bully pulpit of their own as the Secretary-General's human rights deputy. Since both officials must have their appointments approved by the UNGA, political dynamics underpinning the election process can ultimately influence the use of the bully pulpit.

In all of the cases examined, the Secretary-General and High Commissioner for Human Rights have used their highly visible platforms to make public condemnations and statements of support to issues that are not part of or are not major agenda items within more established fora within the UN system. Just last year, High Commissioner Bachelet issued a number of high-profile statements following the killing of George Floyd, which seems to have contributed in no small part to putting the U.S. discrimination case squarely on the international human rights agenda. The High Commissioner has also brought attention to police violence against the Roma, attacks against people with albinism in Africa, and human rights violations against LGBTI individuals. After making the first statement from a Secretary-General in relation to LGBTI rights, Secretary-General Ban frequently lent his voice to the issue, adding momentum to Human Rights Council activities. In the case of Myanmar, Secretary-General Guterres issued remarks before the Security Council that call attention to the magnitude of the Rohingya refugee emergency, declaring it "one of the world's worst humanitarian and human rights

[150] Samantha Power, "The Education of an Idealist: A Memoir," *Dey Street Books*" September 2019, 422.
[151] *United Nations Secretary-General*, "Secretary-General's remarks to the General Assembly observance of the International Day for the Elimination of Racial Discrimination," March 2021.
UN Jobnet, "Intern - Administration and Project Management (Anti-Racism, Diversity and Inclusion) [Temporary]," Accessed April 2021.
[152] Ibid.

crises,"[153] while also highlighting the need for "collective attention and active engagement…to prevent the further suffering of all communities in Rakhine State" in a letter addressed to the President of the Council.[154]

If nothing else, this "bully pulpit" function of the Secretariat's high office holders can serve to publicly condemn abuses or support causes when other organs of the UN are hampered by division or a lack of will. That said, these figures also must take political considerations into account. In pressing China for access to Xinjiang, Bachelet has expressed concern about rights violations against the Uighurs, but has not gone so far as to condemn China's actions. Similarly, Secretary-General Guterres has received criticism for not explicitly rebuking human rights violations over the Uighurs and for his cautionary recommendation to China after a visit to Beijing in 2019.

UN Agencies, Funds, and Programs

UN offices have a degree of bureaucratic autonomy on anti-discrimination programming, which is seen through efforts to mainstream thematic considerations and innovate on new initiatives. Within our case studies, the International Labour Organization (ILO), UN Development Programme (UNDP), and UN trust funds played the most central role in advancing racial justice and anti-discrimination at the bureaucratic level.

Specialized Agencies

The International Labour Organization (ILO) played a highly active role from the early stages of the UN's broader anti-apartheid campaign, developing its own distinct approach through its unique tripartite constituency of governments, workers, and employers. Engaging on the grounds that apartheid had resulted in a system of discriminatory and forced labor, the ILO's scrutiny of, condemnations against, and threats to expel South Africa from the organization ultimately compelled the country to withdraw in 1964. After the unanimous adoption of the Declaration Concerning the Policy of Apartheid of the Republic of South Africa, the country's non-membership within the ILO enabled the initiation of measures that would not have been possible against a Member State.[155] What began as a sustained and intense campaign of monitoring and annual reports submitted to the International Labour Conference each year, ultimately evolved to include concrete technical, material, and political support for South Africa's liberation movement—despite the ILO's inability to ever enter within the boundaries of a non-Member State.

A combination of key factors enabled the ILO's unprecedented activation around apartheid. First and most fundamentally, the ILO had the necessary anti-discrimination policy framework already in place through the 1954 Convention, which put labor discrimination issues at the organization's core. Secondly, as in the GA, a growing contingent of African states (supported by Asian, Arab, and Soviet bloc states) took advantage of this discrimination framework and a wave of decolonization to obstruct ILO procedures. These coalitions also greatly benefited from a voting system that empowered not only states but worker's unions and employers. In practice, this meant

[153] *United Nations Secretary-General*, "Secretary-General's remarks to the Security Council on Myanmar [as delivered]," August 2018.

[154] Security Council, *Letter dated 2 September 2017 from the Secretary-General addressed to the President of the Security Council*, S/2017/753, September, 2017.

[155] Kari Tapiola, personal interview, February 2021.

the South African liberation movement—represented by worker's unions and employer groups—were given voting power while the South African regime remained absent. This cooperation between workers unions and employer groups in the ILO eventually laid the groundwork for labor law changes after democratization. Finally, the ILO enjoyed very close coordination with UN entities working against apartheid, including with the Special Committee, the Centre against Apartheid, and other subsidiary bodies within the Secretariat.

The ILO's concerted anti-apartheid campaign spanning more than three decades is likely not replicable in any of the selected cases. However, it offers an important lesson that can be drawn for future cases of discrimination—namely the importance of active and broad coalitions of Member States, and the stronger measures that are enabled by the expulsion or total isolation of a Member State within a UN entity.

While the ILO did not actively engage with other cases as much as it did in South Africa, it has shown the capacity to continue addressing discrimination against marginalized populations within the world of work. For example, in 2012, the ILO initiated the "Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE)" project,[156] with an initial scope of Argentina (co-chair of LGBTI Core Group), Hungary, and Thailand. The ILO report documented the experiences of LGBTI people facing discrimination in the workforce, such as Trans individuals being denied jobs due to their gender expression, and demonstrated the need for labor statistics that are inclusive of marginalized populations.[157] The ILO project aligns with a rights-based approach, which examines basic tenets of life including livelihood, and can shed light on varied forms of stigma and discrimination. Nevertheless, it is also worth noting that the LGBTI rights can face additional obstacles to be brought up in UN specialized agencies or related organizations, as those entities have members, budgets, and rules separate from the UN Secretariat. It could be implied that such barriers could hinder UN agency work on other discrimination cases contested amongst Member States.[158]

UN Development Programme

The UN Development Programme (UNDP) is committed to eradicating poverty and reducing inequality, particularly through the advancement of the Sustainable Development Goals (SDGs). With their commitment to "leave no one behind," the SDGs highlight the need to address multiple and intersecting forms of discrimination that an individual is faced with. In that regard, UNDP can initiate an independent programme to achieve SDGs for particular populations; UNDP's "Being LGBTI" projects in multiple regional programmes can exemplify such efforts.[159] The program's main objectives are to foster a greater understanding of the marginalization and exclusion faced by LGBTI people in the region, particularly concerning SDG indicators. This effectively demonstrates that eradicating discrimination is an imperative factor in achieving the SDGs. Additionally, UNDP also includes LGBTI considerations in its broader strategies and has created an LGBTI Inclusion Index[160] to track SDG

[156] *ILO*, "Discrimination at work on the basis of sexual orientation and gender identity: Results of the ILO's PRIDE Project" Geneva, May 2015.
[157] Rosina Gammarano, "Inclusion and Diversity in the Labour Market: a call for LGBT Labour Statistics", *ILO*, December 2019.
[158] Albert Trithart, "A UN for All? UN Policy and Programming on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics," *International Peace Institute*, February 2021.
[159] M. V. Lee Badgett & Randall Sell, *A Set of Proposed Indicators for the LGBTI Inclusion Index*, New York: UNDP. 2018.
[160] *UNDP*, "LGBTI Index," March 2019.

progresses for LGBTI individuals. The index not only introduces a set of 51 indicators to measure development outcomes for LGBTI individuals but also calls for high-quality data on LGBTI people, which could further be used for programming and policymaking. Developing such an index can contribute to mainstreaming marginalized population's rights within the UN-wide systems.

Trust Funds

In the case of South Africa, the UN also provided direct support to the victims of apartheid through the use of a Trust Fund. In 1968, the General Assembly requested that the Secretary-General establish the Trust Fund for South Africa, which would collect funds from Member States, organizations, and individuals to provide legal assistance to South Africans charged under apartheid laws, relief to families of persecuted individuals, education to prisoners and their families, and relief for refugees. A Committee of Trustees was subsequently established by the General Assembly to promote contributions to the Trust Fund and make decisions about its use.[161] In one of its Notes and Documents, the Centre on Apartheid showed that the Fund had received contributions from more than 70 countries amounting to more than $3.6 million. The Centre also notes that the Fund had "enjoyed virtually unanimous support in the United Nations" and was also supported by the Organization of African Unity and numerous other NGOs.[162]

Although direct support to victims through UN Trust Funds is unique to the case of apartheid, this mechanism has been widely used in other contexts to provide assistance to marginalized or at-risk groups, especially the long-running Trust Fund to End Violence against Women administered by UN Women. While useful in assisting victims of discrimination, this mechanism requires a broad consensus within the GA both for passing and for raising contributions, and therefore may not be feasible in more politicized cases of discrimination. That said, the Secretary-General could also decide to establish a trust fund to channel voluntary contributions toward a specific purpose.[163]

Human Rights Council

The UN Human Rights Council (UNHRC) was established by the UN General Assembly in 2006, replacing the former UN Commission on Human Rights (UNCHR) which was a subsidiary body of ECOSOC. The current UNHRC is made up of 47 States elected by the UN General Assembly, responsible for promoting and protecting all human rights worldwide and making recommendations. UNHRC elections often feature 'clean slates' of candidates running uncontested for seats allocated to their regional group. As a result, countries with questionable human rights records have repeatedly been elected to serve on the UNHRC.

The subsidiary organs of the Human Rights Council have been involved in varying degrees in each case study. In the country-specific cases, the UNHRC's role has been primarily focused on collecting evidence on discrimination against marginalized populations. The former Commission on Human Rights played a limited role in addressing the issue of apartheid in South Africa, stemming from the agency's relative weakness compared to today's UNHRC and lack of established procedures. Despite these deficiencies, the Commission's work on apartheid has been instrumental in the

[161] United Nations General Assembly, *The Policies Of Apartheid Of The Government Of The Republic Of South Africa*, United Nations Trust Fund For South Africa. Report Of The Secretary-General, JSTOR, 1968.

[162] United Nations Centre against Apartheid, "The United Nations Trust Fund for South Africa," JSTOR, 1976.

[163] Secretary-General's Bulletin, "Financial Regulations and Rules of the United Nations," ST/SGB/2013/4, July 2013.

development of many of the UN human rights protocols and mechanisms in place today. The agency has also established an International Fact-Finding Mission[164] and Independent Investigative Mechanism on Myanmar[165] to gather data and testimonies on human rights abuses and crimes against humanity against the Rohingya.

In addition to creating specialized missions to report on violations, the Council adopts resolutions to protect human rights and address discrimination. In the thematic cases, these resolutions have been critical in reaffirming and protecting the human rights of minorities. For example, the first UNHRC Resolution on sexual orientation and gender identity in 2011 affirmed the rights of LGBTI individuals by expressing grave concern regarding discrimination against them. In the interview with Jessica Stern, the Executive Director of Outright International, she pointed out the importance of the UN in addressing minority rights: "The biggest world body listens to you saying according to my understanding of human rights, my rights, and my life matters. ... It's like when you've never been listened to and suddenly you feel like you have a voice."[166]

The formation of coalitions between Member States in the agency has proven effective in enabling greater traction on addressing discrimination. For example, the 2011 UNHRC resolution on discrimination based on sexual orientation and gender identity (SOGI) was sponsored by South Africa, and it effectively responded to the opposing discourse that protecting LGBTI rights is primarily a western issue. Civil society organizations (CSOs) are another important stakeholder that works to bring pertinent issues on the Council's agenda. In the albinism case, CSO submissions to the working group on attacks on PWA have served to foster greater awareness and hold governments accountable.

Universal Periodic Reviews

Another component of the UNHRC is the Universal Periodic Review (UPR), which serves to assess the human rights situations in all United Nations Member States. Recommendations provide that the UPR can serve as a conduit for the UNHRC to address human rights abuses and foster communication between Member States through its peer review process and interactive dialogue sessions. The UPR has been broadly applied across our cases and has brought attention to discrimination against Black Americans and the Roma. The UPR also provided 1,375 LGBTI-related recommendations to over 158 countries between 2008-2017,[167] continuously raising awareness of the issue. The most recent UPR cycle on Myanmar in 2020 urged the government to consider all existing recommendations put forth by other UN agencies and officials.[168]

Similar recommendations were made during each of the three UPR cycles for China. However, the politicization between Member States and China's refusal to allow its sovereignty to be undermined has weakened the UPR's impact in the country. Several Member States praised China's efforts to promote and protect human rights with Sudan encouraging China to push forward with its detention centers.[169] These laudatory

[164] *United Nations Human Rights Council*, "Myanmar: UN Fact-Finding Mission releases its full account of massive violations by military
in Rakhine, Kachin and Shan States."
[165] *Independent Investigative Mechanism for Myanmar*, "Independent Investigative Mechanism for Myanmar."
[166] Jessica Stern, Executive Director at Outright International, personal interview, February 2021.
[167] Diana Carolina Prado Mosquera "SOGIESC UPR Advocacy Toolkit" Geneva: ILGA World, November 2017.
[168] General Assembly, *Compilation on Myanmar: Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/WG.6/37/MMR/2, November 2020.
[169] Working Group on the Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review - China*, A/HRC/11/25, October 2009.

statements have had an adverse effect and given China the impetus to continue its discriminatory practices against the Uighurs. In general, the composition of the UNHCR, which includes Member States that have breached international human rights law, has affected its ability to fulfill its mandate of impartially assessing human rights situations for each country.

Special Procedures

Special Procedures mandate holders are independent human rights experts that work to enhance the capacity of the Human Rights Council by reporting and advising on human rights from a thematic or country-specific perspective. As part of their mandates the Special Procedures conduct fact-finding missions and undertake country visits, transmit communications to States, act on individual cases of reported violations, conduct thematic studies, convene expert consultations, contribute to the development of international human rights standards, engage in advocacy, and provide advice for technical cooperation. The Special Procedures report annually to the Human Rights Council, with the majority of the mandate holders also reporting annually to the General Assembly. The Coordination Committee of the Human Rights Council Special Procedures was created in 2005 to facilitate greater cohesiveness among mandate holders and to act as a bridge between them and the OHCHR, the broader UN human rights framework, and civil society. The Special Procedures have also issued several joint statements and press releases.

The comparative advantages of mandate-holders include their ability to undertake country visits and fact-finding missions, including to countries that may not have ratified relevant human rights treaties and without the prerequisite to have exhausted domestic remedies. The independent status of the mandate-holders is crucial for their ability to fulfill their functions with impartiality. The fact that the Special Procedures are somewhat "outside the UN" oftentimes works to their advantage as they have greater flexibility in undertaking their work. Given their independence, they are also able to engage with a wide range of actors, and as OHCHR has noted, they are "the most directly accessible mechanism of the international human rights machinery." For these reasons, the Special Procedures continue "to exert a major influence over global efforts to strengthen the enjoyment of human rights."[170] The Special Procedures have made "significant contributions to the elaboration, interpretation, acceptance and internationalisation of norms," through human rights mainstreaming, standard-setting, and awareness-raising, including through their regular reports to the Human Rights Council and, in some cases, to the General Assembly, the "contents of which may then be reflected in Council and/or General Assembly resolutions, and through the elaboration of soft law instruments such as UN guidelines."[171]

Special Procedures mandate holders, including thematic and country-specific Special Rapporteurs, Independent experts, and Working Groups, were involved in a range of settings across our cases. The first two Special Procedures mandates were established in 1967 in response to apartheid in South Africa at the urging of a cross-regional group of states from Africa, Asia, the Middle East, and the Caribbean—the Ad-Hoc Working Group of Experts on South

[170] Marc Limon and Ted Piccone, "Human Rights Special Procedures: Determinants of Influence Understanding and strengthening the effectiveness of the UN's independent human rights experts," *Universal Rights Group and Brookings Institution*, March 2014.
[171] Ibid.

Africa and the Special Rapporteur on Apartheid. The Special Procedures mechanism was given "the power to recommend and adopt general and specific measures to deal with violations of human rights," which "was significant as it led to ECOSOC resolution 1235 (XLII), which constituted the legal basis for the establishment of future Special Procedures"[172] with the Human Rights Commission's work on apartheid instrumental in the development of many of the UN human rights procedures and mechanisms in place today. In South Africa and numerous subsequent cases, the Special Procedures have been instrumental in raising awareness.

Since that time, several additional mandates have been created in response to normative gaps or political challenges related to the appointment of country-specific rapporteurs.[173] In the case of the United States, shortly after the mandate's creation in 1993, the first country visit of the Special Rapporteur on contemporary forms of racism was to the U.S. the subsequent year, following the beating of Rodney King, a Black American by police, with a fact-finding mission to investigate racial discrimination in the administration of criminal justice and police brutality. The report confirmed discrimination in the administration of criminal justice and the excessive use of force against minority groups, noting "it is one of the most pressing human rights problems facing the United States."[174] The Working Group of Experts on People of African Descent and the Special Rapporteur on extrajudicial killings also conducted fact-finding missions to the U.S. and brought to light the issue, releasing a number of statements. In addition, the Special Rapporteur on the Situation of Human Rights in Myanmar has brought to attention the situation of Rohingya in Myanmar, reiterating the urgency in executing previous proposals from several UN mechanisms and officials, and urging the government to "lift the draconian restrictions arbitrarily imposed and enforced on Rohingya, including restrictions on freedom of movement, health, education, livelihoods and equal access to citizenship."[175]

Special Rapporteurs have also focused significant attention on the rights of minority groups across several countries and have assisted with standard-setting and awareness-raising to increase understanding around the issues faced by these groups. In the Roma case, the Special Rapporteur on minority issues conducted Studies on the Protection of the Roma, which called attention to anti-Gypsyism as a 'specific form of racism,' which underlies the deeply-rooted structural discrimination and extreme marginalization historically experienced by the Roma. The Special Rapporteur on contemporary forms of racism also carried out a regional mission to Hungary, the Czech Republic, and Romania in 1999, motivated by allegations of systematic discrimination against Roma, and in 2011 issued a report noting the "structural inequalities that still persist and continue to have a disadvantageous or disproportionate effect on [the Roma] and that 'racial

[172] Marc Limon and Hilary Power, "History of the United Nations Special Procedures Mechanism: Origins, Evolution and Reform," *Universal Rights Group and Brookings Institution*, September 2014.
[173] The first thematic mandate under the Special Procedures was created in 1980 to respond to forced disappearances in Argentina as the government had objected to a country-specific mandate at the time.
[174] Maurice Glélé-Ahanhanzo, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to the United States*, E/CN.4/1995/78/Add.1, January 1995.
[175] General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, A/75/335, September 2020.

discrimination against Roma is deeply rooted in State institutions."[176]

Existing special procedures were deemed inadequate to address LGBTI issues and cases involving persons with albinism, which led to the establishment of Independent Experts to address the respective issues. The Independent Expert on albinism was also particularly instrumental in the development of the Regional Action Plan on albinism which was recently endorsed by the African Union as a continent-wide policy. The Independent Expert's effectiveness has been in part due to the novelty of the issue in terms of it being new to the international agenda. An additional enabling factor, in this case, was the generally high level of cooperation by governments. Similarly, the Independent Expert on SOGI has been extremely effective in bringing more attention to issues that could have been overlooked, such as so-called 'conversion therapy' and the impact of the COVID-19 pandemic on LGBTI people. In fact, long before the first HRC Resolution on LGBTI rights in 2011, multiple thematic Special Rapporteurs had also addressed and documented discrimination against LGBTI individuals.[177] By continuously bringing attention to cases of discrimination through different thematic areas, LGBTI rights movements were able to gain momentum within the UN.

The Special Procedures mandate holders have also made significant contributions to legislative and policy reforms through communications with governments. In accordance with recommendations of the Independent Expert on albinism, shortly after a country visit to the Republic of Malawi in 2016, the Malawi government adopted several legislative and policy measures, including amending the Penal Code and the Anatomy Act to better address and respond to attacks against persons with albinism, ensuring that such cases are handled by senior members of the judiciary, and establishing a National Technical Committee on Albinism. As a result of these measures, reports, as well as prosecution of cases of attacks against persons with albinism, increased.

While Special Procedures mandate holders have made significant contributions to advancing equality and addressing issues of discrimination, they face several limitations, with the extent of their effectiveness significantly dependent upon the level of cooperation of host countries. While mandate holders are able to undertake country visits and fact-finding missions, they require the consent of states, including an official invitation from governments to undertake missions. For example, China has inhibited Special Procedures on human rights to assess the human rights situation of the Uighurs by refusing to grant access to Xinjiang, with China repeatedly denying the request to conduct a fact-finding mission by the Special Rapporteur on terrorism. As a result, there has been less extensive engagement with the Chinese government on the issue. In addition, mandate holders have needed to undertake their missions remotely with much of their work focused on issuing statements, including the statement in 2019 by twelve mandate holders regarding the Counter-Terrorism Law implemented in the Xinjiang, in which they indicated that the law leaves ethnic minorities vulnerable to discrimination, violating international human rights standards. In the U.S. case, the government under the Trump administration,

[176] Githu Muigai, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, A/HRC/17/40, May 2011.

[177] Relevant Special Rapporteur's reports include, but not limited to: the 1999 report of UN Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions (E/CN.4/1999/39), the 2001 report of Special Rapporteur on the question of torture (A/56/156), the 2004 report of the special rapporteur on the right to health issues (E/CN.4/2004/49).

ceased cooperation with UN special rapporteurs, denying them access to the country by failing to respond to country visit requests. Although governments were generally cooperative in the case of albinism, some governments occasionally blocked access to visits by the Independent Expert. Even in the cases where governments do comply with requests for country visits or fact-finding missions, there is often a lack of follow-up on the implementation of recommendations.

An additional factor that has significantly reduced the effectiveness of the Special Procedures is insufficient resources. According to the Brookings Institution, due to lack of funding, "only a small proportion of all submissions by victims are actively taken up by mandate holders. Of those that are taken up, governments respond to only around half, and of those, just 8% result in and/or reflect substantive steps to address the alleged violation."[178]

Anti-Muslim Discrimination Post 9/11

There has been a significant rise in Anti-Muslim discrimination post-9/11, including hate crimes and racist attacks directed against Muslims, as well as systemic discrimination stemming from the counterterrorism policies of member States. While there is currently no convention focused specifically on religion, as the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)[179] has not received sufficient consensus to become a legally binding treaty due to a number of political challenges, the UN has engaged on the issue in several ways. A number of treaty bodies have effectively brought attention to Anti-Muslim discrimination in their Concluding Observations to Periodic Reports, with the International Covenant on Civil and Political Rights (ICCPR), in particular, observing that "everyone shall have the right to freedom of thought, conscience and religion."[180] In 1993, the Human Rights Committee of the ICCPR also issued General Comment No. 22 on The right to freedom of thought, conscience and religion and has adjudicated several cases involving Anti-Muslim discrimination. In addition, the General Assembly adopted Resolution 73/296 in May 2019, establishing an International Day Commemorating Victims of Acts of Violence Based on Religion or Belief. Secretary-General Guterres has also issued a number of statements condemning Anti-Muslim discrimination, including most recently in March 2021, in commemoration of the International Day to Combat Islamophobia.

In addition, the Human Rights Council has issued several recommendations in response to Anti-Muslim discrimination in Universal Periodic Reviews of member States. Recently in January 2021, in an unprecedented move, a coalition of 36 civil society organizations from 13 countries submitted a petition to the UNHRC to investigate France's actions and policies in relation to Muslim communities in the country. A number of the UNHRC's Special Procedures mandate holders have also worked to address the issue, including Special Rapporteurs on the promotion and protection of human rights while countering terrorism; on the freedom of religion or belief;

[178] Marc Limon and Ted Piccone, "Human Rights Special Procedures: Determinants of Influence Understanding and strengthening the effectiveness of the UN's independent human rights experts," *Universal Rights Group and Brookings Institution*, March 2014.

[179] General Assembly, "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief," Resolution 36/55, November 1981.

[180] International Covenant on Civil and Political Rights (ICCPR), 1966.

and on the promotion and protection of the right to freedom of opinion and expression. In March 2021, the Special Rapporteur on freedom of religion or belief presented a report to the Council on Countering Islamophobia/Anti-Muslim Hatred to Eliminate Discrimination and Intolerance Based on Religion or Belief, noting that "Anti-Muslim hatred has reached epidemic proportions." The report also observes that, "despite the pervasiveness of Islamophobia and Anti-Muslim discrimination, discussions on how to address its impacts are often fraught with tension."[181] At the root of this tension is the fact that national security policies of States are frequently at odds with their human rights obligations, which has significantly limited the extent of UN engagement and the effectiveness of mechanisms for addressing the issue.

Treaty bodies

There are nine core international human rights treaties relevant for anti-discrimination.[182] The first treaty to be adopted was the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in 1965 in response to calls to address apartheid, colonialism, antisemitism, and racial segregation. The ICERD was quickly adopted and went into effect in 1969, and with 182 State parties, it was the most ratified treaty until the adoption of the Convention on the Rights of the Child in 1989. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted in 1965, with both Covenants entering into force a decade later in 1976. The other core treaties include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984), the Convention on the Rights of the Child (CRC) (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) (1990), the International Convention for the Protection of All Persons from Enforced Disappearance (CED) (2007), and the Convention on the Rights of Persons with Disabilities (CRPD) (2007).

Each of the treaties has established a Committee of experts with a mandate to monitor implementation of the treaty provisions by its States parties. The Committees work to fulfill their mandates by providing Concluding Observations to the Periodic Reports of States that have ratified the treaties, in addition to issuing General Recommendations or General Comments on thematic issues of concern. All of the treaty bodies, except for the Convention on Migrant Workers,[183] have adopted an optional Individual Complaints Procedure, under which individuals, and in some cases groups, can bring communications against States parties. The CESCR, CEDAW, CAT, CRC, CED, and CRPD also have an Inquiry Procedure, whereby the Committees can initiate inquiries into serious or systematic violations of the conventions by States. In addition, CERD has preventive measures under its Early Warning Measures and Urgent Action (EWUA) Procedures, which include early-warning to prevent the escalation of situations into conflicts and urgent procedures to respond to issues

[181] Ahmed Shaheed, "Countering Islamophobia/Anti-Muslim Hatred to Eliminate Discrimination and Intolerance Based on Religion or Belief," A/HRC/46/30, February 2021.
[182] There has not been sufficient consensus to transform the Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion and Belief (1981), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), and the Declaration on the Rights of Indigenous Peoples (2007) into legally binding treaties.
[183] The Optional Protocol of the CMW has not received enough signatures for its adoption.

requiring immediate attention and to prevent or limit serious violations.

In addition, the CESCR, CAT, CMW, CED, and CRC have a mechanism for Inter-State Communications, which sets out a procedure for the Committees to consider complaints from one State party against another for failure to adhere to provisions of the Conventions, and the CERD, CEDAW, CAT, CMW, and CED have an Inter-State mechanism to resolve disputes between States parties concerning interpretation or application of the Convention. An additional Inter-State mechanism of the CERD, CCPR, and CRC sets out a more elaborate procedure for the resolution of disputes between States parties over a State's fulfilment of its obligations under the relevant Convention/Covenant through the establishment of an ad hoc Conciliation Commission; however, this mechanism is only compulsory under the CERD. The Inter-State mechanism under article 11 of the CERD was used for the first time in 2018, with the Committee receiving three communications from the State of Qatar vs. the Kingdom of Saudi Arabia, the State of Qatar vs. the United Arab Emirates, and the State of Palestine vs. the State of Israel.

The treaty bodies have been integral in several of the cases studies. The primary comparative advantages of the mechanisms available to the Committees are that treaties are legally binding in character, and in cases where States have signed onto the optional Individual Complaints procedure, individuals are able to bring cases against their own governments in an international setting.

Concluding Observations following Periodic Reports is often the main instrument for treaty bodies to engage with States on their implementation of the treaties and were effective in bringing attention to several issues across a number of our cases. Treaty bodies also have strong engagement with voices on the ground, such as Civil Society Organizations, which often provide shadow reports during the process. The CERD, CEDAW, and UNCAT put forth several recommendations in their Concluding Observations to China, calling on the government to halt its discriminatory policies, which contributed to the government amending its national legislation. CEDAW, in its Concluding Observations to Myanmar's most recent Period Report in 2019, drew attention to the continued denial by government authorities of accusations of sexual violence against Rohingya women and girls committed by security forces, urging the government to ratify the Rome Statute and to establish a special tribunal to investigate these crimes. In the case of the United States, the CERD and the Human Rights Committee of the ICCPR highlighted the issue of discrimination in the criminal justice system in a number of Concluding Observations, noting concern "at the brutality and excessive use of force by law enforcement officials against members of racial and ethnic minorities, which has disparate impact on African Americans," calling on the U.S. to ensure that instances of police brutality are independently, promptly and thoroughly investigated.[184]

The various Committees, and CERD in particular, have been crucial in conceptualizing and moving forward the understanding that discrimination against the Roma and persons with albinism constitutes racial discrimination, as well as in identifying anti-Gypsyism as a specific form of racism, due to the deeply-rooted structural discrimination and extreme marginalization

[184] Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of United States of America*, CERD/C/USA/CO/7-9, August 2014.

historically experienced by the Roma. The treaty bodies have also been instrumental in conceptualizing the multiple and intersecting layers of discrimination faced by people with albinism,[185] namely the experience of physical disability and discrimination on the basis of race. In terms of addressing specific issues faced by the Roma, CERD in its Concluding Observations, drew attention to racially motivated violence against Roma, police brutality, segregation in schooling and housing, discriminatory citizenship laws, and the dismantling of settlements and the forced expulsion of Roma. The CERD, with the Human Rights Committee of the ICCPR, CEDAW, and UNCAT, also brought significant attention to the forced sterilization of Romani women, particularly in relation to the Czech Republic, Hungary and Slovakia.

In thematic cases, it is notable that multiple treaty bodies addressed cases of systemic discrimination in Concluding Observations of states parties, which contributed to raising awareness and increasing pressure on states. For example, LGBTI-related issues were brought up in all nine treaty bodies, including ICERD and CEDAW. In 2019, all nine treaty bodies made 137 LGBTI-references in total, in 66 Concluding Observations on 56 different States.[186] Similarly, several treaty bodies have engaged on the issue of albinism.[187] This illustrates how treaty bodies were engaged with multiple forms of discrimination stemming from intersecting identities, effectively addressing overlapping forms of discrimination. For example, ICERD has issued recommendations on hate speech and hate crimes against LGBTI migrants.[188] CEDAW has also addressed harmful practices specifically affecting women with albinism, including stigma and social exclusion suffered by mothers who give birth to children with albinism.[189]

In addition to conceptualizing discrimination against the Roma and persons with albinism as constituting racial discrimination and increasing understanding around the specific and multiple forms of discrimination affecting these groups, the treaty bodies have been important for giving people with albinism and the Roma another voice and for holding governments accountable for upholding their rights. The statements and recommendations these bodies make are sometimes the only source of information that the government might have on these issues in a given country. The Independent Expert on albinism has noted treaty bodies are especially useful in keeping the issue on the government's agenda in between visits to a country, which are limited to twice annually and that this is particularly important for small, less powerful minority groups like PWA, who do not enjoy advocates representing their interests in Geneva. In addition, questioning by treaty bodies have spurred countries to "suddenly begin acting" on the issue, the Independent Expert has noted, especially when governments are "relying on the powerlessness of certain

[185] Ikponwosa Ero, personal interview, March 2021.
[186] International Lesbian, Gay, Bisexual, Trans and Intersex Association: Kirichenko K, *United Nations Treaty Bodies: References to sexual orientation, gender identity, gender expression and sex characteristics: Annual Report 2019*, Geneva: ILGA World, July 2020.
[187] General Assembly, "Report of the Independent Expert on the enjoyment of human rights by persons with albinism," A/72/131, July 2017.
[188] Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventeenth to nineteenth periodic reports of Colombia*, CERD/C/COL/CO/17-19, January 2020.
[189] Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of the United Republic of Tanzania*, CEDAW/C/TZA/CO/7-8, March 2016.
Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined fifth and sixth periodic reports of Burundi*, CEDAW/C/BDI/CO/5-6, November 2016.
Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of the United Republic of Tanzania*, CEDAW/C/TZA/CO/7-8, March 2016.
Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined initial and second periodic reports of Swaziland*, CEDAW/C/SWZ/CO/1-2, July 2014.

marginalized groups to ignore human rights violations."[190]

General Recommendations and General Comments have also had an integral role in bringing to light certain issues and advancing norms in several areas. CERD, in particular, has strengthened its mandate of protecting group rights by identifying specific categories of people in need of further protection. For example, CERD issued General Recommendation XXVII on Discrimination Against Roma (2000), noting that Roma communities are "among those most disadvantaged and most subject to discrimination in the contemporary world," outlining a number of measures that relevant states parties should take to improve the situation of the Roma.[191] Notably, CERD recognizes that the adoption of these measures should take into account the specific situations of members of Roma communities. CERD has also issued a number of General Recommendations on discrimination in policing, including on the prevention of racial discrimination in the administration and functioning of the criminal justice system (2005)[192] and in preventing and combating racial profiling by law enforcement officials (2020).[193]

The *Early Warning Measures and Urgent Action (EWUA) Procedures* of CERD have also brought heightened attention to issues of discrimination, sometimes leading to changes on the ground. In response to the killing of George Floyd, CERD issued a Statement under the EWUA procedures in 2020, in which it noted with concern "the brutality and excessive use of force by law enforcement officials against persons belonging to racial and ethnic minorities," including "the recurrence of killings of unarmed African Americans by police officers," calling on the U.S. government "to intensify efforts to prohibit and eradicate in practice racial profiling and the excessive use of force by law enforcement officials."[194] Discrimination against Roma also features to a certain extent among issues raised under the EWUA procedures, with CERD issuing communications to the governments of the Czech Republic, Italy, Slovakia and the United Kingdom in cases concerning Roma.[195]

Under the *Individual Complaints* procedure, various treaty bodies, including CERD, the Human Rights Committee of the ICCPR, CEDAW, and UNCAT, have also adjudicated a number of successful cases involving discrimination and human rights abuses directed against the Roma, including cases involving the dismantling of settlements and the forced expulsion of Roma communities, the sterilization of Romani women, police brutality, and discriminatory laws, including the requirement for Roma to carry travel cards, with the Committees calling on State parties to provide adequate reparations and to promptly and impartially investigate the claims. In addition, in 2017 and 2018, the CRPD successfully adjudicated cases involving violence directed at PWA,[196] siding with two individuals with albinism in Tanzania who had been attacked on the basis

[190] Ikponwosa Ero, personal interview, March 2021.
[191] Committee on the Elimination of Racial Discrimination, *CERD General Recommendation XXVII on Discrimination Against Roma*, 2000.
[192] Committee on the Elimination of Racial Discrimination, *CERD General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, 2005.
[193] Committee on the Elimination of Racial Discrimination, *CERD General Recommendation XXXVI in preventing and combating racial profiling by law enforcement officials*, 2020.
[194] Committee on the Elimination of Racial Discrimination, *Early warning and urgent action procedure: statement 1: United States of America*, 2020.
[195] See for example CERD, 'Concluding Observations: Slovakia,' 2009 and CERD, 'Concluding Observations: France,' 2013.
[196] Committee on the Rights of Persons with Disabilities, *Communication No. 22/2014*, CRPD/C/18/D/22/2014, August 2014.
Committee on the Rights of Persons with Disabilities, *Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 23/2014*, CRPD/C/20/D/23/2014, October 2018.

of a disability, with the Committee calling on Tanzania to provide both individuals with effective remedies, to conduct investigations, and to persecute the perpetrators of the attacks. In both cases, the Committee also called on Tanzania to review and adapt legal frameworks in line with recommendations made by the Independent Expert so as to prevent future attacks. Several of these cases, in concert with other international and regional mechanisms, have effectively applied pressure, and over time, contributed to systemic changes on the ground including the desegregation of schools and ending the forced sterilization of Romani women.

While the *Inter-State Mechanism* under article 11 of the ICERD was not applied in our cases, there is the possibility for it to be used more often going forward, particularly as it is compulsory for countries that have ratified the convention, which "means that its potential to be used is stronger than it would be under other instruments."[197] For example, international human rights law expert, David Keane, has suggested that the Inter-State Mechanism should be considered in cases involving states that are not covered by other mechanisms or bodies, including in the case of human rights violations against the Uighurs in Xinjiang, as China has not opted into any of the individual mechanisms and has a reservation to the ICJ on the ICERD and in other human rights treaties.[198]

While the treaty bodies have been effective on several fronts, the extent of their effectiveness is again significantly dependent upon the level of cooperation of host countries, with the lack of political will and implementation measures the most significant factors inhibiting their effectiveness. For example, while China amended their national legislation following recommendations by the Committees, the government failed to take action in implementing and enforcing measures to protect the human rights of the Uighurs. In the case of the forced expulsion of Roma, following judgements of the treaty bodies and various regional courts, France continued to dismantle Roma settlements and expel communities. The U.S. has also failed to fully implement the treaties it has ratified, due to the number of reservations, understandings, and declarations upon which it conditioned its ratification. The lack of a clear definition of discrimination in the legislation of the U.S. has also been a major impediment towards full implementation of their obligations under the various treaties

The composition of the treaty bodies at a given time may also limit their engagement on an issue. For example, in 2019, the CEDAW Committee implemented an Exceptional Reporting Procedure in the case of Myanmar, requiring the government to submit a report on the situation of Rohingya women and girls, followed by Concluding Observations specifically focused on discrimination against Rohingya. However, discrimination against Uighurs in China did not receive the same level of attention from the Committee. In the LGBTI case, the CEDAW Committee made significantly less LGBTI-related references in Concluding Observations in 2019 (33 references), compared to 2018 (62 references). This could be explained by the fact that two Committee members that were the most friendly to LGBTI issues left the Committee and were absent in 2019.[199]

Another limitation of the treaty bodies is related to the lack of access to and awareness

[197] David Keane, IHRL expert, personal interview, March 1, 2021.
[198] Ibid.
[199] Kseniya Kirichenko, "United Nations Treaty Bodies: References to sexual orientation, gender identity, gender expression and sex characteristics: Annual Report 2019," Geneva: ILGA World, July 2020.

of individual complaint mechanisms by marginalized groups, with "research indicating that knowledge about and use of these mechanisms by the Roma is limited,[200] with few Roma aware of their rights as guaranteed by various laws. In addition, there are a number of procedural barriers to bringing a case before the courts, including the lack of funds and access to a lawyer, limiting recourse to justice mechanisms for many marginalized groups.

Another limitation is the isolated and fragmented way in which the treaty bodies and different mechanisms concerned with discrimination often operate, with treaty bodies often criticized for their siloed approach, which could stem in part from the fact that not all Member States have ratified each of the treaties. This fragmentation poses a significant challenge for making recommendations in a coordinated manner, with greater cohesiveness particularly critical for cases involving situations of discrimination based on multiple and intersecting identities. There is therefore the need to better harmonize and streamline the work of the treaty body system to increase cooperative and complementary action between the mechanisms. To address these concerns, the treaty bodies have begun to cooperate to ensure greater coherence in their decisions, with the Chairs of the treaty bodies meeting annually to discuss their work and ways to make the treaty body system more effective. In addition, CERD and CEDAW have been particularly active on implementing intersectional approaches and have adopted General Recommendations to provide legal grounds for addressing multiple forms of discrimination.[201] However, despite these efforts, considerable challenges remain, with greater harmonization needed for addressing cases of discrimination based on multiple and intersecting identities.

Further, there are inherent limitations of legal instruments, in general. "They are only instruments. Like with each instrument, it can be excellent, but just lying around. Somebody has to go and pick it up and use it,"[202] which is not always the case. Consequently, "treaty bodies work with what they have, which is within an international system where there are many international states and actors who do not really agree with stronger mechanisms. The UN treaty bodies were not given that power by states, and as such, there is no UN Court of Human Rights. UN treaty bodies do what they can within these limits."[203]

[200] European Union Fundamental rights Agency, European Union Minorities and Discrimination Survey, 2010.
[201] See for example, CERD General Recommendation No. 25 on gender-related dimensions of racial discrimination and CEDAW General recommendation No. 18 on disabled women.
[202] Dimitrina Petrova, Founding Director, Equal Rights Trust, personal interview, March 4, 2021.
[203] David Keane, IHRL expert, personal interview, March 1, 2021.

Table 2. Application of select UN mechanisms across case studies

	Mechanism	South Africa	U.S.	Myanmar	China	Albinism	Roma	LGBTI
Security Council	Informal/Arria Meetings				■			■
	Formal Meetings	■		■				
	Statements	■		■				■
	Expert Groups/Subsidiary Bodies	■						
	Resolutions	■						
	Chapter VII Action	■						
General Assembly	UNGA Events	■			■	■		■
	Resolutions	■		■		■		■
	Special Committees	■						
Secretariat	Fact-Finding Missions/Inquiries	■		■				
	Secretary-General - Reports/Statements	■	■	■	■			■
	Secretary-General - Good Offices	■		■				
	OHCHR		■	■	■	■	■	■
	Special Envoys	■	■	■				
Human Rights Council / Commission on Human Rights	Resolutions	■	■	■		■	■	■
	Special Procedures Mandate Holders	■	■	■		■	■	■
	Fact-Finding Missions		■	■				
	Universal Periodic Review		■	■	■	■	■	■
Treaty Bodies	Periodic Reports		■	■	■		■	■
	Individual Complaints Procedure					■	■	■
	Early Warning and Urgent Action		■				■	
UN Programs, Agencies & Entities,	International Labor Organization	■						
	Trust Funds	■					■	
	UNESCO	■					■	
	UNDP						■	■

This table was adapted from: Namie Di Razza, "The Accountability System for the Protection of Civilians in UN Peacekeeping," International Peace Institute, December 2020.

Chapter 5: Lessons Learned

Beyond evaluating the strengths and weaknesses of the individual mechanisms, a comparative analysis of UN engagement across the selected studies reveals broader lessons about the effectiveness of certain mechanisms and the common factors or conditions that have inhibited and enabled progress. In particular, these lessons point to ways in which actors can leverage certain mechanisms or conditions to initiate anti-discrimination processes or to build and reinforce momentum around an issue. They also highlight common challenges and obstacles that have beset processes throughout the case studies. These obstacles are addressed in recommendations in the following chapter.

Anti-discrimination is at the heart of the UN

According to Theo van Boven, former Director of the UN Human Rights secretariat, discrimination, and racial discrimination, in particular, has received significant UN engagement over time. "Hardly any other subject [has prompted] United Nations organs to produce so many verbal expressions and statements in the form of legal standards, political resolutions, action plans, and other narratives as the struggle against racism and racial discrimination."[204]

The first issue for the UN General Assembly was the treatment of Black people in South Africa, and one of the very first petitions to come through to the UN was the "Appeal to the World" of the NAACP. "It is not a coincidence that the first human rights treaty is based on the issue of racial discrimination. The ability of racial discrimination to find state support is very important for the wider human rights movement. By addressing something that states felt warranted addressing at the international level, CERD further opened the door for the adoption of other treaties, which has allowed wider progress on human rights issues." In this respect, "measures by the UN to address racial discrimination have played a crucial role in helping overcome sovereignty barriers,"[205] as was seen in the South Africa and Roma cases, and to some extent, the U.S.

> *"Measures by the UN to address racial discrimination have played a crucial role in helping overcome sovereignty barriers."*

Meeting the Moment

Human rights approaches open the door

Human rights bodies are certainly not free from politicization, but our cases point to the capacity for human rights approaches, and racism, in particular, to circumvent some of the more restrictive aspects of sovereignty and lack of cooperation by host governments. For example, the Special Rapporteur on contemporary forms of racism was able to undertake the mandate's first fact-finding mission to the U.S in response to

[204] Theo van Boven, "Discrimination and Human Rights Law: Combating Racism," *Discrimination and Human Rights: The Case of Racism*, edited by Sandra Fredman, Oxford Press, 2001.

[205] David Keane, IHRL expert, personal interview, March 1, 2021.

discrimination in the criminal justice system and police brutality, which was one of the first times the U.S. was the subject of such a report. Similarly, the first prominent discussions around LGBTI rights emerged as part of the World Health Organization (WHO)'s global response to the HIV/AIDS epidemic, highlighting that human rights are essential to improve public health in the late 1980s.[206] Further, WHO started openly advocating against discrimination against "key populations," including men who have sex with men (MSM) and, eventually, transgender people.[207]

Across our cases, there appeared to be a distinction between Geneva-based and NY-based bodies, with Geneva providing a more welcoming and permissive atmosphere for CSOs in particular. This includes the physical nature of the UN complexes in each setting (NY is far more imposing and onerous in terms of its security requirements for CSOs to enter), and also the number of opportunities CSOs have in Geneva to interact directly with UN officials. The relatively easier access to the UN mechanisms allows CSOs and human rights defenders to bring discrimination cases to the global agenda through Geneva-based bodies, where human rights approaches are stronger in comparison to NY-based bodies.

However, human rights approaches and bodies also have their limitations: most human rights instruments "come at the government's behest"[208] meaning that some of the most acute cases are never fully addressed. Moreover, while human rights are one of the three pillars of the UN, it only receives 3.5% of the Organization's budget, leaving nearly all of the UN's resources split fairly evenly between peace/security and development.[209]

Timing matters

The UN's ability to engage effectively in cases of discrimination often varies depending on several factors, including the duration of the system of discrimination in question, the stage or severity of an armed conflict that results from that systemic discrimination, and the international community's awareness of these factors. In this way, there may be moments or periods that are more "ripe" for intervention in a system of discrimination than others, to borrow a concept from I. William Zartman.[210]

In South Africa, for instance, decades of sustained UN involvement reached a point of ripeness after international pressure had reached a peak in the 1970s and the regime was isolated like never before—two factors that enabled stronger measures such as the mandatory arms embargo. By the 1990s, the end of the Cold War and rising domestic pressures enabled Western states to enter into consensus against apartheid, ultimately bringing down the regime. Similarly, the growing international awareness of human rights violations against PWA and LGBTI individuals—largely led by CSOs and media attention—has enabled a rapid expansion in UN engagement. As Peter Ash has emphasized, the ability of the UN and CSOs to greatly increase awareness around the human rights conditions of PWA was a necessary prerequisite for stronger measures. In particular, he says, "the Regional Action Plan [in Africa] would have been pointless

[206] Albert Trithart, "A UN for All? UN Policy and Programming on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics," *International Peace Institute*, February 2021.
[207] UNAIDS, "Key populations" https://www.unaids.org/en/topic/key-populations.
[208] Former UN official, personal interview.
[209] Ibid.
[210] Zartman, I. William,"Ripeness: The Hurting Stalemate and Beyond," *International Conflict Resolution After the Cold War*, National Academy Press, November 2000.

ten years ago" given low levels of awareness, but now serves as a continent-wide policy.[211] The emotional impact of particularly violent incidents against minority groups, while heartbreaking, has been shown to create the conditions necessary for UN action. In our cases, we have observed several tragic incidents that have compelled the UN to speak out against a backdrop of moral outrage and shock in the international community. For example, the Soweto police massacre of black South Africans in 1963 galvanized the GA to create the Special Committee and call for an arms embargo; the Pulse Nightclub attack drew a historic condemnation on LGBTI rights violations from the Security Council; and most recently, the killing of George Floyd drew the condemnation of police brutality in the U.S. from the OHCHR. Actions from CSOs as well as international media coverage also feed this momentum, which certain mechanisms within the UN can capitalize on without a heavily politicized debate.

Regardless, distinct mechanisms respond to tragedies at different speeds. Perhaps among the mechanisms, the Secretariat is the quickest to respond as it can operate on its own more easily, such as the 'bully pulpit' of the Secretary-General or the OHCHR. On the other end of the spectrum, it would take longer time and lobbying efforts for the UNSC to speak up about tragedies, even if they could be deemed a threat to peace and security, particularly when the issues are controversial amongst key Member States. Also, treaty bodies are less likely to address concerns in a timely manner. Individual complaints mechanisms could take a few years to come to a conclusion, and through periodic reports, Member States are assessed on the implementation of the human rights treaties, as the name implies, periodically.

Windows can open gradually

While change can often be slow and not immediately apparent—particularly when faced with barriers of sovereignty and a lack of political will—it is important to develop a long-term perspective and work to lay the foundations for when an opening becomes available. For example, with Universal Periodic Reviews and Periodic Reports, "it often begins with drawing attention to an issue, in pioneering certain ideas, and engaging in dialogue between states," and "building on the responses of those states over time."[212] For this reason, it is vital that Member States ratify all core international human rights treaties and continuously engage with the treaty bodies. While recommendations and concluding observations may not be immediately implemented or acted upon, their influence, including in the establishment of norms and standard-setting, is often cumulative, eventually leading to wider change and impact over time.

Side events in large scale UN events, such as annual sessions of the UN General Assembly and Commission on the Status of Women, are also effective in raising awareness in the longer term. The side events can give CSO actors and allies a platform to shed light on the lived experiences of those discriminated against and the informal nature of these sessions allows advocates to circumvent procedural rules that would otherwise constrict discussion in UN fora. As cases like albinism and LGBTI issues illustrate, side events are effective to gather traction from Member States, and UN agencies or departments. However, they have limitations as it takes time to get UN actors to become sensitized and informed about certain issues. It may take "5 years down the road, 10 years down the road, or sometimes it may take 20

[211] Peter Ash, personal interview, February 2021.

[212] David Keane, IHRL expert, personal interview, March 1, 2021.

years to get the recognition." [213] Despite the limitation, it is important to recognize the longer-term impact of side events for their critical role in raising awareness and promoting marginalized groups' rights.

> *"It may take 5 years down the road, 10 years down the road, or sometimes it may take 20 years to get the recognition."*

The LGBTI case underscores the degree to which public opinion can gradually unlock issues of discrimination, opening the door to more robust intervention by the UN. Fifteen years ago, it was unlikely that the LGBTI agenda would have received such consistent support and profile within the multilateral system, but today it is a pillar of the UN's anti-discrimination work. In the context of racial discrimination in the U.S. and elsewhere, opportunities may arise to consolidate and build upon public opinion, potentially opening the possibility of using a greater range of mechanisms in the future.

Mobilizing the Momentum

CSOs put anti-discrimination on the global agenda

The critical role that CSOs play in combating discrimination on the ground, monitoring attitudinal changes, and holding governments and UN actors to account resonates throughout the case studies. The Black Lives Matter movement in the U.S. has been the "single most galvanizing factor in putting racial justice on the global agenda," building transnational solidarity and coordination around exposing racial injustices.[214] A coalition of national legal groups also plans to issue a final report to the Human Rights Council later this year.

In our case studies, CSOs have had a greater impact in cases that do not involve State-level conflicts. CSOs play a critical role in bringing cases to the attention of the UN, particularly for those groups that face discrimination stemming from deeply embedded social norms, such as PWA, Roma, and LGBTI individuals. Their advocacy work has been critical at uncovering the experiences of those groups that may have otherwise remained largely invisible to the UN, particularly when there are no specific conflicts involved. For example, in the LGBTI case, CSO's submissions (shadow reports) to treaty bodies play an integral role in contributing to the number of LGBTI-related recommendations in their periodic reviews.[215]

The relationship between CSOs and the UN in these cases is, therefore, one of symbiosis. The UN lends a great amount of credibility and legitimacy to the work of CSOs. "Suddenly people really start to listen," Peter Ash has said of how his organization's status in Tanzania changed after the Independent Expert began her work on albinism.[216] The UN can also be invaluable in bringing together coalitions of CSOs to create or feed movements—as in the case of South Africa, where the UN sought to both lead a movement while capitalizing off of its

[213] Jessica Stern, Executive Director at Outright International, personal interview, February 2021.
[214] Jamil Dakwar, personal interview, March 3, 2021.
[215] Kseniya Kirichenko, "United Nations Treaty Bodies: References to sexual orientation, gender identity, gender expression and sex characteristics: Annual Report 2019," Geneva: ILGA World, July 2020.
[216] Peter Ash, personal interview, February 2021.

momentum and comparative advantages. Special Committee founder E.S. Reddy said that by convening and supporting anti-apartheid CSOs, the UN was able to "supplement and support UN action" as these groups "were able to do what UN organs could not."[217] In the same way, CSOs advocating for LGBTI rights have successfully circumvented the issue's absence from any official UN agenda to nonetheless raise awareness at side events or Arria meetings of the Security Council.[218]

It should be noted that the CSOs most active in the cases we examined operated in settings with relatively strong protections for speech and political activity, which may help to explain the lack of this important enabling factor in the cases of China and Myanmar. China has leveraged its membership in ECOSOC's Committee on Non-Governmental Organizations to stonewall NGOs that are critical of its policies from receiving accreditation and to ban accredited activists from attending UN events.[219] Chinese officials have also inhibited activists from traveling from China to the UNHRC in Geneva.[220] This may be gradually changing in the case of Myanmar, which has opened its doors to many NGOs in recent years, allowed UN offices in Rakhine State, and has incrementally cultivated deeper relationships with development actors.

Coalitions can galvanize progress

Coalitions of Member States within the UN system have been the key to several of the more successful cases examined. Perhaps the best example is in South Africa, where the UN's steadily expanding African coalition led nearly every anti-apartheid initiative—often with the support of Asian and Soviet bloc states. A lesson from the success of the African coalition in building consensus in the GA on resolutions was its strategy of proposing a series of resolutions on narrower aspects of apartheid—assistance to victims, for instance—in order to ensure the broadest possible support.[221] The informal grouping of the LGBTI Core Group—with the 50-50 Global South-Global North membership rule—has also been critical not only in activating the UN system around LGBTI rights but also in countering the narrative that the movement is a solely Western initiative.

While coalitions of relatively weaker states can make important contributions, their impact is significantly strengthened with the backing or leadership of a powerful state. The Soviet Union regularly lent its support to the African coalition in the case of South Africa. The U.S. has been actively involved with discussions on LGBTI rights and has allowed "other countries to be more outspoken as they know that there's a major power that's going to defend them if there's blowback."[222]

Though China refuses to allow the Uighur issue onto any major UN agenda, Western Member States have taken it up with Beijing in private Security Council meetings and in public letters to the UNHRC. This 'name and shame' tactic employed by coalitions of UN Western Member States has helped maintain the international spotlight on the human rights abuses occurring in Xinjiang.

International and regional coordination

One of the factors we observed across our cases was how the level of regional

[217] E.S. Reddy, "The Struggle against Apartheid: Lessons for Today's World."
[218] Jessica Stern, Executive Director at Outright International, personal interview, February 2021.
[219] *Human Rights Watch*, "UN: China Blocks Activists, Harasses Experts," September 2017.
[220] Ibid.
[221] Boutros Boutros-Ghali, *The United Nations and Apartheid*, 1948-1994, UN Department of Public Information 1994, 39.
[222] Member State representative, personal interview, February 2021.

engagement and the existence of well-developed regional human rights frameworks and mechanisms can significantly enhance the impact of the UN in responding to cases of systemic discrimination. For example, in Europe, Africa, and the Americas, where there exist robust human rights frameworks, UN engagement with regional organizations has been instrumental in responding to discrimination against the Roma, people with albinism, and Black Americans; however, in Asia and the Middle East, where there are relatively weaker human rights frameworks in place, there has largely been a lack of a regional response to the situations of discrimination against the Rohingya in Myanmar and the Uighurs in China. In addition, not only can the UN push regional organizations to respond to issues, but it can often work the other way around, with regional organizations pushing the UN to act.

Another factor we observed in our cases was the need for UN and regional coordination, as a lack of cohesiveness and differing strategies of engagement on an issue, can significantly undermine and weaken the effectiveness of the mechanisms available for addressing discrimination. This also applies to the different ways in which discrimination is construed by legal bodies across various international and regional jurisdictions. By contrast, when the UN works in concert with other regional organizations, following a cohesive and coordinated approach, they can often work in mutually reinforcing ways as part of a supra-national system, further strengthening the mechanisms and their ability to advance equality and non-discrimination in a sustained way. There should therefore be more coordinated engagement across international and regional organizations, with a harmonization of standards and approaches, including systematizing existing anti-discrimination law and policy, possibly with reference to the 2008 Declaration of Principles on Equality.

UN non-binding measures can catalyze change

In many of the cases examined, non-binding measures—such as UNHRC Special Procedures or the adjudication of treaty bodies—have made more traction in addressing cases of discrimination than binding ones. In particular, this is because binding measures often run up against political constraints and because human rights mechanisms have the most direct mandate to deal with discrimination.

As an example of the limits of binding measures, the arms embargo against South Africa—though supposedly the only enforceable action taken in any of these cases—played a relatively small role in bringing down the regime because of its poor compliance. In contrast, in many of the other cases, Member States find it in their interest to comply with non-binding actions—for example, voluntary sanctions against South Africa, or the cooperation of African delegations with the Independent Expert on albinism.

By contrast, non-binding measures that are employed consistently, enjoy a strong mandate, and are reinforced by other mechanisms have been most successful across the case studies—especially in the absence of other measures. In particular, the role of Special Procedures mandate holders has been critical in the cases of PWA, Myanmar, Roma, the U.S., and LGBTI to help to conceptualize and raise awareness around discrimination, shape international public opinion, and elevate the issue within the UN's agenda. Non-binding actions also appear to be most effective when combined with significant consensus across major actors like in the anti-apartheid movement, a

lack of serious sovereignty barriers as seen in the thematic cases, and some domestic receptivity amongst the leadership to external pressures as in the LGBTI rights advancement.

However, non-binding measures have been of limited use in cases dominated by sovereignty concerns. In the case of China, for example, few shifts in the government's approach to the Uighurs have taken place, despite numerous interventions by treaty bodies.

Effective engagement requires UN mechanisms to work together

Given the pervasive nature of discrimination, the struggle against it can be effective only if fought on different levels and with various mechanisms, including legislation, political engagement, public policy, and partnerships with civil society organizations. To this end, effective engagement around issues of discrimination requires all mechanisms available within the United Nations system working in concert to apply sufficient and sustained pressure to advance the issue. This is particularly the case when there is a lack of engagement around an issue on the part of the Security Council and when powerful Member States are involved. The effective application of mechanisms across the UN, however, requires greater cohesiveness, as there is currently very little coordination across various departments and agencies. This is also the case across the treaty bodies, where "anti-discrimination norms are scattered in all the covenants and conventions, and are oftentimes not compatible." This is particularly problematic in cases of multiple and intersecting discriminations, where "anti-discrimination law and policy are best pursued from a coherent, unified equality framework. However, "the unified framework should not impose common solutions to different cases, as achieving substantive equality requires different policies for different groups."[223] Greater cohesiveness therefore requires systematizing existing standards across the treaty bodies. While there have been efforts to harmonize the work across the treaty body system, including annual meetings between the treaty body Chairs, considerable challenges remain, with increased coordination needed to further address situations of discrimination based on multiple and intersecting identities in particular.

Assessing the Obstacles

More data is needed to shine a light on discrimination

A lack of sufficient data has prevented a full accounting of the extent of discrimination in several cases, which severely hampers the response capabilities of UN mechanisms. Especially in cases that have only recently emerged onto the UN's human rights agenda or where there can exist a certain stigma surrounding the marginalized groups—such as albinism, Roma, or LGBTI rights—data is critical to obtain a fuller picture of the human rights situation of these groups. The lack of data is also critical for evaluating the enforcement of anti-discrimination measures put in place, for example in the case of national legislation to protect PWA in Africa, the case of the Roma across Europe, or as it relates to police brutality in the U.S. In cases or countries where the discrimination is so taboo or forced underground, there is an especially urgent need for better data collection, given the groups themselves are very unlikely to know of or use existing mechanisms to report violations against them. The secrecy surrounding the conditions and treatment of the Uighurs in China also

[223] Dimitrina Petrova, Founding Director, Equal Rights Trust, personal interview, March 4, 2021.

limits the UN's ability to counteract Beijing's national security narrative. However, investigative journalism on the issue has been critical in uncovering policy documents and state directives that have been used by UN officials to develop briefings and reports for the Secretary-General and the High Commissioner for Human Rights. It has also served to put pressure on the Chinese government to concede before the CERD that it has built detention facilities after repeatedly denying their existence.

UN human rights mechanisms face a crisis of credibility

The utility of UN human rights mechanisms can be undermined by perceptions of bias. The UNHRC's credibility in particular has been plagued by accusations of bias, leading some Member States to question whether the institution is the right forum to engage on anti-discrimination issues. The 2018 U.S. decision to withdraw from the UNHRC due to the Council's alleged bias against Israel and its covering for dictators represented one consequence of the credibility crisis. Meanwhile, current and former UNHRC members have disregarded Council proceedings seen to promote 'Western' values, or have even attempted to redefine the institution's interpretation of human rights. For example, 33 of the countries that have served as UNHRC members during or after the adoption of the first LGBTI-focused resolution in 2011 continue to maintain national legislation outlawing same-sex relations or criminalizing gender expression.[224]

Additionally, China has garnered praise from allies from the Global South, such as Sudan, for its efforts to protect human rights, including through its Uighur detention centers.[225] China has also utilized similar tactics to its UNHRC approach within the UNSC, where their sovereignty arguments have largely shielded both Uighur and Rohingya human rights abuses from consensus-driven Council criticism.[226]

Geopolitics continue to stymie action

An unfortunate but not surprising lesson from our study was the extent to which geopolitics can prevent UN mechanisms from being used to the fullest extent possible. Current geopolitical dynamics between the U.S. and China (with the support of Russia) have been particularly challenging obstacles in the cases of the Uighurs and Rohingya, and show few signs of abating. Competition between the U.S. and the former Soviet Union, and underlying concerns of communist expansion in Africa, similarly fed Western resistance to UN anti-apartheid measures in the early 1990s.

Meanwhile, regional and thematic coalitions have sometimes worked to obstruct UN processes on anti-discrimination. For example, some regional coalitions have prioritized the inclusion of overly provocative references in UN anti-discrimination resolutions at the cost of undermining broader engagement on the underlying issue.

Member state groupings can also outright block UN action on cases of discrimination,

[224] This analysis is drawn from a comparison of Human Rights Watch's "Map of Anti-LGBT Laws Country by Country" with lists of UNHRC members who were either serving during the 2010-2011 term that ended on June 18, 2011--a day after the first SOGI resolution was adopted on June 17, 2011--or have since been elected to the Council. The list of 33 countries include: Afghanistan, Algeria, Bangladesh, Burundi, Cameroon, Egypt, Eritrea, Ethiopia, Ghana, Kenya, Kuwait, Libya, Malaysia, Maldives, Mauritania, Mauritius, Morocco, Namibia, Nigeria, Pakistan, Qatar, Republic of Korea, Russian Federation (propaganda laws), Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, United Arab Emirates, Zambia.
See: "Map of Anti-LGBT Laws Country by Country," *UN Human Rights Watch*, Accessed April 2021: http://internap.hrw.org/features/features/lgbt_laws/
"List of past members of the Human Rights Council," *UN Human Rights Council*, Accessed April 2021

[225] Working Group on the Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review - China*, 2009.

[226] Ibid.

as exemplified in the Russia-China alignment on Myanmar and the Uighurs, and in China's rallying of the Like-Minded Group to demonstrate international support for its "counterterrorism policies."

Further, geopolitics have led to the gradual erosion of human rights norms. "After World War Two, when the whole international human rights regime was being built and developed, and governments were voluntarily joining the various human rights instruments, there was this upward movement where governments wanted to be held accountable to one another, some more than others, and then somehow it reached this plateau." Due to "a number of geopolitical issues, there has been a significant weakening of the whole system, including the international human rights law regime."[227]

Embracing the Road Ahead

Evolution of UN mechanisms for addressing racism and discrimination

Changes to standards in the area of discrimination often occur in response to tragedies that invoke widespread condemnation and international moral shock, appealing to our collective humanity and prompting movements on a global scale. These pivotal moments of global reckoning change the spirit of the times, often leading to social change tipping points. In the 1960s, it was against the backdrop of colonialism, the rise in anti-Semitism, apartheid in South Africa, and the segregation of Black Americans and the Civil Rights Movement in the U.S., that the first human rights convention was adopted, and quickly ratified, which focused on the elimination of racism.

" Pivotal moments of global reckoning change the spirit of the times, often leading to social change tipping points. "

The mechanisms themselves also represent living instruments, having contributed significantly to the development and evolution of international norms.[228] While the ICERD initially interpreted racial discrimination in the context of apartheid and colonialism, with many member States maintaining that discrimination did not exist within their borders and that the convention therefore did not pertain to them,[229] over time the understanding around the meaning of the convention evolved to address all forms of racism, and eventually expanding the definition of racial discrimination. The various provisions of the conventions and covenants have also provided breakthroughs in the development of procedures for monitoring the extent of states' compliance with their obligations under the treaties, including through periodic reports, individual complaints procedures, and inter-state mechanisms. Other human rights mechanisms, including the Special Procedures mandate holders have also evolved in accordance with normative gaps and political challenges, with the creation of the first thematic rapporteur used as a means of circumventing issues of state sovereignty.

[227] Dimitrina Petrova, personal interview, March 4, 2021.
[228] David Keane and Annapurna Waughray, *Fifty Years of the International Convention on the Elimination of All Forms of Racial Discrimination: A Living Instrument*, Manchester University Press, 2017.
[229] Michael Banton, *International action against racial discrimination*. Oxford: Oxford University Press, 2004.

The UN is more than a last resort

International institutions can be seen as a tool of last resort when a country's own legal system has failed to address issues of discrimination. In many areas, including international justice and human rights, the UN tends to follow the principle of subsidiary, only stepping in following the exhaustion of local remedies or where a state appears unable or unwilling to act on its own. This approach can position the UN in a confrontational way to host governments, seen as an unwelcome imposition in settings where Member States are falling short. As the China and Myanmar cases illustrate, the principle of subsidiarity can be used as a shield to protect governments from intervention, even where they are directly involved in the discrimination itself. Part of the key to success appears to be in changing that dynamic, in having the UN be seen as a constructive partner, helping willing actors advance a common agenda. This insight may have meaningful applicability to the U.S. context, where Chinese-drafted statements by the Human Rights Council are unlikely to generate a positive U.S. response, but where more constructive statements and approaches might find purchase with the Biden Administration. Reconceiving forums like the Human Rights Council as a place where the U.S. can articulate its commitment to addressing systemic racism on its own soil, while also using that forum to push its agenda in other settings, could be a useful way forward.

Chapter 6: Recommendations

The comparative analysis identified several challenges that arise when addressing systemic forms of discrimination as well as some good practices in addressing these challenges. The following recommendations offer specific approaches that could help overcome the principal challenges identified.

1 Work to overcome geopolitics and sovereignty constraints

Lead with humility on the international stage

Member States speaking out against racism and discrimination abroad open themselves up to criticism of shortcomings within their own borders, potentially losing credibility and leverage if their practices fall short of international standards. Advocates of anti-racism processes should therefore seek to lead with humility about their own domestic discrimination issues, highlighting their strengths and acknowledging their weaknesses during UN meetings. Toward the end of apartheid, for example, South Africa's Deputy President Nelson Mandela acknowledged and denounced the discriminatory system as an "indelible blight on human history" during the 1990 session of the UNGA Special Committee Against Apartheid.[230] Although the U.S. continues to grapple with racism, representatives under the Biden-Harris Administration have increasingly addressed the need to confront racial discrimination in America, including through a UNHRC joint statement and high-level UNGA remarks.[231] These examples could be built upon by other Member States to create a broader culture of leading with humility on racism and discrimination at the UN.

- Specifically, Member States should consider using Universal Periodic Review sessions, UNGA High-Level Week speeches, and UN commemorative meetings to build goodwill with international audiences and connect with domestic constituents. Commemorative meetings on the International Day for the Elimination of Racial Discrimination offer a particularly salient platform for countries to openly address their own discrimination issues and the efforts they are taking to address them.[232]

Leverage coalitions to advance stalled or polarized issues

Despite obstacles posed by geopolitics and great power competition, the possibility of reaching a consensus on anti-discrimination issues is not completely out of reach. Member states should strive to overcome political obstacles to addressing anti-discrimination at the UN by leveraging coalitions to advance stalled or polarized issues. For example, the U.S. experience partnering with the Organization of Islamic Cooperation (OIC) to replace a problematic OIC-sponsored resolution on combating religious discrimination with a new consensus text at the UNHRC could serve as a valuable model for this approach.[233]

[230] United Nations, "Statement by Nelson Mandela Deputy President of the African National Congress to the 641st meeting of the Special Committee Against Apartheid," June 1990.

[231] *U.S. Mission to International Organizations in Geneva,*"Joint Statement on Countering Racism and Racial Discrimination," March 2021.

[232]Pamela Falk, "U.S. Ambassador Linda Thomas-Greenfield gives powerful speech at U.N.: 'I know the ugly face of racism,'" *CBS News,* March 2021.

[233] In 2011, the U.S. worked with OIC representatives to replace a OIC-sponsored UNHRC resolution on "Defamation of Religions" with Resolution 16/18 on Combating Discrimination on the Basis of Religion or Belief. The previous UNHRC resolution contained U.S. redlines related to constitutional free speech protections that

Additionally, the U.S. success mobilizing a coalition of allies and adversaries—and leading with humility—to set a UNSC precedent on LGBTI rights could prove useful for addressing other anti-discrimination issues in settings characterized by great power competition.[234]

- Member states like the U.S. and its European allies should explore whether collaboration with the Africa Group and other regional coalitions could produce a new text or process to address racial discrimination at the UN.[235]
- The 'P3' UNSC members—the U.S., United Kingdom, and France—should work with their allies within the E-10 elected members to explore whether discussion of racial discrimination in the context of the BLM movement could open the door to broader engagement on anti-discrimination within the Security Council, including on the Uighur case within China.[236]

Uphold international commitments through local diplomacy

Member state engagement on UN anti-discrimination mechanisms can be limited by both domestic institutions and domestic politics. In scenarios where sovereignty constraints restrict action at the national level, local subnational diplomacy can create innovative precedents and promising opportunities to uphold international commitments on anti-discrimination.[237]

- Member states who are supportive of UN anti-discrimination mechanisms at the national level should encourage and support partnerships between their local governments and the UN on combating racism and discrimination. This support could include public praise for local partnerships in UN forums, national funding for local-level initiatives, and the inclusion of local government representatives in UN conference delegations.
- In countries with high sovereignty barriers and little likelihood of national-level action, local organizations and sub-national governing entities can gain leverage by partnering with the UN in some instances. For example, local institutions could integrate anti-discrimination treaty obligations into local ordinances, even absent national legislation. Local leaders could also submit an SDG Voluntary Local Review that tracks progress on anti-discrimination through the Sustainable Development Goal indicators, regardless of whether their country sponsors an SDG report at the national level.[238] UNESCO's International Coalition of Inclusive and Sustainable Cities offers another entry point for similar locally-driven action.[239]

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triggered U.S. disengagement on an anti-discrimination topic they would otherwise support. By negotiating a new text, Resolution 16/18, the U.S. has been able to re-engage on the UNHRC's process for combating religious discrimination.
See: Arsalan M. Suleman. "Empty Seat Diplomacy: How America Surrendered Its Diplomatic Advantage, and How It Can Bounce Back." *SAIS Review of International Affairs*, vol. 40 no. 1, 2020.

[234] See statement by China at HRC proposing that the U.S. address the legacy of slavery.

[235] Arsalan M. Suleman, "Anti-Muslim Hatred as an Obstacle to the Right to Freedom of Religion or Belief," *EU Delegation to the UN in Geneva*, March 2021.

[236] Ibid, China HRC.

[237] For example, over 40 U.S. cities have passed or are making serious progress towards passing ordinances promoting CEDAW principles through the grassroots Cities for CEDAW campaign, despite lack of treaty ratification at the national level. On a more symbolic level, the city of New York facilitated the 2016 U.S. Mission initiative to paint the UN walkway used by visiting high-level week dignitaries in rainbow colors in support of LGBTI rights. Samantha Power, "The Education of an Idealist: A Memoir," 2019,

[238] Sarah Mendelson, "Inequality, the SDGs, and the human rights movement in the US and around the world," Brookings, June 2020. Julia Spiegel, "Embracing Foreign Affairs Federalism in a Post-Trump Era," Lawfare, March 2021.

[239] UNESCO's International Coalition of Inclusive and Sustainable Cities was launched in response to the 2001 Durban Conference's call for "a common front in the global fight against racial discrimination." It serves as a regional and national city-level UN platform for policymaking, capacity-building, and awareness-raising activities to combat racism and discrimination. *See:*

Unite for peace resolution

Our research indicates that there have been challenges in resolving certain issues of systemic discrimination in principal UN forums in part because of sovereignty concerns and a lack of trust among major powers. This is most visible in the UN Security Council, where great power competition and a lack of trust has undermined effective action in a range of areas, including some involving systemic discrimination. Although very much a last resort, the UN Charter provides the UN General Assembly with the authorization to make recommendations on all matters including those on the agenda of the UNSC, if the Council is not exercising its functions to address intra-state conflicts such as in the case of Myanmar.[240]

- While this has been used very sparingly in the past, some of the cases considered in this report demonstrate that systemic forms of discrimination can overlap with international peace and security,[241] potentially opening an avenue for response by the UNGA. At the very least, opening a discussion about the possibility of Uniting for Peace could provoke a more rigorous debate on the issues of discrimination underlying the case.

2 Strengthen compliance with and implementation of treaties

Encourage Member States to ratify and fully implement treaties

While many of the core international human rights treaties have been widely ratified, other conventions continue to receive little support from states. In addition, many countries have conditioned their ratification of the various treaties upon a number of Reservations, Understandings, and Declarations (RUDs), which undermine the initial purpose of these treaties and allow for systemic forms of discrimination to continue; however, a standing assumption in treaty law, is that reservations cannot directly undermine the stated purpose of the treaty.

- The General Assembly and Human Rights Council should organize a campaign in the context of the 50th Anniversary of the International Year to Combat Racism and Racial Discrimination and the 20th Anniversary of Durban Conference, to encourage Member States who are currently not signatories of the various conventions and covenants, to ratify and fully implement the ICERD and other human rights treaties.
- Treaty body committees should continue to urge Member States to ratify international human rights treaties without conditional ratifications in the form of Reservations, Understandings, and Declarations.
- The secretariats of the committees that oversee the treaties should also issue General Recommendations or Comments to build a common understanding around the interpretation of the treaties, and the expectations and obligations of States with regard to their implementation throughout all levels of national jurisdictions, the establishment of monitoring bodies, as well as ensuring effective remedies.
    - Member States should also be encouraged to recognize the committees' competence to adjudicate cases by adopting the optional articles and protocols on the individual complaints procedures.

"International Coalition of Inclusive and Sustainable Cities – ICCAR," *UNESCO,* Accessed April 2021.

[240] Rebecca Barber, "UN Security Council Won't Respond to Myanmar's Coup, But the General Assembly Can," *Just Security,* February 2021.
[241] Ibid.

- UN agencies should ensure that on a national level, countries are provided with the resources and funding to implement their treaty obligations and action plans.

Facilitate convergence in international human rights law

Our research points to the utility of regional and sub-regional organizations, in addressing discrimination in settings with high sovereignty concerns. In addition, effective international action often requires the backing of regional bodies; however, the UN and regional bodies often lack alignment and do not have similar approaches to non-discrimination. The broader UN system should increase coordination with these regional bodies, allowing for an alignment in approaches to equality and non-discrimination. This would entail systematizing existing standards of equality law that appear in policies dispersed across a number of international legal instruments, while at the same time recognizing the benefits of having distinct regional approaches to addressing discrimination. To this end, relevant UN actors should:

- Develop a common level of legislative standards related to equality that could be used across international and regional actors, possibly referencing the Declaration of Principles on Equality, which was jointly devised by human rights and equality experts.[242]
- Mainstream equality and anti-discrimination into the UN's regional strategies, and jointly develop and monitor anti-discrimination goals, with regular reporting of progress by the Secretary-General, in coordination with the AU, IACHR, EU, and other regional bodies.
- UN organs should provide support to regional and sub-regional organizations that may be seen as having more legitimacy or jurisdiction in addressing human rights abuses. For example, UNDP's Being LGBTI programmes coordinate to conduct research and develop actionable tools with regional organizations, such as ASEAN and Organisation of Eastern Caribbean States (OECS). The programmes' objectives are to fill knowledge gaps and enhance cooperation amongst regional actors.

Increase coordination across treaty bodies

Another limitation is the isolated and fragmented way in which the treaty bodies often operate, which poses a significant challenge for addressing situations of discrimination based on multiple and intersecting identities. There is therefore a need to better harmonize and streamline the procedures and working methods of the treaty body system to increase cooperation and complementary action, while at the same time, recognizing that some variations are necessary requirements of the treaties.[243]

- The committee Chairs should establish thematic working groups to harmonize treaty body jurisprudence and reduce the current fragmented approach in which different international human rights instruments and mechanisms address cases of intersectional discrimination. It would also enhance cooperative and complementary action between these mechanisms.

[242] Equal Rights Trust, "Declaration of Principles on Equality," https://www.equalrightstrust.org/content/declaration-principles-equality

[243] In 2011, it was suggested that thematic working groups be established to discuss issues of common interest, including the harmonization of treaty body jurisprudence and working methods and in 2019, the Chairs endorsed a simplified reporting procedure for States

Promote the Inter-state Complaints mechanism under ICERD Article 11

According to the Inter-State Complaints mechanism under Article 11 of ICERD, "if a State Party considers that another State Party is not giving effect to the provisions of the Convention, it may bring the matter to the attention of the Committee."[244] Member States can thereby play an active role in ensuring other governments are held accountable for failing to protect the human rights of their citizens, while at the same time, providing "a process of conciliation," as "it is not a judicial mechanism and offers recommendations aimed at an 'amicable solution.'"[245] Article 11, however, is an underutilized mechanism that is often unexplored in cases of discrimination. For example, in the Uighur case, one of the experts we interviewed suggested that it could be used by states to bring a complaint against China.[246] CERD and other UN actors should increase awareness around the availability of this mechanism, as it is compulsory for any state that has ratified the convention.[247,248] More specifically:

- The Secretary-General should use his good offices to draw attention to the availability of the mechanism in cases of systemic discrimination, and, where appropriate, bring issues to the Security Council under Article 99 of the UN Charter.
- Groups of Friends and other national configurations (including possibly under the Peacebuilding Commission) should promote the use of Article 11 in cases of discrimination.

Adopt additional optional protocols and General Recommendations

Our research pointed to several discriminatory practices, which are not explicitly captured under existing treaty obligations, including around the standards in the use of force by law enforcement and emerging forms of discrimination, such as the use of advanced technologies in policing.

- Treaty bodies should consider adopting General Recommendations or General Comments or optional protocols (in cooperation with the General Assembly) to address normative and implementation gaps in the human rights framework, including as it relates to the issues of:
  - the discriminatory and excessive use of force,[249] and;
  - the use of advanced technologies in policing, including facial recognition, which have disparate impacts on communities of color and minorities.[250]
- In accordance with recommendations from the Report on the Content and Scope of Substantive Gaps in the Existing International Instruments to Combat Racism, the treaty bodies should, in collaboration, issue a General Recommendation that considers multiple and intersecting forms of discrimination and "the methodology for countering this phenomena, and produce concrete recommendations on the means or avenues to bridge these gaps, including but not limited to the drafting of a new optional protocol to the ICERD or the

[244] UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), 1965.
[245] David Keane, "China and Inter-State Communications under Article 11 of the International Convention on the Elimination of Racial Discrimination," *Institute for International Conflict and Resolution and Reconstruction, DCU*, 10 February 2021.
[246] David Keane, IHRL expert, personal interview, March 1, 2021.
[247] Ibid.
[248] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.
[249] *Harvard University*, "Police Brutality in the United States: A Conversation with Agnes Callamard, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions," June 2020.
[250] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.

adoption of new instruments such as conventions or declarations."[251]

Adopt additional treaties to address normative gaps

While our research tended to cover traditional forms of systemic discrimination, many experts pointed to emerging forms of discrimination, such as environmental racism. This issue could be addressed either through a non-binding compact, treaty process, or another forum.

- The General Assembly should consider adopting a treaty on human rights and the environment, which could include a provision on minorities, indigenous peoples or other groups covered by ICERD,[252] and/or a treaty on environmental racism and discrimination.
- The General Assembly should also continue to push for increased consensus to transform the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief (1981), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), and the Declaration on the Rights of Indigenous Peoples (2007)[253] into legally binding treaties.

Provide support and educate affected groups about their rights

- The Committees should work to increase knowledge around the availability of legal remedies under the Individual Complaints Procedures and ensure the mechanisms are more easily accessible to marginalized groups.
- The UN should also support Civil Society Organizations and National Human Rights Institutions in providing legal aid and assistance to victims and in advising them on legislative and policy measures.

3 Mainstream equality and anti-discrimination across the UN

Establish a Diversity, Equity, and Inclusion unit within the Secretariat

Diversity, Equity, and Inclusion (DEI) units are often critical drivers in fostering change through the prioritization of goals focused on diversity, equity, and inclusion and the mainstreaming of these issues across organizations more broadly, as well as through the development of comprehensive and cohesive strategies and the management of dedicated programming.

- A DEI unit should be created within the Secretariat to further institutionalize and prioritize the UN's work around equality and non-discrimination. This could be based on outcomes of the 2021 Strategic Action Plan to be developed by the Task Force to Address Racism and Promote Dignity for all in the United Nations which was established by the Secretary-General.
- The Secretary-General could propose this measure and work with Member States to find support, either through assessed or voluntary funding.
- The DEI unit should have both an inward focus, to increase diversity, equity, and inclusion within the UN itself,[254] as well as an outward looking focus to coordinate the UN's work around advancing equality and non-discrimination.

[251] Human Rights Council, "Report on the study by the five experts on the content and scope of substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance," A/HRC/4/WG.3/6, August 2007.

[252] David Keane, IHRL expert, personal interview, March 1, 2021.
[253] Ibid.
[254] Colum Lynch, "The U.N. Has a Diversity Problem," *Foreign Policy*, October 2020.

4 Improve the implementation and coordination of mechanisms

Foster greater coordination between UN human rights mechanisms

Our research indicated a need to improve system-wide decision-making, including streamlining the UN human rights machinery and coordinating human rights promotion and protection activities throughout the UN system. Facilitating greater cohesion within the UN system would require the following action steps:

- In the context of country team offices, UN agencies and bodies should ensure clearer cross-communication and standardized data sharing to mitigate discrepancies in reporting violations that take place within country borders.[255]
- The UNHRC and UNGA should develop a centralized database on acts of discrimination that could be shared across UN human rights entities including independent experts and missions, special envoys and rapporteurs, and treaty bodies.
- Special Procedures mandate holders and treaty body members should meet regularly and exchange information regarding country-specific cases and thematic issues.

Bolster the capacity of country team staff

UN country team agencies are a key instrument the organization utilizes in addressing discrimination on the ground. However, country teams do not have a dedicated capacity to analyze and develop programs to respond to systemic forms of discrimination.

- In order to build that capacity over time, it will be essential to expand resident coordinator offices to support the broader goals of sustaining peace and addressing the root causes of conflict.
- Providing greater resources and technical assistance to country teams would also allow for better reporting on different forms of systemic discrimination across the UN system.
- The UN should designate the Inter-Agency Advisory Panel to identify suitable candidates for country team offices that can appropriately respond to the evolving needs of each situation on the ground.[256]

5 Build local capacity

Our research emphasized the need to build local capacity to effectively challenge and change systems of discrimination. In some cases, as in albinism, there is a need to ensure that recommendations to Member States are accompanied by the requisite resources to fully implement action plans, UN recommendations, and legislation. There is also room for the UN to better leverage the critical role played by Civil Society Organizations (CSOs) and National Human Rights Institutions (NHRIs) in calling attention to discriminatory practices, in helping to build popular consensus, and in carrying out meaningful work at the local level. Similarly, the UN could make better use of existing mechanisms used to provide support and technical assistance to victims of discrimination.

- UN agencies and bodies should ensure that states are provided with sufficient resources and technical assistance to

[255] Gert Rosenthal, *A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018*, May 2019.

[256] Ibid.

implement UN-led recommendations and action plans on anti-discrimination

- UN agencies and bodies should foster collaborative relationships with these organizations and institutions. These partnerships could be facilitated by OHCHR's NGO coordinators. In particular, specifically in thematic cases of discrimination, the UN should help Member States to identify, empower and fund CSOs in filling key gaps to support or protect marginalized groups.
- The Secretary-General should consider establishing a Trust Fund to collect voluntary contributions from states to broadly support victims of discrimination.

6 Improve data collection, measurement, and transparency

The CERD views data as a reporting obligation; however, for different reasons, many states do not officially collect data based on race or ethnicity, which makes it difficult to track patterns of differential treatment. A lack of sufficient data has prevented the UN and Member States from having a full accounting of the extent of discrimination and consequently, from identifying or enacting appropriate responses. Tracking levels of discrimination and progress in combating it is made even more difficult when governments fail to report relevant data on marginalized groups, or when there is a lack of empowered actors to carry out data collection. The UN and other independent entities should work with states and other actors on the ground in a concerted effort to fill these gaps.

- UN agencies and bodies should encourage Member States to increase systematic, disaggregated data collection and support them in these efforts. In addition, the UN should leverage the Sustainable Development Goals as a framework to collect disaggregated data from member States to track progress on racism and discrimination. As the UN revisits the SDG framework between now and 2030, the UN should also initiate an organization-wide discussion about evaluating continued progress on the goals through the lens of discrimination.
- As part of an inter-agency effort, the UN should fund the development of an independent international index on equality and non-discrimination[257] for the standardization and regulation of discrimination and racism to assess the types and severity of discrimination against different groups present within a country. Such an index should also report aggregate and individual indicators on the levels of violence, marginalization, and relevant health or socioeconomic indicators associated with discrimination and include guidelines on specific measures for modification. Indicators could be based on the SDG Framework, including SDG 5 on Gender Equality, SDG 10 on Reducing Inequalities, and SDG 16 on Peace, Justice and Strong Institutions.
- OHCHR should develop and promote a system of standardized guidelines for providing technical assistance to Member States in implementing policy reforms, including changes to census surveys, to ensure that marginalized groups are represented in national population data.

[257] This index could be similar to the Fund for Peace's *Fragile States Index*, UNDP's *Human Development Index*, Transparency International's *Corruption Perceptions Index*, UNDP's *LGBTI Inclusion Index*, or the World Bank and Brooking Institution's *Worldwide Governance Indicators* (WGI). It could also include information from OHCHR's *Universal Human Rights Index* – a searchable database of recommendations by the treaty bodies, the universal periodic review and the special procedures of the Human Rights Council, including with regard to the Sustainable Development Goals.

- The Human Rights Council should establish a Working Group to examine how member States have successfully dealt with the intersection of policing and issues affecting minority communities and communities of color.

7 Rebalance priorities across the UN pillars with a greater focus on human rights, including equality

There is a recognition that equality and inclusion and many of the core issues embodied in the human rights pillar are not only important in themselves, but also fundamentally important to peace, security, and development; however, the UN's human rights pillar receives less than 3.5% of the UN regular budget. Within that, the Special Procedures mandate holders, which we found to be particularly effective, were even more underfunded, receiving less than 0.5% of funds.[258] If the UN is going to be serious about not only addressing discrimination, but also the ways in which discrimination affects its broader mandate under the charter, including peace and security and development, it should rebalance its priorities across the pillars, including as it relates to funding.[259]

- The General Assembly should work to rebalance the regular budget and shift funding within the UN system to reallocate resources in support of anti-discrimination work, including providing increased funding from the regular budget to support the work of the Special Procedures mandate holders and the treaty bodies so that they can effectively fulfill their respective mandates.[260]
- The Secretary-General should use his influence to re-prioritize the distribution of funds by underscoring the organizational priorities of the UN and signaling the importance of a better balance across the three pillars.

[258] Ted Piccone, "Improving the Special Procedures: Three Tips for the High Commissioner for Human Rights," *Brookings Institute*, July 2014.
[259] Kenneth Roth, "Opinion: Why the U.N. chief's silence on human rights is deeply troubling," *Washington Post*, April 2019.
[260] As of October 2019, there was an 80 percent increase in individual communications received by the Committees from the previous year; this has led to a significant backlog of 1,587 communications that have been received and are awaiting review by the relevant Committees. A/74/643.

Conclusion

As this study shows, the task of strengthening the UN's mechanisms to combat racism and discrimination is significant. Many of the lessons drawn from the seven case studies are instructional about the challenges that have plagued the UN to-date, ranging from relatively more remediable ones, such as data collection, to ones that will require much more creative solutions, such as overcoming intensifying great power competition or strengthening compliance with international treaty bodies.

Positively, these cases have also underlined several ways in which the UN can be successful in combating racism and discrimination—including the importance of a whole-of-UN approach and the need to leverage a wide range of UN and non-UN actors—including regional organizations, CSOs, and the press. The viability of human rights approaches to circumvent Security Council paralysis, the power of the bully pulpit in shaping public opinion, and the overall effectiveness of non-binding actions are critical lessons as the UN stares down increasingly polarized camps in the realm of human rights. The recommendations included in this study, which target UN, regional, and state-level actors, should serve as a starting point for broader discussions about the actions and reforms—both internationally and domestically—that are needed to sustain this collective progress on racism and discrimination.

Strengthening the ability of the United Nations system to address racism and discrimination is vitally important to uphold the basic principles of equality and non-discrimination that are foundational to the organization's mandate and purpose. Beyond satisfying core international human rights frameworks, progress toward eradicating racism and discrimination also works directly in service of the UN's other goals. Inclusion in development processes—including equal access to health services, education, and workforce opportunities—is a central tenet of the UN's Sustainable Development Goals. Lowering levels of intolerance toward marginalized groups also works to prevent the dehumanizing rhetoric and hatred that have led to some of the worst episodes of violence in our history. Finding ways to hold governments accountable for their discriminatory acts could also serve to restore the UN's credibility on human rights at a time when the effectiveness of the Human Rights Council to address violations is viewed with deep skepticism, especially in the West.

Finally, this report hopes to add momentum to the growing chorus of voices calling for greater equality in the U.S. and beyond. At the time of this writing, the United States is braced for an outcome in the trial of Derek Chauvin, the Minneapolis police officer charged in the death of George Floyd—one of the most high-profile racial justice cases in the U.S. since the acquittal of the Los Angeles police officers charged in the beating of Rodney King. As the U.S. finds itself at yet another historic juncture in its own reckoning with a long history of institutionalized racism, the United Nations should seize this pivotal moment to undertake meaningful and serious steps to strengthen its ability to address racism and discrimination around the world.

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Annex

Annex 1: United Nations and regional resolutions and declarations on equality and non-discrimination

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- Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion and Belief (1981)
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- Second Decade for Action to Combat Racism and Racial Discrimination (1983)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (1985)
- Convention Against Apartheid in Sports (1985)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)
- Principles Related to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) (1993)
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- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005)
- World Summit Outcome (2005)
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- Declaration on the Rights of Indigenous Peoples (2007)
- International Decade for People of African Descent for 2015-2024
- Uniting for Peace resolutions

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- Social Justice Declaration (2008)

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- Convention against Discrimination in Education (1960)
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Regional resolutions and declarations

Africa

- African Union
    - African Charter on Human and Peoples' Rights (ACHPR) (1981)
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Americas

- Organization of American States (OAS)
    - Charter of the Organization of American States (OAS) (1948)
    - American Declaration of the Rights and Duties of Man (1948)
    - American Convention on Human Rights (IACHR) (1978)
    - Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)
    - Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance (2013)
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Asia

- Association of Southeast Asian Nations (ASEAN)
    - Universal Declaration of Human Rights (2012)

Europe

- European Council
    - European Convention on Human Rights (ECHR) (1950) and Article 1 of the 2000 Protocol 12 (2000)
    - European Social Charter (1961)
    - European Charter for Regional or Minority Languages (1992)
    - Framework Convention for the Protection of National Minorities (1995)
- Organization for Security and Co-operation in Europe (OSCE)
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    - Racial Equality Directive 43/2000/EC (2000)
    - Employment Equality Directive 2000/78/EC (2000)
    - Directive 2004/113/EC on gender equality related to goods and services (2004)
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    - Directive Proposal (COM(2008)462) against discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace (2008)
    - Treaty on the Functioning of the European Union (2007)
    - Treaty of Lisbon (2009) (altered the status of the Charter of Fundamental Rights making it legally binding; EU accession to the European Convention on Human Rights (ECHR) also became a legal obligation under Article 6(2)

Middle East and North Africa

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    - Arab Charter on Human Rights (2004)

Annex 2: Mechanisms for addressing war crimes, crimes against humanity, ethnic cleansing, and genocide: Sudan and Myanmar

In response to the conflict in the western region of Darfur beginning in 2003, government forces in the Sudan, under President Omar al-Bashir, with Janjaweed militias, conducted indiscriminate attacks against civilians, with the razing of entire villages, leading to the displacement of 1.2-2 million Darfuris, and the ethnic cleansing and genocide of between 80,000-500,000 people, mostly from the Fur, Zaghawa, and Masaalit ethnic groups. In Myanmar, the genocide of the Rohingya, a Muslim ethnic minority, resulted from a series of ongoing persecutions by the Myanmar military including a campaign to strip the Rohingya of their citizenship and a violent military crackdown beginning in 2016, which forced over a million Rohingya to flee to other countries.

The mechanisms available in cases of war crimes, crimes against humanity, ethnic cleansing, and genocide are often significantly more robust, at times involving enforcement measures invoked by the Security Council under Chapter VII; however, the degree to which these mechanisms have been applied has depended to a significant extent on Council dynamics, and in particular, the political will and commitment of the P5 in responding to these violations. In the case of Myanmar, there has been very little engagement of the Council in preventing the ethnic cleansing and genocide of the Rohingya. In the case of the Sudan by contrast, the UNSC issued 205 resolutions and statements on Sudan, 94 with specific reference to Darfur, including Resolution 1564 calling for an International Commission of Inquiry and resolutions establishing a special political mission in Sudan, UNMIS, in 2005, a UN-AU Hybrid Operation, UNAMID, in 2007, and a Transition Assistance Mission, UNITAMS, in 2020. In addition, the UNSC issued a number of arms embargos and targeted sanctions on Sudanese authorities. Especially noteworthy is the UNSC's indictment of Sudan and President al-Bashir. While the Council had previously established the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) after the conflicts in both countries had ended, the Sudan was the first state, and President al-Bashir, the first sitting head of state, to be referred to the International Criminal Court (ICC) by the UNSC for crimes of genocide.

In cases where the UNSC has failed to respond to ongoing cases of ethnic cleansing and genocide, other bodies and agencies within the UN have stepped in, and applied the mechanisms available under their respective mandates. For example, in the case of Myanmar, the Human Rights Council established the Independent International Fact-Finding Mission on Myanmar[261] in March 2017, which found that the Tatmadaw military had systematically targeted Rohingya civilians and committed genocide, crimes against humanity, and war crimes, with the experts noting that the international community had failed the people of Myanmar and urged the UNSC to refer the persons responsible to the ICC, or to create an ad hoc international tribunal and impose an arms embargo and individual sanctions on Burmese authorities. The UNHRC subsequently established the Independent

[261] The Human Rights Council also appointed a High-Level Mission to assess the human rights situation in Darfur and a Group of Experts to ensure the effective follow-up and implementation of resolutions and recommendations.

Investigative Mechanism for Myanmar in September 2018, to collect, analyze, and preserve evidence of crimes against humanity, genocide, and war crimes. In addition, a number of Special Rapporteurs and Independent Experts, under the UNHRC's Special Procedures, were integral in bringing to light atrocities following fact-finding missions in both the cases of Myanmar and the Sudan, with five Special Rapporteurs over nearly three decades detailing their recommendations on the human rights situation in Myanmar to the UNGA and the UNHRC, and the Special Rapporteur on extrajudicial killings and the Independent Expert on the Sudan issuing a number of reports that war crimes and crimes against humanity had been committed in Darfur. Other measures taken outside of the UNSC, include the case filed in the International Court of Justice (ICJ) against Myanmar by The Gambia, on behalf of the Organization of Islamic Cooperation (OIC), for violations of the Genocide Convention.[262] The ICJ issued its groundbreaking decision in January 2020 based on evidence uncovered by the International Fact-Finding Mission on Myanmar. In its ruling, the court ordered Myanmar to cease and desist all forms of genocide against the Rohingya and preserve evidence regarding genocidal acts that had been committed. In addition, while Myanmar is not a State party to the ICC,[263] Prosecutor Fatou Bensouda requested authorization to initiate an investigation into crimes against humanity in Myanmar, and in November 2019, the ICC judges granted her request to open investigations, allowing for broad parameters to be considered for the investigation. ICC's investigations are currently underway.

Notwithstanding measures taken by the UNHRC, and Chapter VII measures invoked by the UNSC, their effectiveness has been limited in both cases due to the lack of political will of the Sudanese and Burmese governments, contributing to a lack of implementation of ICJ provisions in Myanmar and obligations of the Sudan under the treaties that had been ratified under al-Bashir. Further, while the UNSC authorized a number of arms embargoes and sanctions in the case of Sudan, continuous violations occurred, including non-compliance by P5 members, which severely weakened their effectiveness. An additional inhibiting factor, was the varying levels of regional and international coordination, with marked fragmentation and differing strategies of engagement with Sudan, and in the case of Myanmar, non-existent engagement at the regional-level, which significantly decreased the effectiveness of the mechanisms available for applying leverage on Khartoum and Naypyidaw. In Sudan, the lack of coordination was most notable in relation to ICC proceedings, with the African Union, the League of Arab States, and the Organisation of the Islamic Conference, opposing the measure and calling for the suspension of the proceedings. This provided Khartoum significant room for maneouvre, with states repeatedly in violation of the Rome Statute for failing to arrest individuals, including al-Bashir, as they crossed international borders. The efficacy of the ICC was also severely limited[264] due to "the Security Council's lack of action on the matter," with Prosecutor

[262] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*).

[263] Although Myanmar is not a party to the ICC, Bangladesh is a member of the court.

[264] The efficacy of the ICC in obtaining al-Bashir's compliance was also mixed. Several non-governmental organizations were ordered to leave the country following the indictment, placing numerous civilians at risk. "This led to widespread hostility towards UN entities and INGOs. Within six months of the indictment, 1000s of aid workers were expelled from the Sudan, which had a negative impact on human rights work and on the delivery of humanitarian assistance, which was a significant setback. As a result, the human rights work that was done before the indictment was affected, and some of it completely eroded." Abou Jeng, UN Human Rights Officer, personal interview, March 5, 2021. "After the expulsion of the INGOs, UNAMID really was the only major international

Bensouda noting that violations were "unlikely to end if the Security Council remains unwilling to take action against such non-compliance."

While the robustness of the mechanisms applied in the Sudan and Myanmar varied considerably, these cases demonstrate that, regardless of the mechanisms available in a given context, without concerted and coordinated action and pressure on states, the mechanisms can be rendered essentially useless in stopping crimes against humanity, including ethnic cleansing and genocide.

presence left on the ground to continue human rights monitoring, and even within the peacekeeping context it had to be done quietly. So while peacekeeping provided the entry point for us to enter and stay in Sudan and afforded a cover for the operational space for human rights work to continue, it was very much a negotiated space, if not a concealed space, for human rights processes." Sumie Nakaya, Political Affairs Officer, UN DPPA-DPO, personal interview, March 5, 2021.

Annex 3: Cases Studies

Apartheid in South Africa

Context

Apartheid, the legislative system holding up segregationist policies against non-white citizens in South Africa, was the subject of extensive United Nations activity for much of the latter half of the 20th century on the grounds that the discriminatory policies violated human rights and, eventually, that they posed a threat to international peace and security.[265] For almost 50 years, the United Nations system—particularly through the leadership of the General Assembly (UNGA) and its apartheid body, the Special Committee on Apartheid, as well as the Security Council—employed an impressively broad range of tools and innovations aimed at bringing the system of apartheid to an end and establishing a non-racial democracy in the country.

Ultimately, the UN's sustained campaign—in concert with a growing international anti-apartheid movement—to exert diplomatic and cultural pressure on the South African government was its most effective tool in casting the regime as a global pariah and creating conditions for democratization. Specialized UN entities like the ILO were also instrumental in providing assistance to the liberation movement. Aside from a Chapter VII arms embargo, the UN failed to adopt the required economic sanctions believed necessary to bring down apartheid as a result of consistent opposition by the Security Council's Western powers.

UN Responses

Security Council

The Security Council began to address the question of South Africa after the issue was referred to the Council as a formal agenda item beginning in 1959 as "The question of race conflict in South Africa." It was then repeatedly (but not consistently) taken up by the Council under other names throughout the duration of the apartheid regime. Though at first the Council focused most of its efforts on condemning South Africa's actions, the Security Council began to harden its position in the 1970s, referring to the South African regime for the first time as "racist" and affirming the South African people's right to self-determination.[266] The Council eventually recognized apartheid as a threat to international peace and security, adopting in 1978 its perhaps strongest action: a mandatory arms embargo against South Africa.[267]

Major Resolutions

In its first action on South Africa, the Security Council in 1960 adopted resolution 134 condemning the actions and policies of the South African government following the killing of 69 peaceful protesters by police in an incident known as the Sharpeville Massacre, and calling on the government to abandon its policies of apartheid and discrimination.[268] The massacre, which drew widespread condemnation and "international moral shock," marked a turning point in how the international community considered apartheid.[269] At the urging of a group of African and Asian member states, the

[265] Particularly following the forcible extension of apartheid policies to the territory of South West Africa (modern-day Namibia).
[266] S/RES/417 (1977)
[267] The Council occasionally took up agenda items related to South Africa's acts of aggression in neighboring states, but which pertain more to matters of international peace and security than to issues related to discrimination, and are therefore outside the scope of this paper.
[268] S/RES/136 (1960)
[269] Boutros Ghali, Boutros. The United Nations and apartheid, 1948-1994. (1994)

Council took up the issue and adopted resolution 134 to deplore "the policies and actions of the Government of the Union of South Africa which have given rise to the present situation," called upon the government "to initiate measures aimed at bringing about racial harmony based on equality…and to abandon its policies of apartheid and racial discrimination." It also requested the Secretary-General, "in consultation with the Government of the Union of South Africa, to make such arrangements as would adequately help in upholding the purposes and principles of the Charter and to report to the Security Council."[270] South Africa objected to the resolution on the grounds that it violated Paragraph 7, Article 2 of Chapter I of the UN Charter, which restricts UN authority in domestic conflicts. Secretary-General Dag Hammarskjold subsequently made a number of visits at the invitation of the South African regime before his untimely death, which ultimately led to a 29-year lapse in engagement between the office of the Secretary-General and Pretoria.

Bolstered by reporting from the Expert Group on South Africa in 1964 and from the Special Committee, the Council also took up the issue of detention of political prisoners who opposed apartheid. In resolution 191, the Council urged Pretoria to renounce the death sentences against opposition activists on trial in the so-called Rivonia trial (which included Nelson Mandela), to grant amnesty to those imprisoned, and to abolish its practice of imprisonment without charges.[271] The Council also endorsed the Expert Group's call for a representative national convention to decide the future government of South Africa.

Arms Embargo

After Sharpeville, consensus in the Council was building for stronger action against South Africa, in particular to address a perceived arms build-up being used by the regime to repress its people. Aided by the fact that the U.S. had adopted an arms embargo of its own in August 1963, the Security Council adopted Resolution 181 later that year calling for the first-ever arms embargo against a UN member state. Noting that some of the regime's arms were being used "in furtherance of that Government's racial policies," the resolution called upon all States "to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa."[272] France and the United Kingdom abstained from the vote. The embargo was not adopted under Chapter VII of the charter and therefore entirely voluntary. While some states complied, the arms trade to South Africa continued to thrive, with the regime able to continue to purchase hundreds of millions of dollars each year in weapons from the U.S., UK, France, and Italy.

In the 1970s, reluctance among Western members of the P5 diminished amid growing international outrage at the death of anti-apartheid activist Steve Biko in police custody, the banning of peaceful opposition groups in South Africa, and the regime's invasion of Angola in 1975. In arguably the Council's most important action on South Africa,[273] the Security Council—led by Benin, Libya, and Mauritius acting on behalf of 49 African states—adopted a mandatory arms embargo under Chapter VII of the Charter. All three permanent Council members voted in favor of Resolution 418.

[270] S/RES/134 (1963)
[271] S/RES/181 (1963)
[272] Ibid.
[273] Interview with Richard Knight of the African Activist Archive, March 2021.

Some argue that the arms embargo may have undermined the UN's goals by prompting the regime in Pretoria to accelerate the development of a domestic weapons industry, with South Africa becoming one of the biggest suppliers of armaments in the world in the 1980s. However, others believe the embargo was successful in providing an opening for the anti-apartheid movement by increasing employment and training opportunities for non-white arms manufacturers and eventually leading South Africa to undergo a perestroika-like period of economic restructuring.[274]

Transition

As the human rights situation in South Africa deteriorated in the 1970s and 80s, the Council continued to issue condemnations of the regime for its violent repression of non-whites. Among other things, it called on South Africa to release political prisoners, cease its "homeland" policies, and ensure majority rule.[275] In 1984, the Security Council condemned South Africa's general elections and declared null and void its new constitution, which it said was designed to continue the "denationalize process" of the non-white majority, deprive it of rights and further entrench apartheid.[276] After South Africa declared a state of emergency in 1985, giving the police their most repressive powers yet, the Council responded by urging member states for the first time to take economic measures against the regime, including the suspension of new investment, nuclear contracts, and export loans; prohibitions on the sale of computer equipment and and South African currency; and restrictions in sports and cultural relations.[277] Although these measures were not mandatory, they represented the closest the Council ever got to adopting Chapter VII economic sanctions and significantly tightened pressure around South Africa.[278]

General Assembly

Though regularly frustrated and obstructed by the Western members of the Security Council, the General Assembly was highly active on the issue of apartheid, using resolutions to issue condemnations, press for sanctions, and create new bodies under its auspices. Strengthened by a rapidly growing number of African countries in the UN system, African and Asian member states led the UNGA to power the UN's international campaign to shape public opinion around apartheid, to spearhead assistance to apartheid victims, and to increasingly press the Security Council to take more aggressive measures against the regime.

Resolutions

After initially taking up the issue of apartheid over the treatment of Indians in South Africa, the UNGA adopted its first resolution on apartheid in 1950, stating that "a policy of 'racial segregation' (Apartheid) is necessarily based on doctrines of racial discrimination.[279] Over the next decade, the UNGA would regularly condemn South Africa's system of apartheid, including through resolutions 721 (VIII), 820 (IX), 917 (X), 1016 (XI), 1178 (XII) and 1248 (XII).[280] The UNGA continued until the dissolution of apartheid this tactic of exerting through resolutions direct pressure on South Africa

[274] Interview with Dr. Neta Crawford of Boston University, March 2021.
[275] S/RES/417 (1977)
[276] S/RES/554 (1984)
[277] S/RES/569 (1985)
[278] Boutros Ghali 40
[279] A/RES/395(V) (1950)
[280] In 1952, the UNGA established United Nations Commission on the Racial Situation of South Africa (UNCORS), a three-member fact-finding commission to study the racial situation in South Africa, which published its first report in 1953 concluding that apartheid was "contrary" to the UN charter and that it would "endanger friendly relations among nations." UNCORS only functioned for three years and was never permitted by the regime to visit South Africa. Because of its lack of access to the country, there was a sense by member states that it had accomplished little, and it ultimately lost political support in the GA and was not renewed in 1955.

for its racist laws and human rights violations, and calling for stronger measures from Member States and the Security Council.

From the 1960s onward, the UNGA began to draw to the attention of the Security Council that apartheid in South Africa constituted a threat to international peace and security, calling for action under Chapter VII of the Charter, including universal economic sanctions. Particularly after the events of Sharpeville, a campaign led by African and Asian member states resulted in the UNGA's adoption of resolution 1761 (XVII) requesting that member states engage in a voluntary boycott of South Africa, to break off diplomatic relations, and to prohibit certain types of trade and travel. Though the GA lacked the authority to mandate these sanctions, a number of member states did comply with the resolution and broke off diplomatic or economic relations with Pretoria. Though South Africa's main trading partners did not comply,[281] the resolution nonetheless demonstrated a growing consensus in the UN system to exert pressure on South Africa and for enforceable opposition to apartheid through Chapter VII.[282]

As the UNGA continued to adopt resolutions calling for stronger measures to isolate South Africa—including the Council's successful arms embargo and the unsuccessful economic and petroleum sanctions—it also began to take aim at the South African trading partners it accused of colluding with and propping up the regime.[283] Israel, the United States, the United Kingdom, and France were most frequently mentioned in these resolutions.

Critical to the Assembly's success in maintaining a steady drumbeat of adoptions was its strategy of proposing several resolutions on a narrower aspect of apartheid—for instance, assistance to victims or demands that South Africa cease execution of political opponents—in order to ensure the broadest possible support among member states. While the level of support for more divisive sanctions issues varied, the favorable majorities did increase over time, propelling the UNGA to undertake new levels of action.[284] From 1984 to 1989, for instance, a set of resolutions under the name "Concerted international action for the elimination of apartheid" was adopted nearly unanimously in the Assembly, with only the United Kingdom and the United States casting votes against.[285]

As the apartheid regime showed signs of unraveling, the UNGA adopted in 1989 the "Declaration on Apartheid and its Destructive Consequences for Southern Africa" calling for negotiations to end apartheid and establish a non-racial democracy. The Declaration affirmed that a post-apartheid state should include common and equal citizenship regardless of race, colour or sex; universal suffrage under a non-racial voting system; and universal human rights and freedoms. It proposed a role for the international community in facilitating the transition, called for an increase in support for apartheid opponents, and requested the Secretary-General to transmit the Declaration to Pretoria and report on its implementation.[286] Though the South African government rejected the declaration, Boutros Ghali credits the Declaration for acting as a kind of blueprint for a post-racial democracy in South Africa and for initiating the process

[281] Boutros Ghali 18
[282] Stultz, Newell M. "Evolution of the United Nations Anti-Apartheid Regime." Human Rights Quarterly 13, no. 1 (1991): 1-23. Accessed April 20, 2021. doi:10.2307/762456, 7.
[283] Resolutions 1978 A (XVIII), 2045 (XX), 2022 A (XXI), 2307 (XXII), 2396 (XXIII), and 2671 F (XXV)
[284] Boutros Ghali 39
[285] A/RES/44/27K
[286] A/RES/S-16/1 (1990)

that led to South Africa's historic transition to democracy in 1994.[287]

Special Committee

In 1962, by the same resolution used to recommend sanctions against South Africa, the UNGA established an 11-member Special Committee to review South Africa's racial policies between the Assembly's annual sessions. The creation of the committee, as Boutros Ghali explains, effectively meant that apartheid would remain under continuous consideration at the UN.[288] With an initial mandate to review developments on apartheid and South Africa, the Special Committee presented 32 annual reports to the GA and the Security Council, but soon became a driving force behind the UN's efforts to isolate South Africa and support the anti-apartheid movement.

As its mandate evolved, the Special Committee served as the UN's central arm for promoting the international campaign against apartheid as a means of isolating the South African regime. It took a range of actions, including pressing for mandatory economic sanctions, recommending arms and oil embargoes, and assisting states and NGOs in their anti-apartheid efforts. The Committee played an important role in convening organizations and individuals with the goal of creating synergies and coalitions among nationally-led movements. To that end, beginning with the International Seminar on Apartheid in Brasilia in 1966, the committee co-sponsored, organized, or otherwise supported numerous international seminars, conferences, coalitions, campaigns and other fora in furtherance of the Committee's goals. For example, the Special Committee organized an International Seminar on the Implementation and Reinforcement of the Arms Embargo and the Conference of West European Parliamentarians on an Oil Embargo against South Africa in 1981. The Special Committee also called for the International Conference on Sanctions against South Africa, which was held in cooperation with the Organization of African Unity (OAU) in 1979.

It also assumed the lead role in the UN's overall anti-apartheid public education effort, emphasizing the particular importance of informing the public in the countries which maintained close relations with South Africa, and of counteracting the South African Government's propaganda and censorship.[289] It also took the initiative to set up a Trust Fund for South Africa for legal assistance to political prisoners, their families, and refugees.

Trust Fund

The General Assembly requested that the Secretary General seek ways to provide relief and assistance through international agencies to families of those persecuted for opposition to policies of apartheid, and to establish a Trust Fund to help the victims of those policies.[290] The Trust Fund was established to collect voluntary contributions from states, organizations, and individuals which would be used in grants to voluntary organizations, governments hosting refugees from South Africa, and "other appropriate bodies."[291] Its aims were to provide legal assistance to South Africans charged under apartheid laws, relief to dependents of persecuted individuals, education to prisoners and their families, and relief for refugees. A Committee of Trustees was subsequently established by the General Assembly to

[287] Boutros Ghali 127
[288] Boutros Ghali 18
[289] Boutros Ghali 63
[290] A/RES/2054(XX) B

[291] United Nations General Assembly. The Policies Of Apartheid Of The Government Of The Republic Of South Africa. United Nations Trust Fund For South Africa. Report Of The Secretary-General. 1968. JSTOR, jstor.org/stable/10.2307/al.sff.document.puun1968005.

promote contributions to the Trust Fund and make decisions about its use. The scope of the Fund expanded in 1970 to cover assistance to persons persecuted under repressive and discriminatory legislation in Namibia and Southern Rhodesia.[292]

In one of its Notes and Documents, the Centre on Apartheid showed that the Fund had received contributions from more than 70 countries amounting to more than $3.6 million. The Centre also notes that the Fund had "enjoyed virtually unanimous support in the United Nations" and was also supported by the Organization of African Unity and numerous other NGOs.[293]

ECOSOC

Commission on Human Rights

At the request of the Special Committee, the now defunct Commission on Human Rights took up the issue of apartheid beginning in 1967, with a particular focus on the torture and ill-treatment of political prisoners in South Africa. It established an Ad Hoc Working Group of Experts to investigate the matter, and also appointed a Special Rapporteur on apartheid.

As a result of the Commission's attention to the treatment of political prisoners, and the Working Group's investigation, the South African Government invited the International Committee of the Red Cross to visit the prisons and also made some improvements in the conditions of political prisoners. Annual reports of the Ad Hoc Working Group documented and publicized human rights violations in South Africa. The Commission also prepared the draft of the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly in 1973, and monitored its implementation. The Special Rapporteur of the Commission also prepared a series of reports on the effects of collaboration with South Africa, especially by transnational corporations.

International Labour Organization

The International Labour Organization (ILO), a specialized agency of the UN, played a critical role in opposing apartheid, often as part of a joint initiative with the UN. It formed an ad-hoc committee on forced labor which reported in 1953 that apartheid policies had created a forced labor situation among its black population and that apartheid discriminated against workers on the grounds of race. After the ILO had condemned South Africa's policies, banned South Africa from participating in most ILO meetings, and excluded South Africa from certain trade committees, South Africa withdrew from the ILO on its own accord in 1964. The ILO's Declaration of Apartheid introduced an intense and sustained monitoring of South Africa, requiring reports every year from the Director-General on measures to bring an end to apartheid. The ILO's Committee on Action against Apartheid was established to monitor developments and decide on activities to challenge apartheid, while the Committee of Independent Experts was established to follow up and monitor the implementation of sanctions and other anti-apartheid actions. Nelson Mandela spoke before the ILO's national conference in 1990.[294]

Secretariat

Unit on Apartheid (Center against Apartheid)

The Unit on Apartheid was established by the General Assembly in 1966 as a body in the Secretariat charged with ensuring maximum publicity about apartheid. The Unit, which

[292] United Nations Centre against Apartheid. *The United Nations Trust Fund for South Africa.* 1976. JSTOR, jstor.org/stable/10.2307/al.sff.document.nuun1976_10.

[293] Ibid.

[294] Grawitzky, Renee. "The Role of the ILO During and Ending Apartheid," 2013.

was subsumed by the Centre on Apartheid in 1976, prepared hundreds of studies and reports from liberation movement leaders and experts on a wide range of subjects, which were then disseminated by the UN Information Centres and other organizations. At the request of the General Assembly, the Unit also established the Trust Fund for Publicity against Apartheid to collect voluntary contributions to fund the publication and dissemination of pamphlets, educational materials for schools, photographs, films, and other communications.[295][296]

Education and Training

The UN Educational and Training Programme for South Africans was established in 1965 with the goal of expanding opportunities and advancement for Black South Africans outside of the country. After 1992, the program continued with a new focus on institutions within the country.

Transition Mechanisms

The Secretariat played its primary role in South Africa throughout the country's transition from apartheid toward representative democracy. After the signing of the National Peace Accord (NPA), the UN began to shift away from its pressure campaign centered on anti-discrimination to mechanisms more commonly used in conflict resolution settings: the cessation of violence, the facilitation of negotiations, the return of refugees, and the overseeing of elections. These are useful for understanding how the UN has sought to ensure democratization in highly racialized societies, but are less useful in understanding its efforts to directly undo a system of racial discrimination and will only be discussed briefly.

After the release of Nelson Mandela and the revocation of the ban on African political parties in 1990, the Secretary-General was given a mandate to follow and report on the situation in South Africa. After the signing of the National Peace Accord, the Secretary-General was asked in 1992 to appoint a Special Representative to recommend measures to assist in ending violence and producing negotiations that would lead to a peaceful transition to a non-racial democracy.[297] The Special Representative, Cyrus Vance, conducted a visit to South Africa in 1992, after which the Secretary-General approved the deployment of up to 50 UN Mission Observers (UNOMSA) to observe demonstrations, marches, and other forms of mass action and monitor parties' compliance to the NPA. At the request of South Africa's Transitional Executive Council, the Security Council adopted Resolution 894 (1994) authorizing UNOMSA to assist in observing the 1994 elections. UNOMSA observers monitored the ability of all races to campaign and vote freely, and reviewed and analyzed voter education efforts and the use of mass media—reporting all complaints to the IEC for remedial action.[298]

Legal Tools

Crime of Apartheid

While apartheid was unanimously denounced by Member States as a crime, there was disagreement over whether it could be defined as a crime against humanity.[299] From 1966 onward, the General Assembly condemned apartheid as a "crime against humanity," and in in 1973 adopted resolution

[295] Boutros Ghali 65

[296] Through the Department of Public Information and in coordination with South Africa's neighboring states, the Secretariat also broadcast thousands of radio programs that could be heard within South Africa. The programs were aimed at educating apartheid supporters of the regime's isolation and informing opponents of growing international solidarity behind their cause.

[297] S/RES/765 (1992)

[298] United Nations Observer Mission in South Africa

[299] Boutros Ghali 37

3068 (XXVIII): the International Convention on the Suppression and Punishment of the Crime of Apartheid, which declared apartheid to be a crime against humanity in violation of the principles of international law, and that they constituted a serious threat to international peace and security. It defined the crime of apartheid as "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them." It imposed obligations on States parties to adopt legislative measures to suppress, discourage, and punish the crime of apartheid and make the offense and international crime subject to universal jurisdiction.[300] It came into force in 1976 with 109 parties, and only 30 ratifications.

Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) (adopted 1963) also specifically condemns apartheid and racial segregation, obligating parties to "prevent, prohibit and eradicate" these practices in territories under their jurisdiction.

Effectiveness of UN mechanisms

Enabling factors

UN system-wide approach

Rather than approaching apartheid merely through a single lens (human rights, discrimination, anti-colonialism) and thereby focusing its efforts through a limited set of bodies, the UN used a wide range of tools aimed at dismantling apartheid through nearly every instrument, agency, and fora available to it—while also creating new ones. Though some duplication of efforts did occur, Boutros Ghali concedes, the mostly coordinated efforts by several agencies and on a diverse range of issues—from athletics to labor rights—enabled the UN to mobilize an equally diverse array of actors and to shape international public opinion to the broadest extent possible.

Existing international movement

To a great extent, this system-wide approach was enabled by and benefited from the existence of a broad and ever-expanding international movement against the system of apartheid. The UN sought to tap into and synchronize its efforts with these groups and individuals, while also encouraging a widening of their involvement in coordinated action.[301] Though the UN was not always the initial or lead actor behind one element of the movement,

On the other hand, this reliance on the international anti-apartheid movement also prevented stronger measures from taking hold until the movement gained stronger momentum in key Western countries. For example, the Security Council's mandatory arms embargo would not have been possible in 1977 without the development of a powerful anti-apartheid divestment movement in the United States and in the United Kingdom. UN bodies like the GA and the Special Committee regularly called for these kinds of economic measures and more forceful sanctions, but it was left to the will of national governments and transnational corporations to ultimately decide whether to disengage from South Africa.

Establishment of a dedicated body

The central importance of the Special Committee on Apartheid was initially to ensure that developments concerning South Africa's racial polices would be kept under constant review by the UN. Through its reporting and frequent recommendations to

[300] International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973.

[301] Boutros Ghali 67

both the UNGA and Security Council, the Special Committee ensured the UN remained at the fore of anti-apartheid activity. As its mandate was steadily broadened to serve as the UN's central arm on apartheid, it becme tremendously valuable and effective in the promotion, coordination, and amplification of the international campaign against apartheid.

Perhaps the Special Committee's most important contribution to the UN anti-apartheid effort was its role as convener.[302] By inviting a wide range of individuals and groups to attend meetings, conferences, and seminars with UN agencies, regional organizations, and governments, the Special Committee was able to build coalitions, coordinate and synchronize activities, and formulate proposals for action. The Committee lent its support and amplification to boycotts and divestment efforts, helping to mobilize campaigns involving millions of people in critical Western countries. According to Boutros Ghali, this was an unprecedented level of coordination with non-governmental organizations that enabled these groups to counter vested interests in their countries opposed to action against apartheid.[303] Similarly, Special Committee founder E.S. Reddy credits the Committee's ability to promote the establishment of NGOs and other funds and agencies outside of the UN "to supplement and support UN action" as "they were able to do what UN organs could not."[304]

The Special Committee was able to conduct all of these activities without the participation of the Group of Western European and Other States at the UN, which declined membership. Though Boutros Ghali concedes that their non-participation prevented dialogue between supporters and opponents of sanctions on the Committee, and "could be seen to weaken the authority of its recommendations," it also enabled the Committee to act "expeditiously and with unanimity." The Committee frequently consulted with Western governments and sent missions to their capitals, and benefited from growing opposition to apartheid among Western populations.[305] However, despite its primary occupation with binding economic sanctions, it could never build sufficient consensus in the Security Council for those measures.

Expulsion/exclusion

An important factor enabling the UN's success in pressuring South Africa to abandon apartheid was the casting the government as an international pariah through the exclusion (voluntary or not) of the government from various organs of the UN system.

Beginning with the General Assembly, the scrutiny of the UNCORS mission ultimately prompted South Africa to briefly withdraw its delegation to the UNGA in 1955 and in 1956, to announce it would maintain only "token representation" in New York.[306] Though it had returned to the UNGA a few years later, the General Assembly voted in 1974 to suspend South Africa's participation—the first time it had taken such an action. South Africa was also excluded from the work of the UN's Economic Commission of Africa in 1963 following mass arrests of protestors in 1962 and new laws allowing for 90-day detention without trial.[307]

[302] Interview with Richard Knight, March 2021
[303] Boutros Ghali 45
[304] E.S. Reddy, "The Struggle against Apartheid: Lessons for Today's World https://www.un.org/en/chronicle/article/struggle-against-apartheid-lessons-todays-world
[305] Boutros Ghali 44
[306] "South Africa Tie to UN Slashed; Nation Says It Will Retain Only Token Representation Because of Racial Stand," 28 November 1956. *The New York Times.*
[307] Boutros Ghali 19

By the 1970s, South Africa had withdrawn or been excluded from nearly every major UN organ "as a direct consequence of its violation of the Charter of the United Nations and the Universal Declaration of Human Rights."[308] In 1955, South Africa willingly withdrew from UNESCO in protest against the organization's activities, and similarly withdrew from the ILO and FAO in the 1960s.

There were also efforts, albeit unsuccessful, within the Security Council to expel South Africa from the UN system writ large. At the request of the Chairman of the African Group, the Council also took up the "Relationship of the United Nations and South Africa" from 1972-1974 "in light of the constant violation by South Africa of the principles of the United Nations Charter and the Universal Declaration of Human Rights." The Council held 11 meetings in that two-year period with the participation of numerous African member states, most of which called for or expressed support for the expulsion of South Africa from the UN. France, the U.S., and the United Kingdom opposed South Africa's expulsion, asserting that it would create a dangerous precedent and would also remove the country from the pressures of international opinion.[309]

Member States also sharply disagreed about the effectiveness of isolation as a broad tactic in bringing down the South African government. While one camp argued that total isolation of Pretoria through diplomatic, economic and other sanctions was essential to securing a solution, South Africa's major trading partners believed isolation and exclusion would be counter-productive.[310] The effectiveness of exclusion seems to vary by entity. South Africa's withdrawal was undoubtedly critical to the effectiveness of its campaign, which would have been impossible to enact with South Africa's continued membership. Furthermore, several UN agencies instead began to invite liberation movements to meetings and conferences, bolstering the credibility of these organizations as legitimate representatives of South Africa.[311]

Role of liberation movement

The anti-apartheid effort seemed to earn the support of so many states in the GA and throughout the UN system due not only to South Africa's institutionalized discrimination against Africans but also the ANC's struggle to liberate indigenous Africans from their colonial oppressors. This combination of a racial justice movement with an anti-colonial liberation movement enabled the UN's efforts to earn committed support from non-African former colonies, for instance India. The fact that the South Africa case involved an active and well-organized liberation movement also provided UN agencies with a clear recipient to whom they could offer direct support.

Leadership of African states

The leadership of a growing number of newly independent African states was vital to the success of UN activities against apartheid. The African states were also particularly adept at focusing the Council's attention on South Africa at widely-reported moments of brutality and repression in South Africa as a way of making it difficult for Pretoria's backers on the Council to oppose motions against apartheid. It is not a coincidence that the Council's strongest measure—the mandatory arms embargo—came in the direct aftermath of some of the most blatant

[308] Boutros Ghali 30
[309] "Relationship between the United Nations and South Africa," Repertoire of the Practices and Procedures of the UN Security Council, 1972-1974.
[310] Boutros Ghali
[311] Boutros Ghali 42

acts of aggression by South Africa, both within its borders and in the region.

Inhibiting factors

Western opposition:

Though Western opposition to UN anti-apartheid activity was present elsewhere, the omnipresent threat of a veto by France, the U.S. and the UK effectively blocked the adoption of any enforceable measures in the Security Council aside from the arms embargo. Despite numerous recommendations from relevant UN apartheid bodies and the UNGA to enact economic sanctions and a petroleum embargo an against South Africa, the Council was never able to build consensus around these measures. These intra-Council divisions hampered even its own activities to decide on actions to take against South Africa. Notably, the Security Council's own Expert Committee—composed of representatives from all Council member states and charged with recommending measures the Council could take against apartheid consistent with the charter—was not able to produce any proposals with enough support to be undertaken by the Council.[312]

It should also be noted that geopolitical considerations were inevitably driving, at least in part, the West's opposition to dismantling apartheid. The USSR and other socialist countries had been early and strong advocates of stronger action to bring apartheid to an end.[313] From the U.S. government's point of view, the Soviet Union's support for anti-apartheid movement was a major motive in its approach to the South Africa question.[314] Soviet support to the Africans for political reasons also extended to the ILO.[315] So for the U.S., the question of bringing down the apartheid regime was not just one of bringing down a system of racial discrimination but of bringing down a Cold War ally.

Foreign trade with and foreign investments in South Africa continued to grow as a result of this "protection" afforded to the regime by the West. The GA in 1966 adopted a resolution deploring South Africa's main trading partners, including the three permanent members of the Security Council, for their "increasing collaboration" which they said had enabled South Africa to "persist in its racial policies." As Boutros Ghali explains, this disagreement on appropriate measures effectively enabled the regime to defy the UN and "entrench White domination."[316]

However, as the humanitarian situation deteriorated in the 1970s and the international campaign against apartheid gained momentum, some smaller Western states—particularly the Nordic group—took national measures to restrict their relations with South Africa. Other countries, like Sweden, even began to make direct contributions to South African liberation movements.[317]

[312] Boutros Ghali 26
[313] Boutros Ghali 27
[314] Interview with Richard Knight, March 2021
[315] Interview with Kari Tapiola, February 2021
[316] Boutros Ghali 27
[317] Boutros Ghali 33-34

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"South Africa Tie to UN Slashed; Nation Says It Will Retain Only Token Representation Because of Racial Stand," 28 November 1956. *The New York Times.*

"Relationship between the United Nations and South Africa," Repertoire of the Practices and Procedures of the UN Security Council, 1972-1974.

Discrimination Against the Rohingya in Myanmar

Context

The Rohingya are a Muslim ethnic minority population who have resided in Rakhine State in western Burma since the fifteenth century.[318] There has been a history of systemic discrimination against the Rohingya since the 1962 military coup led by former General Ne Win. Each successive government has claimed the Rohingya are Bengalis who immigrated illegally to Burma from Bangladesh,[319] ensuing in exclusionary policies and violent attacks against the group. In 1977, Burmese authorities launched Operation Dragon King in Rakhine State.[320] The campaign was used as a mechanism to strip the Rohingya of their citizenship, which initiated a cycle of forced displacement of the population. During the operation, the military desecrated mosques, destroyed villages,[321] and enacted mass arrests, murder, and rape of the Rohingya driving nearly 200,000 across the border to Bangladesh.[322] This government sanctioned operation was followed by the enactment of the 1982 citizenship law that identified 135 national ethnic groups, yet did not include the Rohingya, rendering them stateless. After another military crackdown in 1989, Burma was renamed Myanmar.[323] Two years later, Operation Clean and Beautiful Nation resulted in another 200,000 Rohingya fleeing persecution by the central government.[324]

In 2014, Myanmar held its first census in 30 years and excluded the Rohingya as an ethnic group. These repressive tactics culminated in the most recent incident of widespread violence that took place on August 25, 2017.[325] State security forces, referred to as the Tatmadaw, targeted the Rohingya after the Arakan Rohingya Salvation Army (ARSA) attacked several police and army posts.[326] During the Tatmadaw 'clearance operations,' Rohingya villages were decimated, at least 6,700 Rohingya were killed, and more than 700,000 sought refuge in Bangladesh.[327]

UN Responses

The United Nations (UN) has been involved in mitigating the crisis in Myanmar for several years, however the fora and mechanisms in this section refer to the UN's engagement following the attack on civilians enacted by the Tatmadaw in 2017. Although the international criminal justice system has responded to the Rohingya crisis, this case does not include UN instruments that have been used to address crimes against humanity and genocide since there is extensive research on these UN processes. This case specifically focuses on the engagement of the Human Rights Council, independent missions, the Security Council, the Secretary-General, special procedures mandate holders, and treaty bodies.

Secretary-General

In his remarks to the UN Security Council (UNSC) on August 28, 2018, UN Secretary-General António Guterres declared the refugee emergency that followed the attacks in Rakhine State in August 2017 as "one of the world's worst humanitarian and human

[318] Eleanor Albert & Lindsay Maizland, "The Rohingya Crisis," *Council on Foreign Relations*, January 2020.
[319] Greg Constantine, "Bangladesh: The Plight of the Rohingya," *Pulitzer Center*, September 2012.
[320] *Medecins Sans Frontieres*, "Timeline: A Visual history of the Rohingya Refugee Crisis," August 2020.
[321] Akbar Ahmed & Harrison Akins, "Aung San Suu Kyi, the Rohingya of Burma and the Challenge of Faith," *Brookings*, October 2012.
[322] "Timeline: A Visual history of the Rohingya Refugee Crisis."
[323] Ibid.
[324] "Aung San Suu Kyi, the Rohingya of Burma and the Challenge of Faith."
[325] "Timeline: A Visual history of the Rohingya Refugee Crisis."
[326] Kathryn Reid, "Rohingya refugee crisis: Facts, FAQs, and how to help," *World Vision*, June 2020.
[327] "The Rohingya Crisis."

rights crises."[328] He also noted the various measures he had taken to engage the UN in addressing the treatment of the Rohingya, beginning with his statement immediately following the incident. While he condemned the attacks by the ARSA against state authorities, he asserted that the disproportionate response by security forces against civilians was unjustified. Additionally, Guterres referenced the letter he sent to the president of the UNSC on September 2, 2017 in which he emphasized the need for "collective attention and active engagement…to prevent the further suffering of all communities in Rakhine State."[329]

As part of his agenda to foster multilateral collaboration, Guterres has engaged with state authorities and UN initiatives on the ground in Myanmar. He described his endeavors to encourage the government of Myanmar to take positive steps towards reconciliation and help build trust between communities in the country. His appointment of Christine Schraner Burgener as the Special Envoy on Myanmar has contributed to his objective of promoting unified action on this issue. He expressed appreciation for the UNSC's support of Schraner Burgener's mandate and Myanmar's cooperation with her consultative process. Guterres also cited the Memorandum of Understanding devised by the UN High Commissioner for Refugees, UN Development Programme, and Myanmar authorities to improve conditions for Rohingya living in Rakhine State and facilitate the safe and voluntary return of refugees from Bangladesh.

In discussing the summary report for the UN Independent Fact Finding Mission on Myanmar issued on August 27, 2018, he stated, "I believe this report's findings and recommendations deserve serious consideration by all relevant United Nations bodies. Effective international cooperation will be critical to ensuring that accountability mechanisms are credible, transparent, impartial, independent[,] and comply with Myanmar's obligations under international law."[330] The Secretary-General concluded his remarks to the UNSC by reiterating the importance of unity in moving towards peace and reconciliation in Rakhine State.

Special Envoy

Guterres appointed Schraner Burgener as the new Special Envoy on Myanmar on April 26, 2018.[331] During her preliminary nine months as Special Envoy of the Secretary-General (SESG), she visited Myanmar five times and Bangladesh three times[332] to hold consultations with civilians, government officials, local leaders, military authorities, NGOs, and UN agencies.[333]

On February 28, 2019, Schraner Burgener briefed the UNSC on her visits to the region. Based on interactions with affected populations, the SESG recommended that Myanmar's national strategy to close camps in which the Rohingya have been confined must also address the issue of citizenship. After her third visit to Myanmar, she insisted that "closing the IDP camps is not enough. The IDPs full human rights need to be respected: starting with equal access to education and health, and freedom of movement. They have to be able to live in safety and security. This will be the most positive incentive for the refugees in Bangladesh to return [to Myanmar]."[334] In her efforts to ensure the protection of

[328] *United Nations*, "Secretary-General's remarks to the Security Council on Myanmar [as delivered]," August 2018.
[329] United Nations Security Council, *Letter dated 2 September 2017 from the Secretary-General addressed to the President of the Security Council*, S/2017/753, September 2017.
[330] "Secretary-General's remarks to the Security Council on Myanmar [as delivered]."
[331] *United Nations*, "Special Envoy Myanmar," April 2018.
[332] *United Nations*, "Security Council Briefing on Myanmar, Special Envoy Christine Schraner-Burgener," February 2019.
[333] *ReliefWeb*, "Note to correspondents: Statement attributable to the Secretary-General's Special Envoy on Myanmar," October 2018.
[334] "Note to correspondents: Statement attributable to the Secretary-General's Special Envoy on Myanmar."

civilians, the SESG has advocated that a "Zero Tolerance for Discrimination" campaign be implemented from the top down in Myanmar.

Furthermore, Schraner Burgener has encouraged that, in addition to criminal liability, accountability should include the participatory involvement of victims in discussions and initiatives focused on national reconciliation. The SESG has also underscored the need for accountability to align with the Basic Principles on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law.

Human Rights Council

Independent International Fact-Finding Mission on Myanmar

The UN Human Rights Council (UNHRC) established the Independent International Fact-Finding Mission on Myanmar in March 2017. This Mission conducted a 15-month examination of the human rights violations by the Myanmar military, the Tatmadaw.[335] The 440-page report released in September 2018 found that the Tatmadaw had systematically targeted Rohingya civilians; committed genocide, crimes against humanity, and war crimes; promoted discriminatory rhetoric against minorities; and created a climate of impunity for security forces.[336] After the release of the full report, Marzuki Darusman, Chair of the Fact-Finding Mission, declared that he had "never been confronted by crimes as horrendous and on such a scale as these."[337] He added that based on their findings, the members of the mission "insist that the perpetrators of the gross human rights violations and international crimes, committed in Rakhine, Kachin and Shan States[,] must not go unpunished."[338] The experts stated that the international community had failed the people of Myanmar. They called upon all UN agencies to fulfill their duty in addressing the treatment of the Rohingya, and act with urgency to hold the commanders responsible for these abuses accountable.

The report noted that five special rapporteurs over nearly three decades have detailed their recommendations on the human rights situation in Myanmar to the UN General Assembly (UNGA) and the UNHRC. It also cited that the UN High Commissioner for Human Rights, the Advisory Commission on Rakhine State, and several international and national civil society organizations have presented recommendations on this crisis. The experts requested that these recommendations be implemented immediately and outlined additional priority areas for the UN to address. These proposals included UN Member States ensuring adequate funding for humanitarian organizations operating in Myanmar; exercising jurisdiction to investigate and prosecute perpetrators of crimes committed in Myanmar; and ceasing all operational support of security forces until reform measures are enforced, which includes halting the transfer of arms. The experts also urged the UNSC to either refer the persons responsible for the abuses to the International Criminal Court or create an ad hoc international tribunal; apply individual sanctions in the form of asset freezes and travel bans on authorities who committed violations; and impose an arms embargo on Myanmar. Furthermore, they advised the UNHRC to: 1) create an independent mechanism to collect evidence of violations; 2) instruct the Office of the UN High

[335] *United Nations Human Rights Council*, "Myanmar: UN Fact-Finding Mission releases its full account of massive violations by military
in Rakhine, Kachin and Shan States," September 2020.

[336] Ibid.
[337] Ibid.
[338] Ibid.

Commissioner for Human Rights (OHCHR) to prioritize accountability; 3) establish a second fact-finding mission to expand upon their developments; 4) and support the mandates of the special rapporteur on the situation of human rights in Myanmar.[339]

Independent Investigative Mechanism for Myanmar

The UNHRC established the Independent Investigative Mechanism for Myanmar (Mechanism) in September 2018 in resolution 39/2 as a response to reports by UN entities, including the Independent International Fact-Finding Mission on Myanmar, that determined international crimes have been committed in Myanmar since 2011. The UNGA welcomed the development of this organ in December 2018 in resolution 73/264 and has fully funded its operations.[340] The Mechanism has been mandated to collect, analyze, and preserve evidence of the most serious international violations such as crimes against humanity, genocide, and war crimes. The information will be used to prepare case files for criminal proceedings in national, regional or international courts or tribunals. As the Mechanism does not have its own judges, law enforcement, or prosecutors, it must work interdependently with Member States to implement its mandate.[341]

In its first annual report presented to the UNHRC in September 2019, the Mechanism defined its operations strategy, which included developing procedures for its methods of work; determining selection of cases for investigation; devising standards for conducting investigations; engaging with national, regional, and international actors; sharing its documentation; and raising public awareness.[342] Its second annual report released in September 2020 described the progress the Mechanism made during its first year in operation and noted it will continue to expand upon its administrative processes. On December 31, 2020 in resolution 75/238, the UNGA urged the government of Myanmar to cooperate with the mandate of the Mechanism, as well as other UN entities.[343]

Resolution

On March 22, 2019, the UNHRC adopted resolution L.19 on the situation of human rights in Myanmar. In the resolution, the Council urged the government to review the 1982 Citizenship Law that has led to human rights violations; eliminate statelessness against the Rohingya; recognize self-identification; and amend all policies that uphold institutionalized discrimination. The UNHRC also called upon Myanmar to grant the special rapporteur unobstructed access throughout the country. It concluded by requesting that the Secretary-General and the United Nations High Commissioner for Human Rights provide the independent international fact-finding mission**,** the independent mechanism, and the special rapporteur with the necessary resources and support to fulfill their respective mandates.[344]

Special Rapporteur

Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, began his mandate on May 1, 2020 in accordance with UNHRC resolution 43/26. In his September 2020 report, Andrews

[339] United Nations Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, A/HRC/39/64, September 2018.
[340] Nadira Kourt, "Rohingya Genocide: Strengthening the U.N. Response Three Years On," *Newlines Institute for Strategy and Policy*, August 2020.
[341] *Independent Investigative Mechanism for Myanmar*, Independent Investigative Mechanism for Myanmar, 2021, https://iimm.un.org/.
[342] United Nations Human Rights Council, *Report of the Independent Investigative Mechanism for Myanmar*, A/HRC/42/66, August 2019.
[343] *Independent Investigative Mechanism for Myanmar*, Annual Reports, 2021, https://iimm.un.org/annual-reports/.
[344] United Nations Human Rights Council, *Situation of human rights in Myanmar*, A/HRC/40/L.19, March 2019.

indicated that the government of Myanmar has yet to implement several recommendations made by his predecessors, the United Nations High Commissioner for Human Rights, the Independent International Fact-Finding Mission on Myanmar, and the Advisory Commission on Rakhine State. He also echoed the Secretary-General's appeal for the safe, sustainable, and voluntary return of refugees and displaced persons to their place of origin.

In addition to reiterating the urgency in executing these previous proposals, he urged the government to "lift the draconian restrictions arbitrarily imposed and enforced on Rohingya, including restrictions on freedom of movement, health, education, livelihoods and equal access to citizenship," as well as restoring their right to vote and stand for election.[345] He noted that in order for the government to be in compliance with the presidential decrees on the prohibition of genocide and the provisional measures put forth by the International Court of Justice in January 2020, these discriminatory policies must be amended. He encouraged the government to fully cooperate with proceedings at all international courts.

Andrews also requested that the government conduct impartial and independent investigations into atrocities that have been committed and ensure perpetrators are held accountable in trials that align with international standards. In order to support this process, he recommended that the government allow OHCHR to establish an office in Myanmar to investigate and monitor human rights abuses and provide technical assistance to national officials. Lastly, Andrews insisted the government amend the Penal Code to include clear definitions of serious international crimes, torture, and violence against women; repeal laws that are incompatible with CEDAW; and enact legislation that prohibits sexual violence against women, including conflict-related assault and rape.

Universal Periodic Review

The 2020 report on the Working Group on the Universal Periodic Review (UPR) includes a summary of information from documents composed by several UN agencies and officials regarding the situation in Myanmar. Of the recommendations pertaining to the treatment of the Rohingya, there was a resounding message by the UNGA, UNHRC, OHCHR, and the Committee on the Elimination of Discrimination against Women for the government of Myanmar to grant the Rohingya citizenship, thereby restoring and protecting their human rights. There was also an emphasis on amending policies that discriminated on the basis of cultural identity, ethnicity, and religion enacted in 2015, which codified population control and religious conversion, and restricted the access of minorities to civil registration, education, health services, and livelihoods. Moreover, given the dissemination of hate speech against Muslims by ultra-nationalist Buddhist organizations that reinforced these biased laws, OHCHR recommended that Myanmar protect minority places of worship and devise a policy to end religious intolerance.[346]

Treaty Bodies

Committee on the Elimination of All Forms of Discrimination against Women

On March 18, 2019, the Committee on the Elimination of Discrimination against Women provided its latest concluding observations on the combined fourth and fifth

[345] United Nations General Assembly, *Situation of human rights in Myanmar*, A/75/335, September 2020.

[346] United Nations Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights*, A/HRC/WG.6/37/MMR/2, November 2020.

periodic reports of Myanmar. The Committee acknowledged that the government had established an array of investigative national commissions to address the situation in Rakhine State, yet it expressed its regret that these entities had determined human rights abuses had not taken place in the region, and therefore had not held perpetrators accountable. Furthermore, it stated concerns that despite photographic evidence and the testimony of thousands of witnesses collected by UN human rights agencies and other entities, government authorities continued to deny all accusations of sexual violence against Rohingya women and girls committed by security forces. It noted that the 2008 constitution of Myanmar offers immunity to state officials by granting the military the right to adjudicate on all affairs for security forces and prohibiting criminal proceedings for any member of the government.

The Committee recommended these provisions of the constitution be amended to end the perpetuation of impunity for human rights abuses and called for the establishment of civilian jurisdiction over violations. It also urged the government to ratify the Rome Statute of the International Criminal Court and establish a special tribunal to investigate and make determinations on international crimes due to the lack of impartiality in the national justice systems. Given the prevalence of conflict-related sexual violence against Rohingya women and girls, the Committee insisted the government develop an accessible and safe mechanism for rape survivors. It also encouraged the government to take urgent measures to support the integration and rehabilitation of female survivors of violence by providing them with inclusive access to all public services and compensation for their lost possessions and property. Lastly, the Committee reiterated its recommendation to empower women and girls by involving them in the conflict resolution and peace negotiation process.[347]

Security Council

The President of the UNSC made a statement on behalf of the Council at its 8085th meeting on November 6, 2017 both condemning the attacks on the military by the ARSA on August 25, 2017 and denouncing the retaliatory widespread violations against the Rohingya committed by state security forces. Although the UNSC reaffirmed its commitment to the sovereignty of Myanmar, it stressed that the government's primary responsibility is the protection of the human rights of its people, and emphasized its need to reform the country's justice and security sectors to allow for more accountable government institutions. The Council commended the government of Bangladesh for providing safety and shelter to those who fled violence in Myanmar, encouraged the country to continue to host Rohingya refugees, and urged the governments of Bangladesh and Myanmar to work with the UN to facilitate the safe return of the Rohingya.

The UNSC insisted that Myanmar "address the root causes of the crisis in Rakhine State by respecting, promoting and protecting human rights, without discrimination and regardless of ethnicity or religion."[348] It expressed grave concern regarding the magnitude of the number of displaced persons and refugees, and demanded the government grant safe and unfettered access to UN agencies and aid organizations to provide humanitarian assistance in Rakhine State. The Council also insisted all international actors pay particular attention to

[347] Committee on the Elimination of Discrimination against Women, *Concluding observations on the report of Myanmar submitted under the exceptional reporting procedure*, CEDAW/C/MMR/CO/EP/1, March 2019.

[348] United Nations Security Council, *Statement by the President of the Security Council*, S/PRST/2017/22, November 2017.

the needs of women and girls when delivering services. In order to ensure the protection of women and girls, it called upon the government to implement the measures of resolution 2016 (2013) to prevent and respond to acts of sexual violence. Lastly, the UNSC emphasized the importance of conducting transparent investigations into human rights abuses by cooperating with all relevant UN bodies.

In response to this statement, Myanmar's representative stated that the Council "placed undue political pressure on Myanmar."[349] He also reportedly denied the context of the situation in Rakhine State, claiming that terrorism in the region had triggered the atrocities inflicted on civilians. He stated that the government would continue to cooperate with the UN and the entire international community to support peacebuilding in the state.

The UNSC visited Bangladesh and Myanmar from April 28 to May 1, 2018 to address the escalation of the Rohingya situation after the attacks in Rakhine State in August 2017 and to urge both governments to implement its presidential statement. Council members noted their intention to continue supporting both governments and all UN entities involved in resolving the crisis.[350]

Independent Inquiry into the Involvement of the United Nations in Myanmar

In May 2019, Gert Rosenthal released a report entitled, "A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018," which comprises his findings and recommendations based on the investigation he undertook that was commissioned by Secretary-General Guterres.

Rosenthal acknowledged the reform measures Guterres devised in 2017 to support a more cohesive UN response in Myanmar, which includes placing the in-country Resident Coordinator directly under his ordinance; fostering better communication between UN headquarters and the field staff; and allowing decision-makers on the ground to maintain greater authority. Guterres' agenda entails establishing a more viable organizational structure to improve accountability, coordination, monitoring, rapid response, and systematic analysis of the situation in Myanmar. Despite these progressive steps, the report highlights the "systemic and structural failings of the United Nations System" to advance the peacebuilding process in the country and protect the rights of the Rohingya.[351]

Rosenthal recommended finding the balance between separating the functions of different resident representatives and allowing for inter-collaboration among the distinct components of the new country teams in order to augment current UN initiatives in Myanmar. He emphasized the importance of restructuring the Executive Office of the Secretary-General to facilitate better strategic coordination within the unit and on the ground. He also suggested designating the Inter-Agency Advisory Panel to identify suitable candidates for the new country team who can appropriately respond to the evolving needs of each situation on the ground.

He noted that clearer cross-communication and standardized data sharing would support improved system-wide decision-making. In

[349] *United Nations*, "Security Council Presidential Statement Calls on Myanmar to End Excessive Military Force, Intercommunal Violence
in Rakhine State," November 2017.

[350] *United Nations*, "Security Council Press Statement on Security Council Visit to Bangladesh, Myanmar," May 2018.

[351] Gert Rosenthal, *A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018*, May 2019.

order to gain joint support from members of the UNSC, Rosenthal proposed that the Secretariat act on Article 99, which states "[t]he Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."[352] Given the absence of formal UNSC involvement, he urged the UN to mirror the government of Myanmar's bilateral alliances by forming partnerships with international nongovernmental organizations to strengthen its mission.

Although Guterres accepted Rosenthal's recommendations, advocacy organizations have called attention to a similar internal review report produced in 2012 on the engagement of the UN in Sri Lanka. In a joint letter to the Secretary-General, a coalition of organizations noted that the UN failed to fulfill its commitment to ensure the Human Rights Upfront initiative proposed in the report on Sri Lanka was implemented throughout the UN system. The letter indicates that the UN's negligence in executing those recommendations has laid the groundwork for its shortcomings in addressing, preventing, and drawing attention to the persecution of the Rohingya.[353]

Effectiveness of UN Mechanisms

Enabling Factors

According to Rosenthal's report, the UN has had a long-standing presence in Myanmar since the 1950s. The government has opened its doors to a succession of special rapporteurs over the years, while the country's internal conflict has been on the agenda of the UNGA and former Commission of Human Rights, now the UNHRC, since the early 1990s. Both bodies have continually called for the government of Myanmar to be held accountable for its human rights violations against the Rohingya, which advocacy organizations and several UN Member States have also insisted upon.[354]

In the aftermath of Cyclone Nargis that hit in 2008, the Office for the Coordination of Humanitarian Affairs and the World Food Programme ramped up humanitarian assistance, allowing for increased interaction between the UN and the military. Development cooperation between the government and the international community, including the larger UN system, became increasingly enhanced during the country's political transition that began with its elections in 2010. By 2013, there was a fully operational UN country program and a year later the UN country team had developed 18 ancillary agencies on the ground. In recognition of the political progress achieved after the 2015 parliamentary elections, the UN dissolved the mandate of the Special Adviser to the Secretary-General on Myanmar.[355]

Rosenthal notes that even with its apparent involvement in Myanmar, the UN has hardly played a leading role among the various stakeholders working in the country. Although international nongovernmental organizations have developed positive relationships with grassroots level local civil society organizations, there have been less collaborative interactions with the UN country team.[356] With regard to multilateral organizations, the Association of Southeast Asian Nations has gained the confidence of the government, while the Organization of Islamic Cooperation has voiced concerns

[352] Ibid.
[353] *Relief Web*, "Joint Open Letter to the UN Secretary General on the Inquiry into UN Operations in Myanmar," September 2019.
[354] "The Rohingya Crisis."
[355] *A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018*.
[356] Ibid.

about the situation in Rakhine State.[357] Demonstrations in host countries and other nations in response to the brutality and scale of violations against the Rohingya have generated international attention on the issue, helping to sustain the involvement of key international actors such as the UN.

According to a recent interview with a UN official who has requested to remain anonymous, the establishment of a permanent monitoring group on Myanmar by Secretary-General Guterres has been instrumental in integrating efforts across UN entities.[358] The group is comprised of DDPA, OHCA, UNDP, and UNHCR, as well as the Special Envoy and the Resident Coordinators of Myanmar and Bangladesh. The fora has enabled the officials of each agency to convene and determine a coherent, action-oriented approach to the conflict in Myanmar.[359]

Inhibiting Factors

The government of Myanmar has acknowledged the need for international cooperation in order to prosper, which has enabled a select few UN entities to enter the country for several decades each with different levels of engagement. However, persistent mistrust of external actors by both the civilian and military branches of the government have impeded more pronounced human rights advocacy by the UN, and has resulted in UN country officials being subjected to intimidation, harassment, and scrutiny.[360] These dynamics have caused certain UN bodies to face significant challenges in entering the country. For instance, the OHCHR has struggled to get authorization for its staff, while certain missions mandated by the UNHRC have been banned entirely.[361]

Rosenthal notes that generally the UN "has limited political space in countries whose [g]overnments forcefully invoke sovereignty and non-intervention in their internal affairs as a cover for not meeting their commitments to abide by international humanitarian and human rights laws and norms."[362] For this reason, the UNSC has notably not played a central role in Myanmar due to the government inhibiting political involvement from the international community. It is also why UN entities with broader mandates than the OHCHR and special procedures have opted for quiet diplomacy so as not to deepen the divide in the opposing branches of government, and to allow space for the UN to objectively promote its principles.

The dichotomy of those practicing quiet versus public diplomacy was evidenced in the conflicting analyses of events reported by the country team with some official reports framing the situation in Rakhine State as 'stable' and others depicting the conflict as indicative of 'impending disaster.'[363] The discord in reporting may have led to faulty decision-making on the part of officials at the UN headquarters. This lack of unity among different agencies and officials led to infighting that spilled over into the public domain, which both tarnished the image of the UN and contributed to its systemic failure in addressing discrimination against the Rohingya, according to Rosenthal.

The discord within the departments of the Secretariat has also been prevalent among the five permanent members of the UNSC. The U.K. took the lead in pushing for the Council to intercede in the country early-on, however,

[357] Ibid.
[358] Virtual interview with a UN official held on February 22, 2021.
[359] Ibid.
[360] *A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018.*
[361] Ibid.
[362] Ibid.
[363] Ibid.

China insisted the strife in Myanmar did not pose a threat to international peace and security, and therefore should be handled domestically. In 2007, both the U.S. and U.K. drafted a resolution on the situation in Myanmar, yet China and Russia used their veto power to block it from being adopted.

The lack of collective support by the UNSC to establish a presence in Rakhine State has posed significant challenges for the Secretariat to move forward with its initiatives to abate violence in the area and quite possibly to prevent the atrocities that took place on August 25, 2017. In this regard, the UNSC's limited action has offset the cooperation of the Secretary-General and the UNHRC. The UNSC's resistance to take on a more authoritative stance even after its visits to Bangladesh and Myanmar in 2018 has hindered the progress of other UN entities in protecting the human rights of the Rohingya.[364]

UNSC members have remained passive on the crisis in the region in their response to the recent military coup, requesting the release of detainees and stressing the need to uphold the rule of law, while reasserting their "strong commitment to the sovereignty [and] political independence of Myanmar."[365] Conversely, other UN entities have urged for more resolute action with regard to the insurrection. The UNHRC has called for the restoration of the democratically elected government, Special Rapporteur Andrews has pushed for an arms embargo and sanctions,[366] and the President of the General Assembly, Volkan Bozkir, has "condemned the coup...and called for unrestricted humanitarian access to Rakhine State."[367]

These divergent statements on the coup reflect Rosenthal's finding that the polarization in approaches in handling the situation in Myanmar has resulted in "the UN system following a fragmented strategy rather than a common plan of action."[368] In the interview with the UN official, the expert stated that the inability of the UNSC and the UNGA to agree on integrated action has been a continual challenge in addressing discrimination against the Rohingya.[369]

Applicability

This case contrasts with the treatment of the Uighurs in China in that the UN has taken an explicit stance on the discrimination against the Rohingya. Additionally, although China has deterred special mandate holders' from gaining unrestricted access to Xinjiang, the UN has been able to move forward with its investigations to collect evidence of human rights violations in Rakhine State and throughout Myanma

[364] Ibid.
[365] UN News, "Security Council calls for release of Aung San Suu Kyi, pledging 'continued support' for Myanmar's democratic transition," February 2021.
[366] Rebecca Barber, "UN Security Council Won't Respond to Myanmar's Coup, But the General Assembly Can," *Just Security*, February 2021.
[367] UN News, "Security Council unity 'crucial' to support democracy in Myanmar," February 2021.
[368] *A Brief and Independent Inquiry into the Involvement of the United Nations in Myanmar from 2010 to 2018.*
[369] Virtual interview with a UN official held on February 22, 2021.

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Discrimination Against the Uighurs in China

Context

The Uighurs are predominantly Turkic Muslims who reside in the Xinjiang Uighur Autonomous Region of western China.[370] For decades, the Uighurs have faced persecution, culminating in violent clashes occurring between 1990 and 2014 involving the ethnic minority, Chinese security forces, and the majority Han population who also reside in the Xinjiang province.[371] Several national policies have been enacted that have marginalized the Uighurs.

On March 1, 2013, the Chinese government issued "Document 11" in Xinjiang, which sought to eliminate religious extremist thought in the region by banning what were deemed to be illegal religious activities that damaged national interest.[372] "Document 11" was followed by a counter-terrorism law passed on January 1, 2016 and the de-extremism regulations announced in March 2017 all of which were targeted at Uighurs and other ethnic, Muslim minorities in Xinjiang.[373] These policies have acted as a precursor to Xinjiang Department of Justice officials extrajudicially detaining thousands of Uighurs and other Muslim minorities in internment camps. The Chinese government has justified these policies by asserting that the Uighurs hold extremist views and are a threat to national security based on attacks Uighur militants claimed responsibility for in 2013 and 2014.[374]

After initially denying the existence of the detention facilities, Chinese officials finally acknowledged them on August 2018 before the UN Committee on the Elimination of Racial Discrimination, but referred to them as vocational educational and training centers for radical individuals.[375] In December 2019, Xinjian officials closed the re-education internment camps and transferred detainees to forced labor camps.[376] Approximately 380 internment camps were built between 2017 and 2018.[377] 3 million Uighurs have disappeared into the internment camps since construction on the facilities began, and an estimated 1 million are currently being forcibly held.[378]

In addition to the concentration camps, the Chinese government regularly subjects Uighur and other Muslim minority women to pregnancy checks, as well as forces the implantation of intrauterine contraceptive devices, surgical sterilization, and abortion. The government's population control campaign has curbed birth rates among Uighur women by over 60% in three years.[379]

UN Response

China's treatment of the Uighurs has elicited a range of responses from the United Nations (UN) in the form of statements by the Secretary-General, the High Commissioner of Human Rights, and special procedures mandate holders, as well as recommendations made by various treaty bodies. Joint letters written by UN Member States and recommendations they have made during the three cycles of the Universal Periodic Review have demonstrated how politicized the issue is within the UN system.

[370] *International Uyghur Human Rights and Democracy Foundation*, "Who are the Uyghurs of East Turkestan?.".
[371] *The Xinjiang Data Project*, "Timeline," 2021. https://xjdp.aspi.org.au/map/?.
[372] Ibid.
[373] Ibid.
[374] *PBS NewsHour*, "What Is Happening with the Uighurs in China?" https://www.pbs.org/newshour/features/uighurs/.
[375] Ibid.
[376] Ibid.
[377] Ibid.
[378] Jen Kirby, "Concentration camps and forced labor: China's repression of the Uighurs, explained," *Vox*, September 2020.
[379] Edith Lederer, "UN chief rejects claim he didn't condemn China over Muslims," *AP*, September 2019.

Member States

UN Member States have been divided on the issue of the treatment of the Uighurs, complicating the UN's engagement in China. In 2019, two joint statements were addressed to the UN Human Rights Council (UNHRC), one condemning and one commending China for its human rights protocols.[380] On July 8, 22 countries, mainly European, sent a letter to the president of the UNHRC expressing concerns "about credible reports of the arbitrary detention and restrictions particularly targeting Uighurs and other minorities in Xinjiang, China." [381] A counterstatement was submitted to the UNHRC four days later in which 37 countries, across continents including several Muslim-majority countries, noted how they "commend China's remarkable achievements in the field of human rights."[382]

Although the U.S. was not a signatory to the July 2019 letter denouncing China's actions, the U.S. and Germany criticized China for detaining and depriving Uighurs and other Muslims of their rights in an internal UN Security Council (UNSC) meeting held on July 2, 2019.[383] The U.S. also led 30 other UN Member States, 20 NGOs, and Uighur victims in urging China to end its "horrific campaign of repression" during a sideline event at the UN General Assembly (UNGA) in September 2019.[384] At the event, former U.S. Deputy Secretary of State, John Sullivan, stated that it was the responsibility of UN Member States to monitor the human rights violations taking place in China and seek "immediate, unhindered, and unmonitored" access to Xinjiang for the UN High Commissioner for Human Rights.[385] In response to these denunciations, Chinese Foreign Ministry spokesman, Geng Shuang, declared in a daily news briefing in Beijing that the Xinjiang issue is about countering separatism and terrorism and not about human rights.[386]

There continues to be resounding international concern regarding the discrimination of the Uighurs. German Ambassador Christoph Heusgen issued a statement on behalf of 39 UN Member States to the UNGA's Third Committee on October 6, 2020. In the letter, the signatories stated their grave concern about the situation in Xinjiang and called upon China to respect human rights.[387] Most recently, on January 19, 2021, the U.S. State Department declared that the Chinese government is committing genocide and crimes against humanity against the Uighurs and other Muslim ethnic minorities.[388]

Secretary-General

UN Secretary-General António Guterres has been criticized by advocacy organizations for not explicitly rebuking the human rights violations against the Uighurs. A letter signed by Amnesty International, Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, and the World Uyghur Conference urged Guterres to call for the immediate closure of the detention centers. These organizations advised the Secretary-General "against any action that might lend credence to Beijing's narrative that the

[380] "What Is Happening with the Uighurs in China?."
[381] *United Nations Human Rights Council*, Joint Statement, July 2019.
[382] *United Nations Human Rights Council*, Joint Counterstatement, July 2019.
[383] Ben Blanchard & Michelle Nichols, "U.S., Germany slam China at U.N. Security Council over Xinjiang: diplomats," *Reuters*, July 2019.
[384] David Brunnstrom & Humeyra Pamuk, "U.S. leads condemnation of China for 'horrific' repression of Muslims," *Reuters*, September 2019.
[385] Ibid.
[386] Ibid.
[387] *Permanent Mission of the Federal Republic of Germany to the United Nations*, Statement by Ambassador Christoph Heusgen on behalf of 39 Countries in the Third Committee General Debate, October 2020.
[388] Chris Buckley & Edward Wong, "U.S. Says China's Repression of Uighurs Is 'Genocide,'" *The New York Times*, January 2021.

unlawful detention of over a million Uighurs and other Muslims is a necessary measure to counter terrorism."[389]

Guterres has refuted the claims that he has not taken a firm stance on the abuses in Xinjiang, noting, "It is absolutely not true that I've only done discreet diplomacy."[390] In spite of his insistence on making a clear public message during his visit to Beijing in April 2019, his statement about China's actions was insipid and indirect, and more of a cautionary recommendation. Specifically, he told the Chinese government "that it is very important to act in a way that each community feels that their identity is respected and that they belong, at the same time, to the society as a whole."[391] In response to his critics, Gueterres has also declared that he has been more vocal than other leaders around the globe on this particular issue of discrimination.

Treaty Bodies

Committee against Torture

In its most recent concluding observations on the fifth periodic report of China dated February 3, 2016, the Committee against Torture acknowledged the administrative and legislative measures the country had taken to align its national policies on torture with the provisions in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). However, in spite of these legal amendments, the Committee noted its concern regarding "consistent reports indicating that the practice of torture and ill-treatment is still deeply entrenched in... [China's] criminal justice system."[392]

The document broadly referenced violations against "human rights defenders and lawyers, petitioners, political dissidents and members of religious or ethnic minorities,"[393] as well as cases of "coerced sterilizations and forced abortions."[394] Discrimination against the Uighurs is briefly mentioned in paragraphs 40 and 41 with regard to arbitrary detainment, custodial deaths, disappearances, and unfair and cruel treatment.

The document also cited the Chinese government's failure to implement previous recommendations by the Committee in 2009. These recommendations included the collection of statistical information on the number of: detainees registered, death row prisoners, deaths while in custody resulting from torture, illegal secret detention facilities, torture-related complaints, and the use of solitary confinement and restraints. The Committee reiterated its previous recommendations that had not been adhered to by the state, particularly the need to ensure that abuses against ethnic minorities in the Xinjiang Uighur Autonomous Region "are promptly, impartially and effectively investigated by an independent mechanism."[395] It also urged China to withdraw its declarations and reservations to CAT, and widely disseminate the Committee's concluding observations.

Committee on the Elimination of Discrimination against Women

On November 14, 2014, the Committee on the Elimination of Discrimination against Women provided its latest concluding observations on the combined seventh and eighth periodic reports of China. The Committee welcomed the progressive steps

[389] "UN chief rejects claim he didn't condemn China over Muslims."
[390] Ibid.
[391] Ibid.
[392] Committee against Torture, *Concluding observations on the fifth periodic report of China*, CAT/C/CHN/CO/5, February 2016.
[393] Ibid.
[394] Ibid.
[395] Ibid.

the government had taken towards gender inclusive legislative reforms since China's previous reporting period in 2006. Yet, similar to the concluding observations of the Committee against Torture, this document mentioned the treatment of Uighurs within the larger context of discrimination of all women, including ethnic and religious minority women throughout China.

The Committee expressed concerns regarding the underrepresentation of Uighur and other minority women in public office. It also referred to minority women's limited access to employment opportunities and healthcare, as well as restrictions on women's sexual and reproductive health through the persistent practice of forced abortions and sterilizations. Furthermore, it noted that minority girls and women continued to face barriers in pursuing an education. The Committee called upon China to eliminate the intersecting forms of discrimination that impede ethnic and religious minority women from having equal access to education, employment, health, participation in public life, and "the enjoyment of their cultural identity and practices."[396] The overarching recommendation was that China should incorporate all of the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women into its domestic laws, ratify the Optional Protocol, and present the concluding observations to all levels of government.

Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination submitted its most recent concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China) on September 19, 2018. As with the observations of the Committee against Torture and the Committee on the Elimination of Discrimination against Women, these observations recognized the amendments China had made to its national policies and programs to implement the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as well as to protect human rights. The acknowledgement of these positive changes since the last reporting period was followed by the Committee's concerns regarding issues of discrimination against all ethnic minorities due, in part, to the absence of national human rights institutions. It also cited the government's failure to adopt a national anti-discrimination law, the deficiency in administrative records on racial discrimination, and the lack of tools available for victims to report racist hate crimes and hate speech.

The document detailed concerns about the ban on Uighur language education in schools, biased employee recruitment practices, the criminalization of Uighurs due to state references to extremism, the forced return of Uighurs who left China, the ill-treatment and torture of Uighur detainees, and mass surveillance and restricted movement of Uighur residents in Xinjiang. The Committee recommended China review its existing laws to ensure there are safeguards against targeted ethnic and ethno-religious abuse and profiling, and strengthen measures to prevent acts of torture. It also urged the government to "halt the practice of detaining individuals who have not been lawfully charged, tried and convicted for a criminal offence in any extralegal detention facility," and release individuals who have been detained under

[396] Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of China*, CEDAW/C/CHN/CO/7-8, November 2014.

these conditions.[397] In addition to calling on China to ratify the international human rights instruments it is not a member to, the Committee encouraged the government to make the periodic reports and concluding observations readily available to the public.

On November 24, 2020, Marc Bossuyt, the Vice Chairperson of the Committee on the Elimination of Racial Discrimination addressed a letter to Xu Chen, Permanent Representative of China to the United Nations Office in Geneva. In the letter, Bossuyt reiterated the Committee's recommendations in its 2018 concluding observations in relation to the government's treatment of the Uighurs. Regarding the issue of mass surveillance of the Uighurs, Bossuyt indicated that the government should "undertake prompt, thorough and impartial investigations into all allegations of racial, ethnic and ethno-religious profiling, holding those responsible accountable and providing effective remedies, including compensation and guarantees of non-repetition, and provide an update on the availability and actual application of these measures in its next periodic report."[398] Bossuyt also requested that the government provide detailed information on the number of Uighurs and other ethnic minorities held against their will in extrajudicial detention centers, the conditions of these facilities, and the immediate release of these detainees.

Human Rights Council

Special Procedures

On November 1, 2019, twelve UN special procedures mandate holders under the UNHRC addressed a statement to the Chinese government with their comments regarding its Counter-Terrorism Law implemented in the Xinjiang Uighur Autonomous Region in 2016. The experts noted that the law "leaves ethnic minorities vulnerable to racial profiling and discrimination due to its broad definition and vague references to extremism." [399] They expressed concern that the unclear definitions in article 4 of the law link religious belief and practice with terrorism. They indicated that the provisions in the law violate international human rights standards, and cited the government's duty to comply with the articles in the Universal Declaration of Human Rights, several resolutions from the UNGA, UNHRC, and UNSC, and the provisions in treaties which it is a party to, in particular CAT and ICERD. In the concluding remarks, the experts requested additional information on how the Counter-Terrorism Law complies with international human rights law; encouraged the government to narrow its definition of terrorism; and offered their technical assistance in reshaping this national policy to conform with international laws on terrorism.

Universal Periodic Review

The 2009 report on the Working Group on the Universal Periodic Review (UPR) includes a summary of statements made by the 60 UN member countries that were present during the interactive dialogue of the review of China. In their statements, 46 of the countries present praised China on its efforts to promote and protect human rights. The remaining 14 countries expressed concerns regarding issues of arbitrary detention, religious repression, and restrictions on freedom of information and expression, movement, and religion, as well as the

[397] Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China)*, CERD/C/CHN/CO/14-17, September 2018.
[398] Committee on the Elimination of Racial Discrimination, *Letter from the Vice Chairperson of the Committee on the Elimination of Racial Discrimination*, CERD/101st session/FU/MK/ks, November 2020.
[399] Special Rapporteurs Letter to China, OL CHN 18/2019, November 2019.

government's treatment of the Uighurs and other ethnic minorities. Several countries urged China to abolish its system of re-education through labor, yet Sudan recommended that the government "[a]ctively and prudently push forward reform of re-education through labour according to its national realities, so that everything goes according to its system."[400] The delegation of China supported Sudan's recommendation. It also asserted that it had already implemented measures to protect and strengthen the rights of ethnic minorities, and preserve their cultural identity through preferential policies, such as regional ethnic autonomy.

In the 2013 report, the majority of the 137 countries made statements that applauded China's progress in implementing the recommendations that were made in 2009. Several countries restated their insistence on the abolition of re-education camps. There was also a reiteration of the recommendation to guarantee and respect the rights of ethnic minorities with the Czech Republic urging China "to stop all disproportionate policies against" the Uighurs.[401] Many countries urged China to cooperate with the UN Office of the United Nations High Commissioner (OHCHR) for Human Rights and accept requests for visits from mandate holders. The delegation of China maintained that judicial reforms had been made to uphold human rights. It refuted the use of arbitrary detention, and noted that its current policies protect the rights of ethnic minorities and religious groups.

The statements of 150 countries from the interactive dialogue were included in the 2018 report. Several UN Member States encouraged China to continue to share best practices with developing countries as part of South-South cooperation. There were also proposals for China to implement the Committee on the Elimination of Racial Discrimination's recommendations to close the internment camps in Xinjiang, which were included in the 2018 concluding observations document. Many countries also requested for China to provide the United Nations High Commissioner for Human Rights with unrestricted access to Xinjiang, cease the practice of detaining Uighurs, and release all ethnic minorities who have been arbitrarily detained in camps. The report noted that "China resolutely opposed and would never accept the practice of using human rights as an excuse to interfere in its internal affairs and undermine its sovereignty and territorial integrity."[402] The delegation of China indicated that the education and training institutions in the Xinjiang Autonomous Region had been established in accordance with the law, and were part of the government's preventive antiterrorism measures to educate people who had been exposed to extremist thoughts.

High Commissioner for Human Rights

On April 29, 2019, High Commissioner for Human Rights, Michelle Bachelet, submitted a letter to the Minister of Foreign Affairs, China, H.E. Mr. Wang Yi and Vice Minister of Foreign Affairs, China, H.E. Mr. Le Yucheng. In the letter, High Commissioner Bachelet encouraged China "to continue to strengthen its engagement with the United Nations human rights mechanisms, including the Treaty Bodies and Special Procedures mandate holders of the UNHRC," and urged the government "to increase efforts to protect

[400] Working Group on the Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review*, A/HRC/11/25, October 2009.
[401] Working Group on the Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review*, A/HRC/25/5, December 2013.
[402] Working Group on the Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review*, A/HRC/40/6, December 2018.

the rights of ethnic and religious minorities."[403] The letter also included an annex with the overarching recommendations and statements made by the 150 delegations present during the third cycle of the UPR Working Group in 2018. The annex referenced the appeal for the government to allow unimpeded access to the UNHRC and the High Commissioner to investigate violations in Xinjiang, abolish all extra-legal detention facilities in Xinjiang, and protect the rights of the Uighurs to freedom of religion.

Secretariat

UN Department of Political and Peacebuilding Affairs & Office of the United Nations High Commissioner for Human Rights

Based on an interview with sources who have asked to remain anonymous, the UN has made concerted efforts to collaborate inter-departmentally.[404] The Department of Political and Peacebuilding Affairs, Asia and the Pacific Division works in close cooperation with the OHCHR in China, not just on the issue of ethnic and religious discrimination against the Uighurs in Xinjiang, but also in addressing human rights violations against other marginalized populations throughout the country. These agencies have been working to secure the High Commissioner's unfettered access to Xinjiang by engaging with China on modalities for this visit.

In general, both UN entities have been taking on a depoliticized approach to dealing with the issue of the Uighurs and conducting quiet diplomacy with regard to China. One of their core responsibilities is to provide updates to senior officials, including Secretary-General Guterres and High Commissioner Bachelet, on the situation in Xinjiang. Their reports allow these officials to be well-informed when making public statements that reinforce one another's declarations on the treatment of the Uighurs.

Effectiveness of UN Mechanisms

Enabling Factors

While the divide between UN Member States on the situation in Xinjiang has created tension on how to proceed with addressing the repression of the Uighurs, pressure from countries condemning China's actions has resulted in the government finally acknowledging the existence of the detention centers. Furthermore, the recommendations of the UPR and treaty bodies have prompted China to develop national human rights policies and a National Human Rights Action Plan.

The heightened international concern and media attention on this issue has reinforced the denouncements of UN Member States. These Member States have urged UN agencies to take action to protect the human rights of the Uighurs and prevent any further abuses. In Germany's joint statement, the signatories endorsed "an unprecedented appeal from 50 UN human rights experts for the creation of a UN mechanism for monitoring human rights in China."[405]

This appeal by UN experts for a Special Session on the UNHRC to establish an impartial and independent UN mechanism to evaluate violations enacted by China's government was supported by over 300 advocacy organizations. In an open letter to the Secretary-General, the High Commissioner, and UN Member States in September 2020, the organizations urged the Secretary-General to appoint a Special Envoy in adherence with his *Call to Action on Human Rights*, and requested that the High

[403] *United Nations Office of the Human Rights High Commissioner*, Michelle Bachelet Letter to China, April 2019.
[404] Virtual interview with human rights experts held on March 2, 2021.
[405] Louis Charbonneau, "39 Countries at UN Express 'Grave Concerns' About China's Abuses," *Human Rights Watch*, October 2020.

Commissioner execute her mandate to monitor the abuses of the government.[406]

Inhibiting Factors

The Chinese government continues to deny abuses against the Uighurs and other ethnic minorities are taking place in Xinjiang. Restrictions on freedom of expression, press freedom, internet censorship, and media access have posed challenges in ascertaining the conditions in the autonomous region. Due to these circumstances, there has been a heavy reliance on advocacy organizations, leaked documents, and Uighurs living abroad to provide details about the violations taking place in Xinjiang.

While the Chinese government has accepted visits by the special procedures for debt, discrimination against women, extreme poverty, and food, it has rejected visits by rapporteurs tasked with investigating infractions on civil and political rights. It has also denied several requests for unobstructed access by the High Commissioner for Human Rights since 2005.[407] The 2019 visit by Vladimir Voronkov, Under-Secretary-General of the United Nations Office of Counter-Terrorism, sparked controversy among diplomats from many countries since Bachelet has yet to be granted access to the region. A UNSC diplomat stated that the visit by Voronkov "validates [China's] narrative that this is a counterterrorism issue, when we would see it more as a human rights issue."[408] Recently, on March 2, 2021, China announced that it was working with High Commissioner Bachelet to negotiate access to Xinjiang under the premise that her visit would facilitate exchanges and cooperation with the UN and not an investigation into its domestic affairs.[409] This selectivity in accommodating UN mandate holders is an indication that the government complies with visits when it foresees positive reviews on its practices.[410]

Xi Jinping, General Secretary of the Chinese Communist Party and Chairman of the Central Military Commission, has continued to emphasize the need to respect state sovereignty, further thwarting UN engagement in the country.[411] Under Xi, China has formed strong alliances with developing countries against Western countries' criticisms about their human rights legislation, allowing China to weaken the UN's human rights framework.[412] It has used its election to the UNHRC and the withdrawal of the U.S. to its advantage by strengthening its coalition of non-Western states willing to endorse or at least not condemn its policies.[413] China has also advanced its agenda to strengthen ties with its allies at UN events, as well as introduced its concept of "building a community of shared future" in two UNHRC resolutions adopted in 2017.[414] The Member State's considerable influence in the UN is equally discernible in the UNSC, which is restricted in addressing the situation in Xinjiang because of China's role as one of the organ's permanent five members. China has decisively blocked all discussions on the UNSC drafting any

[406] *Human Rights Watch*, "Global call for international human rights monitoring mechanisms on China," September 2020.
[407] *Human Rights Watch*, "The Costs of International Advocacy: China's Interference in United Nations Human Rights Mechanisms," September 2017.
[408] Michelle Nichols, "U.S., others object to U.N. counterterrorism chief visit to China's Xinjiang," *Reuters*, June 2019.
[409] Stephanie Nebehay, "China says door to Xinjiang 'always open', but U.N. rights boss should not prejudge," *AP News*, March 2021.
[410] "The Costs of International Advocacy: China's Interference in United Nations Human Rights Mechanisms"
[411] Joseph Yu-shek Cheng, "The Policy Programme and Human Rights Position of the Xi Jinping Administration," *Contemporary Chinese Political Economy and Strategic Relations, 4* (2), July/August 2018, 319-347, VIII-IX.
[412] Ibid.
[413] Ted Piccone, "Order from Chaos: UN Human Rights Council: As the US returns, it will have to deal with China and its friends," February 2021, *Brookings*.
[414] "The Policy Programme and Human Rights Position of the Xi Jinping Administration."

resolutions on the Uighurs, declaring that it is an internal matter.[415]

Applicability

This case study is an example of the limitations of the UN to get involved in issues of discrimination in certain settings. It illustrates the various impediments UN bodies and officials face in fulfilling their mandates due to China citing sovereignty and viewing the controversy on its national policies and practices as a domestic matter.

[415] Alina Rizvi, "Uighur Crisis Highlights Flawed Structure of UN Security Council," *Jurist*, July 2020.

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Discrimination Against Black Americans in the U.S. Criminal Justice System

Context

The persistence of racism and discrimination against Black, Indigenous, and other people of color spans the history of the United States, beginning with the constitutional enslavement of Africans and others until the passage of the 13th Amendment in 1865, which was followed by the post 13th Amendment imposition of Jim Crow and Sundown laws, contributing to the de facto discrimination, exclusion, and segregation of people of color. The Civil Rights Movement of the 1950s and 1960s led to the passage of the monumental Civil Rights Act (1964), Voting Rights Act (1965), and Fair Housing Act (1968), which prohibit de facto discrimination in U.S. law; however, recent Supreme Court cases have limited the extent to which these statutes provide viable remedies for individuals injured by the racially disparate impact of racially neutral laws. As a result, systemic and structural racism continues, with deeply rooted inequities a direct result of the cumulative effects of institutionalized racism in the country, which continue to be reflected in contemporary policies, practices, and norms. This has contributed to pervasive inequities in education, healthcare, housing, and employment, with around 18.8 percent of Black Americans living in poverty in the U.S., which is more than double the rate for white Americans (7.3 percent).[416]

In addition, racial discrimination in the administration of criminal justice, including biased-based policing, has been documented in a number of reports.[417] "The discriminatory use of force and violence against black, brown, and indigenous communities, is rooted in the long history of racism and discrimination in this country, which involves controlling communities of color through criminalization and over-policing."[418] While discrimination is pervasive throughout the U.S. criminal justice system,[419] this case will focus on the excessive and discriminatory use of force by law enforcement officials against Black Americans. While limited data is available, as no entity in the U.S. government collects comprehensive nationwide statistics on civilian deaths by police,[420] Black Americans represent approximately 28% of total deaths at the hands of law enforcement officials, between 2013 and 2020, despite being only 13% of the U.S. population.[421] Furthermore, charges are rare,[422] with the overwhelming majority of law enforcement officers never charged, let alone convicted, for using excessive force against civilians.[423] The disproportionate application of lethal force

[416] John Creamer, Inequalities Persist Despite Decline in Poverty for All Major Race and Hispanic Origin Groups, U.S. Census Bureau, Current Population Reports, P60-263, Washington, D.C., U.S. Government Printing Office, September 15, 2020.

[417] See for example, ACLU, "The Persistence of Racial and Ethnic Profiling in the U.S.," June 2009; Amnesty International, "Deadly Force: Police Use of Lethal Force in the U.S.," August 2015; IACHR, "African Americans, Police Use of Force, and Human Rights in the U.S.," Nov 2018.

[418] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.

[419] Disparate treatment of minorities is pervasive throughout the U.S. criminal justice system, including police brutality and violence, higher rates of incarceration and death penalty sentences, wrongful accusations and convictions, and the denial of appeals.

[420] The Department of Justice is required to collect and publish comprehensive nationwide statistics on civilian deaths by police, in accordance with the Violent Crime Control and Enforcement Act (1994); however, it has failed to track and report this data.

[421] Mapping Police Violence. *Police Violence Map*, https://mappingpoliceviolence.org (accessed March, 2021).

[422] In terms of killings of civilians by police, 98.3 percent of cases between 2013-2020 did not result in officers being charged with a crime. Ibid.

[423] Of the officers involved in the deadly shootings of unarmed Black people over the last five years, only 13 were charged with murder. Cheryl Thompson, Fatal Police Shootings of Unarmed Black People Reveal Troubling Patterns, National Public Radio, January 25, 2021.

and the extrajudicial killings of Black Americans and other people of color, including George Floyd and Breonna Taylor in 2020, has led to a moment of reckoning in the U.S., and a movement around the world, not only to protest State-sanctioned violence towards Black people, but to combat racism and discrimination more widely.

Response to Discrimination

UN Response

Against the backdrop of apartheid, colonialism, anti-Semitism, and discrimination against Black Americans in the United States, the UN General Assembly adopted the **International Convention on the Elimination of All Forms of Racial Discrimination** (ICERD**)** in December 1965—a year after the U.S. Civil Rights Act—which was followed by the adoption of the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** in 1966. While the U.S. signed the ICERD in 1966 and the ICCPR in 1977, it would be several decades, however, before the U.S. would ratify the treaties. It was amidst the tensions related to the beating of Rodney King, a Black American, by police in Los Angeles in March 1991, and the acquittal of the white officers in April 1992, followed by widespread demonstrations across the country, that the U.S. ratified the ICCPR on June 8, 1992, and the ICERD and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on October 21, 1994.[424]

In response to the beating of Rodney King and leading up to the U.S. ratification of the treaties, pressure was applied by the United Nations in a number of ways. In the first **country visit** undertaken by the **Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**, since the mandate was created by the Commission on Human Rights in 1993, the Special Rapporteur was tasked with a **fact-finding mission** to the U.S. in 1994. The purpose of the mission was to verify information brought to the attention of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights related to the "persistence of structural and insidious racism and racial discrimination," "including racial discrimination in the administration of criminal justice and discriminatory practices in the police and police brutality symbolized by the notorious Rodney King case, which shook the United States and stirred international public opinion."[425]

The subsequent report of the Special Rapporteur on contemporary Forms of racism (1995)[426] confirmed "discrimination in the administration of criminal justice," referring to a U.S. Government Accountability Office study which "revealed that, from a representative sample of 15,000 cases, not only did a pattern of abuse exist, but that there were 181 identifiable jurisdictions within which the issue of police brutality was most pronounced." The report added that "The use of excessive force by police against African Americans, Asian Americans, Arabs and Indians has been cited as one of the most pressing human rights

[424]The United States is a party to three human rights treaties that include protection of rights related to criminal justice: the International Convention on the Elimination of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture (CAT); however it has yet to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR) and CEDAW.

[425] UN Commission on Human Rights, "Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Maurice Glélé-Ahanhanzo, on his mission to the United States," 1995, E/CN.4/1995/78/Add.1.

[426] Ibid.

problems facing the United States," with "no federal law exist[ing] that specifically addresses the issue of police brutality in the United States."[427]

The following year, in response to the initial U.S. report, the **Human Rights Committee** of the ICCPR issued **Concluding Observations** to the **Periodic Report** (1995) of the U.S., in which it noted "with satisfaction that while the United States has recently ratified or acceded to some international human rights instruments," it remains "concerned at the reportedly large number of persons killed, wounded or subjected to ill-treatment by members of the police force in the purported discharge of their duties," recommending that the U.S., "in order to comply with its obligations under the ICCPR, take all necessary measures to prevent the excessive use of force by the police [and ensure] that rules and regulations governing the use of weapons by the police and security forces be in full conformity with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials." [428] The Human Rights Committee's Concluding Observations in 2006 and 2014, also addressed the issue, noting in its 2014 observations that the U.S. "should continue and step up its efforts to robustly address racial disparities in the criminal justice system and effectively combat and eliminate racial profiling by pursuing the review of its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" and "amending regulations and policies leading to racially disparate impact at the federal, state and local levels."[429]

In **Concluding Observations** to **Periodic Reviews** of the U.S. in 2001, 2008, and 2014, the CERD also drew attention to racial profiling and excessive use of force by law enforcement.[430] In the 2001 Periodic Review, the Committee noted with concern, "incidents of police violence and brutality, including cases of deaths as a result of excessive use of force by law enforcement officials, which particularly affect minority groups and foreigners,"[431] and in the 2008 Review, requested that the U.S. ensure "reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished."[432] In the 2014 Review, the Committee "reiterated its previous concerns at the brutality and excessive use of force by law enforcement officials against members of racial and ethnic minorities, which has disparate impact on African Americans," calling for the U.S. to "intensify its efforts to prevent the excessive use of force by law enforcement officials by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials."[433]

In addition, while not directly linked to U.S. reports or reviews, the CERD has issued a number of **General Recommendations** on discrimination in policing, including No. 13 on the training of law enforcement officials

[427] Ibid.
[428] UN Human Rights Committee (HRC), *Concluding Observations of the Human Rights Committee: United States of America*, UN Doc. CCPR/C/79/Add.50, A/50/40, 1995.
[429] UN Human Rights Committee (HRC), *Concluding observations on the fourth periodic report of the United States of America*, April 23, 2014, CCPR/C/USA/CO/4.
[430] The combined tenth to twelfth periodic reports of the U.S. has been overdue since November 2017.
[431] UN Committee on the Elimination of Racial Discrimination, *Concluding Observations to the Periodic Report of the United States of American*, U.N. Doc. CERD/C/59/Misc.17/Rev.3, 2001.
[432] UN Committee on the Elimination of Racial Discrimination, *Concluding Observations to the Periodic Report of the United States of America*, U.N. Doc. CERD/C/USA/CO/6, 2008.
[433] UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, 2014.

in the protection of human rights (1993);[434] No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system (2005);[435] No. 36 on preventing and combating racial profiling by law enforcement officials (2020);[436] and No. 34 on racial discrimination against people of African descent (2011), which calls on state parties to take measures to address discrimination and prevent the use of illegal force by law enforcement agencies and officials against people of African descent.[437]

The **Special Rapporteur on extrajudicial, summary or arbitrary executions** also conducted **Country Visits** to the U.S. in 1998 and 2008. In the 1998 Report Addendum, the Special Rapporteur noted with concern "violations of the right to life as a result of excessive use of force by law enforcement officials" and recommended "all alleged violations be investigated and police officials responsible brought to justice and compensation provided to the victims." He also recommended "measures to prevent recurrence of these violations" and that "patterns of use of lethal force be systematically investigated by the Justice Department" and that "independent organs, outside the police departments, be put in place to investigate all allegations of violations of the right to life promptly and impartially, in accordance with principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions."[438] In the 2009 Report Addendum, the Special Rapporteur recommended "existing data collection efforts regarding killings by law enforcement officers be improved to increase early warning."[439]

In a subsequent report, following his 2009 visit to the U.S., the **Special Rapporteur on contemporary forms of racism** noted that "as a matter of urgency, the Government should clarify to law enforcement officials the obligation of equal treatment and, in particular, the prohibition of racial profiling," adding that this process would benefit from the adoption by Congress of the End Racial Profiling Act. In addition, he noted that State Governments should "adopt comprehensive legislation prohibiting racial profiling and establish independent oversight bodies within police agencies, with real authority to investigate complaints of human rights violations in general and racism in particular" and that "adequate resources should also be provided to train police and other law enforcement officials."[440] In the Special Rapporteur's 2015 report on racial and ethnic profiling, he noted that "racial profiling has been a long-standing issue of concern for the mandate," noting that racial and ethnic profiling in law enforcement exacerbates discrimination already suffered as a result of ethnic origin or minority status" and that "combating the use of racial and ethnic profiling in law enforcement constitutes a new and complex challenge."[441] The

[434] UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 13 on the training of law enforcement officials in the protection of human rights, adopted by the Committee in 1993.
[435] UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 36 on *preventing and combating racial profiling by law enforcement officials*, adopted by the Committee on December 17, 2020.
[436] UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 34 on *Racial discrimination against people of African descent*, adopted by the Committee on October 3, 2011.
[437] Ibid.
[438] UN Commission on Human Rights, *Report of the Special Rapporteur, Mr. Bacre Waly Ndiaye*, December 23, 1997, E/CN.4/1998/68/Add.3.
[439] UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston - Addendum - Mission to the United States of America*, May 28, 2009, A/HRC/11/2/Add.5.
[440] UN Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène : addendum: mission to the United States of America*, April 28, 2009, A/HRC/11/36/Add.3.
[441] UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination,*

disproportionate profiling and targeting of minority groups in the U.S. was also addressed within the report.

The **Working Group of Experts on People of African Descent** carried out **fact-finding missions** into the human rights situation of African Americans in the U.S. in 2010 and 2016. The 2010 mission observed that "racial profiling against people of African descent by the police is an ongoing concern; the darker a person's skin, the more likely they are to be stopped, questioned and frisked by police."[442] A significant portion of the 2016 Report also focused on manifestations of racial discrimination in the criminal justice system, with the Working Group noting it was "deeply concerned at the alarming levels of police brutality and excessive use of lethal force by law enforcement officials, committed with impunity against people of African descent" and "the low number of cases where police officers have been held accountable for these crimes, despite evidence." The Working Group recommended the U.S. "ensure accountability for police violence against African Americans by improving the reporting of violations and ensuring that cases of excessive use of force and extrajudicial killings are independently investigated, and that alleged perpetrators are prosecuted, and if convicted, punished with appropriate sanctions." They also urged "Congress to pass criminal justice reform bills, including the End Racial Profiling Act."[443]

Following the establishment of the Human Rights Council in 2006, **Universal Periodic Reviews** of the human rights situation in the United States have been conducted every five years. The 2011 **Human Rights Council Working Group on the Universal Periodic Review** recorded scrutiny from many of the forty-seven Member States on human rights in the country, including U.S. allies, with twenty-two referenced problems with racial discrimination, fifteen of which were specifically related to the U.S. criminal justice system. China specifically expressed concern about "gaps in human rights legislation" and the U.S. not yet becoming a "party to a number of core international human rights instruments."[444] Several of these sentiments were echoed in the 2015 Review, with China again calling on the U.S. to "correctly address the root causes of racial discrimination and eliminate the frequently occurring excessive use of force by law enforcement against of African Americans and other ethnic minorities" and the Russian Federation calling on the U.S. to "stop extrajudicial killings of citizens of the United States of America and foreigners."[445]

In 2014, the **General Assembly** in Resolution 69/16, adopted the **programme of activities for the implementation of the International Decade for People of African Descent**, and noting "the common problem of racial profiling," "called for the design, implementation and enforcement of measures to eliminate the problem."[446]

xenophobia and related intolerance, Mutuma Ruteere, April 20, 2015, A/HRC/29/46.

[442] UN Human Rights Council, Report of the Working Group of experts on people of African descent: Visit to the United States of America, August 6, 2010, A/HRC/15/18.

[443] UN Human Rights Council, *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, August 18, 2016, A/HRC/33/61/Add.2

[444] UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review : United States*, 2011, A/HRC/16/11/Add.1.

[445] UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review : United States*, July 20, 2015, A/HRC/30/12.

[446] UN General Assembly, *Programme of activities for the implementation of the International Decade for People of African Descent*, December 1, 2014, A/RES/69/16. The issue of racial profiling had also been raised at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in Durban, South Africa, with the Durban Declaration and Programme of Action urging States "to design, implement and enforce effective measures to eliminate racial profiling," *Durban Declaration and Programme of Action*, 2001, A/CONF.189/12.

Pursuant to Resolution 69/16, the **Secretary-General** presented a report on the Programme of activities, which focused on racial profiling of people of African descent. The report was informed by a questionnaire circulated by OHCHR to key stakeholders, including the U.S., and covered applicable international legal frameworks and human rights mechanisms and documented examples of good practices, including as it relates to legal statutes, recruitment and training, community engagement, data collection, and accountability. In 2019, the Secretariat also transmitted to the General Assembly a report of the Special Rapporteur on contemporary forms of racism, which observed that in the U.S. "even today, black people are killed and brutalized at alarming rates by law enforcement authorities and vigilantes, who have little to no accountability and that "Black adults are 5.9 times more likely to be incarcerated than white adults" adding that "such racial disparities do not occur by accident: mass incarceration is a vestige of slavery and the "Jim Crow" era of racial segregation that followed."[447]

Following the killings of George Floyd, Breonna Taylor, and a number of other Black Americans by law enforcement officials and the wave of demonstrations that took place around the world calling for racial justice in 2020, the **High Commissioner for Human Rights**, Michelle Bachelet issued a statement on May 28, observing "This is the latest in a long line of killings of unarmed African Americans by US police officers and members of the public," and that "the US authorities must take serious action to stop such killings, and to ensure justice is done when they do occur," adding that "the role that entrenched and pervasive racial discrimination plays in such deaths must be fully examined, properly recognized and dealt with."[448] This was followed by the High Commissioner's statement on June 3, in which she underscored, "The voices calling for an end to the killings of unarmed African Americans need to be heard. The voices calling for an end to police violence need to be heard. And the voices calling for an end to the endemic and structural racism that blights US society need to be heard."[449] In a town hall on June 4, **Secretary-General** Antonio Guterres stated that "We are all shocked by the brutality of the murder of George Floyd. It's important to recognize that at the center of [this crisis] there is a serious question of racism. Racism is the rejection of our common humanity, which is a central aspect against the Charter of the UN."[450]

In addition, a **Joint-Statement** on the Protests against Systemic Racism in the United States was issued by forty-seven **Special Procedures mandate-holders** on June 5, 2020, calling "attention to the national uprising in the United States against systemic racism in law enforcement." The collective analysis noted the issue in the U.S. "is not limited to specific enforcement practices or individual officers, but extends to the laws and the policies governing law enforcement, which affect all racial and ethnic minorities." Recommendations included that the U.S. Government "implement the 2015 recommendations of the President's Task Force on 21st Century Policing, including addressing biased-based policing," and that it "cease policies facilitating qualified immunity, the provision

[447] UN General Assembly, *Contemporary forms of racism, racial discrimination, xenophobia and racial intolerance*, August 21, 2019, A/74/321.
[448] OHCHR, "UN Human Rights Chief urges "serious action" to halt US police killings of unarmed African Americans," OHCHR, May 28, 2020.
[449] Michelle Bachelet, "US protests: Deep-seated grievances must be addressed," OHCHR, June 3, 2020.
[450] Colum Lynch, "U.N. Reverses Ban on Staff Participation in Anti-Racism Protests," Foreign Policy, June 8, 2020.

of military equipment to, and military-type training of police, no-knock warrants and the use of non-uniformed police in citizen interactions." It also called for "civilian oversight boards, mandated body worn camera use, de-escalation training, and an independent review of all extrajudicial police killings" to "enhance both transparency and accountability."[451]

Under CERD's **Early Warning and Action Procedures**,[452] the Committee issued a Statement on June 12, 2020, in which it noted with concern "the recurrence of killings of unarmed African Americans by police officers and individuals over the years" and "the continuing practice of racial profiling, the brutality and excessive use of force by law enforcement officials against persons belonging to racial and ethnic minorities, including unarmed individuals," adding that "systemic and structural discrimination permeates State institutions and disproportionately promotes racial disparities against African Americans." In addition, it called on the U.S. Government "to intensify efforts to prohibit and eradicate in practice racial profiling and the excessive use of force by law enforcement officials towards persons belonging to racial and ethnic minorities" and "to take immediate and appropriate reforms aimed at eliminating racially disparate impacts or structural discrimination in the police and the criminal justice system."[453]

In addition, at the 40th meeting of the **Human Rights Council** on June 17, 2020, the Council held an Urgent Debate on racially inspired human rights violations, systemic racism, and police brutality against people of African descent and violence against peaceful protest, at the request of the **African Group** and the families of George Floyd, Breonna Taylor, Michael Brown, and Philando Castile, together with over 600 rights groups led by the ACLU and U.S. Human Rights Network, with additional signatories including Black Lives Matter and the NAACP. In a series of addresses before the Council, UN Deputy Secretary-General, Amina Mohammed, observed that "such violence 'spans history and borders alike,' stressing that the UN was fully mobilised to wage a 'sacred battle' to end the scourge of racism" "just as the UN fought apartheid years ago," and AU Deputy Chairperson, Thomas Kwesi, expressed the African Union's "rejection of continued discriminatory practices against black citizens in the United States." High Commissioner Bachelet noted that systemic racial discrimination "results from bias in multiple systems and institutions of public policy, which separately and together perpetuate and reinforce barriers to equality," and urged "the international community to at long last seize this moment to make the fundamental changes being demanded by the peoples of the world," pointing to "the scale of these protests in nations whose history has been intertwined with the twin evils of slavery and racism."[454]

E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, in her own capacity and on behalf of the Working Group of Experts on People of African Descent and the Coordination Committee of the Human Rights Council on Special Procedures, then issued a statement calling for "an international commission of inquiry with the necessary authority to investigate systemic

[451] UN Human Rights Council, "Special Procedures mandate-holders statement on the Protests against Systemic Racism in the U.S.," June 5, 2020

[452] CERD also issued a Decision under its Early Warning and Action Procedures following events in Charlottesville, North Carolina in 2017.

[453] UN Committee on the Elimination of All Forms of Racial Discrimination, *Early Warning and Action Procedures: United States, Statement 1*, June 12, 2020.

[454] OHCHR, "Human Rights Council holds an urgent debate on current racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests," OHCHR, June 17, 2020.

racism in law enforcement in the United States," adding that it should be "thematic or endowed with the power to investigate systemic racism in law enforcement globally." She recommended the Council "not take a course of action that would rely on existing Special Procedure mandates as they did not have the capacity to actually make a difference in the lives of the millions of people in the United States subject to systemic racism in law enforcement." Noting "a steady erosion in the United Nations of the commitment to the anti-racism human rights framework," she urged members of the Council, the Secretary-General, and the High Commissioner to recommit to supporting the different mechanisms and processes established to that end."[455]

While several States expressed their support for the establishment of an independent commission of inquiry, with special investigative authority, within the U.S. and other parts of the world, appeals for the commission were withdrawn from the draft resolution due to pushback from the U.S. and allied countries. The final watered-down Resolution, A/HRC/RES/43/1,[456] was adopted by consensus, with some countries expressing their reservations on paragraphs singling out particular countries. The Resolution requested that the High Commissioner, with the assistance of relevant Special Mandate Holders, prepare a report on systemic racism and violations of international human rights law against Africans and people of African descent by law enforcement agencies, with the final comprehensive report to be presented to the Council at its 47th session in June 2021. It also requested that the High Commissioner "include updates on police brutality against Africans and people of African descent in all her oral updates to the Council."[457]

In the November 2020 **Universal Periodic Review** of the U.S., a number of "Major powers, including allies, criticised the United States for its human rights record, including racism and police brutality**,** calling on the United States to "take serious measures to address structural racism and police violence,"[458] and extend an invitation to the Special Procedures. Russia and China, which have long used the U.S. record on race to push back against its criticism of their human rights abuses, also levied criticism on the U.S., "calling on the United States to root out racism and police violence."[459] In addition, South Africa called on the U.S. to "cooperate fully with the United Nations High Commissioner for Human Rights in the preparation of her report on systemic racism and violations of international human rights law against Africans and people of African descent by law enforcement agencies."[460]

In a recent statement on February 26, 2021, several **Special Rapporteurs and Independent Experts** noted that "in this time of political change, the United States must initiate far-reaching reforms to address police brutality and systemic racism," calling on the U.S. Government to adopt these reforms with "resolve, determination, strong political and financial commitment," to put an end to police violence, and to vigorously address systemic racism and racial discrimination." Specific measures mentioned include the "revision of legal and policy frameworks, from city to federal levels, to reflect established international

[455] Ibid.
[456] UN Human Rights Council, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, June 19, 2020, A/HRC/RES/43/1.
[457] Ibid.
[458] Stephanie Nebehay, "U.S. criticised for police brutality, racism at U.N. rights review," Reuters, November 9, 2020.
[459] UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: United States," December 15, 2020.
[460] UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review : United States," Dec 15, 2020, A/HRC/46/15.

human rights standards," and reforms related to the use of force and the militarization of policing.[461]

Responses of Other Key Actors

The first regional response was from the African Union, with Chairperson of the **AU Commission**, Moussa Faki Mahamat, issuing a statement on May 29, "strongly condemning the murder of George Floyd at the hands of law enforcement officers," and "firmly reaffirming and reiterating the African Union's rejection of the continuing discriminatory practices against Black citizens of the United States." He also urged U.S. authorities "to intensify their efforts to ensure the total elimination of all forms of discrimination based on race or ethnic origin."[462]

The **Inter-American Commission on Human Rights** (IACHR) has also played a prominent role. The U.S. signed onto the **Charter of the Organization of the American States**, the Inter-American treaty that effectively established the **Organization of American States (OAS)**, in addition to the **American Declaration of the Rights and Duties of Man** in 1948, which under Article II, declares "all persons equal before the law" with "the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor."[463] While the U.S. is not party to the **Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance** (2013), as a signatory of the Declaration, it is subject to the **Individual Complaints Procedure** under the **Inter-American Commission on Human Rights** (IACHR).[464] Individuals seeking to present cases against the U.S. for violations of human rights currently only have recourse to the IACHR,[465] as the U.S. has not ratified Article 14 of the ICERD, the first Optional Protocol of the ICCPR, or Article 22 of the CAT. **The Inter-American Court of Human Rights** has advisory jurisdiction on human rights treaties in the Inter-American system, including the American Declaration and the Conventions, which can be "invoked by all member States of the OAS, regardless of whether they have ratified the American Convention or any other treaty, when attempting to address human rights violations on behalf of their citizens," which "could be an important tool in enabling both States and individuals to seek to gain a nonbinding ruling on charges of human rights violations,"[466] to bring international attention to the issues involved. In addition, the Inter-American Commission has identified racial profiling as a problem that affects people of African descent especially.[467]

In response to discrimination in the criminal justice system in the U.S., The Inter-American Commission convened a number of **Thematic Hearings** on issues of systemic racism, policing and use of force, and racism in the criminal justice system in the U.S. during **Periods of Sessions** between 2014

[461] OHCHR, "USA: UN experts urge far-reaching reforms on policing and racism," OHCHR, February 26, 2021.
[462] African Union, "Statement of the Chairperson following the murder of George Floyd in the USA," African Union, May 29, 2020.
[463] Organization of the American States, *American Declaration of the Rights and Duties of Man*, adopted by the OAS on May 2, 1948.
[464] The American Declaration, along with the OAS Charter and the Statute of the IACHR "form the basis of the Committee's jurisdiction over States that have yet to ratify the American Convention on Human Rights. It is well-established that the general principles of the OAS Charter—to which all State Parties to the Charter are bound—are contained in and defined by the American Declaration." The Declaration recognizes a range of fundamental human rights, including many that are relevant to the use of force, discrimination, and access to justice. The U.S. has thus been subject to the jurisdiction of the Inter-American Commission since its ratification of the OAS Charter on June 19, 1951." (IACHR 2018).
[465] Even following negative judgements against the U.S. by the Inter-American Court of Human Rights, the U.S. administration has not followed through with recommendations, including in the case of *Felix Rocha Diaz v United States*.
[466] Terrence Rogers, "Using International Human Rights Law to Combat Racial Discrimination in the U.S. Criminal Justice System, 2011.
[467] IACHR, The *Situation of People of African Descent in the Americas*, December 5, 2011, OEA/Ser.L/V/II. Doc.62.

and 2017, on the Commission's own motion and at the request of the government of the U.S. and civil society organizations, including hearings on "Stand Your Ground in March 2014; "Reports of Racism in the Justice System of the U.S." in October 2014; "Criminal Justice and Race in the United States" in March 2015; "Reports of Excessive Use of Force by the Police against People of African Descent in the United States" in October 2015; and "Reports of impunity for extrajudicial killings in the United States" in December 2017.

The Commission also conducted a **Country Visit** to the U.S. in September 2015 to gather information on racial discrimination, policing, and human rights issues related to poverty. The groundbreaking report on the Commission's findings, "Police Violence Against Afro-descendants in the United States[468] released in 2018, analyzed racial disparities throughout the policing and criminal justice system, observing a "persistent situation of structural discrimination against African Americans in the United States," and in particular, "discriminatory policing practices" and widespread "issues of police brutality, excessive use of force, racially biased policing practices, and racial disparities that permeate virtually every part of the criminal justice system," representing "a clear threat to the human rights of African Americans." The Commission concluded by recommending systemic changes, including reparations for historic violations of human rights. In addition, it recommended that "government and police actions be executed in accordance with the obligations of non-discrimination and the principle of equality" and that the U.S. Government "take the necessary steps to reform domestic law to bring it in line with international law as regards the use of force, respecting the principles of legality, absolute necessity, and proportionality, and ensure that the protection against arbitrary deprivations of life applies to the entire State structure—including federal, state, and local government entities."[469]

On June 8, 2020, the **IACHR** issued a **Statement** expressing its "strong condemnation of the murder of George Floyd and repudiating structural racism, the systemic violence against Afro-Americans, impunity and the disproportionate use of police force," highlighting the necessity of structural reforms and measures, including "independent instances of police surveillance and control; as well as a community policing model that guarantees social participation and monitoring; activate training curricula for police, security and justice agents, focused on initial training and continuing education covering human rights, and conflict mediation and violence reduction with an ethnic-racial perspective."[470] The IACHR participated for the second time in the high-level segment of the UN Human Rights Council sessions and its 43rd Council Session. The president of the IACHR, Commissioner Joel Hernández, also took part in the Urgent Debate on racially inspired human rights violations, systemic racism, police brutality against people of African descent on June 17, and testified again during the 46th session of the Council as part of the oral update that the High Commissioner provided on the implementation of Res. 43/1.

[468] IACHR, "Police Violence Against Afro-descendants in the United States," IACHR, November 26, 2018, OEA/Ser.L/V/II. Doc.156/18.
[469] Ibid.
[470] IACHR, "The IACHR expresses strong condemnation for George Floyd's murder, repudiates structural racism, systemic violence against Afro-Americans, impunity and the disproportionate use of police force, and urges measures to guarantee equality and non-discrimination in the United States," IACHR, June 8, 2020.

On October 7, 2020, the Commission held a **Hearing** on Police Violence and Structural Racism in the United States at the **177th Period of Sessions**. The American Civil Liberties Union (ACLU) submitted written testimony, in which it urged the Commission to issue recommendations to the U.S. Government to "reverse recent actions that eliminate[d] or roll[ed] back federal oversight and investigation of alleged police killings and other misconduct," adding that "the Commission should continue its human rights monitoring of the situation, including through a follow-up fact-finding visit and consideration of other measures to ensure that the United States complies with its regional and international obligations requiring accountability for police killings and access to justice for victims."[471] A subsequent Hearing on Police Violence and Systemic Racism Against People of African Descent in the Americas was held at the **178th Period of Sessions** in December 2020.

In addition, the **European Union Parliament** adopted a Resolution on "The anti-racism protests following the death of George Floyd" on June 19, in which it "strongly condemned the horrific death of George Floyd in the US, asphyxiated by a white policeman when stopped by police in Minneapolis, as well as similar murders elsewhere in the world" and "called on the US government to take decisive action to combat racism and structural inequalities in the country." "Recalling that there was no place for racism and discrimination in our societies," it also "called on the Commission, the European Council and the Council to take a strong and decisive stance against racism, violence and injustice," and proposed measures to address the issue within the EU, including the establishment of a group of independent experts to draw up a European Code of Police Ethics and the organization of an anti-racism summit on combating structural discrimination in Europe, as well as a comprehensive strategy against racism and discrimination and an EU framework for national action plans against racism.

Analysis of Effectiveness of Mechanisms

Through the application of various mechanisms, the United Nations, in coordination with regional organizations, was able to apply pressure on the U.S. by bringing to light systemic injustices and discrimination in the criminal justice system. Due to a number of inhibiting factors discussed below, however, "excessive police violence against Black communities did not dwindle in the decades that separated the beating of Rodney King from the emergence of the movement for Black lives."[472] The effectiveness of the various UN and regional mechanisms can be analyzed in light of the number of enabling and inhibiting factors discussed below.

Enabling Factors

International reputation of U.S.

While an overriding narrative of American exceptionalism can be said to exist, irrespective of the particular moment in time, the U.S. has demonstrated that it places considerable weight on its reputation internationally, which has been greater under certain administrations and at different inflection points. In addition, the degree of U.S. engagement with the United Nations, including on issues of human rights, has often been related to the extent to which the administration at the time has viewed the rules based international order as advancing

[471] IACHR, Hearing on Police Violence and Structural Racism in the United States :177th Period of Sessions, October 7, 2020.

[472] Donney Rose, "What We Have Learned About Police Violence 30 Years After the Beating of Rodney King," The North Star, March 4, 2021.

U.S. interests. This is likely to be increasingly the case under the Biden administration, as it has "recommitted the United States to a foreign policy centered on democracy, human rights, and equality,"[473] adding that, "the effective use of multilateral tools is an important element of that vision, and in this regard, plans to reengage with the Human Rights Council,"[474] first with observer status, before applying for membership at the end of 2021. President Biden also recently stated his intentions for the U.S. to "lead not merely by the example of [its] power but by the power of [its] example,"[475] by "reasserting its global role in speaking up for human rights," and in his inaugural address, decried "the sting of systemic racism," adding that "the dream of justice for all will be deferred no longer."[476]

Coordination of UN and regional organizations

There was a significant level of coordination among international and regional organizations in June 2020, in response to the killings of George Floyd and Breonna Taylor, beginning with a statement by UN High Commissioner Bachelet's statements on May 28, followed by the Chairperson of the AU Commission Moussa Faki Mahamat's statement on May 29, High Commissioner Bachelet's statement on June 3, the town hall by UN Secretary-General Guterres on June 4, the joint statement of the UN Special Rapporteur and other Special Procedures mandate holders and Working Groups on June 5, the statement by the IACHR on June 8, and the Resolution by the EU on June 19, which likely contributed to the effectiveness and impact of their messaging. In addition, IACHR Commissioner, Joel Hernández Garcia, and AU Deputy Chairperson, Thomas Kwesi, took part in the Urgent Debate on racially inspired human rights violations, systemic racism, police brutality against people of African descent and violence against peaceful protests, held by the UN Human Rights Council on June 17 as well as subsequent UNHRC meetings.

Civil society organizations and Black Lives Matter movement

The most galvanizing factor has been civil society, led by the Black Lives Matter movement. Following the killing of George Floyd on May 25, 2020, protesters took to the streets in cities and towns across the U.S. and in over 40 countries around the world in a global movement, which has led to "a social change tipping point."[477] Over the course of several months, with protests held nearly every day, 15 to 26 million people in the U.S. alone participated in the demonstrations, making the protests the largest movement in the country's history.[478] "In addition, the international platform of Black Lives Matter has effectively put racial justice on the global agenda, which has led to greater transnational solidarity and coordination around exposing racial injustices."[479] Civil society groups have also played an integral role in challenging discriminatory law enforcement practices through advocacy, lobbying, monitoring, documentation, and engagement with the media, through organizations like the US Human Rights Network, the ACLU, Human Rights Watch, Amnesty International, the Southern Poverty Law Center, and the recently formed, International Commission of Inquiry on Systemic Racist

[473] The U.S. mission in Geneva sponsored an online discussion on March 17 on "addressing racial justice as a US foreign policy imperative."
[474] Antony J. Blinken, Secretary of State, "U.S. Decision To Reengage with the UN Human Rights Council," February, 8, 2021.
[475] Fred Kaplan, "The Power of Our Example: Biden's speech made clear that America can't lead until it shows why it's worth following, Slate, January 20, 2021.
[476] Sarah Todd, "Joe Biden is the first US president to call out white supremacy in inaugural address," Quartz, January 20, 2021.
[477] Larry Buchanan, Quoctrung Bui and Jugal K. Patel, "Black Lives Matter May Be the Largest Movement in U.S. History," New York Times, July 3, 2020.
[478] Ibid.
[479] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.

Police Violence against People of African Descent in the United States, a nationally-led commission convened by the International Association of Democratic Lawyers (IADL), the National Conference of Black Lawyers (NCBL), and the National Lawyers Guild (NLG), which following a series of hearings, will prepare a report of its findings for submission to OHCHR later this year. "Over the past 20 years, civil society organizations and other social movements pushing for accountability for human rights violations in the United States, have essentially put up a mirror, and exposed the hypocrisy and double standards in the country, which have made it more possible for the UN and regional organizations to be able to take on the serious issues of human rights."[480]

Inhibiting Factors

Lack of political will

The most significant challenge to implementing the reforms necessary for addressing discrimination in the criminal justice system has, up until recently, been the lack of political will by the U.S. government, which has been exacerbated by the fact that the issue has become highly politicized. In addition, there is the general sentiment that these issues should be handled internally, with the U.S. often asserting that its own domestic legislation is sufficient to comply with international treaties. Given the standing of the U.S. as the largest global power in a world that has largely been unipolar, little has been done to effectively challenge this on the international stage, particularly given the veto the U.S. wields within the Security Council and its influence on Member States in the General Assembly. Additionally, the UN does not have a country office presence in the U.S., despite the NYC-based UN Headquarters. As a result, international and regional organizations "have very limited tools vis à vis the United States."[481] In addition, engagement by the U.S. is not really systemic or institutionalized, so that "it is very much dependent on the orientation of whoever is in the White House."[482] The lack of political will by the U.S. increasingly became an issue under the Trump administration, which not only opposed U.S. obligations within the international system, but challenged the entire multi-lateral system, effectively pulling the U.S. out of a number of international organizations, treaties and accords, including the Paris Climate Agreement, the World Health Organization, and the Human Rights Council,[483] and threatening to pull the U.S. out of the World Trade Organization in 2020. Further, the U.S. under Trump failed to be in compliance with its obligations under the treaties it has ratified, neglecting to submit its required biennial reports to the CERD, the Human Rights Committee, and UN CAT. The Trump administration also ceased cooperation with UN special rapporteurs, denying them access to the U.S. by failing to respond to country visit requests.

The Biden administration, however, has indicated its intentions to "reengage immediately and robustly with the UN Human Rights Council,"[484] first as an observer before running as a candidate in October. Leading up to Council elections, the U.S. is likely "to face an examination by the organization of violations in its own country, including re-engagement around Resolution 43/1."[485] Secretary of State Antony

[480] Ibid.
[481] Ibid.
[482] Ibid.
[483] While reasons vary, the Trump Administration cited the Council's alleged bias against Israel and its covering for dictators as reasons for pulling the U.S. out the Human Rights Council.
[484] Antony J. Blinken, Secretary of State, "U.S. Decision To Reengage with the UN Human Rights Council," February, 8, 2021.
[485] Peter Splinter, "Advice for America's Return to the Human Rights Council, Starting With the Issue of Racism," Pass Blue, March 17, 2021.

Blinken, in a statement to the Council on February 24, "acknowledged systemic racism and economic injustice in the US and spoke of action by President Biden to tackle their root causes, adding that the US is "eager to find a more effective and inclusive way to put 'fighting racism' at the top of the global human rights agenda;"[486] however, "the administration's credibility on international human rights will be judged by how close it will match its rhetoric with concrete actions to advance human rights at home and abroad."[487] Plans for the U.S. to rejoin the Council in the fall, presents an opportunity for members of the Council and the General Assembly to work closely with the Biden administration to engage on these issues. The Council could use the momentum around the elections to work with the Biden administration to more effectively and inclusively put racism and discrimination "at the top of the global human rights agenda," including "treating the implementation of the resolution [43/1] as a process to address a common problem, manifested in different ways in different countries."[488] The recent Joint Statement on Racism at the Council's 46th Session led by the U.S., alongside over 155 co-sponsoring countries, signals that this could be a turning point for constructive international engagement toward "countering racism and racial discrimination, xenophobia, and related intolerance, and tackling racial inequality" "through solidarity and cooperation."[489] However, time will tell whether the Biden Administration's commitment to addressing discrimination within the U.S. criminal justice system will "just be more of the same human rights rhetoric,"[490] or whether the U.S. will in effect, "lead not merely by the example of [its] power but by the power of [its] example."[491]

Treaty Reservations, Understandings, and Declarations

Another inhibiting factor is the lack of implementation of the legal frameworks of the various UN treaties. When the U.S. ratified ICERD in 1994, it conditioned its ratification on a number of reservations, understandings, and declarations, including reservations on freedom of speech; private conduct; and the dispute resolution mechanism of the International Court of Justice (ICJ). It also submitted an understanding that CERD "shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments," as well as a declaration that the treaty is non-self-executing. The U.S. also made reservations to the ICCPR's provisions on the prohibition of capital punishment and cruel, inhuman or degrading treatment; understandings on provisions related to equal protection, the right to counsel, and the extension of the provisions to states; and declarations with regard to the treaty being non-self-executing and the derogation of rights during emergencies. In addition, the U.S. has not signed onto Article 14 of ICERD, the first Optional Protocol of the ICCPR, or Article 22 of the CAT, which prevents citizens from bringing claims under the treaties, thereby limiting their legal reach. As a result, the reservations are so broad that the commitment of the U.S. to the treaties "was largely a symbolic gesture to the international

[486] UN Human Rights Council, 46th regular session of the Human Rights Council, February to 24, 2021.
[487] France 24, "US to 're-engage' with UN rights council after Trump pullout," February 8, 2021.
[488] Peter Splinter, "Advice for America's Return to the Human Rights Council, Starting With the Issue of Racism," Pass Blue, March 17, 2021.
[489] UN Human Rights Council, *Joint Statement on Racism at the Human Rights Council 46th Session*, March 19, 2021.
[490] JoAnn Kamuf Ward and Jamil Dakwar, "Is There a New Era for Human Rights on the Horizon?" Just Security, March 19, 2021.
[491] Fred Kaplan, "The Power of Our Example: Biden's speech made clear that America can't lead until it shows why it's worth following, Slate, January 20, 2021.

community,"[492] with the enforcement mechanisms of the treaties having little to no effect in the U.S.

In the recent U.S.-HRC Joint Statement on Racism and in remarks at the UN General Assembly Commemorative Meeting for the International Day for the Elimination of Racial Discrimination on March 19, U.S. Ambassador to the UN, Linda Thomas-Greenfield, called on all countries to ratify and implement the ICERD.[493] In light of this, the Committees of the various treaty bodies should encourage the U.S. to fully implement its obligations under the treaties, including adopting implementing legislation and establishing appropriate mechanisms to ensure their implementation throughout its jurisdiction, including at federal, state and local levels. The Committees should also encourage the U.S. to reconsider adopting Article 14 of the ICERD, the first Optional Protocol of the ICCPR, and Article 22 of the CAT. In addition, the U.S. should be encouraged to ratify other international treaties, including the ICESCR and CEDAW, as well as regional treaties, including the American Convention on Human Rights; Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance; and Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. In the event that the Biden administration were to support ratification of the treaties, however, this could still prove challenging given "the likely difficulty in securing the votes in the Senate."[494]

Narrow interpretation of discrimination

The U.S. has an extensive constitutional and legislative framework, including the Civil Rights Act of 1964[495] and the fourteenth amendment of the Constitution, which contains an Equal Protection Clause to address intentional discrimination; however, it lacks adequate protections and remedies related to the racially disparate impact of "neutral" policies and practices due to its narrow definition of racial discrimination. This narrow judicial interpretation of racial discrimination continues to be a major impediment towards full implementation of its obligations under the various treaties, as racial discrimination is understood to mean both intentional and de-facto discrimination under the ICERD, in accordance with the disparate impact analysis which allows evidence of mere discriminatory effect or impact to support a claim of racial discrimination. "Discrimination within the criminal justice system and affirmative obligations related to socio-economic rights are connected; you cannot address abuses within the criminal legal system, particularly racial disparity, without understanding the lack of socio-economic rights that have historically been denied to black people and other minorities who have been subject to systemic racism."[496] Due to narrow judicial interpretations of discrimination and the fact that the various international treaties are non-self-executing, U.S. citizens, therefore, have no legal recourse for claims based on racially discriminatory impacts or effects. The Committees should encourage the U.S. to overturn *Washington v. Davis* and adopt a broad definition of discrimination in

[492] Audrey Daniel, "The Intent Doctrine and CERD: How the United States Fails to Meet Its International Obligations in Racial Discrimination Jurisprudence," DePaul Journal for Social Justice, January 2016.
[493] UN General Assembly, Commemorative Meeting for the International Day for the Elimination of Racial Discrimination, March 19.
[494] If Congress were to consider ratifying the various treaties, the Committees should encourage the U.S. to sign without RUDs, as it is better "not to have a treaty that is signed and ratified, with so many reservations that they will render it meaningless." Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.
[495] It is also notable that while the Civil Rights Act prohibits discrimination, it has never been enforceable against the U.S. federal government.
[496] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.

compliance with ICERD Article 1 and General Recommendation XI, with reference to the disparate impact standard prohibiting racial discrimination in all its forms, including practices and legislation that may not only be discriminatory in purpose, but also discriminatory in effect. Pursuant to its obligations under ICERD, the U.S. should "review governmental, national and local policies" for discriminatory impact and amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Lack of data

As part of their obligations under ICERD, States are required to collect and disaggregate data related to government policies and practices.[497] While the U.S. collects substantial data at the federal level by race, it is often difficult to access at the state level or within particular agencies. As a result, there is no national disaggregated data on civilian deaths by police. The Department of Justice has been required to ensure the collection and publication of nationwide statistics on police use of force since the passage of the Violent Crime Control and Enforcement Act (1994); however, it has not systematically done so. Consequently, no one knows exactly how many civilians are killed by police, but estimates range from 400 to over 1,000 people each year.[498] The failure of the U.S. government to track this information reinforces the lack of accountability. The collection of data would contribute to "law enforcement agents becoming more thoughtful about their decision-making, more accountable to the persons they are targeting and subject to stronger supervision and management. In addition, it would allow for scrutiny of individual encounters and of broader patterns and trends in the use of police tactics." It would also provide an opportunity to measure levels of racial disparity and to consider strategies for addressing biases."[499] An additional issue is the lack of transparency that is often exhibited in cases against law enforcement, because of the grand jury system and the way in which the indictment process is conducted, so that information shared with the victims of police violence and the public is very limited.[500]

The Department of Justice should ensure the systematic collection and publication of nationwide statistics on the use of force by police, in accordance with the Violent Crime Control and Enforcement Act (1994) and the Death in Custody Act (2014). The data should be collected in accordance with data protection regulations and privacy guarantees, and should be disaggregated on the basis of race, ethnicity, nationality, religion, gender identity, sexual orientation, age, and status. Data collected should be used by agencies to monitor the performance of officers; to conduct analyses, including intersectional analyses; to identify discriminatory patterns in policing; and to inform internal accountability measures. Congress should also pass the Police Reporting Information, Data, and Evidence Act. A centralized database of records of police misconduct and accountability measures should also be made available to the public and police departments.

[497] CERD's General Recommendations IV and XXIV elaborate on the extent of this obligation.
[498] Washington Post, "How many police shootings a year? No one knows," Washington Post, September 8, 2014.
[499] UN General Assembly, *Programme of activities for the implementation of the International Decade for People of African Descent*, August 30, 2018, A/73/354.
[500] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021. Following the Freedom of Information Act, open records requests and the collection of data highlighting systemic bias led to the end of the NYPD stop and frisk program and greater oversight.

Lack of international legal standards governing the use of force

The first measure to securing the right to life, according to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, is the establishment of an appropriate legal framework for the use of force by police, which sets out the conditions under which force may be used in the name of the State and ensures a system of responsibility where these limits are transgressed. "Enacting an adequate domestic legal framework for such use of force by police officials is thus a State obligation, and States that do not do this are in violation of their international obligations."[501] The UN Code of Conduct for Law Enforcement Officials (CLLEO) (1979)[502] and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) (1990)[503] sets out the international principles and requirements which govern the use of force in law enforcement, which are: (1) legality, (2) necessity, (3) proportionality, and (4) accountability, with Article 9 of the CLLEO stating "law enforcement officials may use force only when necessary and to the extent required for the performance of their duty,"[504] and Principle 9 of the BPUFF stipulating that law enforcement officials should only use lethal force as a last resort and in self-defense or the defense of others against the imminent threat of death or serious injury. In addition to setting out the conditions under which force may be used in the name of the State, the principles also ensure a system of accountability where these limits are transgressed. While these norms are not legally binding, the Special Rapporteur has observed that the Code of Conduct and the Basic Principles are rigorous applications of legal rules that States have otherwise assumed under customary or conventional international law.[505]

The U.S. legal framework regulating the use of force by law enforcement officials, however, does not comply with these international standards, as the Supreme Court has established, in a series of cases, that the standard for use of force is one of "reasonableness," even while conceding in *Graham v. Connor*, that the reasonableness test is "not capable of precise definition," nor does it "set clear parameters of what constitutes a justifiable use of force."[506] Further the reasonableness standard does not distinguish between the use of lethal and non-lethal force, nor does it clearly establish absolute necessity and proportionality as guiding principles.[507] As a result, "the reasonableness standard' gives tremendous deference and discretion to law enforcement officers in deciding whether to use lethal or non-lethal force,"[508] which in the end makes it almost impossible to hold officers accountable. In addition, the doctrine of qualified immunity "often shields officers from liability for many constitutional violations, including fatal use of force."[509] Moreover, the "reasonableness standard allows for the disproportionate and discriminatory targeting and killing of black

[501] UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns*, August 30, 2018, A/HRC/26/36.
[502] UN General Assembly, *Code of conduct for law enforcement officials*, December 17, 1979, A/RES/34/169.
[503] UN General Assembly, *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 1990, A/RES/45/166.
[504] UN General Assembly, *Code of conduct for law enforcement officials*, December 17, 1979, A/RES/34/169.
[505] UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns*, August 30, 2018, A/HRC/26/36.
[506] Graham v. Connor, 490 U.S. 386, 1989.
[507] IACHR, "African Americans, Police Use of Force, and Human Rights in the U.S.," IACHR, November 26, 2018.
[508] Stefan Newton, "Excessive use of force against blacks in the United States of America," International Journal of Human Rights, 22:8, 2018.
[509] American Civil Liberties Union (ACLU), "Written Submission of the American Civil Liberties Union (ACLU) To the Office of the United Nations High Commissioner for Human Rights (OHCHR)," December 15, 2020.

Americans."[510] Issues related to the use of force therefore cannot be viewed in isolation, but must be considered "within the context of the wider racially discriminatory and biased policing and criminal justice system."[511]

The Committees should encourage the U.S. to enact legislation requiring federal, state and local law enforcement agencies to review and amend their policies regarding the use of lethal force, ensuring they are in line with standards in the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement. The U.S. should conduct a thorough review and reform of oversight mechanisms and remove qualified immunity to ensure accountability in cases of violations. Congress should also pass the End Racial and Religious Profiling Act (2019), the George Floyd Justice in Policing Act (2021), and the Breath Act (2020) to prohibit law enforcement personnel and agencies from engaging in racial, ethnic, and religious profiling. In addition, law enforcement officials should also be trained in methods for effective de-escalation. Considering that the use of force is often applied in racially discriminatory ways, CERD or the Human Rights Committee, should consider introducing a General Recommendation, General Comment, or in coordination with the General Assembly, a legally binding Optional Protocol to address implementation gaps around this issue.

Lack of independent oversight body

Another significant factor is the lack of independence of the authorities that conduct investigations into police violence, as they are often not separate or independent from the police departments involved in the incidents. As a result, they often lack the impartiality required to make these difficult decisions.[512] In addition, prosecutors are less likely to file charges against police officers than civilian suspects, and even in rare situations where investigations have led to charges, presiding juries and grand juries have frequently demonstrated bias in favor of the police, which is difficult to address through legislation.[513] Furthermore, there is no independent national oversight mechanism of the federal government that has the power to investigate violations or allegations of rights violations. "Without independent investigations, it makes it very difficult to hold police accountable. There is a significant correlation between safeguards, oversight, accountability and the way police behave. When law enforcement finds itself above scrutiny or above the law, there will be little accountability. Where this is the case, you will find more occurrences of police abuses."[514] While the Civil Rights Division of the Department of Justice (DOJ) can investigate and bring suits against agencies engaged in discriminatory practices, it was "essentially decimated in terms of its ability and resources to conduct pattern-or-practice investigations of police violence under the Trump administration."[515] In addition, the DOJ has not always functioned independently from the other branches of the U.S. government, which poses issues for its impartiality. The U.S. Commission on Civil Rights also does not have a mandate to conduct investigations into human rights violations. As a result, "without an independent oversight body, individuals are left with the will of the administration and the political capital that they are willing to spend on engaging around these issues and in

[510] Stefan Newton, "Excessive use of force against blacks in the United States of America," International Journal of Human Rights, 22:8, 2018.
[511] Ibid.
[512] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.
[513] Ibid.
[514] Ibid.
[515] Ibid.

meeting the human rights obligations of the U.S."[516]

The Committees should continue to recommend that the U.S. establish an independent national human rights institution. The establishment of the commission could be done by restructuring and strengthening the mandate of the existing U.S. Commission on Civil Rights, ensuring its independence and transparency. The Commission should examine and produce recommendations on policing, including a nationwide review of standards on the use of lethal force, as well as a thorough review and reform of oversight and accountability mechanisms. In line with the Vienna Declaration and Programme of Action, the Committees should also encourage the U.S. to adopt a national action plan to reduce racial disparities, which should include proactive policies, clear benchmarks, a budget allocation, and measurable indicators. This should include implementation of the 2015 recommendations of the President's Task Force on 21st Century Policing. In addition, it should encourage states to adopt action plans and create a federal inter-agency working group, which includes civil society participation, to oversee implementation.[517] There should also be "national level commitments and plans of action to implement the recommendations that will be included in the High Commissioner's report under UNHRC Res. 43/1 focusing on dismantling systemic racism and combating police violence, in a way that would complement CERD and UPR reviews." In addition, "there should be effective monitoring and enforcement mechanism to ensure follow-up and robust engagement and implementation from governments."[518]

[516] Jamil Dakwar, Director, ACLU Human Rights Program, personal interview, March 3, 2021.

[517] The U.S. has recently noted in its March 4, 2021 report and at the March 17, 2021 presentation at the UNHRC in response to its third UPR, however, that a national action plan on racial justice is "not currently contemplated," nor is the establishment of a national human rights institution. JoAnn Kamuf Ward and Jamil Dakwar, "Is There a New Era for Human Rights on the Horizon?" Just Security, March 19, 2021.

[518] Jamil Dakwar, ACLU Human Rights Program, personal interview, April 19, 2021.

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Discrimination Against the Roma

Context

The Roma[519] comprise Europe's largest minority group, with a population estimated at 10 to 12 million people.[520] Over the centuries, Roma have faced persistent discrimination, marginalization and forced assimilation within Europe, as well as in the Americas. During World War II, the Roma were persecuted, with between 300,000 to 500,000 individuals of Romani descent killed during the Porajmos genocide.[521] Intolerance and violence against the Roma continues to this day, with many Roma subjected to harassment and racially motivated attacks, including indiscriminate use of force and arbitrary detainment by law enforcement officials, with five out of 10 Roma reporting experiences of ethnic discrimination in some form,[522] and 30% of Roma reporting that they have experienced hate-motivated harassment. In addition, discriminatory de jure and de facto legislation related to citizenship and naturalization, has contributed to the statelessness or risk of statelessness of tens of thousands of Roma.

The widespread social and economic exclusion of Roma has also led to their continued marginalization and high rates of extreme poverty, with nine out of 10 Roma in Europe living below national poverty lines.[523] Consequently, Roma continue to face poor housing, often in remote areas with limited infrastructure, and unequal access to justice systems, employment, healthcare, and education, as Roma are often segregated in poor quality schools or are placed in special needs schools.[524] In addition, "one-third of surveyed Roma were unemployed, of which 74 percent said they were looking for paid work, and as of 2011, only 15 percent of the young Roma population had completed upper-secondary education and almost 60 percent of those between 16 and 24 were not in employment, education or training."[525] Due to the pervasive and deeply-rooted structural discrimination and extreme marginalization historically experienced by Romani communities, the racism experienced by the Roma can be seen to represent a specific form of racism—anti-Gypsyism.[526] "The time has come for anti-Gypsyism to gain wider recognition. We are not just talking about discrimination – we are talking about centuries of segregation and marginalization and genocide towards our community."[527] In addition, to racial discrimination, Roma women are often subject to multiple, intersecting forms of discrimination, "with 65 percent of young Roma women, compared to 52 percent of

[519] The Romani and related ethnic groups are a diverse set of peoples and communities living in Europe, the Americas and parts of Africa. The term "Roma" was first chosen at the Inaugural World Romani Congress in 1971, and is now widely used as a of a diverse range of communities. who describe themselves not only as Roma but also as Gypsies, Travellers, Manouches, Ashkali, Sinti and other titles (ILO 2016).

[520] European Commission, "Roma equality, inclusion and participation in the EU," European Commission, 2021.

[521] Open Society Foundations, "What Is the Roma Genocide?" Open Society Foundations, May 2019.

[522] According to a major survey of 11 EU Member States carried out in 2011, European Union Agency for Fundamental Rights (FRA) and UNDP: The situation of Roma in 11 EU Member States – Survey results at a glance, 2012.

[523] Ibid.

[524] Decade of Roma Inclusion Secretariat Foundation. Roma Inclusion Index 2015, Budapest, 2015.

[525] FRA and UNDP: The situation of Roma in 11 EU Member States – Survey results at a glance, 2012.

[526] The Roma community has been pushing for greater recognition of anti-Gypsyism as a specific form of racism due to the historical and deeply-rooted, structural discrimination experienced by the Roma. "This is something that I would like to be better understood, like the word anti-Semitism, which is now widely accepted, because racial discrimination against Roma is also a specific type of racial discrimination. This is something that is missing from a clear understanding of why Roma are treated the way they are and why this is happening exactly to Roma. People should pay attention to anti-Gypsism when viewing the position of Roma and read a bit more about the history of the Roma community before starting to judge just by the situation that they see now in front of their eyes."[526] Senada Sali, personal interview, February 26, 2021.

[527] Senada Sali, Legal Manager, European Roma Right Centre, personal interview, February 26, 2021.

young Roma men, not in employment, education or training."[528]

Response to Discrimination

UN Response

The response of the United Nations to-date has primarily been through the work of its treaty bodies and the Human Rights Council, including Special Procedures mandate holders.

Treaty bodies

Every State within Europe has ratified most of the core international human rights treaties, including the ICERD, ICCPR, ICESCR, CEDAW, and CAT,[529] and according to obligations under these treaty bodies, governments are required to submit periodic reports. The work of **Committee on the Elimination of All Forms of Racial Discrimination (CERD)**, in particular, has paid particular attention to the issue of anti-Roma discrimination during its dialogue with States parties,[530] and "has been very important in moving forward the understanding that anti-Romani sentiment is racism and anti-Romani action is racial discrimination in the sense of ICERD."[531] Beginning in the mid-90s, following a rise in anti-Roma sentiment, violent pogroms in Romania, the forced expulsion of Roma from many Western European countries, and the ethnic cleansing of Roma in Kosovo, CERD focused significant attention on anti-Roma discrimination, often informed by information of violations brought to the CERD by civil society organizations, including the European Roma Rights Centre (ERRC). During this period, CERD focused on racially motivated violence against the Roma, including by law enforcement, as well as the segregation of the Roma in schooling and housing, citing the failure of the justice systems of member states to address these violations. In particular, during CERD's review of the Czech Republic in 1998, it expressed concern at these issues, and to the 1993 Czech citizenship law, which due to its discriminatory effects, rendered thousands of Roma de facto stateless, with the Czech Republic subsequently having taken steps to mitigate the negative effects of the law.

In recent years the CERD has "strengthened its mandate of protecting group rights by identifying specific categories of people in need of further protection,"[532] in particular through its General Recommendations. In August 2000, the Committee held for the first time in its history, a thematic discussion on the issue of discrimination against the Roma, with participation of various UN bodies and NGOs. Following the meeting, the Committee issued General Recommendation XXVII on Discrimination Against Roma (2000),[533] noting that Roma communities are "among those most disadvantaged and most subject to discrimination in the contemporary world," outlining a number of measures that relevant states parties should take, including enacting or amending legislation "to eliminate all forms of racial discrimination against Roma." In particular, it called for measures to ensure that legislation regarding citizenship and naturalization does not

[528] FRA and UNDP: The situation of Roma in 11 EU Member States – Survey results at a glance, 2012.

[529] There is also ratification by all countries in Europe of the CRPD and the CRC. The only treaties not ratified by every country in Europe are the ICRMW and the ICPPED.

[530] Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights, *Prevention of Discrimination Against and the Protection of Minorities*, September 19, 2000, E/CN.4/Sub.2/2000/SR.19.

[531] Claude Cahn, "CERD and discrimination against Roma," in David Keane and Annapurna Waughray, Fifty Years of the International Convention on the Elimination of All Forms of Racial Discrimination: A Living Instrument, Manchester University Press, 2017.

[532] Joshua Castellino, "How effective has CERD been in protecting minorities?" in David Keane and Annapurna Waughray, Fifty Years of the International Convention on the Elimination of All Forms of Racial Discrimination: A Living Instrument, Manchester University Press, 2017.

[533] UN Committee on the Elimination of All Forms of Racial Discrimination, General Recommendation No. 27 on Discrimination Against Roma, adopted by the Committee in 2000.

discriminate against members of Roma communities; to protect Roma against racial violence, including illegal force by the police; as well as measures to prohibit discrimination in employment and to address segregation in housing and education. The recommendation also incorporated gender-awareness, recognizing in all measures adopted, "the situation of Roma women, who are often victims of double discrimination."[534] Notably, the Committee observed that the adoption of these measures should take into account the specific situations of members of Roma communities.

The Committee has subsequently continued to address issues of anti-Roma discrimination in its **Concluding Observations**, with recommendations to state parties becoming increasingly detailed and concrete.[535] Beginning in the mid-2000s, CERD, with the Human Rights Committee of the ICCPR, CEDAW, and UN CAT, also began bringing attention to the forced sterilization of Romani women in the Czech Republic, Hungary, and Slovakia, with CERD noting with concern that "the State has not taken sufficient and prompt action to establish responsibilities and provide reparation to the victims," recommending that "the Czech Republic take strong action, without further delay, to acknowledge the harm done to the victims and take all necessary steps to facilitate victims access to justice and reparation."[536] More recently, in its 2013 Concluding Observations following the review of Slovakia, the Committee drew the attention to the lack of effective investigation by the State party regarding forced sterilization and the lack of prosecution for those responsible, calling on the State party to fully implement the three judgements of the European Court of Human Rights and ensure full reparation and compensation for all victims of these practices. In addition, it "encouraged the State party to adopt appropriate measures, including the implementation of the 2012 Decree related to the cases of illegal sterilization of women."[537]

Another issue raised by the Committee was the forced expulsion of Roma by Western European countries. In its Concluding Observations to France's Periodic Report in 2010, it rebuked the government "for its crackdown on Roma" as thousands of Roma had been collectively sent to Romania, their home countries "without the free, complete and informed consent of all the individuals concerned." The Committee urged the government to "avoid collective repatriations and endeavour to find lasting solutions to issues related to Roma, with full respect for their human rights."[538] In addition, the Committee noted with concern "the difficulties faced by travellers, particularly regarding their freedom of movement, the exercise of the right to vote, and access to education and decent housing."[539] Cases of the expulsion of Roma from Denmark, Germany, Italy and Sweden were also reported during this time.[540] In addition, discrimination against Roma features to a certain extent among issues raised under CERD's **Early Warning and Urgent Action** procedures, with the Committee issuing

[534] Ibid.
[535] Claude Cahn, "CERD and discrimination against Roma," in David Keane and Annapurna Waughray, Fifty Years of the International Convention on the Elimination of All Forms of Racial Discrimination: A Living Instrument, Manchester University Press, 2017.
[536] UN Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: Czech Republic*, UN Doc. CERD/C/CZE/CO/7, March 2007.
[537] UN Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: Slovakia*, UN Doc. CERD/C/SVK/CO/9–10, 2013.
[538] UN Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: France*, CERD/C/FRA/CO/17-19, September 23, 2010.
[539] Ibid.
[540] UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai*, May 24, 2011, A/HRC/17/40.

letters to the governments of the Czech Republic, Italy, Slovakia and the United Kingdom in cases concerning Roma.[541]

In addition, under ICERD Article 14 related to the **Individual Complaints procedure**, the Committee has adjudicated a number of cases brought by Roma against member States. CERD's first finding of a violation was in August 2000, in the case of Anna Koptova v. Slovakia,[542] where the Committee found the Municipal Council of Rokytovce's resolution, expressly forbidding Romani families from settling in the village and threatening them with expulsion, a violation of Article 5(d)(i). CERD again found Slovakia in violation of ICERD provisions in March 2005, in the case of L.R. et al. v. Slovakia.[543] The case concerned the actions of the municipality of Dobsina, which endorsed a discriminatory petition, consequently cancelling its resolution to build low-cost housing for local Roma. The Committee also found the State party in violation of articles 5 (f) and 6, in the case of Mr. Dragan Durmic v Serbia and Montenegro,[544] where a Romani man was refused entry into a public space based on his ethnicity. More recently, in 2016, in the case of V.S. v Slovakia,[545] the Committee found Slovakia in violation of article 5 (e) (i) of the Convention by failing to guarantee equality with respect to the right to work of a Romani woman who had applied to a teaching position at a public elementary school in Revúca.

The **Human Rights Committee** of the ICCPR has also adjudicated a number of cases involving the forced eviction and demolition of housing of Roma communities, with officials often using disproportionate force against inhabitants, including in the cases of Antonios and Chrysafo Georgopoulos v Greece (2010),[546] Liliana Assenova Naidenova et al. v Bulgaria (2014),[547] S. I. D. et al. v Bulgaria (2014),[548] and "I Elpida" v Greece (2017).[549] In these cases, the Committee concluded that the eviction of the communities, without a prior solution for relocating the settlements, constituted arbitrary and unlawful interference with their homes and family lives, which was in violation of articles 17 and 23 of the Covenant, "calling on the State parties 'to refrain from executing the eviction and demolition orders so long as satisfactory replacement housing [was] not immediately available."[550] In the 2014 case of Claude Ory v France,[551] the Committee found the requirement of Roma to carry travel cards, according to which they are subject to regular police checks, as constituting legally sanctioned discrimination and an infringement on the right to liberty of movement within the country, provided for in article 12 of the Covenant. The Committee also addressed a number of cases involving police brutality and excessive use of force against Roma, including in cases of the Mr. Andreas Kalamiotis v Greece (2008)[552] and Nikolaos Katsaris v Greece (2012),[553] where the Committee concluded that the State party had "failed in its duty to promptly,

[541] See for example CERD, Concluding Observations: Slovakia (2009) and CERD, Concluding Observations: France (2013).
[542] Anna Koptova v. Slovakia (2000), CERD Communication No. 13/ 1998, UN Doc. CERD/ C/ 57/ D/ 13/ 1998.
[543] L.R. et al. v. Slovakia (2005), CERD Communication No. 31/ 2003, UN Doc. CERD/ C/ 66/ D/ 31/ 2003.
[544] Mr. Dragan Durmic v. Serbia and Montenegro (2006), Communication No. 29/2003, U.N. Doc. CERD/C/68/D/29/2003.
[545] V.S. v Slovakia (2016), CERD Communication No. 56/ 2014, UN Doc. CERD/C/88/D/56/2014.
[546] Antonios Georgopoulos, Chrysafo Georgopoulou and their seven children v Greece (2010), CCPR/C/99/D/1799/2008.
[547] Liliana Assenova Naidenova et al. v Bulgaria (2014), CCPR/C/106/D/2073/2011.
[548] S. I. D. et al. v Bulgaria (2014), CCPR Communication, UN Doc. CCPR/C/111/D/1926/2010.
[549] "I Elpida" v Greece" (2017), CCPR Communication, UN Doc. CCPR/C/118/D/2242/2013.
[550] Ibid.
[551] Claude Ory v France (2014), CCPR Communication, UN Doc.CCPR/C/110/DR/1960/2010.
[552] Mr. Andreas Kalamiotis v Greece (2008), CCPR Communication, UN Doc. CCPR/C/93/D/1486/2006.
[553] Nikolaos Katsaris v Greece (2012), CCPR Communication, UN Doc. CCPR/C/105/D/1558/2007

thoroughly, and impartially investigate the claims,"[554] finding a violation of its obligations under article 2, paragraph 3, in conjunction with article 7 of the Covenant.

The **UN Committee Against Torture (CAT)** has also found Serbia and Montenegro in violation of its Convention in several cases involving excessive use of force by law enforcement officials, interpreted in the context of systematic police brutality against the Roma. In the cases of Mr. Dragan Dimitrijevic (2002),[555] Mr. Danilo Dimitrijevic (2005),[556] and Mr. Jovica Dimitrov (2005),[557] the Committee found that the situations constituted "torture within the meaning of article 1 of the Convention," in connection with articles 2;12;13; and 14, as "there was ample evidence that acts of torture and/or cruel, inhuman and degrading treatment or punishment had been committed,"[558] adding that the State party authorities had failed to conduct prompt, impartial and comprehensive investigations into the incidents at issue. The Committee also found the Republic of Serbia in violation of the Convention in relation to excessive use of force by police during the forced eviction of Roma from a settlement in the Municipality of New Belgrade in 2009 in the case of Mr. Besim Osmani v Republic of Serbia (2009).[559] In the case of Hajrizi Dzemajl et al. v Federal Republic of Yugoslavia (2002),[560] where law enforcement officials failed to provide adequate protection against racially motivated attacks and the burning and destruction of Romani homes and property during the 1995 pogrom in Podgorica, Montenegro, the Committee considered that the pogrom had been committed with the acquiescence of police and therefore constituted a violation of articles 16, paragraph 1, 12 and 13 of the Convention by the State party.

The **Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)** has been a particularly effective forum for addressing cases of intersectional discrimination against Romani women, placing added penalties on cases involving multiple discriminations.[561] In the case of A.S. v. Hungary (2006) involving the forced sterilization of a Romani woman,[562] the Committee found that because the sterilization surgery was performed without her full and informed consent, her rights under articles 10 (h); 12; and 16, paragraph 1 (e) of the Convention were violated. In addition, the Committee also highlighted the issue in its concluding observations in 2006 and 2010, calling on the Czech Republic to "financially compensate the victims of coercive or non-consensual sterilizations"[563] More recently, in cases involving the forced evictions of a number of pregnant Romani women in North Macedonia— S.N. and E.R. v North Macedonia (2020)[564] and L.A. et al. v North Macedonia (2020)[565]—the Committee revealed a "violation of the authors' rights under article 14 (d) of the Convention," calling on the State party to "provide

[554] Ibid.
[555] Mr. Dragan Dimitrijevic v Serbia and Montenegro (2002), CAT Communication, UN Doc. CAT/C/33/D/207/2002.
[556] Mr. Danilo Dimitrijevic v Serbia and Montenegro (2005), CAT Communication, UN Doc. CAT/C/35/D/172/2000.
[557] Mr. Jovica Dimitrov v Serbia and Montenegro (2005), CAT Communication, UN Doc. CAT/C/34/D/171/2000.
[558] Ibid.
[559] Mr. Besim Osmani v Republic of Serbia (2009), CAT Communication, UN Doc. CAT/C/42/D/261/2005.
[560] Hajrizi Dzemajl et al. v Federal Republic of Yugoslavia (2002), CAT Communication, UN Doc. CAT/C/29/D/161/2000.
[561] Senada Sali, Legal Manager, European Roma Right Centre, personal interview, February 26, 2021.
[562] A.S. v. Hungary (2006), CEDAW Communication, UN Doc. CEDAW/C/36/D/4/2004.
[563] CEDAW Communication, UN Doc. CEDAW/C/CZE/CO/3 and CEDAW Communication, UN Doc. CEDAW/C/CZE/CO/5.
[564] S.N. and E.R. v North Macedonia (2020), CEDAW Communication, UN Doc. CEDAW/C/75/D/107/2016.
[565] L.A. et al. v North Macedonia (2020), CEDAW Communication, UN Doc. CEDAW/C/75/D/110/2016.

adequate reparations, including the recognition of the material and moral damages they suffered due to inadequate access to housing and health care during their pregnancies aggravated by their evictions."[566]

Human rights council

The **Human Rights Council** and its **Special Procedures mandate holders** have also played a significant role in advancing Roma rights. In 1992, the **Commission on Human Rights** (which preceded the Human Rights Council) issued resolution 1992/65 entitled "Protection of Roma (Gypsies)," calling on "States to adopt all appropriate measures in order to eliminate any form of discrimination against the Roma."[567] During the 19th meeting of the **Sub-Commission on the Promotion and Protection of Human Rights** in 2000, which focused on the Prevention of Discrimination against and the Protection of Minorities, with particular discussion on the situation of the Roma, one Committee member noted that the "Roma question—one of the most sensitive issues ever tackled by the Sub-Commission—was finally beginning to receive the attention it deserved," with another member adding that "a concerted effort was needed by Governments, NGOs and Roma leaders to begin addressing the problem of the widespread discrimination and violence facing the Roma throughout Europe."[568] Following the meeting, the Sub-Committee adopted the Resolution 2000/19 on the human rights problems and protection of the Roma.[569] In 2014, the Council passed another Resolution on the Protection of the Roma, "recognizing the existence of anti-Gypsyism as a specific form of racism and intolerance," considering that the "Roma have faced, for more than five centuries, widespread and enduring discrimination, rejection, social exclusion and marginalization," with the Council condemning "unequivocally the persistent manifestations of racism, racial discrimination, xenophobia and related intolerance against Roma, including violence, stigmatization and social exclusion."[570]

Roma have also featured prominently in the **Universal Periodic Reviews** of States before the Human Rights Council, with a number of Reviews addressing their persistent discrimination and marginalization, with a report on Minority Issues in the First Cycle of the Universal Periodic Review by the Special Rapporteur on minority issues, noting that "over 25 percent of all minority rights recommendations in the review referred to the situation of Roma."[571] The issue of forced sterilization, in particular, has been raised during the Universal Periodic Review of several States, including the Czech Republic, Hungary, and Slovakia.

In terms of the work of **Special Procedures mandate holders**, the **Special Rapporteur on minority issues** has had an integral role in focusing significant attention on anti-Roma discrimination, regularly undertaking country visits, monitoring cases of concern through communications procedures, and issuing press releases and thematic and country reports related to the human rights of the Roma, including thematic reports on

[566] Ibid.
[567] UN Commission on Human Rights, "Resolution on the Protection of Roma (Gypsies)," adopted on Mar 4, 1992, E/CN.4/RES/1992/65.
[568] Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights, *Prevention of Discrimination Against and the Protection of Minorities*, September 19, 2000, E/CN.4/Sub.2/2000/SR.19.
[569] Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights, "Resolution on the human rights problems and protection of the Roma," Resolution 2000/19, adopted on September 19, 2000.
[570] UN Human Rights Council, "Resolution on the Protection of the Roma," adopted on July 14, 2014, A/HRC/RES/26/4.
[571] UN Human Rights Council, "Minority Issues in the First Cycle of the Universal Periodic Review (UPR): An analysis by the UN Special Rapporteur on minority issues, Rita Izsák," September 2014.

citizenship;[572] hate speech and incitement to hatred against minorities in the media;[573] in addition to the reports of the Special Rapporteur's missions to France; Greece; Bulgaria; Hungary; Ukraine; and Bosnia and Herzegovina[574] and Communications letters sent to States. Additionally, the Special Rapporteur has conducted a number of Studies on the Protection of the Roma, which were informed by a survey of States and National Human Rights Institutions (NHRIs). This included a Global Study on the situation of Roma worldwide (2015),[575] which applied a minority rights-based approach to the protection and promotion of the rights of the Roma and called attention to anti-Gypsyism as a specific form of racism, underlying the deeply-rooted structural discrimination and extreme marginalization historically experienced by the Roma. This Report was followed by a Study on the Situation of Roma in the Americas in 2016,[576] which highlighted challenges faced by Roma communities and overarching thematic areas of regional concern.

The **Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance** has also brought significant attention to the issue, including in UNHRC Resolution 68/150, which emphasized the persistence of persecution, racial violence and xenophobic crimes targeting vulnerable groups, including the Roma.[577] The Special Rapporteur also regularly addresses challenges facing Roma in country reports,[578] and pursuant to the Commission on Human Rights Resolutions 1993/20 and 1999/78, carried out a regional mission to Hungary, the Czech Republic and Romania in September 1999, motivated by allegations of "systematic discrimination against the Roma citizens of these countries and frequent acts of violence against them by members of extreme right organizations and the police."[579] The regional mission culminated in the February 2000 report to the Commission, which also focused on the denial of asylum to Roma asylum-seekers in Western Europe. In 2011, the Special Rapporteur reported on the causes and consequences of racism against Roma, observing that "despite the wide range of measures taken by States, the Roma continue to be discriminated against in a number of areas, noting the reasons for the failure to eliminate racism and intolerance against the Roma, including the lack of participation of Roma in decision-making processes and implementation of policies and legislation targeting Roma. In addition, the report observed the structural dimension of the racial discrimination they face, stemming from injustices perpetrated against the Roma over centuries, which created persistent structural inequalities that are deeply rooted in State institutions. "Indeed, Roma are confronted with an institutionalized discrimination reflected both in legislation, policies and administrative measures, and in the discriminatory attitudes of State

[572] UN Human Rights Council, "Report of the independent expert on minority issues, Gay McDougall," February 28, 2008, A/HRC/7/23.
[573] UN Human Rights Council, "Report of the Special Rapporteur on minority issues, Rita Izsák," January 5, 2015, A/HRC/28/64.
[574] See for example, France (A/HRC/7/23/Add.2), Greece (A/HRC/10/11/Add.3), Bulgaria (A/HRC/19/56/Add.2 and Corr.1), Hungary (A/HRC/4/9/Add.2), Ukraine (A/HRC/28/64/Add.1) and Bosnia and Herzegovina (A/HRC/22/49/Add.1).
[575] UN Human Rights Council, "Report of the Special Rapporteur on minority issues, Rita Izsák: Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism," May 11, 2015, A/HRC/29/24.
[576] UN Human Rights Council, "Report of the Special Rapporteur on minority issues, Rita Izsák: Study on the Situation of Roma in the Americas," 2016, A/HRC/31/CRP.2.
[577] UN Human Rights Council, "Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the implementation of General Assembly resolution 68/150," April 10, 2014, A/HRC/26/50.
[578] See, for example, Spain (A/HRC/23/56/Add.2), Hungary (A/HRC/20/33/Add.1), and Estonia (A/HRC/7/19/Add.2).
[579] Commission on Human Rights, "Report by Mr. Glélé-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1998/26," January 15, 1999, E/CN.4/1999/15.

officials."[580] The Special Rapporteur's 2015 report on racial profiling, also noted that "in Europe, Roma communities are subjected to unequal levels of identity checks, and in some cases, the police stop Roma pedestrians three times more often than non-Roma pedestrians."[581]

At the 2009 **Durban Review Conference**, the forced sterilization of Romani women was raised, with Elena Gorolová, the speaker for the Group of Women Harmed by Coercive Sterilisation speaking before the group. The Durban Review Conference Outcome Document also noted "with deep concern the persistence of racism, racial discrimination, xenophobia and related intolerance against Roma/Gypsies/Sinti/Travellers, and the violence affecting these communities," urging "States to take concrete measures to prevent, combat and eradicate these scourges and to provide access to just and effective remedies and special protection to the victims."[582]

Responses of Other Key Actors and Influence on UN Mechanisms

A number of mechanisms have also been implemented in Europe, with measures taken by the Council of Europe (CoE), the Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU).

Council of Europe

The Council of Europe has developed a number of legal mechanisms relevant to Roma, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, with the European Committee of Social Rights and the Advisory Committee on the Framework Convention for the Protection of National Minorities supporting implementation of these measures and the European Commission against Racism and Intolerance (ECRI) serving as the Council's independent human rights monitoring body. In addition, the Council created an Ad hoc Committee of Experts on Roma Issues in 2011and appointed a Special Representative for Roma Issues in 2016. The Council and its subsidiary bodies have also issued a number of recommendations and declarations to advance Roma inclusion and non-discrimination, including Recommendation 1203 (1993) on Gypsies in Europe, General Policy Recommendation No. 3: Combating Racism and Intolerance against Roma/Gypsies (1998), Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma (2011), the Recommendation on the Social and economic integration of Roma (2013), and the Declaration of the Committee of Ministers on the Rise of anti-Gypsyism and Racist Violence against Roma in Europe (2012), in which anti-Gypsyism is defined as "a specific form of racism nurtured by historical discrimination."[583] In 2005, the Council also initiated the Decade of Roma Inclusion, the first multi-national project in Europe focused on Roma inclusion. The Decade was followed by the Action Plan on the Inclusion of Roma and Travellers in 2016.

[580] UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai*, May 24, 2011, A/HRC/17/40.
[581] UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere*, April 20, 2015, A/HRC/29/46.
[582] UN General Assembly, "Outcome document of the Durban Review Conference," A/C.3/64/L.55, November 3, 2009.
[583] Council of Europe, *Declaration of the Committee of Ministers on the Rise of anti-Gypsyism and Racist Violence against Roma in Europe*, 2012.

In addition, the European Court of Human Rights (ECtHR) of the CoE, has advanced Roma rights and inclusion through its substantial jurisprudence in this area, including the Buckley v. United Kingdom (1996) case,[584] which recognized the need to give particular policy attention to Roma as due to their vulnerable position; the Nachova v Bulgaria case (2004),[585] which involved the killings of two Roma conscripts by military police, which was the first judgment in the Court's history to find a violation of Article 14 on grounds of racial discrimination; the Moldovan and Others v. Romania cases,[586] which addressed the anti-Romani Hădăreni pogroms; at least six judgments on the discrimination of Roma in education, including the groundbreaking ruling of D.H. and Others v. the Czech Republic (2007)[587] and Oršuš and Others v. Croatia (2010);[588] a number of cases involving the forced sterilization of Romani women, including V.C. v. Slovakia (2011)[589] and I.G. and Others v. Slovakia (2012);[590] and several cases involving forced evictions of Roma, including the Winterstein and Others vs France (2013),[591] and most recently, Hirtu and Others vs. France (2020).[592] Consequently, "The Court's jurisprudence in the area of the ban on racial discrimination is now arguably more advanced than that of any other international tribunal, and indeed of many, if not most, national systems."[593] It has "done an incredible amount of good work for human rights in Europe." However, "some people think that in the last few years, the court has been weakening—as a result, the strong record of the previous decades is somehow no longer there."[594]

Organization for Security and Co-operation in Europe

In addition, the OSCE has contributed significantly to the prevention of racism and racial discrimination against the Roma, including through the Office for Democratic Institutions and Human Rights (ODIHR) and its contact point for Roma Issues, the High Commissioner on National Minorities. In 2003, the Organization developed the OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, which was followed by the Ministerial Council decision No. 6/08 (2008) on enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, and the Ministerial Council decision No. 8/09 (2009) on enhancing OSCE efforts to ensure Roma and Sinti sustainable integration.

European Union

The European Union also has a strong human rights framework and a range of mechanisms to address racial discrimination and racism against Roma, which are supported by the European Commission and the Agency for Fundamental Rights. Mechanisms include Articles 13 and 29 of the Treaty on European Union (1992) and the Charter of Fundamental Rights of the European Union (2000).[595] In addition, aspirant member states

[584] Buckley v. United Kingdom, 20348/92, European Court of Human Rights, Judgment September 25, 1996.
[585] Nachova and Others v. Bulgaria, Nos 43577/98 and 43579/98, European Court of Human Rights, Grand Chamber Judgment, July 6, 2005.
[586] Moldovan and Others v. Romania, 41138/98; 64320/01, European Court of Human Rights, Grand Chamber Judgment, July 12, 2005.
[587] D.H. and Others v. Czech Republic, 57325/00, European Court of Human Rights, Grand Chamber Judgment, Nov 11, 2007.
[588] Oršuš and Others v. Croatia, 15766/03, European Court of Human Rights, Grand Chamber Judgment, March 16, 2010.
[589] V.C. v. Slovakia, 18968/07, European Court of Human Rights, November 8, 2011.
[590] I.G. and Others v. Slovakia, 15966/04, European Court of Human Rights, April 29, 2013.
[591] Winterstein and Others vs France, 27013/07, European Court of Human Rights, October 17, 2013.
[592] Hirtu and Others v France, 24720/13, European Court of Human Rights, May 14, 2020.
[593] Claude Cahn, Human Rights, State Sovereignty and Medical Ethics: Examining Struggles Around Coercive Sterilisation of Romani Women, Martinus Nijhoff Publishers, October 16, 2014.
[594] Dimitrina Petrova, Founding Director, Equal Rights Trust, personal interview, March 4, 2021.
[595] The 2009 Treaty of Lisbon altered the status of the Charter of Fundamental Rights to make it a legally binding document.

must produce Roma integration strategies as a component of the accession process and demonstrate commitment to Roma inclusion in accordance with the "Guiding Principles" for improving the situation of Roma. A series of Directives on Discrimination were also passed in 2000, including the Race Directive 43/2000/EC, which prohibits discrimination on the grounds of race and ethnic origin, which was unanimously adopted in 2000, and has now been transposed into national law by all Member States. "Before the race directive, the only countries in Europe that really had anti-discrimination laws were the UK, Netherlands, and Sweden. Today, every single EU state and all candidate countries must have one, covering education, employment, housing, health care, social services. As a result, the Race Directives have reshaped the European legal systems around discrimination, and there are plenty of people who have received national remedy under them, among them, Roma."[596] "None of the international reporting or complaint mechanisms have penetrated domestic decision making as profoundly as EU law, due partly to the dialogue that the preliminary ruling mechanism has forged between domestic courts and the European Union Court of Justice (CJEU), partly to the fact that the Race Directives requires the establishment of domestic equality bodies."[597] The primacy of the Race Directive, however, has not been mirrored in the docket of the CJEU, which has experienced far less litigation with respect to racial discrimination, partly due to the fact that it is very difficult for an individual complainant to bring a case before the Court, as it requires filing a domestic case and then for the national court to refer the case to the CJEU.

In addition, the EU has passed a number of resolutions specifically addressing Roma discrimination, including the Resolution on the situation of gypsies in the Community (1994) and the Resolution on discrimination against the Roma (1995). The European Commission regularly holds Roma summits and organizes annual meetings of the European Platform for Roma. In June 2009, the EU Council of Ministers of Social Affairs invited Member States to develop Common Basic Principles for Roma Inclusion (CBP) to provide guidance on formulating and implementing plans, policies, and actions for Roma inclusion. "The biggest improvement came from the adoption of the EU Framework for National Roma Integration Strategies in 2011, followed by the EU Roma strategic framework for equality, inclusion and participation in 2020,"[598] which have been the main motivations for all EU Member States to develop National Roma Integration Strategies with targeted and integrated approaches in the areas of education, employment, health care, and housing. This process has led to the creation of a specific investment priority under the European Structural Fund, dedicated to "socio-economic integration of marginalised communities such as the Roma," with "the Commission investing €172 million in European Social Funds between 2007 and 2015, explicitly for actions to integrate and desegregate the Roma." [599]

Comparative Advantages

While mechanisms for addressing discrimination within the UN system and various regional organizations in Europe are not quite comparable, due to their differing levels of resources and the scope of their

[596] Claude Cahn, OHCHR Officer, personal interview, February 23, 2021.
[597] Lilla Farkas and Dezideriu Gergely, "European network of legal experts in gender equality and non-discrimination," EU Commission, 2020.
[598] Senada Sali, Legal Manager, European Roma Right Centre, personal interview, February 26, 2021.
[599] Hilary Silver and Lauren Danielowski, "Fighting Housing Discrimination in Europe," Housing Policy Debate, 2019.

respective mandates, it is useful to examine the circumstances under which certain mechanisms may hold comparative advantages, as the various mechanisms often have their strengths and limitations, depending on a particular context. As such, organizations engaged in strategic litigation will often consider all available tools and resort to forum shopping to choose a judicial venue based on which forum would provide the strongest protections in a particular case, according to its relative comparative advantages.

In the case of the Roma, the mechanisms of the UN have been instrumental in international norm setting and in focusing the attention of states on Roma as a priority, due to the rigorous action by the treaty bodies, special rapporteurs, and Universal Periodic Reports. The treaty bodies, and the CERD in particular, have been especially sympathetic to the situation of Roma, and have exerted pressure and positive influence on member States in a number of ways, with repeated asks in Periodic Reports often moving states to action, as most governments seek to comply with their treaty obligations.[600] In addition, in the situation where states have signed onto the optional individual complaints procedures of the treaties, an individual can bring a case to the UN and challenge their own government in an international setting; however, a government must have signed the individual complaints procedure, which is one weakness of the treaty bodies.

Another weakness is that the judgements of the UN treaties are considered soft law, so it is more difficult to achieve implementation, and even in cases of judgements in favor of complainants, governments often do not view them as a legally binding court victories that need to be implemented. One of the comparative advantages of the European Courts is, therefore, that their judgements are legally binding. In addition, while the treaty bodies can provide a declaration that a violation has occurred and recommendations for remedies, because the judgements are not legally binding, it is at the discretion of states to implement these recommendations, whereas complainants are able to secure compensation and just satisfaction in European Courts.

On the other hand, in some cases where the ECtHR has failed to consider cases for procedural reasons, or a negative judgment was issued, the UN committees have often proven to be more efficient. For instance, the ERRC notes that it has had "good experience with the CEDAW, because it is often faster than the ECtHR, which can take seven years, 10 years, 15 years for a judgment."[601] In addition, in some cases, complainants are not required to exhaust domestic remedies. For instance, in the cases of S.N. and E.R. v North Macedonia (2020)[602] and L.A. et al. v North Macedonia (2020),[603] where pregnant Romani women had been evicted by the government in North Macedonia, the ERRC was able to bring the cases directly before the CEDAW, even though domestic remedies had not been exhausted, because the committee has an interim special measure to provide emergency accommodation so as to prevent further negative repercussions and temporarily remedy the situation. While the ECtHR has a similar mechanism, referred to as rule 39, it is used for very a small number of cases in practice.

Even while various UN and regional organizations may have distinct comparative

[600] Claude Cahn, OHCHR Officer, personal interview, February 23, 2021.
[601] Senada Sali, personal interview, February 26, 2021.
[602] S.N. and E.R. v North Macedonia (2020), CEDAW Communication, UN Doc. CEDAW/C/75/D/107/2016.
[603] L.A. et al. v North Macedonia (2020), CEDAW Communication, UN Doc. CEDAW/C/75/D/110/2016.

advantages depending on a given situation, it is often difficult to disaggregate their overall effect and impact, as they all "have not only been pulling in the same direction, but reflecting on each other. For example, the EU will use UN conclusions and the UN will be in discussion with the EU about priorities. It is therefore in effect one harmonized supra-national system, which tries to move the national level forward."[604] This is key, because effective engagement around issues of discrimination requires all mechanisms available within the UN system and regional organizations working in concert in order to apply sufficient and sustained pressure. "Given the pervasive nature of discrimination, the struggle against it can be effective only if fought on different levels and with various tools: legislation and judicial action, public policy and programmes such as awareness raising, affirmative action and compensation for individuals and groups suffering from discrimination, and active engagement of social groups such as social partners or civil society organizations, with different tools coming to the fore at different times and places, depending on the local context and political constraints."[605]

Analysis of Mechanisms

The UN, with various regional bodies working in mutually reinforcing ways as part of a supra-national system, have been instrumental in shifting Roma to the center of human rights concerns in Europe, bringing to light issues around discrimination and marginalization of the Roma, and in moving forward policy and action by States to strengthen Roma inclusion. These mechanisms have also played a significant role in norm setting, with the CERD,[606] the Special Rapporteurs, and the Council of Europe in particular, being central to bringing about a fundamentally changed understanding of the fact that, not only does anti-Roma sentiment constitute racism, but that anti-Gypsyism, represents a specific form of racism due to the deeply-rooted structural discrimination and extreme marginalization historically experienced by the Roma. In addition, there are several examples of States acting on the UN treaty bodies' recommendations. "A recent review of Moldova's implementation of the 2011 CERD Concluding Observations indicated relatively strong compliance, including on the Roma recommendations, which were by far the most far-reaching within the given review."[607] As such, "there is no question of CERD's contribution to the protection of the Roma, which has been significant."[608]

In addition, national and international jurisprudence, including judgements by the various UN treaty bodies and the legally binding rulings of the European Courts, and the ECtHR, in particular, has contributed to a strong legal framework, which has had a significant impact on the enforcement of anti-discrimination rights for Roma. Progress, although still slow, is beginning to take shape, with legislation in many countries, also leading to actual changes on the ground, not only for individual complainants, but also in terms of policy more broadly, most notably in school desegregation, with the various Roma education cases leading to tangible

[604] Claude Cahn, OHCHR Officer, personal interview, February 23, 2021.
[605] International Labour Organization, Promoting Decent Work Opportunities for Roma Youth in Central and Eastern Europe, 2016.
[606] The Special Rapporteur on minority issues has noted the important role of the UN treaty bodies in highlighting discrimination against Roma, particularly the CERD in its general comment No. 27 (2000) on discrimination against Roma.
[607] UN Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: Moldova*, UN Doc. CERD/ C/ MDA/ CO/ 2011. Claude Cahn, "CERD and discrimination against Roma," in David Keane and Annapurna Waughray, Fifty Years of the International Convention on the Elimination of All Forms of Racial Discrimination: A Living Instrument, Manchester University Press, 2017.
[608] Claude Cahn, OHCHR Officer, personal interview, February 23, 2021.

developments at the national level. In Croatia, following the Grand Chamber judgment in Oršuš, the Ministry of Education amended its Primary and Secondary School Education Act and issued six measures in compliance with the National Programme for Roma and the Decade Action Plan for Roma Inclusion. The Roma education cases in Greece, have also led to some change in practice, including the adoption of the Ministerial Order 1540/2007 and subsequently to Notification 28463/2010 regarding Segregation of Roma in Education.

While UN and regional mechanisms have led to positive legislative and policy frameworks and a number of changes, with formal equality existing in most national legislation in countries in Europe, progress in the social inclusion of Roma remains limited, with efforts "yet to overcome the really deep systemic issues that that are driving the exclusion of the Roma community," with "a fundamental change in the human rights situation of Roma, remaining elusive."[609] The structural issues that Roma continue to face are so considerable in several countries that it may take years to remedy. As a result, "Roma communities still face situations of extreme poverty and marginalization,"[610] including limited access to quality education, employment, public services, healthcare, housing, and justice mechanisms. In some aspects, things have even worsened over the past few decades, particularly for very excluded segments of the Roma community. This is especially the case in the area of housing,[611] which "even 10 more years of efforts at Roma integration will likely not solve, as it would require serious efforts on the part of officials."[612] The lack of attention to addressing these structural factors, has been due to a number of inhibiting factors (discussed below), namely the fact that "racism and racial discrimination against Roma is deeply rooted in State institutions with "Roma confronted with an institutionalized discrimination reflected both in legislation, policies and administrative measures."[613] "Even years after the groundbreaking case on school segregation, DH vs Czech Republic, we still have school segregation in the Czech Republic, because "we are talking about countries where Romani people are treated differently in everyday life, by institutions, by individuals, and one single judgment, even hundreds of judgments, will not change this."[614] Stronger efforts therefore need to be made in order to achieve substantive equality. This is all the more important as the COVID-19 pandemic has revealed the extreme vulnerability of excluded and marginalized Roma communities to negative health and socioeconomic impacts.

Enabling factors

The effectiveness of the various UN and regional mechanisms can be understood with reference to a number of enabling and inhibiting factors, discussed below.

Coordination of UN and regional organizations

A significant enabling factor has been the coordination of UN and regional organizations, including the Council of

[609] Ibid.
[610] UN Human Rights Council, "Report of the Special Rapporteur on minority issues, Rita Izsák: Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism," May 11, 2015, A/HRC/29/24.
[611] A 2017 evaluation found segregation patterns in 21 of 24 member states and no progress in more than a third. The most common issue was poor-quality housing (in 15 member states), but evictions of Roma were also widespread (found in nine countries). Hilary Silver and Lauren Danielowski, "Fighting Housing Discrimination in Europe," Housing Policy Debate, 2019.
[612] Senada Sali, Legal Manager, European Roma Right Centre, personal interview, February 26, 2021.
[613] UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai*, May 24, 2011, A/HRC/17/40.
[614] Senada Sali, Legal Manager, European Roma Right Centre, personal interview, February 26, 2021.

Europe, the European Union, and the Organization for Security and Co-operation in Europe, which have often worked in mutually reinforcing ways as part of a supra-national system to advance Roma rights, often building on the standards and legal precedents of one another. Working in concert, they have been instrumental in shifting Roma to the center of human rights concerns in Europe, bringing to light issues around discrimination and marginalization of the Roma, and in moving forward policy and action by States to strengthen Roma inclusion. This has been key, because effective engagement around issues of discrimination requires all mechanisms available within the UN system and regional organizations working in concert in order to apply sufficient and sustained pressure on states.

Recognition of human rights norms in Europe

The appreciation for and general observance of human rights norms in Europe are widely recognized, and as such, are much more embedded in the national context, with every country in Europe now having ratified most of the core international human rights covenants and conventions, and several countries signing onto the optional Individual Complaints procedures of the treaties. In addition, as states in Central and Eastern Europe were seeking to join the European Union, the EU Commission wielded significant influence, as states were required to demonstrate their commitment to human rights under the accession process, including adopting the Race Directives and transposing them into national legislation, with every country in Europe now required to have the Directives transposed into their national laws. EU accession criteria, along with the Framework for National Roma Integration Strategies, were therefore instrumental in the development and adoption of progressive Roma related institutions and policies. In addition, every member state of the Council of Europe is under the jurisprudence of the European Court of Human Rights (ECtHR), which has developed significant case law on anti-discrimination, including on issues pertaining to Roma equality and inclusion. The availability of several mechanisms for advancing Roma rights within the European Union, the Council of Europe, and the OSCE, clearly assert a positive influence. As a result, "in the context of Roma issues, the fact that it has taken place in a European frame, has been conducive to helping states move,"[615] and contributed to the effectiveness of the mechanisms, including those of the UN.

Civil Society Organizations and National Human Rights Institutions

Civil Society Organizations and National Human Rights Institutions have played an integral in advancing Roma equality and inclusion, particularly in light of the fact that Romani people do not have their own country. "We are aware that states will not be as responsive towards a community that is fragmented across several different states and that does not have a core political representation to pressure governments to make changes. However, we declare the Romani people as members of a Roma nation." "We try to use the power of the Romani diaspora, and the fact that we are scattered as a community, as an advantage to put pressure on regional and international levels, not just at the national level."[616] Romani organizations, including the Roma National Congress and the International Romani Union, have been particularly influential in leveraging the power of the Romani diaspora. The European Roma Rights Centre has also played an instrumental role in advancing Roma equality and

[615] Claude Cahn, OHCHR Officer, personal interview, February 23, 2021.

[616] Senada Sali, Legal Manager, European Roma Right Centre, personal interview, February 26, 2021.

inclusion, bringing a number of successful cases before the ECtHR and various UN treaty bodies.[617] Specific domestic campaigns have also contributed to the European campaign, including an NGO coalition spearheaded by the Open Society Foundations.

Monitoring bodies

Independent Equality bodies—public institutions established at the national level across Europe to promote equality and address issues of discrimination—have also played a fundamental role in the enforcement of non-discrimination legislation in the past few years. Equality bodies have the competence to conduct independent surveys concerning discrimination and publish independent reports, as well as to support awareness raising through campaigns. They also make recommendations on issues related to discrimination, including providing policy advice to governments, and supporting good practices and positive measures. Equality Bodies also provide independent assistance to victims of discrimination in pursuing their complaints and in improving access to justice mechanisms. This activity is necessary in order to reduce the discrepancy between the levels of discrimination experienced and discrimination that is reported, as cases of discrimination against the Roma often go unreported.

Inhibiting factors

Lack of political will

While there is relatively strong commitment to human rights among European countries, there have been a number of cases where member states have pushed back against challenges to their sovereignty. A lack of political will, including a reluctance to address structural forms of anti-Gypsyism,[618] has therefore been the most recurring factor inhibiting the effectiveness of these mechanisms, with "progress very much dependent on the political will of national governments, with action taken to address Roma disadvantage depending heavily on the personal commitment of the particular political leader in power." Such an approach therefore "does not institutionalize anti-discrimination as a political goal, but rather reduces it to a subjective choice dependent on individual political actors."[619] Despite international standards prohibiting discrimination, and rulings by various international and regional bodies leading in many cases to changes on the ground, the absence of political will has also "contributed to the insufficient implementation of those standards in the Roma context" as "international litigation could seldom achieve what states were not prepared to grant."[620]

While there have been considerable changes at the national or local political level, which have brought about improvements, these changes have often been "driven by external pressure from international monitoring bodies, national or international court decisions or infringement proceedings initiated by the European Commission."[621] While the situation of Roma varies across countries, there is a need to increase the commitment and accountability at the national level to bring a real change in Roma

[617] The ERRC is also trying to introduce the definition of anti-Gypsyism in the work of the courts and in case law. "In all our cases where we argue an article 14 violation, which is the protection against discrimination clause, we explain the entire context and try to push the Court to use the word anti-Gypsyism in its own practice." Ibid.

[618] UN Human Rights Council, "Report of the Special Rapporteur on minority issues, Rita Izsák: Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism," May 11, 2015, A/HRC/29/24.

[619] Ibid.

[620] Lilla Farkas and Dezideriu Gergely, "European network of legal experts in gender equality and non-discrimination," EU Commission, 2020.

[621] Isabelle Chopin, Catharina Germaine and Judit Tanczos, "Roma and the Enforcement of Anti-Discrimination Law," European Union, 2017.

everyday life. As the EU Commission concluded in the 2011 report on the evaluation of the EU Roma strategic framework and the reasons for the limited effectiveness of past measures, a "tangible change in the situation of Roma" will only be possible if member states "demonstrate political will and determination" and "honor the commitments adopted under the Framework."[622] The UN with the regional organizations in Europe, including the CoE, EU, and OSCE, should therefore act more forcefully to exert pressure on member states to deliver and fulfil their commitments and ensure the political will for implementation.

Lack of implementation

While many countries in Europe recognize the jurisprudence of the UN treaty bodies, with EU countries required to have the Race Directives transposed into national legislation and countries in the CoE falling under the jurisprudence of the ECtHR, enforcement of these legislative frameworks is relegated to the member states. While minor gaps still exist in the transposition of certain anti-discrimination provisions in a few states, the main issues are implementation gaps, including the judicial interpretation and enforcement of legislation. In addition, while the EU and the CoE maintain significant influence on states, there are no strong mechanisms to monitor implementation of these measures or to hold them accountable. For example, the Czech Republic, Slovakia, and Hungary continued to demonstrate a lack of compliance in the desegregation of schools following a number of rulings by the ECtHR, Concluding Observations by the CERD, and infringement proceedings launched by the European Commission, although positive legal developments have slowly started to take place in all three countries.[623] While the problem of a lack of implementation applies to every country across Europe, it is particularly challenging in cases involving states that wield significant influence over EU and CoE institutions, as there is often an unwillingness to act against "big" or "influential" member states.[624] In the case of the systematic and forced expulsions of thousands Roma in France, following a number rulings by the ECtHR and a resolution adopted by the European Parliament calling for a suspension of the expulsions, and CERD's 2015 Concluding Observations expressing concern at repeated breaches of the right of Roma to housing, the French government continued the dismantling of Roma settlements.[625] For political reasons, however, the EU Commission decided not to initiate infringement proceedings. Insufficient implementation tied to a lack of political will therefore continues to be one of the most significant inhibiting factors. "If a nation state does not want to implement a judgement, there is nothing we can do apart from waiting on their will to implement it. We are left to international institutions which are made up of States."[626] "In 2000, we had an enormous amount of hope that we finally have this norm, but it is very disappointing compared to the expectations we had about the Race Directive. What happened was that

[622] European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the implementation of the EU Framework for National Roma Integration Strategies," COM/2014/0209, 2014.

[623] In the Czech Republic, three years after the infringement proceedings were launched and 10 years after the landmark decision of the ECtHR, some positive changes can be noted in legislation, such as the reform package adopted in February 2015 to amend the Schools Act and the additional amendments adopted in 2016. In both Slovakia and Hungary, legislative steps have been taken following the initiation of the infringement proceedings, to amend the legal framework and thereby counter the situations of segregation and discrimination in education.

[624] Pinar Sayan, "Enforcement of the anti-Racism legislation of the European Union against antigypsyism," Ethnic and Racial Studies, Vol. 42, No. 5, 2018.

[625] UN Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: France*, 2015, UN Doc. CERD/ C/ FRA/ CO/ 20– 21.

[626] Senada Sali, Legal Manager, European Roma Right Centre, personal interview, February 26, 2021.

on the legislative front, it worked well, but implementation has not been impressive. Rights protection through the courts has also started to weaken. I wouldn't say today that the Roma in Europe rely very much on litigation and on having their day in court. Somehow that is not happening for various reasons."[627]

Insufficient policy

While legal frameworks are often a necessary pre-condition for institutionalizing anti-discrimination measures, legal instruments are not, in and of themselves, sufficient to induce the lasting positive transformations that are required for overcoming the widespread and systemic discrimination faced by the Roma," which is so considerable in several countries that it necessitates sustained political commitment and the treatment of Roma issues as a consistent governmental priority. Legislation is therefore but one tool to generate social change and must be reinforced by other measures, including effective policy. While a number of policies have been enacted at the regional level, as EU countries are required to adopt National Roma Integration Strategies, many efforts have failed due to the lack of a proactive approach at national and local levels. Proactive policies and positive measures to ensure equality of opportunity are particularly important given the structural and institutionalized discrimination the Roma have faced for generations. The key to achieving social transformation therefore lies in mainstreaming Roma issues and shaping policy actions by promoting equality, socio-economic inclusion, and meaningful participation of Roma, as well as ensuring active positive measures and development efforts, including employment opportunities. Inadequate funding is another commonly cited cause of ineffective Roma policy implementation with the allocation of EU funding towards Roma integration programs dependent upon a political willingness to appropriate funds for Roma purposes. For example, the FRA Report pointed out that "in the 2007–2013 period, the potential use of EU funds [had] not yet been exploited to support Roma integration."[628] Closer cooperation between UN and EU agencies and national and local governments is therefore required to support governments in shaping effective policies and equipping them with the resources to implement effective Roma programming. This should include positive measures and targeted development efforts, which could be facilitated by UNDP and partner organizations. In addition, the UN and regional organizations should prioritize support for the work of equality bodies and in providing capacity building for CSOs and NHRIs.

Lack of data

Disaggregated data allows inequalities to be revealed objectively and demonstrated statistically, and provides clear markers by which progress towards targets can be monitored and evaluated. Although Roma are the largest ethnic minority in Europe, there is very little data as many member states often do not collect information on ethnicity, with the best data on the Roma currently available from the FRA's EU Minorities and Discrimination Survey (EU-MIDIS) of Roma in selected member states in 2008, 2011, and 2016. As such, research indicates that Roma populations remain undercounted. For example, "discrepancies between official statistics and unofficial estimates of Roma populations across 12 countries in Europe range from 45 to 99 percent."[629] The

[627] Dimitrina Petrova, Founding Director, Equal Rights Trust, personal interview, March 4, 2021.
[628] Jacqueline Bhabha, et al., editors, *Realizing Roma Rights*, University of Pennsylvania Press, 2017.
[629] Open Society Foundations, "No Data No Progress," Open Society Foundations, 2012.

institutionalized discrimination against the Roma is therefore also reflected in their absolute non-existence in data and figures.[630] The lack of ethnically disaggregated data can also impact effective policy development and programming for Roma.[631] In addition, advances in data collection and reporting also emerge as one of the major factors required for improving the enforcement of anti-discrimination law regarding Roma. To this end, UN agencies with regional organizations should encourage member States to increase systematic, disaggregated data collection and support them in these efforts. Data collection should be based on self-identification and follow protocols and international standards for data protection. OHCHR should also develop and promote a system of standardized guidelines for improving census surveys, to ensure that the Roma are represented in national population data.

Lack of access to and knowledge of complaint mechanisms

In addition, the protective reach of legislation is limited by challenges related to the lack of access to and awareness of complaint mechanisms by Roma, as well as a lack of trust and confidence in the system. "Research indicates that knowledge about and use of the various mechanisms by Roma is limited," with few Roma aware of their rights as guaranteed by various laws. For example, in EU Member States, only 35 percent of Roma women and 45 percent of Roma men were aware of laws against discrimination that apply to them when seeking employment.[632] In addition, there are a number of procedural barriers to bringing a case before the courts, including the lack of funds and access to a lawyer, limiting the availability of justice mechanisms for many Roma. Further, Roma rarely report instances of discrimination because they lack trust in authorities and institutions. As a result, although there have been a number of high-profile Roma rights cases brought before the ECtHR, there have been relatively few cases when considered in relation to the significant disadvantages Roma face in Europe. At the international level, there are even fewer communications brought to the treaty bodies.[633] States should work to improve knowledge among Roma about their rights, including about discrimination, and their awareness of complaint mechanisms at both the national and international levels. States should also develop measures that enable Roma complainants to have easy access to such mechanisms.

[630] UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai*, May 24, 2011, A/HRC/17/40.

[631] UN Human Rights Council, "Report of the Special Rapporteur on minority issues, Rita Izsák: Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism," May 11, 2015, A/HRC/29/24.

[632] FRA and UNDP: The situation of Roma in 11 EU Member States – Survey results at a glance, 2012.

[633] UN Human Rights Council, "Report of the Special Rapporteur on minority issues, Rita Izsák: Comprehensive study of the human rights situation of Roma worldwide," May 11, 2015, A/HRC/29/24.

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Discrimination Against People with Albinism

Context

Albinism—a rare genetic disorder characterized by a lack of pigment in the skin, hair, and eyes—is a profoundly misunderstood condition which has led to various forms of stigma and discrimination against people with albinism (PWA). Widespread erroneous beliefs and myths surrounding the appearance of PWA has produced stigmas and discrimination leading to their marginalization, social exclusion, and even persecution—especially in Africa, where culturally embedded witchcraft rituals and stark differences in pigmentation between PWA and the rest of the society can lead to brutal attacks, dismemberment, social isolation, abandonment of children, and rape. Under the Same Sun (UTSS), the NGO focused on albinism rights, has documented 215 killings of and 405 attacks against PWA across 29 African countries since 2008, though UTSS suspected these attacks are widely underreported. This case covers the UN Responses to Discrimination against People with Albinism in Africa from 2013 until present.

UN response

Gradually since 2013, the UN has adopted the issue of discrimination against PWA squarely onto its human rights agenda. Though albinism affects people around the world, the UN has focused the vast majority of its efforts in Africa, where the discrimination is deeply embedded in the culture and takes on a very violent form. For that reason, this case study will focus exclusively on the albinism rights agenda in Africa.

Human Rights Council

Beginning in 2013, the United Nations has mobilized primarily under the auspices of the Human Rights Council (HRC) to combat discrimination against and protect the human rights of PWA. After a concerted lobbying campaign led by Peter Ash, founder of the albinism advocacy organization Under the Same Sun, the HRC began to engage on the issue with the adoption of Resolution 23/13 on "Attacks and discrimination against persons with albinism," the first ever UN resolution on albinism. The resolution expressed concern at attacks against PWA and the widespread discrimination, stigma and social exclusion suffered by PWA. It also urged states to ensure the protection of PWA and end the impunity enjoyed by their attackers, and requested a preliminary Advisory Committee report on attacks and discrimination against PWA.[634]

That preliminary report, submitted at the 24th session (September 2013) of the HRC, provided an overview of the most serious human rights violations against PWA, with a primary on attacks and ritual killings in Africa. It also documented how attacks against PWA were related to trade in organs, trafficking in persons, sale or abandonment of children, and infanticide. It noted measures taken by the states concerned, and called on states to, *inter alia*, pursue education and awareness campaigns to combat superstition and stigma, to take legislative measures to criminalize harmful practices, and to guarantee the victims' right to justice and redress.[635] Also at its 24th session, adopting Resolution 24/33 on "Technical cooperation for the prevention of attacks against persons with albinism," the HRC requested the Human Rights Council

[634] A/HRC/RES/23/13 (2013)

[635] A/HRC/24/57 (2016)

Advisory Committee prepare a secondary study on the situation of human rights of PWA.[636]

The secondary report relied on responses to a questionnaire disseminated by the Advisory Committee's drafting group to governments, HRC special procedures and UN treaty bodies, OHCHR field offices, national human rights institutions, and NGOs. Beyond taking further stock of the human rights violations against PWA in many parts of Africa, the report noted that an adequate UN response was inhibited by limited knowledge of the issue, limited capacity for persons with albinism to engage with human rights mechanisms, and a scarcity of data related to killings and attacks, which was said to be an obstacle for current special procedures mandate-holders to give attention to the issue. For example, the secret and underground nature of the markets for trafficking persons and organs offer little evidence to trigger the engagement of the Special Rapporteurs on the sale of children or on trafficking in persons. Concluding that the "human rights challenges associated with albinism are multi-layered and are not currently being addressed in a comprehensive and sustainable manner by any human rights mechanism," the report called for a "specific and dedicated special procedure" to address the discrimination and violence against PWA.[637]

In response to this call, the HRC decided in March 2015 to establish the office of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, appointing Nigerian-Canadian lawyer Ikponwosa Ero to the position in June of that year.

Independent Expert

The independent expert was mandated to:

1. Consult with states, relevant UN and regional bodies, as well as the private sector and donors to "identify, exchange and promote good practices relating to the realization of the rights" of PWA;
2. To gather information on violations of the rights of PWA, including through country visits and fact-finding missions;
3. To assist national efforts aimed at realizing the rights of PWA, and make recommendations to the HRC in this regard.[638]

Throughout her six years holding the office, the Independent Expert has enjoyed remarkable success in creating widespread awareness of the issue of albinism, mainstreaming the issue within the UN's human rights framework, and leading national and regional action to address violence against PWA. She has used her mandate to conduct seven official missions to Mozambique, Malawi, Tanzania, Fiji, Kenya, South Africa and Brazil, as well as 33 working visits to a broad range of countries. The visit to South Africa resulted in the establishment of a national task force to take forward the protection of human rights of PWA, while a visit to Malawi resulted in a commitment by all national political parties to stop attacks and promote and protect the rights of PWA. She provided technical assistance on legislation and policy to scores of government and non-governmental bodies, and conducted hundreds of advocacy events. Finally, she authored 21 reports to the HRC and UNGA, in addition to academic papers and reports. [639]

[636] A/HRC/RES/24/33 (2013)
[637] A/HRC/28/75 (2015)
[638] A/HRC/28/L.10 (2015)
[639] A/HRC/46/32/Add.2 (2021)

Ero cites as her most significant achievement the formulation of the Regional Action Plan to end attacks and violations against PWA in Africa. Her office convened the two-day consultative forum 2016 Action on Albinism forum in Dar es Salaam, Tanzania, featuring 150 representatives from the UN, AU, academia, civil society, government, and human rights institutions. The forum—which took into account recommendations from OHCHR, the HRC and its Advisory Council, Human Rights Treaty bodies, and the universal Periodic Review Mechanism, among others—resulted in a first draft of the Regional Action Plan. She was then able to secure the plan's endorsement by the African Commission on Human and People's Rights and the Pan African Parliament. In 2020, the African Union has since endorsed the plan as a continent-wide policy to be implemented over the next decade.[640]

Universal Periodic Review

The Universal Periodic Review mechanism has served most importantly as a tool to ensure accountability for violations and attacks against PWA, especially Malawi and Tanzania.[641] International NGOs like Under the Same Sun, Amnesty International, and others have regularly prepared submissions that take into account or focus extensively on human rights violations against PWA.

Treaty Bodies

Because of the numerous forms of discrimination that PWA face, several UN treaty bodies have engaged on the issue of albinism—especially the Committees on the Rights of Persons with Disabilities, on the Elimination of Discrimination against Women, and on Rights of the Child. Most importantly, their work has been crucial in conceptualizing the multiple and intersecting issues faced by PWA,[642] namely the experience of physical disability and discrimination on the basis of race.

However, because the Convention on the Rights of Persons with Disabilities (CRPD) does not recognize racial issues as one of the intersectional forms of discrimination, leaders on the albinism issue at the UN—including Peter Ash and Ikponwosa Ero—have insisted that this disability framework would fail to adequately encompass the experience of PWA. "The combination of the CRPD and the International Convention on the Elimination of All Forms of Racial Discrimination provides more comprehensive protection and promotion of human rights of persons with albinism," Ero wrote in her 2017 report to the General Assembly. The issue of albinism is, however, treated through a disability framework under many national governments in Africa.

Many provisions of CRPD have been applied to countries like Kenya, Ethiopia, and Uganda, especially related to the rights to life, to health, and living independently and being included in a community.[643] However, it is the discrimination on the basis of their lighter skin tone faced by PWA—not necessarily their disability—that results in harmful practices and violence against them. The ICERD's article 1 is therefore also applicable to discrimination against PWA, and the Committee has recommended implementation of effective measures to protect PWA in action plans and measures taken to implement the Durban Declaration and Programme of Action.[644]

CEDAW has also addressed harmful practices specifically affecting women with albinism, including the practice of

[640] Officially referred to as the AU Plan of Action to End Attacks and Other Human Rights Violations Targeting Persons with Albinism in Africa (2021-2031).
[641] Interview with Peter Ash, February 2021.
[642] Interview with Ikponwosa Ero, March 2021.
[643] A/72/131 (2017)
[644] Ibid., 7

prescribing sex with girls or women with albinism as a cure for HIV/AIDS, as well as the stigma and social exclusion suffered by mothers who give birth to children with albinism. The CRC has expressed concern at violence perpetrated against children with albinism, who are at high risk of being abandoned and to trafficking.[645] Similarly, the Committee on the Rights of the Child has condemned discrimination against children with albinism. Finally, the Committee against Torture has examined the situation of PWA and emphasized that their death and mutilation fall under the scope of the Convention.

In addition to conceptualizing the intersectional nature of albinism, the treaty bodies are important for giving people with albinism another voice and for holding governments accountable for upholding their human rights. The statements and recommendations these bodies make regarding PWA are sometimes the only source of information that the government might have on the issue in a given country. Ikponwosa Ero says these treaty bodies are especially useful in keeping the issue on the government's agenda in between her visits to a country, which are limited to twice annually. She says this is important for small, less powerful minority groups like PWA, who do not enjoy advocates representing their interests in Geneva. Questioning by treaty bodies have spurred countries to "suddenly begin acting" on the issue, Ero says, especially when those governments are "relying on the powerlessness of certain marginalized groups to ignore human rights violations."[646]

The individual complaints procedure within these treaty bodies has been used in at least two instances involving PWA. In 2017 and 2018, the Committee on the Rights of Persons with Disabilities sided with two individuals with albinism in Tanzania had been attacked on the basis of a disability. The Committee said Tanzania was obligated to provide both individuals with an effective remedy including compensation, as well as to conduct an investigation and persecute the perpetrators of the attacks. In both cases, the Committee also called on Tanzania to review and adapt legal frameworks in line with recommendations made by the Independent Expert so as to prevent future attacks.[647]

Effectiveness of UN mechanisms

Enabling Factors

Awareness and advocacy

Because of the taboo nature of albinism across Africa, and a lack of documentation about the violence and discrimination that PWA face, the UN has sought to lead a campaign of advocacy and awareness to combat the many myths surrounding albinism. This strategy has served to build coalitions and support within the UN for addressing the issue, and also as an important prerequisite for stronger measures.

In total, this strategy has enjoyed tremendous success. Ero emphasized as one of her office's major achievements was to bring this issue out of obscurity and onto the UN's agenda, noting that throughout her country visits she has seen conditions change dramatically on the ground for PWA. Similarly, Peter Ash says the UN's campaign has produced "night and day" changes to the human rights situation for PWA. Ash noted that the last reported killing of a PWA was in 2015 and the last reported physical attack was in 2017.

[645] Ibid., 8
[646] Interview with Ikponwosa Ero, March 2021.
[647] (CRPD/C/18/D/22/2014) (CRPD/C/20/D/23/2014)

Aside from the Independent Expert, the High Commissioner of Human Rights has also added her voice to the issue through press statements, while side events at the HRC highlighting attacks against PWA has helped to build consensus among member states around the need for measures aimed at their protection. Furthermore, OHCHR has led an impressive online public information campaign—notably through the website "People with Albinism: Not Ghosts but Human Beings"—centered around elevating champions and advocates, education around albinism and human rights for PWA, and providing resources for getting involved in the cause.[648] This heightened awareness to the issue has helped to spur discourse beyond the UN. For example, the number of reports and literature available on the subject have grown immensely since the beginning of the Independent Expert's mandate.[649]

This advocacy and awareness component of the UN's campaign was an essential first step necessary to bring the issue out of obscurity and onto the international human rights agenda. Only after securing broad-based recognition of the albinism as an issue of discrimination and its applicability to the UN's human rights framework could changes at the level of national legislation or action at the AU level be feasible. As Ash says, the Regional Action Plan would have been "pointless" just ten years ago.

Strong civil society and NGO engagement

This advocacy at the international level has served to complement and lend legitimacy to ongoing advocacy and education being conducted at the regional level through a vibrant and extensive network of NGOs and civil society groups. While varied in their approaches and goals, these groups have enabled the UN to collect and disseminate information, better understand national and local contexts, keep governments accountable for their commitments and monitor on-the-ground progress. For example, civil society groups from 26 countries were heavily involved in developing recommendations to inform the regional action plan.[650]

In addition, civil society groups have also played a key role in changing discriminatory attitudes toward PWA by elevating and mainstreaming their status within African societies—the kind of day-to-day, on-the-ground work that the UN simply does not have the resources to conduct. Peter Ash especially emphasized the role outreach being conducted by NGOs at the village level in African countries aimed at changing attitudes and behaviors, which he says has been tremendously successful. "Once you change the mind of the father and grandfather, the mind of elders, then you have changed the mind of the community for generations."[651] Ash also describes how his organization has focused in particular on providing private education to children with albinism as a way to "change the face of albinism" within Tanzania.[652]

In this regard, Ash offered the view that the value of Geneva-based human rights mechanisms is primarily found in the legitimacy that the UN provides to NGOs operating in-country. However, recognizing that the work conducted by civil society and NGOs fills an important void in the UN's operational reach, it is clear that the human rights procedures employed in this case were instrumental in bringing about concrete changes at the national, regional, and international level.

[648] "People with Albinism: Not Ghosts but Human Beings," United Nations Office of the High Commissioner for Human Rights. https://albinism.ohchr.org/resources.html
[649] Interview with Ikponwosa Ero, March 2021.
[650] Interview with Ikponwosa Ero, March 2021.
[651] Interview with Peter Ash, February 2021.
[652] Interview with Peter Ash, February 2021.

National cooperation

The third factor enabling the UN's success in combating discrimination against PWA is the cooperation from and political will demonstrated by most national governments in Africa to engage with the Independent Expert and in regional fora, allow for investigations and country visits, and to produce transparent reporting.

Though not all states were immediately willing to engage, given the taboo secrecy surrounding the issue and even the participation of national politicians in witchcraft rituals, the UN and NGOs have found creative ways of securing their cooperation. Ikponwosa Ero stressed that member states were largely cooperative with her mandate. One of the ways in which she ensured member state cooperation was by meeting frequently with their staffs in informal bilateral discussions, which she said helped to ensure that her requests for visits were approved by the national government. The level of access she was given by some member states even surpassed her expectations, allowing her and the government to uncover the extent of attacks within a country's borders. Indeed, Ero cited these country visits as one of the most impactful elements of her mandates, especially in helping countries to comprehend albinism as a human rights issue. Her visit to Malawi, for instance, helped leaders to broaden their definition of discriminatory violence against PWA and to even disclose a large number of new cases.

The elevated attention to the issue of albinism at the international and regional level was another factor critical to ensuring the participation of national governments. The mere presence of Western-led organizations like Under the Same Sun, in addition to the Independent Expert's office, led the government of Tanzania to begin to fear it might lose significant sums of Western and international aid. Malawi, too, shared this fear—which Ash cites as perhaps one reason for its cooperation, given its status as one of the poorest countries in the world. Regardless, the government of Malawi has adopted the regional action plan as well as a national action plan for the protection of PWA. Malawi's national action plan, which Ms. Ero was instrumental in helping the country to develop, covers the following areas: civic education, awareness, administration of justice, support to victims, human rights monitoring, mainstreaming of employment of PWA, access to affordable and quality health care services, and access to education.

Collaborations

The Independent Expert said she was selective with her collaborations, seeking ways to meet as many of her mandate's stakeholders and audiences as possible, namely UN staff and international bodies, her constituency (people with albinism), and the broader global public. She said she often sought to collaborate for the sake of advocacy.

While her collaboration with the African Union was ultimately successful, culminating in the AU's recent endorsement of the Regional Action Plan, Ikponwosa Ero says that working with the AU is "not easy." She noted that her being of African origin helped her credibility in working with the institution but being a woman in a highly patriarchal institution proved challenging. She emphasized that she relied on storytelling—photo exhibits and stories of attack victims—in order to persuade the AU to pay serious attention to the issue.

Lack of politicization

While albinism can be politicized at the national level, with even high-level

government figures participating in witchcraft rituals, the issue has enjoyed a relatively apolitical status at the international level. Ikponwosa Ero says its relatively apolitical status. She notes that she received support from countries like Israel and Venezuela.

Inhibiting factors

Scarcity of information

Despite important progress in drawing awareness to the many challenges faced by PWA in Africa, there remains an ongoing lack of data around violence and attacks, as well as other human rights indicators around this population—such as census data or health status. In part, these information gaps stem from the social exclusion to which PWA are often subjected, which can inhibit their ability and willingness to report attacks and other incidents to authorities. These obstacles are also exacerbated by the fact that victims are often children.

An even more problematic obstacle to the collection and verification of data, however, is the taboo and secrecy that surrounds the witchcraft rituals involving PWA. Peter Ash noted that the highly taboo nature of albinism in Africa, and the involvement of politicians in witchcraft, has made African leaders reluctant to discuss the issue. According to Ash, it was countries without recording killings—he mentions Sierra Leone, Somalia, and Swaziland—that were willing to support the Human Rights Council's first resolution calling for a preliminary report on the situation of albinism. "We let them have that fiction so they would join us," he said.

With the support of the Independent Expert, states have taken important steps in recent years to address these information gaps, though more like them are needed. A recent initiative in Kenya, for example, to register PWA as part of the national census was introduced in 2019 after lobbying led by OHCHR Kenya in partnership with the country's human rights commission and the bureau of statistics.[653]

Nature of discrimination

The nature of the discrimination experienced by PWA in Africa as based largely in myth and witchcraft has, on the one hand, enabled the UN to concentrate many of its activities on correcting and dispeling these erroneous beliefs through education and awareness. Representatives of national governments in the region say that a key pillar of their national efforts are based in civic education because attacks are precipitated largely by erroneous beliefs that PWA hold special powers. Similarly, Ikponwosa Ero—who also notes that the novelty of the issue was critical—attributed much of her success in gaining traction on the regional action plan to her strategy for storytelling and advocacy. By giving a platform to advocates and victims of attacks through storytelling and photo exhibits, she says this left little room for bureaucrats to question the legitimacy or importance of the issue.

However, the nature of discrimination against PWA in Africa—as an issue of both colorism and discrimination based on disability—has also prevented the development of a harmonized approach to the problem. Given the nature of albinism as a genetic disorder, the UN had initially sought to treat the issue as discrimination on the basis of a disability rather than on the basis of race. Peter Ash and Ikponwosa Ero, however, have asserted the importance of treating

[653] "Counting groups left behind: a stellar step for inclusion in Kenya," Office of the High Commissioner for Human Rights, 28 November 2019.

albinism as primarily an issue of colorism, and secondarily as a health issue: "A person with a wheelchair doesn't get attacked because of witchcraft beliefs." For people with albinism in Africa, he said, "it is because of their whiteness." Ash said had argued strenuously for the issue not to be placed under the UN's disability rubric. Ikponwosa Ero also underlined that albinism was considered a disability issue and that that led some to refuse to view her mandate as legitimate. Emphasizing the importance of having the issue treated as one of racial discrimination, she said that "if we let it go with one billion other disability issues, nothing is going to happen with these genocides."

While the issue has since been established within the UN system as one of human rights, it is not always categorized in this way at the national level. Albinism is often viewed by national governments within Africa more so as a social, economic, and cultural problem. In Malawi, for instance, the government has intentionally grouped PWA into existing structures meant to assist people with disabilities rather than creating a special funding stream for PWA. This disconnect in defining discrimination against PWA at the international and national level may inhibit the UN's efforts to advance this issue as one of human rights.

Implementation challenges

Given the weak rule of law in several East African nations where persecution of PWA is most common, it remains to be seen whether the steps taken to prevent and prosecute attacks will be formally implemented. Representatives of national governments in the region note that there is sufficient political will to take on the problem, but a lack of resources continues to hamper efforts to implement national action plans. For example, more resources are needed to train law enforcement to understand the legal provisions surrounding attacks against PWA as well as to appreciate the gravity of these crimes.

Poverty

Finally, poverty is an important driver of the witchcraft beliefs and rituals that have fueled attacks and discrimination against PWA across Africa. Interviewees have stressed that it is the promise of escaping poverty and "getting rich" through witchcraft that leads to the desperate act of attacking someone with albinism.

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Discrimination Against LGBTI People

"No set of human rights advanced faster than LGBTI rights for the past 20 years,"
Andrew Gilmour, Former Assistant Secretary General for Human Rights at OHCHR

Context

Countless lesbian, gay, bisexual, transgender or intersex (LGBTI) individuals experience violations and discrimination due to their sexual orientation, gender identity and expression, or sex characteristics (SOGIESC).[654] The violations include killings, violent attacks, torture, arbitrary detention, forced marriage, criminalization, and denial of rights to assembly and expression. Further, lack of legal protections and hostile prejudice against LGBTI people have led to discriminations in accessing health care, education, employment and housing. Additionally, conflict-related sexual violence targeting LGBTI individuals has been documented in Colombia, Iraq, and Syria.[655]

LGBTI rights movements are becoming stronger across the world and have reverberated within the UN. Since the 1990s, concerns about violation and discrimination against LGBTI people and related human rights issues have been expressed repeatedly to United Nations human rights mechanisms. After over 20 years of advocacy, LGBTI rights have made significant progress within the UN in terms of gaining recognition and awareness. Although obstacles remain, the LGBTI case features formidable enabling factors working to overcome inhibiting barriers and further progress on LGBTI rights at the UN.

UN Response

Security Council

Geopolitical dynamics have limited UN Security Council engagement on LGBTI discrimination, alongside other contested human rights issues. However, the Council has been able to selectively shed light on violence against LGBTI people in conflict settings through informal mechanisms and acts of humility. In 2015, the UNSC convened its first meeting on LBGTI rights under the Council's informal Arria format. The meeting focused on LGBTI victims of targeted ISIL attacks in Syria and Iraq. Although counterterrorism issues are usually an area of common ground within the UNSC, the U.S. convened the informal session over Russian objections, given the Russian government's opposition to spotlighting victims from the LGBTI community.[656]

Nevertheless, the informal Arria meeting made an impact, as the testimonies of the two young men terrorized by ISIL reached a room full of 200 foreign diplomats--and, given the significant international media coverage, shared their lived experience with policymakers and activists around the

[654] In this report, we chose to use the terminology LGBTI, the acronym for Lesbian, Gay, Bisexual, Transgender and Intersex, which may exclude populations that are not identified under these terms. Although the term sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) is more inclusive in that it does not refer to a specific identity of people, we call this case 'LGBTI case' for convenience. We acknowledge that this terminology can be subject to criticism.

[655] Sarah Hayley Barrett, "LGBT Community the Forgotten Targets of Colombia's Civil War," *The New Humanitarian,* 27 November 2017.
Outright International, "Violence and Discrimination based on Sexual Orientation and Gender Identity in Iraq," *Submission to the United Nations Human Rights Council,* March 2019.
Ban Barkawi, "'I Wish They Killed You': Trauma of Syrian LGBT+ Rape Survivors," *Reuters,* 29 July 2020.

[656] Samantha Power, "The Education of an Idealist: A Memoir," *Dey Street Books,* 10 September 2019: Page 522

Box 1: Timeline of UN Action on SOGIESC Rights

(1994) Complaints about Australia to the Human Rights Committee: Toonen vs. Australia (Communication No. 488/1992)
(2003) The first reference to sexual orientation in the UNGA Resolution was made on United Nations General Assembly Resolution on Extrajudicial, Summary, and Arbitrary Executions. (A/RES/57/214)
(2010) The first written statement by Secretary-General Ban Ki-moon at the Human Rights Council side-event on ending violence and criminal sanctions based on sexual orientation and gender identity.
(2011) The first Human Rights Council Resolution on Violence and Discrimination based on Sexual Orientation and Gender Identity (SOGI). (A/HRC/RES/17/19)
(2013) OHCHR launched UN Free & Equal Campaign, a global UN public information campaign aimed at promoting equal rights and fair treatment of LGBTI people.
(2016) Human Rights Council mandated the UN secretary-general to appoint an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. (A/HRC/RES/32/2)
(2019) The first Human Rights Council Resolution on the Rights of Intersex Persons (A/HRC/40/L.10/Rev.1)

world.[657] Additionally, the UNSC adopted the first press statement regarding the targeting of victims based on their sexual orientation after the 2016 Pulse nightclub attack in the U.S.[658] Although some Member States in UNSC, such as Russia and China, generally oppose addressing LGBTI rights, the press statement was able to achieve consensus due to U.S. humility and willingness to condemn domestic LGBTI discrimination in the international forum.

General Assembly

Although routine UNGA proceedings have had limited impact, the use of the UNGA as a forum has allowed world leaders to elevate the LGBTI cause. A statement supported by 66 Member States to address violence based on SOGI was delivered for the first time at the UN General Assembly in 2008.[659] In 2011, U.S. President Barack Obama became the first head of state to advocate for LGBTI rights in the forum during the High-Level Week of the 66th General Assembly.[660] The decision to include a call to "stand up for the rights of gays and lesbians everywhere" within his UNGA speech led to a flurry of media attention and expressions of gratitude from human rights activists across the globe.[661]

Member state fissures over LGBTI issues, however, have also played out in the UNGA. The human rights-focused Third Committee adopts a regular resolution acknowledging the work of the UNHRC, which includes routine references to the International Expert on SOGI following the office's creation in 2016. Countries who opposed the creation of the special procedure at the UNHRC seized the opportunity to voice opposition again during the fall 2016 UNGA session. The

[657] Samantha Power, "The Education of an Idealist: A Memoir," *Dey Street Books*, 10 September 2019: Page 523
[658] Albert Trithart, "The WPS Agenda is Not Just for Straight Cisgender Women," *IPI Global Observatory,* 13 October 2020.
[659] "UN General Assembly Statement Affirms Rights for All: 66 States Condemn Violations Based on Sexual Orientation and Gender Identity," *Human Rights Watch,* 18 December 2008: https://www.hrw.org/news/2008/12/18/un-general-assembly-statement-affirms-rights-all
[660] Samantha Power, "The Education of an Idealist: A Memoir," *Dey Street Books,* 10 September 2019: Page 280
[661] Ibid, Power 280

African Group submitted a draft text intended to defer consideration and acknowledgment of the UNHRC resolution until the next UNGA, arguing that the IE-SOGI mandate referenced alongside other Council activities lacked specificity since "sexual orientation" and "gender identity" were crystalized within international law.[662] Thanks to advocacy from Latin American and Western member states, the Third Committee ultimately amended the resolution to remove the IE-SOGI pushback before adoption. Nevertheless, the African Group text had opened up a broader debate in the committee that sought to undermine LGBTI rights.[663] Three years later, however, the Third Committee UNHRC resolution text acknowledging the IE-SOGI's mandate renewal in 2019 was adopted without wide-scale pushback.[664] Additionally, the biannual UNGA resolution on extrajudicial, summary, and arbitrary executions (EJEs) has referenced sexual orientation and gender identity as discriminatory grounds since 2003[665], although multiple amendments have been proposed to delete the reference to sexual orientation and gender identity.[666] The UNGA resolutions on EJEs remain the UNGA only resolutions that address LGBTI rights.

Secretariat / Secretary General

Although LGBTI rights remain a sensitive issue with many UN member states, the Secretary General has enacted new policies and spoke out in support. The Secretary General Ban also directed extending employee benefits to the same-sex spouses of UN civil servants. Both Secretary Generals Ban and Guterres have both leveraged their administrative authority, 'bully pulpit,' and annual reports in support of identifying and combating discrimination and violence against the LBGTI community.

Administrative Authority

In 2014, SG Ban drew upon his administrative authority to extend employee benefits to the same-sex spouses of UN civil servants, establishing an inclusive policy applicable even to staff from countries with LBGTI-related restrictions.[667]

'Bully Pulpit' and Building Momentum for HRC Resolution

In 2010, SG Ban delivered a written statement for an event during the fifteenth regular session of the Human Rights Council[668], one year before the historic HRC resolution regarding sexual orientation and gender identity. This marks the first statement of SG in relations to LGBTI people. In 2018, his successor SG Guterres called for "redoubled efforts" to address discrimination and violence against the LGBTI community during a ministerial meeting of the UN LGBTI Core Group.[669] He has continued to call attention to the issue through periodic statements, especially around the International Day Against Homophobia, Biphobia and Transphobia.[670]

Annual Reports

[662] "Intense Debate, Close Voting as Gender Identity, Sexual Orientation, Digital-age Privacy Take Centre Stage in Third Committee," *United Nations,* 21 November 2016.
[663] Ibid, United Nations
[664] "No Challenge in UN Third Committee on the Renewal of Independent Expert on SOGI," *Outright International,* 7 November 2019: https://outrightinternational.org/content/no-challenge-un-third-committee-renewal-independent-expert-sogi
[665] A/RES/57/214
[666] Sara Perle & John Fisher "Governments Remote Sexual Orientation From UN Resolution Condemning Extrajudicial, Summary, or Arbitrary Executions." *Outright Action International,* 17 November 2010.
[667] Samantha Power, "The Education of an Idealist: A Memoir," *Dey Street Books,* 10 September 2019: Page 422
[668] OHCHR, The Secretary-General -- MESSAGE TO event on ending violence and criminal sanctions based on sexual orientation and gender identity Geneva, 17 September 2010.
[669] "Secretary-General, at Ministerial Event, Urges Bolder Efforts to End Rights Violations against Lesbian, Gay, Bisexual, Transgender, Intersex Community," *United Nations Press Release,* 25 September 2018.
[670]

The SG's annual report on conflict-related sexual violence has included specific mentions of LGBTI victims since 2015.[671] Within his Women, Peace, and Security annual report, the SG called for data to be "disaggregated by race, ethnicity, sexual orientation, gender identity and disability" in 2019, empowering UN peace operations to improve "monitoring and reporting of threats and violence" against LGBTI individuals among others.[672]

UN Funds, Programmes, and Agencies

A number of UN departments and agencies have made efforts in including LGBTI rights into their programming. While this report does not capture all the works of the UN Funds, Programmes, and Agencies, it aims to look at a number of initiatives that could benefit the analysis of the main report. It is also worth noting that the LGBTI rights may face additional obstacles to be brought up in UN specialized agencies or related organizations, as those entities have members, budgets, and rules separate from the UN Secretariat.[673]

Specialized Agencies

The very first prominent discussions around LGBTI rights emerged as part of the World Health Organization (WHO)'s global response to the HIV/AIDS epidemic, highlighting that human rights are essential to improve public health in the late 1980s.[674] Further, WHO started openly advocating against discrimination against "key populations," including men who have sex with men (MSM) and, eventually, transgender people.[675]

The International Labour Organization (ILO) has addressed discrimination against LGBTI persons within the world of work. In 2012, the ILO initiated the "Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work (PRIDE)" project,[676] with an initial scope of Argentina (co-chair of LGBTI Core Group), Hungary, and Thailand. The ILO report documented the experiences of LGBTI people facing discrimination in the workforce, such as Trans individuals being denied jobs due to their gender expression, and demonstrated the need for labor statistics that are inclusive of marginalized populations.[677] The ILO project aligns with a rights-based approach, which examines basic tenets of life including livelihood, and such approach can shed light on varied forms of stigma and discrimination.

UN Development Programme

The UN Development Programme (UNDP) includes LBGTI considerations in their development strategies. UNDP's "Being LGBTI" projects in multiple regional programmes can exemplify such efforts.[678] The program coordinates regional organizations, such as ASEAN and Organisation of Eastern Caribbean States (OECS), and regional research institutes to conduct research on the marginalization and exclusion faced by LGBTI people in the region, particularly concerning SDG indicators.

[671] Ibid, Trithart

[672] Albert Trithart, "The WPS Agenda is Not Just for Straight Cisgender Women," *IPI Global Observatory*, 13 October 2020: https://theglobalobservatory.org/2020/10/the-women-peace-and-security-agenda-is-not-just-for-straight-cisgender-women/

[673] Albert Trithart, "A UN for All? UN Policy and Programming on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics," *International Peace Institute*, February 2021.

[674] Albert Trithart, "A UN for All? UN Policy and Programming on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics," *International Peace Institute*, February 2021.

[675] UNAIDS, "Key populations" https://www.unaids.org/en/topic/key-populations.

[676] *ILO*, "Discrimination at work on the basis of sexual orientation and gender identity: Results of the ILO's PRIDE Project" Geneva, May 2015.

[677] Rosina Gammarano, "Inclusion and Diversity in the Labour Market: a call for LGBT Labour Statistics", *ILO*, December 2019.

[678] UNDP, "LGBTI Index," March 2019.

There remains a dearth of data on discrimination and violation against LGBTI individauls to show tangible evidence of the discrimination cases. To respond to the challenge, UNDP has created an LGBTI Inclusion Index, an index that tracks development progress for LGBTI individuals within the SDGs framework.[679] This shows the UNDP's initiatives to include LGBTI considerations in its broader strategies. The index not only introduces a set of 51 indicators to measure development outcomes for LGBTI individuals but also calls for high-quality data on LGBTI people, which could further be used for programming and policymaking. Developing such an index can contribute to mainstreaming marginalized population's rights within the UN-wide systems. It also effectively demonstrates that eradicating discrimination is an imperative factor in achieving the SDGs.

Human Rights Council

The discussions on human rights of LGBTI people evidently increased within the Human Rights Council, and as of 2021, three resolutions that explicitly mention sexual orientation and gender identity have been passed in 2011, 2014, and 2016.[680] Additionally, in 2019, UNHRC made the first resolution on the rights of intersex persons.[681] The 2011 HRC revolution resolution was sponsored by South Africa and this was effective in responding to the opposing discourse that protecting LGBTI rights is too western, therefore post-colonial. The 2011 resolution also resulted in the first official United Nations report on the issue prepared by the Office of the High Commissioner for Human Rights[682], and consequently, a panel discussion to discuss the report's findings in March 2012[683].

Additionally, the Universal Periodic Review has been used to register instances of LGBTI discrimination and provide concrete recommendations. 1,375 LGBTI-related recommendations to over 158 countries have been published from 2008-2017.[684]

Special Procedures

Even before the first HRC Resolution on LGBTI rights in 2011, multiple thematic Special Rapporteur had also addressed and documented discrimination against LGBTI individuals.[685] By continuously bringing attention to cases of discrimination through different thematic areas, LGBTI rights movements were able to gain momentum within the UN. The UN Special Rapporteurs also played a role in establishing the Yogyakarta Principles, a set of international legal principles to protect sexual minorities, developed by Civil Society Organizations and international experts. Out of 29 experts who signed the Yogyakarta Principles, 8 of them were serving as UN Special Rapporteurs. As the Yogyakarta Principles provide foundational frameworks for international legal systems to address human rights of LGBTI individuals, it is important to highlight the contribution of UN Special Rapporteurs to the Principles.

[679] M. V. Lee Badgett & Randall Sell, A Set of Proposed Indicators for the LGBTI Inclusion Index, New York: UNDP. 2018.
[680] 2011 (A/HRC/RES/17/19), 2014 (A/HRC/RES/27/32), and 2016 (A/HRC/RES/32/2)
[681] A/HRC/40/L.10/Rev.1)
[682] United Nations Office of the High Commissioner for Human Rights. "Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity" November 17 2011 (A/HRC/19/41)
[683] Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity.
[684] Helen Nolan et al, "LGBTI Advocacy at the UN: The Role of Capacity Building and Coalitions," *IPI Global Observatory*, 23 July 2019.
[685] Relevant Special Rapporteur's reports include, but not limited to: the 1999 report of UN Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions (E/CN.4/1999/39), the 2001 report of Special Rapporteur on the question of torture (A/56/156), the 2004 report of the special rapporteur on the right to health issues (E/CN.4/2004/49).

Further, the 2016 resolution mandated the adoption of the Independent Expert on Sexual Orientation and Gender Identity (IE-SOGI). IE-SOGI is mandated to deliver annual reports both to the Human Rights Council and to the General Assembly but has also spoken with numerous UN fora, including the CEDAW committee. Independent Expert on SOGI has been extremely effective in bringing more attention to issues that could have been overlooked, such as so-called 'conversion therapy' and the impact of the COVID-19 pandemic on LGBTI people.

Treaty Bodies

All the nine Treaty Bodies made 137 LGBTI-inclusive references in 66 Concluding Observations on 56 different States in 2019. CEDAW made the highest number of references (33) among all Treaty Bodies that year. Evidently, the number of the LGBTI-inclusive references has been growing. For example, in 2014, CEDAW committee made 11 references in 25 Concluding Observations, and in 2018, the number even reached 66 in 24 Concluding Observations.[686] The composition of Committee members affects the Committee's decision. For example, the number of SOGIESC references made by CEDAW decreased in 2019 compared to 2018. This is after two strong L(G)BTI advocate committee members left significantly.

While CEDAW has a strong standpoint on LGBTI rights, it is important to notet that all the treaty bodies are engaged with enhancing LGBTI rights. This illustrates how treaty bodies were engaged with multiple forms of discrimination stemming from intersecting identities, effectively unpacking overlapping forms of discrimination. For example, ICERD has issued recommendations on hate speech and hate crimes against LGBTI migrants.[687]

Enabling and Inhibiting Factors

Enabling Factors

Advocacy by a Global Leader - United States

UN action against LGBTI discrimination has been catalyzed by dedicated political capital and resources from a central UN member state. U.S. actions at the UN have established new precedents for combating LGBTI discrimination and violence through UN mechanisms and institutions. The U.S. led both UN Security Council initiatives that recognized the targeting of individuals based on sexual orientation.[688] Cabinet-level Ambassador Samantha Power spearheaded the ISIL-related Arria meeting and the Pulse nightclub press statement, leveraging the influence of the U.S. Mission to the UN and the U.S. writ large to create Council precedents that could be built upon to address persecuted LGBTI communities around the globe.[689] The U.S. seized an "extraordinarily rare" opportunity with the Pulse nightclub statement to build consensus with China and Russia, who are normally "extremely opposed to LGBTI recognition at the UN," choosing to lead with humility and issue a "condemnation" of LGBTI violence within their own borders.[690] Similarly, U.S. President Obama broke new ground by including the first references to LGBTI human rights in his 2011 UN General Assembly speech. Although the U.S. was a

[686] Kirichenko, Kseniya. 2020. United Nations Treaty Bodies: References to sexual orientation, gender identity, gender expression and sex characteristics: Annual Report 2019 . Geneva: ILGA World.
[687] Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventeenth to nineteenth periodic reports of Colombia*, CERD/C/COL/CO/17-19, January 2020.
[688] Albert Trithart, "The WPS Agenda is Not Just for Straight Cisgender Women," *IPI Global Observatory*, 13 October 2020.
[689] Samantha Power, "The Education of an Idealist: A Memoir," *Dey Street Books*, 10 September 2019: Page 524
[690] Jessica Stern, Outright International, Interview on February 23, 2021

strong enabling factor to advance LGBTI rights during the Obama-Biden Administration, the Trump-Pence Administration's conservative position on gender, sexual health, and the definition of family threatened to reverse gains made by the previous U.S. administration. While mid-level U.S. diplomats continued to attend LGBTI coalition meetings, the leadership vacuum at the senior level during the Trump-Pence Administration underscored the importance of other supportive actors like the LGBTI Core Group continuing to galvanize progress.

Coalition of Supportive UN Actors - LGBTI Core Group

Progress on LGBTI rights at the UN can also be attributed to the advocacy of the UN LGBTI Core Group. The coalition of states and civil society actors have continued to direct attention to the LGBTI cause within UN fora, leading to greater momentum. Since its 2008 founding, the Core Group has regularly played a crucial role in proposing and passing HRC resolutions, and convened UN side events and incorporated LGBTI considerations into statements during official UN meetings.[691] The informal group is composed of a cross-regional coalition of 33 member states, alongside the European Union, Office of the UN High Commissioner for Human Rights, Human Rights Watch, and OutRight Action International.[692] LGBTI Core Group secured strong allies in Latin America, such as Costa Rica. Collaborating with Global South countries is helpful to counter arguments that LGBTI rights are 'Western.' The group's adoption of a rule for member states to join in pairs--one from the Global North and one from the Global South--has been particularly useful for building broader support for LGBTI rights within the UN.[693]

Coalition of Courageous Civil Society

CSOs have been the core of LGBTI movements and have been active in UN proceedings. These organizations have their "finger on the pulse of the [LGBTI] community" and direct "state attention and UN attention to community needs."[694] LGBTI civil society organizations normalize and socialize UN member states to the idea of LGBTI rights, making the most of limited or informal speaking opportunities to ensure the voices of marginalized LGBTI communities are heard, including side events at annual UN events.[695] Their advocacy work has been critical at uncovering the experiences of those groups that may have otherwise remained largely invisible to the UN, particularly when there are no specific conflicts involved. It is also worth noting that the CSO coalition for LGBTI case appears to be stronger than other cases as there are LGBTI individuals across the world. For example, Outright Action International works in four different continents to advance LGBTI rights across the world. Likewise, ILGA (The International Lesbian, Gay, Bisexual, Trans and Intersex Association) World is an umbrella civil society organisation representing 1,614 member organisations from 158 countries and territories. However, it is worth noting that CSOs have limited access to New York-based UN mechanisms, in comparison with Geneva-based UN mechanisms.

Side Events to Mainstream and Sensitize LGBTI Rights within the UN

[691] Sahar Moazami, "Defending the Human Rights of LGBTI People at the UN," *IPI Global Observatory*, 21 June 2019.
[692] UN LGBTI Core Group, "Core Group History," Accessed 9 February 2021.
[693] Albert Trithart, "A UN for All? UN Policy and Programming on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics," *International Peace Institute*, February 2021.
[694] Jessica Stern, Outright International, Interview on February 23, 2021
[695] UN Member State Representative, Interview on February 2021

A number of CSOs and Member States host LGBTI-related side events at the UN meetings in Geneva and New York. The events give LGBTI activists and allies a platform to shed light on the lived experiences of those discriminated against for their sexual and gender identities. For example, at the 63rd session of the CSW in 2019, the first state-sponsored side event focused on trans and gender non-conforming people's lives was hosted by OutRight International, Haus of Khameleon and the Permanent Missions of Argentina, Malta and the European Union.[696] The informal nature of these sessions allows advocates to circumvent procedural rules that would otherwise constrict discussion of LGBTI issues in UN fora. While the side events may not have immediate impact, they can be effective in awareness building and sensitizing in the longer term.

Inhibiting Factors

Coalition of Adverse UN Actors - Russia, China, OIC, African Group

More than 70 UN Member States have laws criminalizing LGBTI individuals.[697] These Member States attempt to challenge the LGBTI agenda through questioning the inclusion of sexual orientation-related rights in matters of international human rights law.[698] Regional allies have pressured HRC and UNGA not to address this issue at the UN. For example, when HRC held its first panel on LGBTI rights, sponsored by South Africa, almost all delegates from Islamic, Arab, and African countries walked out of the room.[699] Additionally, member states pose a threat to the inclusion of LGBTI considerations within international financial institutions, as their voting bloc's influence over funding and administrative decisions cause delays on integrating LBGTI issues into programming and analytics.[700] These member states argue that acknowledging LGBTI rights is not aligned with their societal and cultural values. Such views have constrained advocacy in the UNSC and UNGA, and have posed a threat to LGBTI-related UNHRC proceedings. The Russian UN delegation poses a particular threat to the LBGTQ+ agenda within the United Nations. Within the Security Council, Russia has pushed back on references to "vulnerable populations," viewing the language as a euphemism for LGBTI populations.[701] Russia also threatened to protest SG Ban's same-sex benefits policy through a vote in the UN General Assembly, and works to thwart inclusive references in UNGA documents.

Limitation on Influencing Legal Changes

69 UN Member States are still criminalizing consensual homosexual acts as of 2020. Although this number has been decreasing, it is difficult to find a significant correlation between UN resolutions and legal changes in Member States' national legislation. Although the OHCHR published "Living Free and Equal: Good Practices by States" to introduce initiatives taken by States to advance LGBTI rights, the UN has still shown limitations in amplifying significant legal changes within Member States, such as legalizing same-sex marriage.[702] Particularly, equal marriage is considered "an extraordinarily controversial topic that it's

[696] OutRight International, "UN New Yorker: OutRight at CSW", April 2, 2019, Accessed March 17, 2021.
[697] Ibid, Trithart
[698] Rosa Freedman, "Mandate Renewal of Independent Expert on Sexual Orientation and Gender Identity At Risk," *IPI Global Observatory,* 10 July 2019.
[699] Rosa Freedman, "Mandate Renewal of Independent Expert on Sexual Orientation and Gender Identity At Risk," *IPI Global Observatory,* 10 July 2019.
[700] Phil Crehan et al, "Transforming U.S. Foreign Policy To Ensure Dignity and Rights for LGBTI People," Atlantic Council, 16 November 2020.
[701] Samantha Power, "The Education of an Idealist: A Memoir," *Dey Street Books,* 10 September 2019: Page 524
[702] Jessica Stern, Outright International, Interview on February 23, 2021

almost unthinkable to imagine talking about it at the UN."[703]

Physical and Procedural Barriers

One unexpected factor inhibiting UN LGBTI advocacy is the presence of physical and procedural barriers at the UN's New York headquarters. "Structural barriers in the physical space itself," such as restricted grounds, conference rooms, and accessways can undermine opportunities to conduct advocacy aimed at UN member states.[704] "Huge parts of the UNHQ are inaccessible to civil society," requiring escorts from member state representatives.[705] Casual and serendipitous conversations on the latest issue developments are made more difficult by access restrictions to the UN Delegates Lounge. In contrast, CSOs have much greater access at the UNHRC, where "everyone hangs out in the same cafe, civil society and diplomats."[706] Civil society officers are able to brief county representatives as they "walk by in the hallways."[707] Beyond the access restricted or created by physical space at the UN, procedure and protocol can also undermine CSO advocacy on LBGTI rights. "There are very few spaces for CSOs to speak in the GA," with limited civil society speaking slots despite innumerable UN meetings.[708] Although civil society can often observe UN meetings, the procedures around the "very few" speaking slots at UNHQ meetings make it harder for the voices of those affected by anti-LGBTI discrimination to reach UN member governments able to craft international policy to address it.[709]

[703] Ibid, Stern
[704] Ibid, Stern
[705] Ibid, Stern
[706] Ibid, Stern
[707] Ibid, Stern
[708] Ibid, Stern
[709] Ibid, Stern

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