

NWMUN 2012



**The Premier
Model United Nations Conference
in the Northwest**

**Background Guide for:
*Human Rights Council***



Northwest Model United Nations | November 16 – 18 | Seattle, WA

August 1, 2012

Dear Delegates,

Welcome to the 2012 Northwest Model United Nations (NWMUN) Conference and the Human Rights Council. The committee staff of the Human Rights Council, consisting of Director Sara Leister, Assistant Director Jane Kim, and Special Adviser Evin Sanders, are looking forward to working with you at our conference.

The entire Secretariat is very excited to work with you in November and appreciate the hard work and research you are undertaking in preparation for what we are confident will be a great conference!

We are immensely pleased to present to you the background guide for the Human Rights Council, written by Sabrina Grover, Jane Kim, and Evin Sanders. The topics for this year's Human Rights Council are:

- I. Rights of Indigenous People**
- II. Access to Safe Drinking Water and Sanitation**

Every participating delegation is *required* to submit a position paper prior to attending the conference. NWMUN will accept position papers until **Sunday, November 11th at 11:59 pm Pacific Time. Please submit all position papers to: positionpapers@nwmun.org.**

Please refer to the following pages for position paper requirements, as well as an example position paper. Delegates' adherence to these guidelines is crucial, because it not only ensures a well-prepared committee, but is also a key component of the awards process.

We wish each of you the best as you prepare for this conference and committee. We urge you to move beyond the background guide as you learn more about both the Member State you will represent and the topics we will be discussing. Please do not hesitate to direct any questions or concerns toward your Director or the Director-General. We look forward to meeting you at the conference!

Sincerely,

Sara Leister
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Jane Kim
Assistant Director,
Human Rights Council
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Janie Sacco
Director-General,
NWMUN 2012
dg@nwmun.org



Position Paper Guidelines

Your position paper should consist of a well-developed introduction and a summary of the position of your country on each of the topics to be discussed in your committee. It is important to remember that while you will have lots of information on your country’s actions on a local or national level, you must discuss your country’s position on an international level, particularly including suggestions for policies and future action that could be taken by the committee. Additional examples of high quality position papers are available on the NWMUN website.

Formatting

Position papers should be formatted using the following specifications:

1. Times New Roman
2. Size 10 – 12 font
3. Single spaced
4. 2 pages in length

Please Note: Anything over two pages will not be read. If your paper is not correctly formatted it could be returned to the author for corrections.

Submission Process

NWMUN will accept position papers until **Sunday, November 11th at 11:59 pm Pacific Time.**

1. Please **send each position paper in a separate e-mail to the committee** with the subject line: COUNTRY – COMMITTEE
 - a. Example: BELARUS – HRC
 - b. Example: TRINIDAD & TOBAGO - GA
2. Please **cc all position paper submissions** to positionpapers@nwmun.org.

General Assembly Plenary:	ga@nwmun.org	Human Rights Council:	hrc@nwmun.org
UN Education, Scientific, and Cultural Organization:	unesco@nwmun.org	Security Council:	sc@nwmun.org
Reformed Security Council	rsc@nwmun.org	Conference of the Parties to the UNFCCC:	cop18@nwmun.org

Please Note: Delegates who have not submitted a position paper by the specified deadline will not be given consideration for awards.

Content Requirements

Position papers should include, and will be evaluated, on the following items:

1. **Formatting** and presentation;
2. **Spelling and grammar that is reflective of the level of education** being pursued by attendees of the conference.
3. The **content** should include:
 - a. **Background information on the topic**, why your country thinks it is important, relevant national commitments and action on the issue. Remember to focus on national policies which influence your country's action on this topic within the UN and internationally.
 - b. **International commitments and your country's support of specific resolutions**, initiatives, conventions or treaties. Describe what actions have been taken by your country to address its prior international commitments.
 - c. **Specific and concrete proposals** for next steps on the topic, priority issues, and ways your country believes the committee can move forward on addressing the topic. This is the most important section of the position paper, and should be the prioritized accordingly.

Research Tips

1. Look for statements made by your country – you will often find the exact position of your country within a speech that they have made.
2. Look for the voting record of your country, which indicates its support or lack of support for particular resolutions on the topics when they were previously discussed.
3. Look for recommendations made in Secretariat reports or within resolutions that have been adopted in order to identify the ways in which you can move forward or take action on the topic.

Key Resources

1. **UN Website “On the Record”:** <http://www.un.org/depts/dhl/unms/>
This website provides direct access to official documents reflecting the views of United Nations Member States.
2. **UN Website “Global Issues”:** <http://www.un.org/en/globalissues/>
This website offers an overview of some of the global issues we will be discussing at NWMUN, and links to other resources where you can get additional information.
3. **UN Human Rights Council:** <http://www2.ohchr.org/english/bodies/hrcouncil/>
The official website of the Human Rights Council, this source will offer delegates easy access to

Sample Format & Content of Position Papers

Delegation from
(Bold, Italicized, Times New Roman, Size 10-12)
[Member State]
(Bold, Times New Roman, Size 10-12)

Delegation from
(Bold, Italicized, Times New Roman, Size 10-12)
[Member State]
(Bold, Times New Roman, Size 10-12)

Position Paper for [Committee Name]
(Bold, Italicized, Times New Roman, Size 10-12, Centered)

Introductory sentence providing an overview of the topics. (Times New Roman, Size 10 – 12)

I. Topic One Title
(Bold, Italicized, Times New Roman, Size 10-12, Centered)

Paragraph #1: Background information on the topic, why your country thinks it is important, relevant national commitments and action on the issue. Remember to focus on national policies which influence your country's action on this topic within the UN and internationally.
(Times New Roman, Size 10 – 12)

Paragraph #2: International commitments and your country's support of specific resolutions, initiatives, conventions or treaties. Describe what actions have been taken by your country to address prior international agreements made by your country (Times New Roman, Size 10 – 12)

Paragraph #3: Specific and concrete proposals for next steps on the topic, priority issues, and how your country can move forward on addressing the topic. This is the most important section of the position paper, and should be the longest paragraph. (Times New Roman, Size 10 – 12)

II. Topic Two Title
(Bold, Italicized, Times New Roman, Size 10-12, Centered)

Paragraph #1: Background information on the topic, why your country thinks it is important, relevant national commitments and action on the issue. Remember to focus on national policies which influence your country's action on this topic within the UN and internationally.
(Times New Roman, Size 10 – 12)

Paragraph #2: International commitments and your country's support of specific resolutions, initiatives, conventions or treaties. Describe what actions have been taken by your country to address prior international agreements made by your country (Times New Roman, Size 10 – 12)

Paragraph #3: Specific and concrete proposals for next steps on the topic, priority issues, and how your country can move forward on addressing the topic. This is the most important section of the position paper, and should be the longest paragraph. (Times New Roman, Size 10 – 12)

Example Position Paper

Delegation from
Canada

Represented by
University of South Washington

Position Paper for the Economic and Social Council Plenary

The topics before the Economic and Social Council are: 1) Promoting Economic and Social Gender Equality as a Means to Achieve Sustainable Peace, 2) Implementing International Agreements to Ensure Global Public Health, and 3) Promoting Sustainable Cities. Canada is committed to strengthening the role of ECOSOC on the issues before it, and looks forward to promoting enhanced cooperation amongst Member States in order to reach consensus and take concrete action.

I. Promoting Economic and Social Gender Equality as a Means to Achieve Sustainable Peace

In conflict and post-conflict societies, economic and social rights are often given lower priority than political and civil rights. In these cases, women are not treated equally, and are often the victims of gender discrimination, which manifests itself in violations of human rights such as rape, violence and displacement. The prevalence of these crimes is exacerbated by a lack of protection for women, who often do not possess the right to own land, have no means to receive adequate health care and have no access to justice.

Canada has long been a champion of women's economic, social, and cultural rights. As an original signatory of the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights (CESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Canada has a formal commitment to gender equality and, more specifically, supports the explicit and systematic integration of a gender perspective into all peace-building and foreign aid initiatives. Canada continues to press for specific initiatives with concrete and measurable outcomes when addressing gender inequality. The Canadian International Development Agency (CIDA) has developed its own Framework for Addressing Gender Equality Results. This framework has been an important advance in assessing the effectiveness of its initiatives and has consistently provided CIDA with useful and relevant data. Canada recognizes the advancements made in Security Council resolution 1820 (2008), 1888 (2009) and 1889 (2009) to strengthen the original principals of Security Council resolution 1325 (2000). However, Canada firmly believes that ensuring the implementation of SCR 1325 (2000) at the national level is vital. That is why Canada suggests that the CEDAW committee issue recommendations to both the Security Council and ECOSOC on positive models for National Action Plans (NAP) for incorporating SCR 1325 (2000), a set of progress and impact indicators through which its implementation can be monitored, and benchmarks designed towards strengthening the principals of SCR 1325 (2000).

Canada recommends that the Commission on the Status of Women (CSW), along with the ECOSOC Committee on Non-Governmental Organizations (NGOs) reach out to local NGOs and civil society organizations (CSOs) to coordinate the monitoring of, and reporting on, the progress of these NAPs. CSW will then report its findings to ECOSOC, the Security Council, and the Secretary General. Canada urges for the adoption of benchmarks requiring 30% of UN-mandated peacekeeping forces and negotiating delegations be women. Canada also believes that while peacekeeping troops are vital to facilitating the cessation of hostilities, a separate unit with a specialized mandate is necessary to deal with the psychological and health issues of women that continue in post-conflict situations long after the violence is over. The specialized mandate will also lay the groundwork for legal procedures that may need to be taken to ensure just peace. Canada calls for the creation of this specially trained unit to be deployed in post-conflict situations, with a specific mandate to address sexual and gender based violence,

help to eliminate impunity, and offer same-sex interviewers for rehabilitation purposes. The newly created unit will facilitate reconciliation and violence prevention.

II. Implementing International Agreements to Ensure Global Public Health

Effectively addressing global public health lies at the center of achieving the Millennium Development Goals (MDGs). Through agreements such as the Paris Declaration on AID Effectiveness, the Accra Agenda for Action (AAA), and global health initiatives such as the Global Alliance for Vaccines and Immunizations (GAVI), and the Global Fund to fight AIDS, TB, and Malaria, the international community has made significant progress in addressing the world's health concerns. Canada is focused on creating frameworks and resolutions that foster greater coordination, eliminate corruption and overlap, improve AID consistency, encourage the untying of AID, emphasize a focus on national health systems, and hold all the countries involved accountable for producing tangible and measurable results.

Canada has been a leader in the use of innovative funding mechanisms, such the Advance Market Commitment (AMC), which provides incentives for pharmaceutical companies to accelerate the development of vaccines and sell them at prices that poor countries can afford. This project, which is being implemented in coordination with the World Bank and GAVI, is expected to save an estimated 7.7 million lives by 2030. Canada will continue to urge its fellow member states to become more involved in the creation and implementation of such innovative funding mechanisms.

Especially now, due to the downturn in the global economy, where the world's poor are disproportionately suffering, there is a greater need for all donor countries to fulfill their Official Development Aid (ODA) commitments. Canada was the first country to fulfill its G8 commitment to double ODA in Africa by 2008, and throughout the world by 2010. This has been accomplished through both the African Health Systems Initiative (AHSI) and the Catalytic Initiative to Save a Million Lives. Canada has not only committed USD 450 million to these initiatives, but with them has demonstrated its focus on both strengthening, and developing local ownership, of national health systems. Canada urges the implementation of year-by-year funding targets to ensure that ODA commitments for health initiatives are kept. Currently The Measles Initiative is facing a funding gap of \$59 million for 2010, and the Global Fund to fight AIDS, TB, and Malaria is also facing a funding crisis of \$5 billion for this year. These gaps in funding could cause millions their lives. Canada strongly urges it fellow member states to fulfill their commitments to these funds.

Canada is also a strong proponent of the International Health Partnership & Related Initiatives (IHP+). The Canadian International Development Agency (CIDA), through the IHP+ framework, is the chair of the Mozambique National AIDS Council (CNCS) and has made long-term financial commitments to IHP+. Canada believes that IHP + will not only prove to be extremely effective in addressing the issues of AID effectiveness, redundancy, and accountability, but will also go a long way towards creating a united front dedicated to improving global public health. Canada urges for the creation of new commitments that compel 15 Organization for Economic Co-operation and Development (OECD) countries to join in either bilateral or compact agreements through IHP+ by 2020.

The Human Rights Council at NWMUN 2012

NWMUN works each year to create as accurate a simulation as is possible for our delegates. Therefore, we have developed some additional ways for delegates to interact within the simulation, including enabling delegates to take action other than passing resolutions on an issue. This section aims to provide additional, specific information for the Human Rights Council at NWMUN 2012.

Briefings

While discussing a topic, HRC delegates are able to receive briefings from representatives of relevant member states or UN subject matter experts. The specific thematic experts available will be announced on the NWMUN website, as well as the beginning of the conference.

Mandate

The mandate of the Human Rights Council at NWMUN 2012 is to:

Promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner; Address situations of violations of human rights, including gross and systematic violations, and to make recommendations thereon; and Promote the effective coordination and the mainstreaming of human rights within the UN system.

Functions & Powers

- To recommend to the General Assembly actions that would further develop international law in the field of human rights;
- To undertake a Universal Periodic Review of every UN Member State, which would evaluate its fulfillment of its obligations and commitments in the field of human rights;
- Make recommendations to the General Assembly on courses of action to take with regards to specific human rights violations, including human rights emergencies;

Outcome Documents

When taking action, the Human Rights Council may adopt **resolutions**. Human Rights Council resolutions are non-binding, but are recommendations to the General Assembly (and potentially other UN bodies such as the Security Council) that may encourage those latter bodies to take action as well. Additionally, HRC resolutions carry considerable weight behind it, as the Council develops norms in the field of human rights, and represents the opinions of states entrusted to uphold human rights.

Rules of Procedure

The Human Rights Council will use the standard NWMUN rules of procedure, available on our website as well as at the conference.

Members of the Human Rights Council at NWMUN 2012

Angola	Austria	Bangladesh	Belgium
Benin	Botswana	Burkina Faso	Cameroon
Chile	China	Congo	Costa Rica
Cuba	Czech Republic	Djibouti	Ecuador
Guatemala	Hungary	India	Indonesia
Italy	Jordan	Kuwait	Kyrgyzstan
Libyan Arab Jamahiriya	Malaysia	Maldives	Mauritania
Mauritius	Mexico	Nigeria	Norway
Peru	Philippines	Poland	Qatar
Republic of Moldova	Romania	Russian Federation	Saudi Arabia
Senegal	Spain	Switzerland	Thailand
Uganda	United States of America	Uruguay	

Human Rights Council History and Background

Introduction

The Human Rights Council (HRC) was established by the General Assembly (GA) in 2006 pursuant to 60/251 and became the primary actor for human rights issues, replacing the former Commission on Human Rights (UNCHR) which had been in place since 1946.¹ The replacement of the UNCHR came after the commission had been widely criticized for dubious membership, as well as concerns with its failure to effectively and equally investigate human rights concerns.² Further, the elevation of the Council as a subsidiary of the Economic and Social Council (ECOSOC) to a body under the GA emphasized the core role of human rights within the UN system.³ The mandate of the HRC, guided by the Universal Declaration of Human Rights (UNDHR), is set out in resolution 60/251.⁴ The HRC serves as the primary body for the dialogue and communication on human rights issues, while additionally promoting education and the pursuing the full implementation of human rights obligations.⁵ Further, the Council is tasked with the responsibility to investigate and address “situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.”⁶ The Council is additionally requested to undertake periodic reviews of states to ensure that they are meeting the minimum human rights standards, and provide assistance and recommendations in those situations where states have fallen short.⁷

In 2011, the HRC underwent a five year review of its work and functionality by the General Assembly, as mandated in resolution 60/251.⁸ The review consisted of three stages: informal initiatives by Member States and the President of the council, the First Session of the Working Group on Council Review in October 2010, and the Second Session in February 2011.⁹ The outcome of the review focused largely on the overall functionality and logistics of the council, as well as emphasizing the need to continue strengthening the transparency and objectivity of the Special Procedures and ensuring continued cooperation with other UN bodies as well as regional and international organizations.¹⁰ Section E of the report cites comments made by Member States following the adoption of the review, several states expressed disappointment with the process and outcome of the review citing that debate during the process had been hindered, and that the outcomes did not adequately strengthen the councils functionality or abilities with respect to investigating violations.¹¹ Annex IV of the report documents State proposals which cover reform of the Universal Periodic Review (UPR), the Advisory Committee, Special Procedures and the overall programme of work for the committee.¹² The recommendations cover both procedural matters, including the restriction of the speakers list for the UPR and, the inability for adequate NGO and participation; as well as substantive matters such as strengthening intergovernmental cooperation and developing better guidelines for the UPR and Special Procedures.¹³

UN Framework and International Instruments

The framework for the issue of Human Rights within the United Nations is guided by three principal instruments: the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political rights (ICCPR), the three documents are collectively known as the International Bill of Human Rights¹⁴. Each of these three documents outlines different sides to the human rights framework. The UNDHR is the foremost document, which encapsulates the basic rights of the person, including the right of life, the right for equal and fair treatment, the right to privacy, social economic and

¹ UN GA, *Human Rights Council (A/RES/60/251)*, 2006. <http://www.un.org/Docs/journal/asp/ws.asp?m=a/res/60/251>

² IWRAW, *Overview: From Commission on Human Rights to Human Rights Council*, 2007. <http://www.iwraw-ap.org/publications/ops.htm>

³ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

⁴ UN GA, *Human Rights Council (A/RES/60/251)*, 2006. <http://www.un.org/Docs/journal/asp/ws.asp?m=a/res/60/251>

⁵ UN GA, *Human Rights Council (A/RES/60/251)*, 2006. <http://www.un.org/Docs/journal/asp/ws.asp?m=a/res/60/251>

⁶ UN GA, *Human Rights Council (A/RES/60/251)*, 2006. <http://www.un.org/Docs/journal/asp/ws.asp?m=a/res/60/251>

⁷ UN GA, *Human Rights Council (A/RES/60/251)*, 2006. <http://www.un.org/Docs/journal/asp/ws.asp?m=a/res/60/251>

⁸ HRC, *Human Rights Council Review*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCReview.aspx>

⁹ HRC, *Human Rights Council Review*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCReview.aspx>

¹⁰ UN GA, *Report of the open ended intergovernmental working group on the review of the work and functioning of the Human Rights Council (A/HRC/WG8.2/1)*, 2011. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/WG.8/2/1>

¹¹ UN General Assembly, *Report of the open ended intergovernmental working group on the review of the work and functioning of the Human Rights Council (A/HRC/WG8.2/1)*, 2011. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/WG.8/2/1>

¹² UN General Assembly, *Report of the open ended intergovernmental working group on the review of the work and functioning of the Human Rights Council (A/HRC/WG8.2/1)*, 2011. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/WG.8/2/1>

¹³ UN General Assembly, *Report of the open ended intergovernmental working group on the review of the work and functioning of the Human Rights Council (A/HRC/WG8.2/1)*, 2011. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/WG.8/2/1>

¹⁴ University for Peace, *Human Rights Instruments*, 2004. <http://www.hrc.ucepeace.org/files/pages/Human%20rights%20instruments.pdf>

cultural rights, the right to education, and the right to freedom of opinion and participation.¹⁵ The UNDHR provides the specific guidance for the mandate of the HRC, and is the one of the key documents which the HRC basis its' investigations of human rights violations.¹⁶ The ratification of the UNDHR by Member States creates binding obligations upon those States to ensure and protect human rights for all those within that State.¹⁷ Further it provides citizens with the legal framework and mechanism within which they may launch complaints or investigations in the event of human rights violations.¹⁸ The ICESCR and the ICCPR are supplementary to the UNDHR and focus in on specific aspects of the human rights framework.¹⁹ The ICESCR provides the specific framework for economic and social rights for citizens of Member States.²⁰ Specifically, the ICESCR outlines the conditions of work including the right to trade unions, the equality of men and women in the workplace, the minimum standards of living, the right to culture, and the right to education.²¹ The ICCPR is the specific framework surrounding the civil and political rights of the person.²² The convention also provides protection with respect to fair and equal treatment under the law, as well as setting the framework for a fair justice system.²³

In addition to the International Bill of Rights, the UN has several other substantive conventions that address particular scopes of the human rights issue, and specific segments of the population. There are two specific conventions which concern the rights of women and children, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).²⁴ Additionally, the ILO has several conventions which specify obligations upon States to ensure that workers are provided with certain working conditions and rights including fair and equal remuneration.²⁵

Outside of the HRC, the UN has several committees which also address human rights issues. Primarily these committees are focused on the implementation of treaties and monitoring their progress.²⁶

Committee Framework and Membership

The HRC has 47 member states which are elected by the General Assembly by secret ballot.²⁷ Membership of the council is broken down by region: Africa, 13 seats; Asia, 13 seats; Eastern Europe, 6 seats; Latin America and the Caribbean, 8 seats, Western Europe and Other States, 7 seats.²⁸ Elected members serve three year terms on the committee.²⁹ Additionally, the Bureau of the Council is composed of five members, one President and four vice-Presidents.³⁰ The Bureau represents each of the five regions.³¹ The key principles of the election of states is based on their existing human rights records, as well as their commitment to progress and programs as initiated by the Council.³²

The Council framework is composed of several different offices, procedures and mechanisms.³³ Each of these specific offices and procedures serve a unique function within the Council, responding and investigating different human rights situations. There are three key procedures within the committee: the Universal Periodic Review (UPR), the Complaint Procedures and the Special Procedures.

The UPR is the process by which each of the overall human rights records of all 193 member states are examined.³⁴ The UPR occurs once every four years.³⁵ The process itself is initiated by the Member States whereby each

¹⁵ UN General Assembly, *Universal Declaration of Human Rights*, 1948. <http://www.un.org/en/documents/udhr/index.shtml>

¹⁶ UN, *The Foundation of International Human Rights Law*, n.d. http://www.un.org/en/documents/udhr/hr_law.shtml

¹⁷ UN, *The Foundation of International Human Rights Law*, n.d. http://www.un.org/en/documents/udhr/hr_law.shtml

¹⁸ UN, *The Foundation of International Human Rights Law*, n.d. http://www.un.org/en/documents/udhr/hr_law.shtml

¹⁹ University for Peace, *Human Rights Instruments*, 2004. <http://www.hrc.upeace.org/files/pages/Human%20rights%20instruments.pdf>

²⁰ UN General Assembly, *International Covenant of Economic, Social and Cultural Rights*, 1966. <http://www2.ohchr.org/english/law/cescr.htm>

²¹ UN General Assembly, *International Covenant of Economic, Social and Cultural Rights*, 1966. <http://www2.ohchr.org/english/law/cescr.htm>

²² UN General Assembly, *International Covenant on Civil and Political Rights*, 1966. <http://www2.ohchr.org/english/law/ccpr.htm>

²³ UN General Assembly, *International Covenant on Civil and Political Rights*, 1966. <http://www2.ohchr.org/english/law/ccpr.htm>

²⁴ University for Peace, *Human Rights Instruments*, 2004. <http://www.hrc.upeace.org/files/pages/Human%20rights%20instruments.pdf>

²⁵ University for Peace, *Human Rights Instruments*, 2004. <http://www.hrc.upeace.org/files/pages/Human%20rights%20instruments.pdf>

²⁶ OHCHR, *Human Rights Bodies*, n.d. <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

²⁷ OHCHR, *Background Information on the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>

²⁸ IWRAP, *Overview: From Commission on Human Rights to Human Rights Council*, 2007. <http://www.iwraw-ap.org/publications/ops.htm>

²⁹ OHCHR, *Membership of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx>

³⁰ OHCHR, *Membership of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx>

³¹ OHCHR, *Membership of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx>

³² OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

³³ OHCHR, *Background Information on the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>

³⁴ OHCHR, *Universal Periodic Review*, n.d. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

government submits a national report consisting of appropriate documentation and records.³⁶ Additional reports are compiled based on existing information within the UN system and documents prepared by stakeholders including civil society and NGOs.³⁷ Primarily, the UPR takes place as a consultative process through dialogue between the State under review and the members of the Council.³⁸ While external stakeholders, including civil society and NGOs are not part of the consultations during the UPR, they are able to express their views and concerns prior to the consultation vis-à-vis their submissions to the UPR. Additionally, they may be asked to help in the compiling of the national reports prepared by each government.³⁹ The basis for the UPR review stems from the International Bill of Rights, and essentially attempts to ensure that States meet the minimum standards for human rights within their countries.⁴⁰ Where States fall short, the Council provides best practices and recommendations.⁴¹ Civil Society actors are encouraged, and sometimes required to in the follow up stages of the UPR and the implementation of recommendations.⁴² Following the initial UPR sessions, States report back to the Working Group periodically to report on the status of undertaking the recommendations (these occur in four year cycles).⁴³ As an example, in April 2008 Poland had its initial report to the Working Group, and in May 2012 had its second cycle follow up.⁴⁴ In its first cycle, the council had 56 recommendations for improvements to the human rights situation in Poland.⁴⁵ The recommendations covered several topics including the effective legislative implementation on the CRC, recommendations to adopt anti-discrimination law, reform of the prison systems, and legislatively improving gender equality in the country.⁴⁶ In 2012, during the second cycle, Poland was invited back to report on its progress. The follow up document contained a combination of a restatement of existing Polish legislation, designed to address the recommendations, and new strides the government had made in improving human rights conditions. Examples of the latter include the implementation of a new gender mainstreaming policy, to address gender inequality and the implementation of short-term imprisonment, to improve overcrowding in prisons.⁴⁷

The Complaint Procedure was adopted in HRC resolution 5/1, under the institution building mechanism framework.⁴⁸ The purpose of the complaint procedure was to investigate and address gross violations of human rights and fundamental freedoms.⁴⁹ The procedure is held to the highest regard of objectivity, equality and confidentiality.⁵⁰ The complaints procedure is composed of two working groups, the Working Group on Communications (WGC) and the Working Group on Situations (WGS).⁵¹ The WGC serves to review the communications submitted by victims of alleged human rights violations and determine if the communications submitted indicate and reveal a situation of human rights violations and are admissible to the WGS for investigation.⁵² These communications are then forwarded to the WGS, who investigate and review the communications and present to the council the situation as well recommended actions to further investigate or resolve the situation.⁵³ The WGC has specific conditions for its initial assessment on any alleged human rights violations. Specifically, the communication must not be politically motivated, it must not be a case already duplicated in the Special Procedures, domestic resolutions must have been attempted, and the evidence must stem beyond media reports.⁵⁴ The Complaint Procedure is individual driven, and designed as a tool for victims to voice their concerns directly to the Council, giving citizen's greater empowerment in the scope of human rights activity.⁵⁵ In addition to the complaints procedures each of the human rights treaty based bodies such as CEDAW and

³⁵ OHCHR, *Universal Periodic Review*, n.d. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

³⁶ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

³⁷ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

³⁸ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

³⁹ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

⁴⁰ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

⁴¹ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

⁴² OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

⁴³ OHCHR, *Basic Facts about the UPR*, n.d. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

⁴⁴ OHCHR, *Universal Periodic Review – Poland*, n.d. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PLSession1.aspx>

⁴⁵ OHCHR, *Universal Periodic Review – Poland*, n.d. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PLSession1.aspx>

⁴⁶ HRC, *Report of the Working Group on the Universal Periodic Review- Poland*, 2008. <http://goo.gl/oJY00>

⁴⁷ Republic of Poland, *Universal Periodic Review Mid Term Progress report by Poland*, 2012. <http://goo.gl/Dneug>

⁴⁸ OHCHR, *Complaint Procedure*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Complaint.aspx>

⁴⁹ HRC, *Institution Building of the United Nations Human Rights Council*, 2006

⁵⁰ OHCHR, *Complaint Procedure*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Complaint.aspx>

⁵¹ OHCHR, *Complaint Procedure*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Complaint.aspx>

⁵² OHCHR, *Complaint Procedure*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Complaint.aspx>

⁵³ HRC, *Institution Building of the United Nations Human Rights Council*, 2006. <http://goo.gl/PNZop>

⁵⁴ HRC, *Institution Building of the United Nations Human Rights Council*, 2006. <http://goo.gl/PNZop>

⁵⁵ OHCHR, *Complaint Procedure*, n.d. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Complaint.aspx>

Convention on the Elimination of Racial Discrimination (CERD), also house their own complaint procedures for those specific situations which are covered specifically by those treaties.⁵⁶

The Special Procedures of the HRC are designed to effectively investigate either those country specific or thematic situations of human rights issues.⁵⁷ The thematic issues are under the mandate of a combination of individual Special Rapporteurs or alternatively by a Working Group.⁵⁸ Currently, the HRC has 36 thematic issues including, the rights of indigenous people, cultural rights, the right to education, the rights of the child, including the sale and trafficking of children, and the obligations of States as related to a safe, clean, healthy and sustainable environment.⁵⁹ Each of the thematic specific offices, are tasked with investigating and reporting back to the Council on the global, regional and national scope of these issues.⁶⁰ Mandates for each of the Special Rapporteurs, or the Working Groups are established vis-à-vis the HRC resolution which created the office.⁶¹ In addition to reports, the Special Rapporteurs and Working Groups will produce recommendations for both the Council and for specific States under investigation and will institute follow ups, to monitor progress of the situation⁶² For example, the Special Rapporteur on trafficking in persons, especially women and children is responsible for assessing the global implementation and adherence to the Recommended Principles and Guidelines on Human Rights and Human Trafficking, as well as CRC and the ICCPR for the specific situation of trafficking on women and children; additionally, they are responsible for country specific situations, done primarily via country visits.⁶³ The reports prepared by the Special Rapporteurs and Working Groups on thematic issues serve important roles with respect to the education and awareness of the global community on specific situations, and further provide Member States with references for best practices and standards on the guiding their human rights approach.⁶⁴ In addition to the thematic issues, the Special Procedures are also tasked with the investigations and reporting on country specific situations that stretch beyond the thematic reports, and are designed to investigate gross national human rights violations.⁶⁵ Unlike the Complaint Procedure, which is individual and victim driven, the Special Procedures investigations are based upon a wider scope of information including submissions from civil society actors such as professionals such as lawyers and doctors, lobbying groups, and NGOs.⁶⁶ Further, the Special Procedures will attempt to seek greater understanding of the situation from Government sources within the state.⁶⁷ Country specific situations are addressed through country visits, following which the Special Procedure mandate holder will draft together recommendations for implementation and action both at the national, local and also at the Council level to effectively resolve the situation.⁶⁸

Conclusion

Human Rights are one of the most important pillars in the foundation of the United Nations. The Human Rights Council serves as the core body of the United Nations with respect to human rights issues, education and investigation. The council itself is broad based and composed of several unique bodies, committees and offices which are dedicated to protecting, investigating and resolve specific human rights concerns. The Council and its actions are driven with a regard to foster informative and constructive dialogue between Member States, but also to ensure that individual citizens feel empowered within the scope of human rights activity. The HRC has continued to expand its mandate over the last several years, and ensure that the functionality and framework continue to evolve and accurately reflect the human rights situation of the day.

⁵⁶ OHCHR, *Human Rights Bodies- Complaints Procedures*, n.d. <http://www2.ohchr.org/english/bodies/petitions/index.htm>

⁵⁷ OHCHR, *Special Procedures of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

⁵⁸ OHCHR, *Special Procedures of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

⁵⁹ OHCHR, *Special Procedures of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

⁶⁰ OHCHR, *Special Procedures of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

⁶¹ OHCHR, *Special Procedures of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

⁶² OHCHR, *Special Procedures of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

⁶³ OHCHR, *Special Rapporteur on trafficking in persons, especially women and children*, n.d. <http://goo.gl/3KJpe>

⁶⁴ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

⁶⁵ OHCHR, *Special Procedures of the Human Rights Council*, n.d. <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

⁶⁶ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

⁶⁷ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

⁶⁸ OHCHR, *A handbook for civil society*, 2008. <http://www.ohchr.org/Documents/Publications/NgoHandbook.pdf>

I. Rights of Indigenous Peoples

*“On the International Day of the World’s Indigenous Peoples, we reaffirm the rights of indigenous peoples and our shared commitment to advance the values of equity, justice and dignity for all.”*⁶⁹

-United Nations Secretary-General Ban Ki-moon

Introduction

The Office of the High Commissioner of Human Rights (OHCHR) estimates that Indigenous Peoples total nearly 300 million of the world’s population, and are geographically spread through more than 70 states across the globe.⁷⁰ Indigenous, while not officially defined by the United Nations (UN), has evolved into an encapsulating term to categorize those individuals who simultaneously self-identify as “indigenous peoples” through historical, ancestral and territorial ties to their surroundings, and at the same time form the non-dominant or minority segment of the society in which they are present.⁷¹ Historically, indigenous peoples have faced a unique challenge in confronting those non-native societies and peoples which expanded into their territory through colonization or other means (such as the French and British colonization of Canada).⁷² While each group has faced different challenges, the overarching issues and resulting circumstances have been similar. Primarily the effects are centered on societal participation and self-government, security, claims to land and cultural preservation, as well as access to social and educational services, discrimination, and economic stability.⁷³

Within the wider context of the UN HRC, the discussion of the rights of indigenous peoples falls into the broader framework of racial discrimination and racism, addressed in numerous documents, most notably the International Convention on the Elimination of All Forms of Racial Discrimination.⁷⁴ This convention, in conjunction with the Declaration on the Rights of Indigenous Peoples are two of the key documents which states have signed and used to frame domestic policies, to protect the rights of the people.

UN Framework and International Conventions

One of the strongest governing documents related to the protection of the rights of indigenous people is the International Labor Organization (ILO) Convention 169 (on the Rights of Indigenous and Tribal People in Independent Countries), written in 1989.⁷⁵ Convention 169 is a legally binding treaty, targeted at the specific advancement of the rights of indigenous peoples with respect to protection of culture, the rejection of the assimilationist attitude of states, control over development, and lastly, consultation and participation in decision making.⁷⁶ Similar to the Declaration on the Rights of Indigenous Peoples, Articles 6 and 7 of Convention 169 places a focus on the importance of governments recognizing the autonomy of indigenous peoples, especially with respect to economic development and traditional laws.⁷⁷ At present, 20 Member States, primarily in Central and Latin America, have ratified the treaty.⁷⁸ Denmark and the Netherlands are currently the only Western states to have ratified the convention.⁷⁹ In 2009, the ILO released *Indigenous and Tribal Peoples Rights in Practice*, which is a guide for governments to effectively implement Convention 169.⁸⁰ Section 3 of the guide provides direction on Article 2 of the convention, which focuses on government responsibility and action.⁸¹ Specific recommendations include equal access to adequate services and institutions, access to participate in government, and education of the wider public on indigenous culture to combat marginalization.⁸² These themes were further entrenched in 2007 under the Declaration on the Rights of Indigenous People. One point of note on the Convention is that it does not seek to define indigenous peoples, but rather provides guidelines for states to recognize where groups self-identify as indigenous peoples.⁸³

⁶⁹ UN, *International Day of the World’s Indigenous People: Secretary General’s Message for 2011*, 2011. <http://goo.gl/9l6WR>

⁷⁰ OHCHR, *Fact Sheet No.9 (Rev 1), The Rights of Indigenous Peoples*, 1997. <http://goo.gl/2JwX4>

⁷¹ UNPFII, *Fact Sheet 1: Indigenous Peoples and Identity*, 2006. http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf

⁷² UNPFII, *Fact Sheet 1: Indigenous Peoples and Identity*, 2006. http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf

⁷³ OHCHR, *Fact Sheet No.9 (Rev 1), The Rights of Indigenous Peoples*, 1997. <http://goo.gl/JOVPR>

⁷⁴ UN GA, *International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/2106 (XX))*, 1965. <http://goo.gl/LRd7D>

⁷⁵ United Nations, *The human rights normative framework*, n.d. http://www.un.org/en/globalissues/democracy/human_rights.shtml

⁷⁶ ILO, *Convention 169 Indigenous and Tribal Peoples Convention*, 1989. <http://goo.gl/kjyy6>

⁷⁷ ILO, *Convention 169 Indigenous and Tribal Peoples Convention*, 1989. <http://goo.gl/kjyy6>

⁷⁸ ILO, *Ratifications of C169 - Indigenous and Tribal Peoples Convention*, 1989 (No. 169), 1991. <http://goo.gl/WzqOr>

⁷⁹ ILO, *Ratifications of C169 - Indigenous and Tribal Peoples Convention*, 1989 (No. 169), 1991. <http://goo.gl/WzqOr>

⁸⁰ ILO, *Indigenous and Tribal Peoples Rights in Practice*, 2009. <http://goo.gl/EPgPB>

⁸¹ ILO, *Indigenous and Tribal Peoples Rights in Practice*, 2009. <http://goo.gl/EPgPB>

⁸² ILO, *Indigenous and Tribal Peoples Rights in Practice*, 2009. <http://goo.gl/EPgPB>

⁸³ ILO, *Indigenous and Tribal Peoples Rights in Practice*, 2009. <http://goo.gl/EPgPB>

Outside of the Declaration on the Rights of Indigenous People, the UN has two other important conventions which have historically applied to circumstances surrounding indigenous rights: the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination. The ICCPR was adopted by the General Assembly in December of 1966 and sets out the framework for the protection of civil and political rights.⁸⁴ The most pertinent articles to the issue of indigenous rights are: Article 1, the right to self-determination and Article 27, the rights of national, ethnic, and linguistic minorities.⁸⁵ The ICCPR, similar to Convention 169, sets out the obligations and responsibilities of governments to protect rights through official policy and legislation, and provide citizens with rights.⁸⁶ As of 2012, 167 states have ratified the treaty, and it is legally binding upon all those member states.⁸⁷

The Convention on the Elimination of All Forms of Racial Discrimination was adopted under General Assembly Resolution 2106 in December of 1965.⁸⁸ The convention is framed specifically to take the broad principles of protection from the Declaration of Human Rights one step further and focus particularly on those individuals who face discrimination and marginalization based specifically on race, descent or ethnic origin.⁸⁹ The application of the convention is broad ranging, and aims to protect a number of different groups, including indigenous populations.⁹⁰ Notably, the convention ties racial discrimination and hatred to punishment by law.⁹¹ In 1997, the Committee on the Elimination of Racial Discrimination (CERD) noting the convention passed General Recommendation No. 23 Indigenous Peoples, aimed at highlighting the particular aspects of the Convention that applied to indigenous populations.⁹² General Recommendation No. 23 reaffirms the unique cultures and need of preservation of indigenous people with respect to history and language, and notes the recurring discrimination which indigenous groups face with respect to land claims and claims on natural resources.⁹³

At the 107th General Assembly Plenary meeting in 2007, the UN adopted the Declaration on the Rights of Indigenous People, following the 2006 adoption of the Declaration by the Human Rights Council (HRC).⁹⁴ Guided by the principles of the Declaration of Human Rights, the Declaration on the Rights of Indigenous Peoples reaffirms the need to protect and promote the rights of indigenous populations and to respect their land, cultures, and way of life.⁹⁵ Further, the declaration highlights specific goals including the right to self-determination and self-governance (meaning distinct and separate legal institutions) as well as the right to retain social and cultural institutions.⁹⁶ Additionally, the declaration strongly advocates for the prevention of forced assimilation and also the prevention of forced displacement via land claims by dominant societies.⁹⁷ The declaration serves as one of the primary guiding documents for the Human Rights Council in navigating its activities with respect to indigenous populations.

UN Involvement and Structure

The UN has several groups which are formulated to work on the topic of indigenous rights. The HRC has two offices in particular dedicated to the topic. The Special Rapporteur, the Expert Mechanism and the UN Permanent Forum on Indigenous Issues form the core specialized bodies which focus on the issues within the context of indigenous peoples rights.⁹⁸ Each group has its own focus and reports, which provide a framework for understanding the issues as well as a forum for recommendations and progress within the topic.

⁸⁴ ACLU, *FAQ: The Covenant on Civil and Political Rights (ICCPR)*, 2012. <http://goo.gl/MdbU9>

⁸⁵ United Nations, *The human rights normative framework*, n.d. http://www.un.org/en/globalissues/democracy/human_rights.shtml

⁸⁶ ACLU, *FAQ: The Covenant on Civil and Political Rights (ICCPR)*, 2012. <http://goo.gl/MdbU9>

⁸⁷ ACLU, *FAQ: The Covenant on Civil and Political Rights (ICCPR)*, 2012. <http://goo.gl/MdbU9>

⁸⁸ UNGA, *International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/2016 (XX))*, 1965. <http://goo.gl/r2XIX>

⁸⁹ UNGA, *International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/2016 (XX))*, 1965. <http://goo.gl/r2XIX>

⁹⁰ UNGA, *International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/2016 (XX))*, 1965. <http://goo.gl/r2XIX>

⁹¹ UNGA, *International Convention on the Elimination of All Forms of Racial Discrimination (A/RES/2016 (XX))*, 1965. <http://goo.gl/r2XIX>

⁹² CERD, *General Recommendation No. 23 Indigenous People*, 1997. <http://goo.gl/cU3qS>

⁹³ CERD, *General Recommendation No. 23 Indigenous People*, 1997. <http://goo.gl/cU3qS>

⁹⁴ UN GA, *Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007. <http://goo.gl/EVkuJ>

⁹⁵ UN GA, *Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007. <http://goo.gl/EVkuJ>

⁹⁶ UN GA, *Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007. <http://goo.gl/EVkuJ>

⁹⁷ UN GA, *Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*, 2007. <http://goo.gl/EVkuJ>

⁹⁸ HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

The Special Rapporteur on the Rights of Indigenous People

The office of the Special Rapporteur on the Rights of Indigenous People was first appointed in 2001.⁹⁹ The Special Rapporteur has several key mandates including: the promotion of good practices between governments and indigenous populations; country specific reporting and investigations on indigenous rights including cases of abuse and violations of rights; and studies on key issues of importance that relate to protection of rights.¹⁰⁰ The Office of the Special Rapporteur produces annual reports for the Human Rights Council, in addition to a variety of reports that detail country specific human rights issues of various local indigenous populations.¹⁰¹

The Special Rapporteur on the rights of indigenous people focuses on collaboration, communication, and the implementation of best practices.¹⁰² The current Special Rapporteur is Professor James Anaya of the United States, who began in 2008.¹⁰³ Similar to the Expert Mechanism, the Special Rapporteur conducts studies and reports back annually to the HRC.¹⁰⁴ The focus of the majority of these studies is on country specific cases of human rights issues and violations, rather than the broad thematic studies of the EMRIP.¹⁰⁵ Much of the work of the Special Rapporteur is based on collaboration with external UN bodies, notably the UN Permanent Forum on Indigenous Issue.¹⁰⁶ The UNPFII and the Special Rapporteur cooperate on reports of specific human rights issues. The most recent report, in May 2012, was on Combating violence against indigenous women and girls.¹⁰⁷ Further, the Special Rapporteur provides advice and recommendations for continued development of the Permanent Forum, addressing the procedural aspect of the organization.¹⁰⁸ In his 2009 annual report, HRC Resolution 12/34, Mr. Anaya noted that there was a “significant level of confusion among indigenous groups, NGOs, and other stakeholders about the respective roles of and functions of the three mechanisms [the EMRIP, the UNPFII, and the Special Rapporteur].”¹⁰⁹ As such Mr. Anaya encouraged greater coordination and clarity on the actual mandate of each organization, as well as better dissemination of information amongst relevant stakeholders such that they are informed of the unique role of each body.¹¹⁰ Notably, there must be clarity for indigenous groups on understanding how and on what issues the organizations cooperate and specifically noting that the Special Rapporteur is the reporting mechanism on indigenous rights violations.¹¹¹

The promotion of best practices within Member States and organizations has been a primary focus of the Special Rapporteur. The primary underpinning of this focus is to “advance and programmatic reforms at the domestic level to implement the standards of the United Nations Declaration on the Rights of Indigenous People.”¹¹² As a part of this mandate, in 2008 the Special Rapporteur was asked to provide technical assistance with the constitutional review of Ecuador, ensuring the protection of indigenous rights through effective legislation.¹¹³ In the 2010 follow-up summary, Mr. Anaya reported that while there was still much room for progress there had been significant efforts in the coordination between the Member State and indigenous groups on the development of an effective legal

⁹⁹ OHCHR, *Special Rapporteur on the rights of indigenous peoples*, n.d. <http://goo.gl/FL3uz>

¹⁰⁰ OHCHR, *Special Rapporteur on the rights of indigenous peoples*, n.d. <http://goo.gl/FL3uz>

¹⁰¹ OHCHR, *Special Rapporteur on the rights of indigenous peoples*, n.d. <http://goo.gl/FL3uz>

¹⁰² HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹⁰³ OHCHR, *Special Rapporteur on the rights of indigenous peoples*, n.d. <http://goo.gl/FL3uz>

¹⁰⁴ OHCHR, *Special Rapporteur on the rights of indigenous peoples*, n.d. <http://goo.gl/FL3uz>

¹⁰⁵ HRC, *Report of the Special Rapp. on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹⁰⁶ HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹⁰⁷ UNPFII, *Statement by Professor James Anaya Special Rapporteur on the rights of indigenous people-tenth session of the UN Permanent Forum on indigenous issues*, 2011. http://www.un.org/esa/socdev/unpfii/documents/session_10_statement_sr_anaya_%202011.pdf

¹⁰⁸ HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹⁰⁹ HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹¹⁰ HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹¹¹ HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹¹² HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹¹³ HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

framework which balanced traditional and indigenous justice systems.¹¹⁴ Another instance of the work of the Special Rapporteur was in March of 2009 in Indonesia, where the office helped promote a joint agreement between the Indonesian National Human Rights Commission (KOMNAS HAM) and the Indigenous Peoples' Alliance of the Archipelago (AMAN) in addressing indigenous issues in the country.¹¹⁵ One of the major successes in 2011 under this umbrella has been the acceptance and of the Declaration on the Rights of Indigenous People by Australia, New Zealand, Canada and the United States, all who had previously opposed the document.¹¹⁶

One of the specific functions of the Special Rapporteur is to investigate and follow up on particular instances of human rights situations and violations in states.¹¹⁷ Since 2002, there have been twenty-two country specific reports, including follow-up visits, in both developed and developing states throughout the international community.¹¹⁸

The Expert Mechanism on Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established in 2007 under HRC Resolution 6/36.¹¹⁹ The Expert Mechanism on Indigenous Peoples has been one of the strongest sources of information and reports to the HRC on key topics. The predecessor of the EMRIP was the Working Group on Indigenous Populations, which was established in 1982 under the Economic Social Council.¹²⁰ Following HRC resolution 6/16 and the informal meeting of the HRC on December 7, 2007, the decision was made to reform the Working Group into the EMRIP in order to provide a framework for more expert advice and recommendations through the reformed membership of the body.¹²¹ The Expert Mechanism is composed of five independent experts on the issue area, who are appointed by the Human Rights Council.¹²² The group conducts thematic studies and research on specific issues within the broader context of indigenous rights and reports back to the HRC with advice and recommendations.¹²³ Studies to date have included topics such as the right to participate in decision making, the right to education and dispute resolution frameworks.¹²⁴

In 2009, the Expert Mechanism conducted its first study on the right of indigenous peoples to education and presented findings and advice to the HRC.¹²⁵ Some of the conclusions of the study point to the historical discrimination and systematic disadvantage the indigenous populations have faced with respect to access to education, and further highlight the lack of quality education available for consumption.¹²⁶ The study outlines the link between access to education and progress towards self-determination and empowerment for indigenous populations.¹²⁷ The report further emphasizes the role of individual states and governments in providing access to education, especially primary education, without discrimination or barriers to all citizens.¹²⁸ Additionally, the report highlights the importance of the understanding and recognizing the unique culture of indigenous populations and the role this plays in the development of educational institutions and infrastructure; essentially ensuring that indigenous peoples are able to harmonize traditional and mainstream education.¹²⁹ The annex to the report contains recommendations, with a specific and focused emphasis on the role that state governments must play in ensuring access to education.¹³⁰

¹¹⁴ HRC, *Observations on the progress made and challenges faced in the implementation of the constitutional guarantees of the rights of indigenous peoples in Ecuador*, 2010. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37/Add.7>

¹¹⁵ HRC, *Observations on the progress made and challenges faced in the implementation of the constitutional guarantees of the rights of indigenous peoples in Ecuador*, 2010. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37/Add.7>

¹¹⁶ UNPFII, *Statement by Professor James Anaya Special Rapporteur on the rights of indigenous people-tenth session of the UN Permanent Forum on indigenous issues*, 2011. http://www.un.org/esa/socdev/unpfii/documents/session_10_statement_sr_anaya_%202011.pdf

¹¹⁷ HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹¹⁸ HRC, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya (A/HRC/15/37)*, 2009. <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/15/37>

¹¹⁹ HRC, *Expert Mechanism on the Rights of Indigenous People (A/HRC/RES/6/36)*, 2007. <http://goo.gl/RHna4>

¹²⁰ HRC, *Expert Mechanism on the Rights of Indigenous People (A/HRC/RES/6/36)*, 2007. <http://goo.gl/RHna4>

¹²¹ HRC, *The Expert Mechanism on the Rights of Indigenous Peoples*, n.d. <http://goo.gl/cTCHe>

¹²² HRC, *The Expert Mechanism on the Rights of Indigenous Peoples*, n.d. <http://goo.gl/cTCHe>

¹²³ HRC, *The Expert Mechanism on the Rights of Indigenous Peoples*, n.d. <http://goo.gl/cTCHe>

¹²⁴ HRC, *The Expert Mechanism on the Rights of Indigenous Peoples*, n.d. <http://goo.gl/cTCHe>

¹²⁵ HRC, *The Expert Mechanism on the Rights of Indigenous Peoples*, n.d. <http://goo.gl/cTCHe>

¹²⁶ HRC, *Lessons Learned & Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education*, 2009. <http://goo.gl/f4iXi>

¹²⁷ HRC, *Lessons Learned & Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education*, 2009. <http://goo.gl/f4iXi>

¹²⁸ HRC, *Lessons Learned & Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education*, 2009. <http://goo.gl/f4iXi>

¹²⁹ HRC, *Lessons Learned & Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education*, 2009. <http://goo.gl/f4iXi>

¹³⁰ HRC, *Lessons Learned & Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education*, 2009. <http://goo.gl/f4iXi>

The second key report conducted by the Expert Mechanism was completed in 2011 on the right to participate in decision-making. One of the main points of the report was to outline and identify the nature of good practices with respect to decision making and the rights of indigenous people, keeping in mind the criteria of the Declaration on the Rights of Indigenous Peoples.¹³¹ Additionally, the report attempted to integrate indigenous populations' participation in the wider state context of public affairs with the group's own internal, society specific processes.¹³² The report notes successful instances of decision-making processes in Indonesia and New Zealand, but ultimately notes that indigenous people remain one of the most marginalized segments of society.¹³³ The issue of participation itself is subdivided into sections such as participation and access to governance and social welfare, as well as participation in the legal system and access to justice.¹³⁴ The advice highlights that the framework by which indigenous peoples are granted the rights to decision making strongly exists in the international law system, based both on precedence through court decisions and also international conventions.¹³⁵ Again, highlighted most importantly is the role and duty of states to ensure that unbiased and discrimination free policies are applied to indigenous people and that their access to government systems is guaranteed.¹³⁶

Currently, the EMRIP is undertaking a study on the role of languages and culture in the protection and promotion of the rights and identity of indigenous peoples, in accordance with resolution A/HRC/18/8¹³⁷. In preparation for the study, the EMRIP requested submissions on the topic from Member States as well as other UN bodies and relevant NGOs. One of the key submissions was from the UN Educational, Scientific, and Cultural Organization (UNESCO), which highlighted the link between the preservation of indigenous culture and societal development.¹³⁸ Of note is the reference to UNESCO's Convention for the Safeguarding of Intangible Cultural Heritage (ICH). The convention defines ICH as the

"...practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated there with – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage... [which] provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity."¹³⁹

The convention outlines the responsibility of states as the primary protectors of ICH, by way of legal and educational frameworks, which ties back to the protection of the legal and education rights of indigenous peoples covered in the first two EMRIP studies.¹⁴⁰

Case Study: New Zealand

One such example of progressive reporting has been New Zealand. In 2006, the first Special Rapporteur, Mr. Rodolfo Stavenhagen, visited New Zealand to report on the situation of fundamental freedoms and human rights of the Maori, the primary indigenous group in the Member State.¹⁴¹ The Maori currently account for 15 percent of the total New Zealand population.¹⁴² The first treaty, the Treaty of Waitangi, signed between the Maori people and New Zealand in 1840, granted the Maori exclusive rights over their lands and properties.¹⁴³ By the 1900s, much of the legislation New Zealand passed stripped the Maori of their original land claims and rights in the Treaty of Waitangi, legislation which was later considered to impose significant breaches on the Treaty.¹⁴⁴ While over the years there has been some progress in the Maori reclaiming their rights under the Treaty, unless bound by legislation, the Treaty remains excluded from New Zealand law.¹⁴⁵ This was of utmost importance to Mr. Stavenhagen, as without entrenchment in the law, the fundamental protection of human rights for the Maori people remains cracked.¹⁴⁶ One

¹³¹ HRC, *Report on the study on indigenous peoples and the right to participate in decision making (A/HRC/18/42)*, 2009. <http://goo.gl/1SX0k>

¹³² HRC, *Report on the study on indigenous peoples and the right to participate in decision making (A/HRC/18/42)*, 2009. <http://goo.gl/1SX0k>

¹³³ HRC, *Report on the study on indigenous peoples and the right to participate in decision making (A/HRC/18/42)*, 2009. <http://goo.gl/1SX0k>

¹³⁴ HRC, *Report on the study on indigenous peoples and the right to participate in decision making (A/HRC/18/42)*, 2009. <http://goo.gl/1SX0k>

¹³⁵ HRC, *Report on the study on indigenous peoples and the right to participate in decision making (A/HRC/18/42)*, 2009. <http://goo.gl/1SX0k>

¹³⁶ HRC, *Report on the study on indigenous peoples and the right to participate in decision making (A/HRC/18/42)*, 2009. <http://goo.gl/1SX0k>

¹³⁷ HRC, *Study on Languages and Culture*, n.d. <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/StudyLanguages.aspx>

¹³⁸ UNESCO, *A summary of UNESCO's key instruments, programmes and resources*, 2012. <http://goo.gl/XIAIK>

¹³⁹ UNESCO, *The convention for Safeguarding of Intangible Cultural Heritage*, 2003. <http://goo.gl/RVUYE>

¹⁴⁰ UNESCO, *The convention for Safeguarding of Intangible Cultural Heritage*, 2003. <http://goo.gl/RVUYE>

¹⁴¹ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁴² CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁴³ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁴⁴ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁴⁵ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁴⁶ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

of the central findings of the report indicated that the Special Rapporteur considered it a violation of the human rights approach for the government of New Zealand's attempts in overriding the provisions of the Treaty with complicated legislation of land ownership and individual title.¹⁴⁷ By 2005, nearly 94% of all of the land which had been originally granted to the Maori had been reclaimed and appropriated by New Zealand.¹⁴⁸ On the positive side, the Maori are represented in the country's Parliament, and in 2006 they held 17.3 percent of seats, which has at the very least allowed the indigenous group a voice within the government.¹⁴⁹ Yet, there still exist gaps in the administration of the judicial and educational systems, including the preservation of the traditional Maori culture, something that can be tied back to the protection of the ICH.¹⁵⁰ The most important recommendation from the report was the encouragement of a constitution for New Zealand which entrenched the Treaty and furthered protection of human rights into legislation.¹⁵¹ Further, the report encouraged a better allocation of resources towards traditional education for the Maori people and the preservation of particular cultural heritages.¹⁵² In 2010, Mr. Anaya conducted a follow-up visit in New Zealand and reported back to the 18th session of the Human Rights Council. The developments since the 2006 visit have been both positive and negative. One of the increasingly positive developments is the incorporation of traditional Maori education and history into the school curriculum as well as greater resources devoted to the preservation of the Maori language.¹⁵³ Progress, however, was still needed in the administration of legal and economic rights of the Maori. On legal rights, the Maori continued to suffer from higher than average rates of incarceration.¹⁵⁴ With respect to economic rights, the Maori continued to experience higher levels of unemployment, while consistently earning lower incomes than the national average in New Zealand.¹⁵⁵ Mr. Anaya praised the significant strides that had been made in the last five years, but noted the substantial improvement still to be made.

Conclusion

Within the wider context of addressing the issues concerning the human rights of indigenous people, the EMRIP, the Special Rapporteur, and the UNPFII have laid substantial foundational work with respect to understanding where the problems stem as well as the general mechanisms by which these problems must be solved. Yet there is still much progress to be made in the issue area, especially in ensuring that States both understand and implement the rights based approach that the HRC advocates in resolving indigenous issues. The substantial questions to consider on this topic are both broad and narrow reaching. On the broader scale, how do indigenous rights fall into the wider context of the HRC's commitment to rooting out racial discrimination and cultural intolerance? How can discrimination of indigenous populations be linked to discrimination against minority groups, and are there similar approaches to solving this discrimination? What specific capacity building needs do states have, in order to effectively implement the solutions and recommendations of the reports by the Special Rapporteur and the EMRIP? The rights of indigenous people have and continue to be an important part of rooting out racial discrimination throughout the international community. The HRC is a vital part of the chain of success within this goal, and it is through the committee's work that international community will "strengthen their rights and support their aspirations."¹⁵⁶

¹⁴⁷ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁴⁸ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁴⁹ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁵⁰ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁵¹ CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁵² CHR, *Report on the human rights and fundamental freedoms of indigenous (E/CN.4/2006/78/Add.3)*, 2006. <http://goo.gl/fAvRs>

¹⁵³ HRC, *Report of the Special Rapp.: the situation of the Maori people in New Zealand (A/HRC/18/35/Add.4)*, 2011. <http://goo.gl/hV0ri>

¹⁵⁴ HRC, *Report of the Special Rapp.: the situation of the Maori people in New Zealand (A/HRC/18/35/Add.4)*, 2011. <http://goo.gl/hV0ri>

¹⁵⁵ HRC, *Report of the Special Rapp.: the situation of the Maori people in New Zealand (A/HRC/18/35/Add.4)*, 2011. <http://goo.gl/hV0ri>

¹⁵⁶ UN, *International Day of the World's Indigenous People: Secretary General's Message for 2011*, 2011. <http://goo.gl/XfKQI>

II. Access to Safe Drinking Water and Sanitation

“Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity.”

–United Nations Secretary-General, Kofi Annan

Introduction

According to the World Health Organization (WHO), almost a quarter of the world’s population cannot access safe drinking water and sanitation.¹⁵⁷ Consequently, these 1.1 billion people suffer from a myriad of water and sanitation-related diseases such as cholera, schistosomiasis, trachoma, intestinal helminthes, and hepatitis A.¹⁵⁸ On July 28th, 2010, the United Nations General Assembly declared access to clean drinking water and sanitation a fundamental human right in Resolution 64/292.¹⁵⁹ Further, the UN GA called upon Member States and international organizations to offer aid and technology to assist developing states in their efforts to establish safe water and sanitation infrastructure for everyone.¹⁶⁰ The declaration from the UN GA reinforced access to safe drinking water and sanitation as essential for the full enjoyment of all other rights and further tied the right to clean water to the right to an adequate standard of living, citing approximately 884 million people lacking access to safe drinking water and 2.6 billion without access to basic sanitation.¹⁶¹ Furthermore, the resolution called upon Member States and international organizations to cooperate and provide financial resources, capacity-building and technology transfer.¹⁶²

The Human Rights Council (HRC) and many independent experts within the UN have long advocated for safe drinking water and sanitation to be considered a basic human right.¹⁶³ In Decision 2/104 of November 2006, the HRC called for a detailed study of the human rights obligations related to water and turned water into a rights issue, making water a legal entitlement rather than a “matter of charity.”¹⁶⁴ In this decision, the HRC declared governments responsible for water sanitation and outlined their related obligations as “the lowest-cost technology ensuring hygienic excreta and sullage disposal and a clean and healthful living environment.”¹⁶⁵ Access to basic sanitation also incorporates safety and privacy in the facilities, which may include public sewer connections, septic system connections, pour-flush latrines, simple pit latrines, and ventilated improved pit latrines.¹⁶⁶ Aware that governments may not have control of water sanitation in all states, the HRC affirmed that regardless of whether water service providers are public, private, or voluntary, the government should still be accountable for three obligations: *respecting* an individual’s right to sanitation, *protecting* individuals from third parties that may seek to marginalize certain groups such as women or ethnic minorities, and *fulfilling* safe access to water by adopting the measures necessary.¹⁶⁷ Through the rights-based approach, access to clean water and sanitation constitutes legally binding obligations detailing concrete standards for all water providers, public or private.¹⁶⁸ The right to water is defined such that “all individuals have the right to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses,” while the right to sanitation means that everyone has the right to access to sanitation that is safe, hygienic, secure, socially and culturally acceptable.¹⁶⁹ In summation, the rights to clean water and sanitation must meet the criteria of availability, quality, acceptability, accessibility, and affordability.¹⁷⁰

International Framework and Current Situation

In the United Nations Millennium Declaration of 2000, the international community pledged to halve the proportion of people who are unable to reach or afford safe drinking water and to halve the proportion of those without access

¹⁵⁷ WHO, *Health through safe drinking water and sanitation*, 2012. http://www.who.int/water_sanitation_health/mdg1/en/index.html

¹⁵⁸ WHO, *Health through safe drinking water and sanitation*, 2012. http://www.who.int/water_sanitation_health/mdg1/en/index.html

¹⁵⁹ UN News Centre, *General Assembly declares access to clean water and sanitation is a human right*, 2010. <http://goo.gl/3BhTA>

¹⁶⁰ UN News Centre, *General Assembly declares access to clean water and sanitation is a human right*, 2010. <http://goo.gl/3BhTA>

¹⁶¹ OHCHR, *Legal Obligations and Tangible Benefits*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

¹⁶² United Nations, *The human right to water and sanitation (A/RES/64/292)*, 2010. <http://goo.gl/SbMnq>

¹⁶³ OHCHR, *OHCHR study on human rights obligations related to equitable access to safe drinking water and sanitation*, 2006. <http://www2.ohchr.org/english/issues/water/index.htm>

¹⁶⁴ UN News Centre, *General Assembly declares access to clean water and sanitation is a human right*, 2010. <http://goo.gl/cigzA>

¹⁶⁵ WHO, *Health through safe drinking water and sanitation*, 2012. http://www.who.int/water_sanitation_health/mdg1/en/index.html

¹⁶⁶ WHO, *Health through safe drinking water and sanitation*, 2012. http://www.who.int/water_sanitation_health/mdg1/en/index.html

¹⁶⁷ WHO, *Health through safe drinking water and sanitation*, 2012. http://www.who.int/water_sanitation_health/mdg1/en/index.html

¹⁶⁸ OHCHR, *Legal Obligations and Tangible Benefits*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

¹⁶⁹ WHO, *Health through safe drinking water and sanitation*, 2012. http://www.who.int/water_sanitation_health/mdg1/en/index.html

¹⁷⁰ OHCHR, *Legal Obligations and Tangible Benefits*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

to basic sanitation by 2015.¹⁷¹ It is clear that safe drinking water and hygienic sanitation facilities are essential to the enjoyment of all other human rights. Currently, more than one in six people worldwide do not have access to clean water sources, according to the Joint Monitoring Programme on Water Supply and Sanitation (JMP), which is spearheaded by the WHO and United Nations Children's Fund (UNICEF) to monitor the progress on Millennium Development Goals (MDGs).¹⁷² Acknowledging the gravity of the issue, the UN General Assembly passed resolution 58/217 on October 23rd of 2003 declaring 2005-2015 the International Decade for Action: Water for Life.¹⁷³ This resolution focused on cooperation at all levels in the implementation of water-related programs and projects as a critical factor in the eradication of poverty.¹⁷⁴

In order to aid in the implementation of the agenda as defined by the Millennium Declaration, UN-Water was established in 2000 for the promotion of coherence and cooperation in the wide scope of water-related UN initiatives.¹⁷⁵ As UN-Water is an inter-agency coordination mechanism, its scope on all freshwater-related issues is very broad; hence its focus areas extend to integrated water resources management, water scarcity, water quality, climate change and disaster risk management, gender and water, financing and valuation, capacity building, and Africa as a region for priority action.¹⁷⁶ The Human Rights Council is one of the UN agencies that use the information and data gathered by UN-Water for assessing human rights with regards to water and sanitation.

The water and sanitation targets of the MDGs and UN-Water relate to the specific goals on eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality and empowering women, reducing child mortality, improving maternal health, combating HIV and malaria, ensuring environmental sustainability and developing a global partnership for development.¹⁷⁷ By monitoring and reporting on the international targets against national targets, indicators, and benchmarks, the MDGs strengthen accountability. However, MDGs focus on aggregate progress, whereas the Human Rights Council attempts to look beyond averages by paying special attention to disaggregated data for clues on discrimination on a range of grounds "including race, colour, sex, language, and religion."¹⁷⁸ In addition, international human rights obligations do not stop at any arbitrary benchmark; although such targets can generate broad and high level political commitment, human rights law requires "progressive realization," as described in Article 2(1) of the International Covenant on Economic, Social, and Cultural Rights.¹⁷⁹ This means that while some of the rights may be difficult to achieve due to time or resource constraints, states should still work towards the obligations, including through adopting legislative measures.¹⁸⁰

The mandate of the Special Rapporteur on the human right to safe drinking water and sanitation was established in 2008 in accordance with the Special Procedures mandates of the HRC.¹⁸¹ The current Special Rapporteur, Ms. Catarina de Albuquerque, conducts research and country missions while advising governments, UN agencies, civil society, and other stakeholders on the measures necessary for the realization of water and sanitation-related rights.¹⁸² Ms. de Albuquerque was critical in the transition of access to water and sanitation as a "core of development policy" into a legally binding obligation that entails clear references and goals for political, legal, and institutional reform.¹⁸³ While acknowledging the crucial role of non-governmental organizations (NGOs) in providing indispensable services to those in need, the Special Rapporteur emphasizes that dependence on NGOs for water and sanitation allows negligence on behalf of the State and fails to deliver sustainable, transformative change.¹⁸⁴ Through the rights-based approach, the Special Rapporteur believes that people can be empowered to claim their rights, strengthening the people's own agency in their own development.¹⁸⁵ At the UN Conference on Sustainable Development (Rio +20) on June 28, 2012, the Special Rapporteur urged Member States to work toward "a future

¹⁷¹ United Nations, *Millennium Declaration*, 2000. <http://www.un.org/millennium/declaration/ares552e.htm/>

¹⁷² WHO, *Health through safe drinking water and sanitation*, 2012. http://www.who.int/water_sanitation_health/mdg1/en/index.html

¹⁷³ UN General Assembly, *International Decade for Action, "Water for Life" 2005-2015 (A/RES/58/217)*, 2004. <http://goo.gl/PngJA>

¹⁷⁴ UN General Assembly, *International Decade for Action, "Water for Life" 2005-2015 (A/RES/58/217)*, 2004. <http://goo.gl/PngJA>

¹⁷⁵ UN Water, *A Guide to UN Water*, 2012. http://www.unwater.org/downloads/brochure_EN_Web_2012.pdf

¹⁷⁶ UN Water, *A Guide to UN Water*, 2012. http://www.unwater.org/downloads/brochure_EN_Web_2012.pdf

¹⁷⁷ United Nations Water, *A Guide to UN Water*, 2012. http://www.unwater.org/downloads/brochure_EN_Web_2012.pdf

¹⁷⁸ OHCHR, *The contribution of the human rights to water and sanitation to the realization of the MDGs*, 2012. <http://goo.gl/UjRas>

¹⁷⁹ OHCHR, *The contribution of the human rights to water and sanitation to the realization of the MDGs*, 2012. <http://goo.gl/UjRas>

¹⁸⁰ OHCHR, *The contribution of the human rights to water and sanitation to the realization of the MDGs*, 2012. <http://goo.gl/UjRas>

¹⁸¹ OHCHR, *Legal Obligations and Tangible Benefits*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

¹⁸² OHCHR, *Legal Obligations and Tangible Benefits*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

¹⁸³ OHCHR, *Legal Obligations and Tangible Benefits*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

¹⁸⁴ OHCHR, *Legal Obligations and Tangible Benefits*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

¹⁸⁵ OHCHR, *Legal Obligations and Tangible Benefits*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

with hope for those girls who still have to walk miles to fetch water every day, for the boys who drop out of school because of diarrhea, for the children dying due to drinking unsafe water, and also for those children with disabilities who cannot access sanitation facilities with dignity.”¹⁸⁶

The latest HRC resolution 18/1 of 2011 calls upon states to “ensure full transparency of the monitoring and assessment of the implementation of plans of action” and to give “priority to realizing a basic level of service for everyone before improving service levels for those already served.”¹⁸⁷ All governments are encouraged in this resolution to continue to respond favorably to requests by the Special Rapporteur for visits and information.¹⁸⁸ The HRC maintains an open dialogue with local authorities and groups, the non-governmental sector, as well as international and regional organizations to continue identifying challenges and facilitate technical assistance to secure the right of access to potable water and sanitation.¹⁸⁹

Case Study: Middle East

The Arab world is one of the most water-threatened regions in the world according to the Water Poverty Index.¹⁹⁰ Water supplies can be endangered by several factors: degradation of water by pollution, over-exploitation of ground water reserves, poor irrigation methods, inefficient use of water, and natural lack of access to water resources.¹⁹¹ According to the Arab Human Development report of 2009, launched by the United Nations Development Programme (UNDP), there is compelling evidence that the burgeoning water scarcity problem in the Arab region presents a serious threat to human security.¹⁹² The Regional Director of United Nations Development Programme Regional Bureau for Arab States (UNDP/RBAS) reports: “This region has 5% of the world’s population and only 1% its fresh water resources. It is the most water-stressed region in the world. By 2025, the per capita share of renewable water resources in the region will be lower than the world-agreed extreme water poverty levels.”¹⁹³ In response, the League of Arab States (LAS) has developed a strategy containing several goals and targets for 2020 which include: raising water use efficiency by 15 to 25%, adopting integrated water policies insuring the implementation of the MDGs, developing alternative solutions for renewable energy in water desalination and treatment, signing permanent agreements on shared water resources, and having each Member State include climate change adaptation policy into its national water policy.¹⁹⁴

The difficulty Palestinians face in accessing clean water is another somber point of contention with Israel.¹⁹⁵ According to a report published by the World Bank in 2009, Palestinians only get access to a quarter of the water in the region, as the water sources are primarily controlled by Israel in Gaza and the West Bank.¹⁹⁶ The report also indicated that the Palestinian Authority was inefficient in its operation of water supply distribution, which is still functioning under a state of emergency.¹⁹⁷ In 2010, Maxwell Gaylard, the UN Resident and Humanitarian Coordinator for the Occupied Palestinian Territories, denounced Israel’s destruction of rainwater collection systems in the West Bank, “some of them very old, which serve marginalized rural and herder Palestinian communities where water is already scarce and where drought is an ever-present threat.”¹⁹⁸ The Human Rights Council voted in March 2012 to dispatch an independent international fact-finding mission appointed by the President of the HRC to investigate implications of the Israeli settlements on the rights of the Palestinian people, which was met with criticism by Israel and the United States.¹⁹⁹

Case Study: United States

In the United States, the Special Rapporteur Catarina de Albuquerque met with numerous communities facing challenges accessing safe water and sanitation, especially focusing on the homeless and the indigenous.²⁰⁰ Up to 3.5

¹⁸⁶ OHCHR, *Rio+20: Now is time to work together to implement the human right to water and sanitation*, 2012. <http://goo.gl/aIGFp>

¹⁸⁷ Human Rights Council, *The human right to safe drinking water and sanitation (A/HRC/RES/18/1)* 2011. <http://goo.gl/EGrLU>

¹⁸⁸ Human Rights Council, *The human right to safe drinking water and sanitation (A/HRC/RES/18/1)* 2011. <http://goo.gl/EGrLU>

¹⁸⁹ Human Rights Council, *The human right to safe drinking water and sanitation (A/HRC/RES/18/1)* 2011. <http://goo.gl/EGrLU>

¹⁹⁰ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, 2009. <http://goo.gl/EvHFd>

¹⁹¹ United Nations Water, *A Guide to UN Water*, 2012. http://www.unwater.org/downloads/brochure_EN_Web_2012.pdf

¹⁹² UNDP, *Arab Human Development Reports (AHDR)*, 2009. <http://www.arab-hdr.org/contents/index.aspx?rid=5>

¹⁹³ UNDP, *Arab Human Development Reports (AHDR)*, 2009. <http://www.arab-hdr.org/contents/index.aspx?rid=5>

¹⁹⁴ World Water Forum, *Arab Countries Cross-Continental Process*, 2012. <http://goo.gl/DSPFU>

¹⁹⁵ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, 2009. <http://goo.gl/qtyj>

¹⁹⁶ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, 2009. <http://goo.gl/qtyj>

¹⁹⁷ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, 2009. <http://goo.gl/qtyj>

¹⁹⁸ United Nations, *Statement by Mr. Maxwell Gaylard on Continuing Demolition of Water Cisterns in the West Bank*, 2009. <http://goo.gl/OZiZc>

¹⁹⁹ Haaretz, *UN human rights body to probe Israel’s settlement activities in West Bank*, 2012. <http://goo.gl/Ds11y>

²⁰⁰ HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

million people experience homelessness in the U.S. every year and on any given night over 800,000 people lack housing.²⁰¹ Yet local statutes prohibiting public urination and defecation, constituting a sexual offense in some cases, are often discriminatory against homeless individuals who have no access to public restrooms and are given no alternatives.²⁰² Special Rapporteur de Albuquerque cited the story of a homeless man in Sacramento, California who engineered a sanitation system that consists of a seat with a two-layered plastic bag underneath for his community.²⁰³ Each week, "Tim would collect the bags full of human waste weighing between 130 to 230 pounds (60 to 105kg) and transport them on his bicycle to a local public restroom a few miles away.²⁰⁴ Once emptying the bags' contents, he packs the plastic bags with residue inside a third plastic bag, ties it securely and disposes of them in the garbage, and then sanitizes his hands with water and lemon.²⁰⁵ The Special Rapporteur declared the fact that private citizens are compelled to provide such services as "an indication of failure by the State to meet its responsibilities," and called for "an immediate, interim solution to ensure access to restroom facilities in public places, including during the night."²⁰⁶

In terms of racial discrimination, the Special Rapporteur also called attention to the fact that 13 percent of American first nation households have no access to safe water or wastewater disposal, a disproportionately high percentage in contrast with 0.6 percent of non-native households.²⁰⁷ While acknowledging that many first nation families lived in rural or isolated areas, Ms. De Albuquerque concluded that the United States "must do more to eliminate discrimination in practice."²⁰⁸

Case Study: Brazil

In examining water supply and sanitation in rural areas, it is often costly for either public or private sectors to fund the infrastructure to extend water access to remote locations with low population density. In Brazil, municipal cooperatives became a successful model for isolated communities in the 1990s.²⁰⁹ The main theme of the model was "to link rural, small-scale localities based on geographical links in order to organize a supra-municipal authority with the technical and administrative capacity" to provide water and sanitation.²¹⁰ This self-organization of services, with little state and federal governmental participation, has been recognized for its effective distribution of water.²¹¹

The HRC emphasizes full and meaningful participation as an important tenet of the human rights framework, and Brazil's national plan of action, the 2007 Law on Environmental Sanitation, is an example of legislation developed through a multi-stakeholder process.²¹² Focusing on poor and marginalized groups, a multi-stakeholder body is set up to discuss and create a clear plan for data collection and monitoring processes in order for the municipality to receive funds from the central government.²¹³

Conclusion

In the quest for water security, many international organizations and actors come together to mitigate the effects of climate change, water scarcity, population growth, poor infrastructure, and marginalization of groups that face cultural, physical, institutional, and language barriers.²¹⁴ It is then inevitable that water continues to be a noticeable agenda topic for the Economic and Social Council (ECOSOC), HRC, UNICEF, WHO, as well as regional organizations such as the League of Arab States, African Union, and Organization of American States. Access to clean water and sanitation is an indispensable right for a life of dignity, yet the sustainable achievement of this right is hindered by situations of systematic exclusion, deprivation, and discrimination, which require targeted

²⁰¹ HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²⁰² HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²⁰³ HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²⁰⁴ HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²⁰⁵ HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²⁰⁶ HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²⁰⁷ HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²⁰⁸ HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²⁰⁹ Heller, *Access to Water Supply and Sanitation in Brazil: Historical and Current Reflections; Future Perspectives*, 2006. <http://goo.gl/u7nty>

²¹⁰ UNDP, *Access to Water Supply and Sanitation in Brazil: Historical and Current Reflections; Future Perspectives*, 2006. <http://goo.gl/u7nty>

²¹¹ UNDP, *Access to Water Supply and Sanitation in Brazil: Historical and Current Reflections; Future Perspectives*, 2006. <http://goo.gl/u7nty>

²¹² HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²¹³ HRC, *Report of the Special Rapporteur on the right to safe drinking water and sanitation (A/HRC/18/33/Add.4)*, 2011. <http://goo.gl/82zXJ>

²¹⁴ OHCHR, *Legal Obligations with Tangible Benefits: The Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

interventions.²¹⁵ The role of the HRC and its rights-based approach regarding access to water and sanitation is critical in combating water poverty, and empowering people to participate and affect change in their communities.

How can the HRC collaborate with existing institutions, while specifically targeting water as a human rights issue? One important aspect will be paying greater attention to disaggregated data. Are certain groups marginalized in their effort to access clean water and sanitization? What measures are being taken to address and overcome stigmatization, and how are different groups and individuals affected by discrimination? How can we align MDG indicators, national and interregional targets with normative human rights criteria? For example, many water-related targets call for improved water sources, yet recent studies by UNICEF and WHO in eight countries have shown that the drinking water was often unsafe and undrinkable, even though it came out of a tap.²¹⁶ Human rights obligations determine that States “treat, dispose or re-use human excreta,” but the MDGs’ target on sanitation does not address these issues- which means that States complying with the MDGs may still dump over 90% of the wastewater into rivers and oceans.²¹⁷ Simultaneously, how can the HRC communicate that “progressive realization” may not be used as a pretext to shelve full implementation? As the Special Rapporteur on the human right to safe drinking water and sanitation declared at Rio+20, progressive realization of the right requires States to take concrete steps for its full realization to the maximum of available resources- and calls for immediate steps.²¹⁸

²¹⁵ OHCHR, *Legal Obligations with Tangible Benefits: The Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, 2012. http://www.ohchr.org/Documents/Issues/Water/LegalObligations_en.pdf

²¹⁶ OHCHR, *The contribution of the human rights to water and sanitation to the realization of the MDGs*, 2012. <http://goo.gl/dxmao>

²¹⁷ OHCHR, *The contribution of the human rights to water and sanitation to the realization of the MDGs*, 2012. <http://goo.gl/dxmao>

²¹⁸ OHCHR, *The contribution of the human rights to water and sanitation to the realization of the MDGs*, 2012. <http://goo.gl/dxmao>

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