



## **United Nations Human Rights Council**

### **Background Guide**

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The United Nations Human Rights Council (UNHRC) was created by the United Nations General Assembly in 2006 with the goal of strengthening the promotion and protection of human rights around the globe. The UNHRC replaced the United Nations Commission on Human Rights and serves as an intergovernmental body where human rights defenders, non-governmental bodies, and countries large and small can voice their concerns on human rights and the status of individual rights around the world. Composed of 47 member states, the UNHRC adopted its “institution-building package” to aid in the establishment of its procedures and mechanisms. Chief among them is the Advisory Committee, which provides the Council with advice on human rights issues, and the Complaint Procedure, which enables organizations to bring human rights violations to the Council’s attention.<sup>1</sup>

### **I. Accountability for Human Rights Violations During Crises**

#### **Statement of the Issue:**

Emergencies present a period where people are particularly vulnerable to human rights abuses. During emergencies, states often assume more power than they do in times of normalcy and peace in order to address the emergency. Allowing governments to claim more powers during emergencies can be genuinely necessary and important for resolving emergency situations, but also creates the risk of those powers being abused<sup>2</sup>.

Powers acquired by governments during emergency situations can also remain in place far longer than they were originally intended to. For example, most portions of the Patriot Act, a legislative act passed in the United States after the 9/11 terrorist attacks to help intelligence agencies better investigate and prevent terrorist activities, were originally set to expire in 2005<sup>3</sup>; however, much of the Patriot Act remains in place today, including the controversial section 215,

which allows for the collection of personal data by government agencies without a warrant and is argued to be violation of Americans' 4th Amendment rights<sup>4</sup>.

Cases such as the Patriot Act show how measures that were implemented to help resolve an emergency can become more permanent than they were originally intended to be. Because of the potential of emergency measure permanence, it is especially important for the international community to ensure that governments are held accountable for minimizing human rights violations during emergencies.

Protecting human rights during emergencies is also important because it helps maintain the rule of law. During times of crisis and uncertainty, working within existing legal frameworks helps set a good precedent for managing through the emergency and promotes stability and rule by reason during periods where these qualities of governance are most important<sup>5</sup>.

Human rights violators are also likely to hurt many people, which makes it essential to prosecute them to prevent them from causing further harm. If a human rights violator is stopped shortly after their first violation, the number of people they will hurt can be significantly reduced. Ensuring that all parties involved with violations are held accountable for their actions is important as well. International human rights law extends culpability for violations to not only the people directly responsible for violations (i.e. soldiers carrying out orders) but also the people who give orders for human rights violations and support for violations (i.e. supplying weapons)<sup>7</sup>. Holding all parties involved in violations responsible for their actions is essential to ensuring that fewer parties are able to continue violating human rights.

Emergencies where human rights violations may occur take a variety of forms. From public health emergencies to natural disasters and national security risks, not all emergencies look the same<sup>8</sup> and so how they should be handled is going to vary as well. The international community needs to work to establish a flexible framework of accountability that will work in a variety of emergency situations.

### **History:**

Modern human rights protections largely emerged out of one of the most cataclysmic emergencies of the 20th century, World War II. With gross violations of human rights such as genocide, slavery, and the inhumane treatment of prisoners of war, World War II presented a dire need for accountability. The Allies responded to these violations by conducting the Nuremberg and Tokyo trials. Run by the International Military Tribunal (IMT) and the International Military Tribunal for the Far East (IMTFE), prosecution teams from the Allied powers tried German and Japanese officials with three crimes, Crimes Against Peace, War

Crimes, and Crimes Against Humanity. The latter two crimes are focused on human rights violations<sup>9</sup>.

During the Nuremberg and Tokyo trials, not all parties responsible for human rights violations during World War II were convicted; however, the trials still saw the imprisonment or execution of many officials involved in human rights violations<sup>10</sup>. More importantly, the trials established that government officials could be held accountable for crimes they authorized but did not directly commit. It reversed the previous trend of not holding leaders accountable for actions they approved<sup>11</sup>. Prosecution for war crimes committed during World War II continued after the Nuremberg and Tokyo trials concluded<sup>12</sup>, showing that accountability for human rights violations that occurred during the war did not end with the trials run by the IMT and IMTFE.

As the United Nations developed, the concept of human rights and the mechanisms to protect them did as well. The Universal Declaration of Human Rights established an important framework for conceptualizing human rights<sup>13</sup>. The United Nations has developed entities to help protect the rights outlined in the Universal Declaration along with subsequent documents that further define and establish human rights. The UNHRC works with governments to improve human rights within their boundaries by helping states develop policies and procedures to better uphold human rights. The UNHRC meets at least three times per year to address human rights issues and can gather information about human rights violations as well as send appeals or allegations to states with suspected human rights violations. The Human Rights Treaty Mechanisms monitor the implementation of treaties in countries and help provide information about the state of human rights that can be used to implement better human rights policies<sup>14</sup>. Existing human rights institutions ensure that few human rights violations go undocumented, but holding perpetrators accountable for their actions occurs less frequently<sup>15</sup>.

Human rights violations during the 1990s led to increasing concern over the ability of the international community to respond to these violations. Cases such as the genocides in then Yugoslavia and Rwanda were handled with tribunals; however, they showed the need to have a permanent institution to prosecute human rights violations during conflict. In 1998, the Rome Statute established a framework for a court to prosecute war crimes, genocide, and crimes against humanity. Four years later, this court became an active part of the international justice system. With over 120 countries signatory to the International Criminal Court (ICC), it has become a valuable institution for holding violators of international humanitarian law accountable for their actions during wartime and helps prevent leaders from evading punishment for their actions during emergencies<sup>16</sup>.

Emergencies present a challenge for human rights. Under existing international law, there are circumstances in which it is appropriate to restrict certain rights in an emergency situation; however, there are several conditions that must be met for the right to be restricted. First, there must be a clear emergency and the country must continue operating within its existing legal framework. Dramatic changes to the rule of law during an emergency are not considered acceptable. Second, the right must be as minimally infringed upon as possible and the need for infringement must be evidence-based<sup>17</sup>. For example, restricting the freedom of movement because there is known to be a highly contagious disease in a country could be considered appropriate, but restrictions such as this must be implemented in such a way that does not interfere with other rights. Restricting a person's movement and not allowing an exemption for a medical emergency that requires movement (i.e. taking a person in cardiac arrest to a hospital) would be a violation of the person's right to seek medical treatment. Human rights restrictions must also have a clear planned end date. While extending the end date may be appropriate if circumstances require it, indefinite suspensions of human rights are an inappropriate response to emergencies<sup>18</sup>.

International human rights law also does not allow rights to be suspended in emergencies. Actions such as torture, enslavement, and arbitrary arrest are considered violations of human rights law regardless of the circumstances whereas restrictions of other rights such as the freedom of movement and the freedom of speech may be appropriate in certain circumstances, including emergency situations<sup>19</sup>.

The current global pandemic is creating emergencies across the world that are endangering human rights. Pandemic protocols, such as China's quarantine measures used early in the pandemic, are a good example of human rights violations that have occurred. In the Wuhan province, people were prohibited from leaving their homes, even for emergencies, which resulted in several deaths due to non-COVID related causes. The way that the emergency protocol was implemented demonstrates the importance of implementing emergency procedures in a way that is minimally invasive and mindful of the rights and needs of people living in areas experiencing emergencies<sup>20</sup>.

### **Analysis:**

The coronavirus is creating emergency situations all across the world and, in turn, vulnerability to human rights violations. Countries have a responsibility to keep their people safe from COVID-19, but need to also implement policies that are evidence-based, as minimally invasive as possible given the circumstances, and respectful of their people's rights<sup>21</sup>.

Governments need to be held accountable for their policies, as well as the lack of policies put in place to protect their citizens.

Accountability for actions that occur during COVID-19 is essential for ensuring a smooth transition out of the pandemic. Emergency protocols adopted during COVID-19 could become the new normal. Some new policies, such as improved health and sanitation standards, could be good additions to a post-pandemic world; however, other policies, such as restrictions on the freedom of movement, could interfere with human rights and should not continue after the end of the pandemic. Given the prolonged nature of the pandemic, it is especially important for protocols to be as non-invasive as possible as the emergency situation will likely continue for a while.

The inconsistency between the documentation and prosecution of human rights violations is disconcerting for the implications about the importance of human rights to the international community. The international community needs to work to show consistency between its stated value of human rights and the protections in place for these rights<sup>22</sup>. Accountability efforts also need to be holistic and focus on all parties involved. Simply focusing on the direct perpetrators of human rights violations instead of also addressing parties who make the violations possible does not fully address the current lack of accountability<sup>23</sup>.

One current challenge to accountability for human rights violations is the lack of support for institutions that can help make accountability possible. The fact that not all countries are signatory to institutions such as the ICC creates a challenge for accountability. The ICC cannot prosecute individuals unless they are either nationals of states signatory to the ICC or the crimes they committed occurred within the boundaries of a member state. Because the ICC is designed like this, it is limited in what violations it can prosecute. Encouraging universal support for institutions such as the ICC could help increase the number of human rights violators who can be tried<sup>24</sup>.

Clarifying the language of existing protocols on what constitutes an emergency could also improve protections for human rights during emergencies. Existing documents on what qualifies as an emergency are non-specific in their language and in some cases contradictory to each other<sup>25</sup>. Working to improve the consistency and clarity in what qualifies as an emergency could help prevent governments from inappropriately restricting human rights.

## **Conclusion:**

Emergencies present a time where human rights violations are more likely to occur and may be less likely to be prosecuted due to the turbulence and perceived necessity of

suspending human rights. Accountability for unethical measures taken during emergencies is extremely important as it sets a precedent of not tolerating human rights abuses and helps prevent the continuation of policies that violate human rights. It also helps support the role of law and makes for better transitions out of emergency procedures. The United Nations is committed to improving human rights and thus member states need to work to insure that they are holding fellow members accountable for violations of these values.

**Questions:**

1. What can member states do to improve accountability for human rights violations during emergencies?
2. How can policies be implemented during emergencies to avoid infringing upon human rights?
3. How can accountability institutions such as the ICC be more effective?

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## II. Protecting the Rights of Migrant Workers

### Statement of the Issue:

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families defines migrant workers as people who perform labor in exchange for compensation in a country other than the one in which they are a citizen. The Convention does not include all people who might meet this definition, such as students and employees of international organizations<sup>1</sup>, but it is a term used to describe approximately 164 million people worldwide. The number of migrant workers increased by approximately 9% over a 5 year period<sup>2</sup>.

Across the world, migrant workers are at a disproportionately high risk for experiencing human trafficking. Relocating to a new domicile is one of the highest risk factors that increases the likelihood of an individual experiencing human trafficking<sup>3</sup>. The promise of work overseas is also a common front used by human trafficking groups to lure victims in<sup>4</sup>. To promote human rights and human security, all countries should be committed to combatting the flow of human trafficking in and out of their borders.

Migrant workers are also at risk for exploitation. A study of workers at elder care facilities in Israel concluded that migrant workers at these facilities were at a significantly higher risk for experiencing violations of their rights, such as not receiving breaks, than non-migrant workers in the same setting<sup>5</sup>, demonstrating that occupation alone does not explain the risks migrant workers may face. Migrant workers are easy targets for exploitive employers for a variety of reasons, including a possible lack of familiarity with local labor practices<sup>6</sup>, labor systems that give employers extensive power over migrant workers<sup>7</sup>, and possible concerns about deportation<sup>8</sup>.

The current treatment of many migrant workers is preserving modern slavery. The rights of migrant workers are not an issue countries with high populations of migrant workers alone face. Most migrant workers live in upper and upper-middle income countries, but countries of all income levels have migrant workers<sup>9</sup>. It is common for migrant workers to travel to higher income countries to work, with countries such as India, Mexico, and Bangladesh having some of the highest number of people born in their borders living abroad<sup>10</sup>, but it should be noted that not all migrant workers follow this trend. Migrant workers who reside in low and middle income countries tend to receive better wages and are more likely to be treated as skilled workers than migrant workers in high income countries<sup>11</sup>. Migrant workers may also move between countries of similar income levels. An article published by *The Guardian* in 2016 uncovered an abusive

international migrant worker recruitment network that lured well-educated young adults from the Republic of Korea to Australia where they were underpaid and working longer hours than their visas allowed<sup>12</sup>.

The coronavirus pandemic is exacerbating the current problems migrant workers face. The pandemic forced many migrant workers to return home, leaving them without the means to support themselves<sup>13</sup>. The migrant workers who stayed in the countries where they worked contracted COVID-19 at disproportionately high rates due to factors such as overcrowded living conditions<sup>14</sup>, showing that migrant workers were uniquely vulnerable to the virus.

Migrant workers' rights affect many people across the world. They are an issue that affects the people of both migrant workers' countries of origin as well as their host countries. The international community has a responsibility to protect the rights of migrant workers and create more ethical living and working conditions for them.

### **History:**

Migrant workers are a vital part of the global economy. Migrant workers perform essential services in countries across the world. In regions such as the Gulf States, migrant workers outnumber local residents. In other countries, such as Switzerland, migrant workers make up a significant minority of the population<sup>15</sup>.

Efforts to exploit migrant workers have a long history. In colonial America, indentured servitude was used to import cheap foreign labor. In exchange for a path to the New World, European immigrants signed contracts in which they were effectively enslaved for a set period of time. During this period, indentured servants were often treated very poorly<sup>16</sup>.

Systems continue to leave migrant workers vulnerable to exploitation. The Kafala system implemented by members of the Gulf Collaborative Council is an excellent example of this. Implemented in 1950 to address the increasing number of migrant workers in the region, the Kafala is designed so that employers have extensive control over migrant workers. In most Gulf States, employers are responsible for securing their foreign employees' visas. The consequence of this system is that employees are vulnerable to exploitation as their visa issuer decides if they can make decisions such as leaving the country and changing jobs. Since the formation of the Kafala system, countries such as Saudi Arabia have made reforms, with the Saudi government reforming the Kafala system so that migrant workers can leave the country without their employer's permission<sup>17</sup>.

The International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families establishes a valuable framework for protecting migrant workers.

The Convention addresses issues specific to migrant workers; it emphasizes that these workers cannot be enslaved or underpaid, and should be given access to information in a language that they understand. The Convention also emphasizes that migrant workers should not be tried as criminals for failing to fulfill a contractual obligation<sup>18</sup>, demonstrating that existing international law recognizes the risk of retaliation that migrant workers might face if they fail to meet employer expectations.

The reality many migrant workers face differs greatly from their rights outlined in the Convention. Migrant workers in high income countries frequently receive lower wages than domestic workers with similar qualifications would. In Cyprus, there is a 42% wage gap between domestic and migrant workers<sup>19</sup>. Migrant workers are particularly at risk for abusive employer-employee relationships because they may not understand their rights and the labor conventions of the country in which they reside<sup>20</sup>.

The non-citizenship of migrant workers is currently being exploited across the world. Practices such as the confiscation of passports, deceptive recruitment methods, and forcing employees to pay off debts related to their recruitment leave migrant workers vulnerable to abuse and human trafficking<sup>21</sup>.

The long term impacts of COVID-19 on migrant workers remains to be seen, but it is already having a clear and negative impact. Unhygienic living conditions are jeopardizing migrant workers in places such as the Maldives<sup>22</sup> and Singapore<sup>23</sup>. With lockdowns keeping people at home, it may become easier for employers to force migrant workers to work overtime<sup>24</sup>. The impact of the pandemic on the domestic-migrant worker wage gap is unclear, but the International Labour Organization predicts that it may increase in high income countries, continuing the previous trend of rising inequality in pay for domestic and migrant workers<sup>25</sup>.

### **Analysis:**

The current treatment of migrant workers across the world is undermining basic human rights. Existing migrant labor management systems, such as the Kafala system, are not prepared to adequately protect the human rights of migrant workers. The heavy dependency migrant workers have on their employers is a significant problem with labor systems such as the Kafala system<sup>26</sup>. Working to reduce migrant workers' dependency on their employers could help migrant workers report abuses of their rights. Improving worker independence would also require addressing illegal labor practices, such as passport confiscation<sup>27</sup>.

In addition to addressing labor systems within countries, the international community also needs to address the role of international worker recruitment networks that abuse their

workers. Recruiters outside of the country where migrant workers are abused play an extremely important role in not only making the abuse possible, but in some cases provide harmful guidance to employers as to how their workers should be treated<sup>28</sup>. For this reason, migrant worker abuse needs to be looked at as a larger system than just abusive employers and so the role of both employers and recruiters needs to be considered.

The liability many migrant workers currently face for recruiter fees also presents a major problem for protecting migrant workers' rights. When migrant workers accumulate debt to recruiters, it can impede their ability to leave their country of employment and infringe upon their freedom of movement<sup>29</sup>. Evaluating how recruiter fees can be reduced or eliminated could help protect migrant workers from such abuse.

Working to improve migrant workers' and their employers' familiarity with the rights of migrant workers could also help prevent rights abuses. Migrant workers may run into problems confronting employers because they do not know their rights. Alternatively, employers of migrant workers have engaged in unethical practices such as underpaying their migrant workers because they are genuinely unaware of what their workers' rights are<sup>30</sup>. Providing resources for migrant workers and their employers to ensure that both parties understand what the workers' rights are could help prevent such situations.

### **Conclusion:**

Migrant workers are a group particularly vulnerable to human rights violations. Many migrant workers are currently working in abusive labor systems. Labor system regulations need to be improved to protect migrant workers' rights. Efforts to prevent migrant worker abuse and reduce the trafficking of migrant workers need to be collaborative and international.

### **Questions:**

1. What role do recruiters play in abusive migrant labor practices?
2. How should labor systems be reformed to better protect migrant workers?
3. What responsibility do migrant workers' host countries have in protecting them? What should countries of origin do to protect migrant workers?

### Resources:

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