





**UNHRC**

**UNITED NATIONS HUMAN RIGHTS COUNCIL**

Dear delegates,

On behalf of the United Nations Human Rights Council committee, I am honoured to welcome you to Foscamun 2019.

My name is Emma Savino and I will be the President of the UNHRC committee. I will cooperate with Francesco Maggioni, as Moderator, and Pierpaolo Fasolo, as Vice-president.

The two topics under discussion deal with:

- A) *Implementing the Mandela Rules worldwide*
- B) *LGBTQ+ refugee protection across the world.*

The members of the Chair invite all delegates to work productively and fairly and to cooperate in order to find new solutions. We truly hope you will strive towards consensus in addressing these complex issues, which affect the global community.

Sincerely,  
Emma Savino

## UNHRC MANDATE

### *Promotion and protection of Human Rights around the globe*

The United Nations Human Rights Council, part of the Office of the High Commissioner for Human Rights (OHCHR), is a crucial inter-governmental body for the protection and promotion of all the human rights established under the Charter of the United Nations across the world. Through dialogue and cooperation the commission contributes toward the prevention of human rights violations and it assists governments in fulfilling their obligations.

The Council was founded by the UN General Assembly on 15 March 2006 to replace the UN Commission on Human Rights and works with the UN Special Procedure – *i.e.* “special rapporteurs, special representatives, independent experts and working groups that monitor, examine, advise and publicly report on thematic issues or human rights situations in specific countries”[1] – established by the previous Commission.

The Council is made up of 47 States elected according to the candidate States’ contribution to the protection and promotion of Human Rights. UNHRC holds regular sessions three times a year in the headquarters in Geneva, chaired by the president Mr Vojislav Šuc.

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[1] "Welcome to the Human Rights Council." OHCHR | Freedom of Religion: UN Expert Hails Albania, but Notes New Challenges and Unresolved Issues from the past.  
<https://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>

## TOPIC A: IMPLEMENTING THE MANDELA RULES WORLDWIDE

### THE HISTORY OF THE NELSON MANDELA RULES

*“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”*

*Nelson Rolihlahla Mandela*

The [Standard Minimum Rules for the Treatment of Prisoners](#), originally adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners, and have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world.

In recognition of the advances in international law and correctional science since 1955, however, the General Assembly decided, in 2011, to establish an open-ended intergovernmental Expert Group to review and possibly revise the rules. Relevant UN bodies, other international and regional organisations, as well as civil society were invited to contribute to the process. As the custodian of the Standard Minimum Rules, the [United Nations Office on Drugs and Crime](#) (UNODC) closely accompanied the revision process by serving as its Secretariat.

At its fourth meeting held in Cape Town, South Africa, in March 2015, the Expert Group reached consensus on all of the rules opened for revision. In May 2015, the Commission on Crime Prevention and Criminal Justice (CCPCJ) endorsed the revised rules and submitted the entire set of the revised SMRs (Standard Minimum Rules) for approval by the Economic and Social Council (ECOSOC) and subsequent adoption by the General Assembly.

In December 2015, the UN General Assembly adopted the revised rules as the “[United Nations Standard Minimum Rules for the Treatment of Prisoners](#)”. As per the recommendation of the Expert Group, the revised rules are known as "the Nelson Mandela Rules" to honour the legacy of the late President of South Africa, Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace.

Compared to the Standard Minimum Rules for the Treatment of Prisoners the 122 Mandela Rules were revised in 8 main different areas:

- Prisoners’ inherent dignity as human beings

Respect of prisoners for the dignity and value as human beings and the prohibition of torture and other inhuman or degrading treatment have been incorporated throughout the Rules.

- Medical and health services  
It is clarified that healthcare of prisoners is a state responsibility and should be of an equal standard to that available in the community.
- Restriction, discipline and sanctions  
Updated guidance on the use of instruments of restraint, procedural safeguards in disciplinary procedures and clarification of prohibited disciplinary sanctions. Limitations on the use of solitary confinement.
- Investigation of deaths and torture under custody  
The updated provisions introduce the obligations of the prison in cases of any death, disappearance or serious injury. These include obligations on reporting, investigations and notifying family or friends. Prisoner file management requirements were also amended in recognition of their role in recording incidents and complaints.
- Vulnerable groups of prisoners  
The Rules now clarify that prisons need to identify the individual needs of prisoners and that measures taking account of such needs must not be regarded as discriminatory.
- Access to legal representation  
Provisions were updated and expanded to cover not only pre-trial detention and criminal proceedings, but requirements of legal counsel more comprehensively based on the 2012 UN Legal Aid Principles and Guidelines. The Rules also clarify that prisoners are allowed to keep in their possession documents relating to their legal proceedings.
- Complaints and inspections  
The revised Rules specify the powers of inspectors and require written inspection reports and encourage their publication.
- Staff training  
Provisions on training were updated to clarify the necessity of training for staff prior to entry into service as well as ongoing in-service training, both of which should reflect contemporary evidence-based best practice. A list of training requirements includes security and safety, the concept of dynamic security, and the use of force and instruments of restraint, as well as management of violent offenders, with due consideration to preventive and defusing techniques.

## **GUIDING QUESTIONS**

- What are the laws regarding prisoners in your country?

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- How do the prison regulations in your country compare to the reality in prisons?
- Has your country already adopted the Mandela Rules? If not, why?
- What obstacles, if any, has your country come up against in implementing the Mandela Rules?
- Is there an awareness among legislators in your country of the issues facing prisoners?
- What is the composition of the prison population in your country?
- How many citizens of your country are imprisoned abroad?
- Is your country planning anything in order to encourage the implementation of the Mandela Rules in the countries that have not adopted them yet?

### USEFUL LINKS

- [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf)
- <https://www.unodc.org/ropan/en/PrisonReform/the-nelson-mandela-rules--an-updated-guide-for-prison-management-in-line-with-human-rights.html>
- [https://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_Checklist\\_-\\_Nelson\\_Mandela\\_Rules.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Checklist_-_Nelson_Mandela_Rules.pdf)
- <http://www.prisonstudies.org>
- [http://www.prisonstudies.org/highest-to-lowest/occupancy-level?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All)
- [http://www.un.org/en/events/mandeladay/assets/pdf/16-00403\\_Mandela\\_rules\\_info\\_graphic.pdf](http://www.un.org/en/events/mandeladay/assets/pdf/16-00403_Mandela_rules_info_graphic.pdf)
- [http://www.un.org/en/events/mandeladay/assets/pdf/16-00403\\_Mandela\\_rules\\_info\\_graphic.pdf](http://www.un.org/en/events/mandeladay/assets/pdf/16-00403_Mandela_rules_info_graphic.pdf)
- [https://cdn.penalreform.org/wp-content/uploads/2018/07/MR\\_Guidance\\_Doc.pdf](https://cdn.penalreform.org/wp-content/uploads/2018/07/MR_Guidance_Doc.pdf)
- <https://www.penalreform.org/resource/the-nelson-mandela-rules-an-animated-introduction/>

## TOPIC B: LGBTQ REFUGEE PROTECTION ACROSS THE WORLD

Among the refugees that flee their countries every year, there are many who are escaping violence and persecutions due to their sexual orientation. As a matter of fact, there are still 13 countries in which homosexuality can be punished by death and 14 countries in which it can lead to imprisonment<sup>1</sup>.

The criminalisation of the lesbian, gay, bisexual, transsexual and queer (LGBTQ) community has only recently begun to draw global attention, but there is still little documentation and this is a major obstacle for LGBTQ+ persons seeking asylum. In 2009 the European Union conducted a study on the topic (*Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States*).

The main problem faced by these refugees is when they meet with the Territorial Commission for the recognition of international protection in the host countries. These bodies are responsible for evaluating asylum applications, and for granting or rejecting humanitarian protection. A study conducted in the Netherlands<sup>2</sup> shows that on many occasions national authorities have based their examinations on stereotypes and LGBTQ+ refugees' applications are regularly rejected on the grounds that they could perhaps avoid persecution by hiding their identities or by moving to "safe" region of their country of origin. The problem, though, is provided. It is also important to highlight the fact that in some host countries COI (Country of Origin Information)<sup>3</sup> is often misused and more often there is a lack of substantial COI concerning human rights violations against LGBTQ+ persons in the countries from which people flee. Moreover, any information that *is* available deals mainly with gay men; information regarding lesbian and transsexual claimants is very scarce indeed, while information on bisexual and intersex persons seem non-existent. Additionally, in some countries, medical examinations are used to establish an applicant's sexual orientation entailing an invasion of the person's privacy, and since LGBTQ+ identity is not a matter of medicine or psychiatry, this method is not legitimate.

Another problem faced by LGBTQ+ refugees regards their compatriots and other refugees in detention centres, or even citizens of host countries where the LGBTQ+ community may already experience episodes of direct and indirect discrimination. However, there is a significant lack of both academic research and NGO data regarding this kind of intolerance, and it has been proved that the number of reported cases of discrimination is low compared to

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<sup>1</sup> Torrissi, Claudia. "The Double Stigma of LGBTI Asylum Seekers" Open Migration. February 02, 2018. <https://openmigration.org/en/analyses/the-double-stigma-of-lgbti-refugees/>.

<sup>2</sup> Jansen, Sabine, and Thomas Spijkerboer. *Fleeing Homophobia - Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*. Report. Vrije Universiteit Amsterdam and COC Nederland.

<sup>3</sup> <https://www.easo.europa.eu/country-origin-information>

other grounds of discrimination<sup>4</sup>. This lack of data is often rooted in the authorities' unwillingness to deal with this kind of complaints, thus leading the exclusion of the LGBTQ+ community from social and political life.

## **BRIEF HISTORY OF THE ISSUE**

In the High Middle Ages persecution against homosexuals reached its height during the Medieval Inquisition. Indeed, most Christian denominations forbid any sexual activity between members of the same sex and this mentality informed moral and legal thinking over the centuries that followed. Moreover, during the Renaissance homosexuality went from being completely legal in most of Europe to being punishable by death. European colonizers imported this culture to the New World and other colonies<sup>5</sup>. Furthermore, across the globe, all the Abrahamic religions sanctioned discrimination and in varying degrees the persecution of homosexuals.

Nevertheless, by the 20<sup>th</sup> century, a movement claiming the rights of gays and lesbians was underway, enhanced by the social climate of feminism and the relatively new discipline of psychology. Despite this, as dictatorial regimes emerged across the world, state-sponsored homophobia, *i.e.* criminalisation and persecutions was again put in place by many governments. After the II World War, mainly in the 60s, people started campaigning and sometimes even fighting with the authorities (see *Stonewall riots* in 1969) for what was termed Gay Rights.

Nowadays, there is a wider acceptance of the LGBTQ+ community. Notwithstanding, while homosexuality has been decriminalized in the vast majority of Western countries and same sex partnerships or marriages are often legally recognised there, the picture in Africa, the Middle East and parts of Asia is more divided (it is still illegal in 74 countries) and homophobia is still widespread<sup>6</sup>. As many refugees come from these areas, it is understandable that some of these are fleeing also because of LGBTQ+ discrimination.

## **WHAT HAS BEEN DONE**

Recent years have seen some progress toward the protection of LGBTQ+ refugees: from NGOs providing assistance to people fleeing persecutions to youth organizations involving

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<sup>4</sup> *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States - Part II: The Social Situation*. Report. European Union Agency for Fundamental Rights, 2009.

<sup>5</sup> Morris, Bonnie J. "History of Lesbian, Gay, Bisexual and Transgender Social Movements" American Psychological Association. <https://www.apa.org/pi/lgbt/resources/history.aspx>

<sup>6</sup> Anderson, Eric. "Homophobia" Encyclopædia Britannica. 22 November 2016. <https://www.britannica.com/topic/homophobia>

and informing the new generation about the problem. Since 2003, the General Assembly of the United Nations has drawn attention to the discrimination against the LGBTQ+ community and in June 2011 UNHRC approved the first UN resolution on the issue, leading to reports on that kind of human rights violation.<sup>7</sup> Additionally, in October 2012 UNHCR (U.N. High Commissioner for Refugees) released guidelines which state that “*LGBT persons may be recognized as a ‘particular social group’ and, as such, are entitled to protection under the 1951 Convention.*”<sup>8</sup> These guidelines also specify that examinations of LGBTQ+ claims should be conducted in an appropriate and non-offensive manner by trained legal personnel.

## GUIDING QUESTIONS

- Is the LGBTQ+ community criminalised in your country?
  - If so, on what grounds does your country consider it a crime?
  - If so, what are the punishments?
- Are LGBTQ+ persons eligible for refugee status in your country?
- Might LGBTQ+ people flee your country because of discrimination?
- Is there a political debate in your country regarding this issue?
- In the long term, what could happen if the problem is ignored?
- Are there measures taken into account in order to provide protection to LGBTQ+ refugees?

## USEFUL LINKS

- [https://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Discrimination/LGBT/FactSheets/UNFE\\_Fact\\_Sheet\\_Refuge\\_Asylum\\_EN.pdf&action=default&DefaultItemOpen=1](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Discrimination/LGBT/FactSheets/UNFE_Fact_Sheet_Refuge_Asylum_EN.pdf&action=default&DefaultItemOpen=1)
- <https://openmigration.org/en/analyses/the-double-stigma-of-lgbti-refugees/>
- [https://www.coc.nl/wp-content/uploads/2013/11/Fleeing-Homophobia-report-EN\\_tcm22-232205.pdf](https://www.coc.nl/wp-content/uploads/2013/11/Fleeing-Homophobia-report-EN_tcm22-232205.pdf)
- <https://www.refworld.org/docid/566140454.html>
- [http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150929\\_LGBTI](http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150929_LGBTI)

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<sup>7</sup> United Nations. "Combating Discrimination Based on Sexual Orientation and Gender Identity." Office of the High Commissioner for Human Rights. <https://www.ohchr.org/en/issues/discrimination/pages/lgbt.aspx>.

<sup>8</sup> United Nations. "UNHCR Guidelines LGBT" UNHCR. October 2012. <https://www.unhcr.org/protection/migration/585ab0ef4/unhcr-guidelines-lgbt.html>.