

MEDIMUN XII Annual Session 2017



RESEARCH REPORT – GA4

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Topic 1: Measures to limit the impunity of UN officials

Introduction

One of the UN's founding principles is the maintenance of global peace and security, with UN officials and especially peacekeepers manifesting a key role in the realisation of this aim. However in recent years cases of sexual abuse and exploitation, child abuse, corruption and torture committed by UN peacekeepers have been reported in countries including Bosnia, Mozambique, Cambodia, East Timor, Iraq, Democratic Republic of the Congo, and Haiti. The lack of legal prosecution and convictions of such cases poses a serious threat to the credibility of the work of UN officials and undermine the UN's values, integrity and effectiveness.

The main reason why UN officials are not convicted of alleged crimes is their immunity: members of peacekeeping forces have immunity in countries where they are deployed, and UN staff have immunity in every country. There are ways to lift their immunity, and the UN has taken measures to enforce criminal accountability in these cases, nevertheless there is still work to be done for the closing of the so-called 'impunity gap'.

It is important to differentiate between the immunity of UN officials and of peacekeepers in order to be able to devise solutions that cater towards both:

Troops provided by U.N. member states (i.e. UN Peacekeepers) are immune from the jurisdiction of the country where the peacekeeping mission takes place, but they can be prosecuted in their country of origin for crimes committed on duty. In many cases the countries of origin have gaps in their legislation and thus fail to hold trials for criminal acts committed abroad.

U.N. staff, part of the international civil service, are immune from the jurisdiction of courts in any country in the world, including their own nations. Their immunity can only be waived by the Secretary General, and only then can they be tried in the host country where the crime allegedly occurred. However, peacekeeping missions often take place in countries with failed judicial systems that prevent them from trying these individuals.

Definition of Key Terms

United Nations staff and related personnel: United Nations staff members, consultants, individual contractors, United Nations Volunteers, experts on mission and contingent members

United Nations Peacekeepers: Soldiers drawn voluntarily from various national armies, who fulfil the role of an impartial third party

Immunity of UN Officials: UN officials possess immunity from legal processes with respect to all acts performed by them in their official capacity. The Secretary-General has the ability to waive the immunity of any official in the case where, in his opinion, the immunity would impede the course of justice.

Extradition: The transfer of an accused from one state or country to another state or country that seeks to place the accused on trial

General Overview

There are two ways in which the UN handles allegation of criminal misconduct depending on the position of the suspect:

For staff members:

- The UN investigates allegations of misconduct;
- The UN now commits to a six-month timeline for completing investigations, subject to extenuating circumstances;
- If the allegation is substantiated, the UN takes disciplinary action against its staff members;
- Substantiated cases of criminal conduct can also be referred for prosecution, or directly prosecuted, by national authorities.

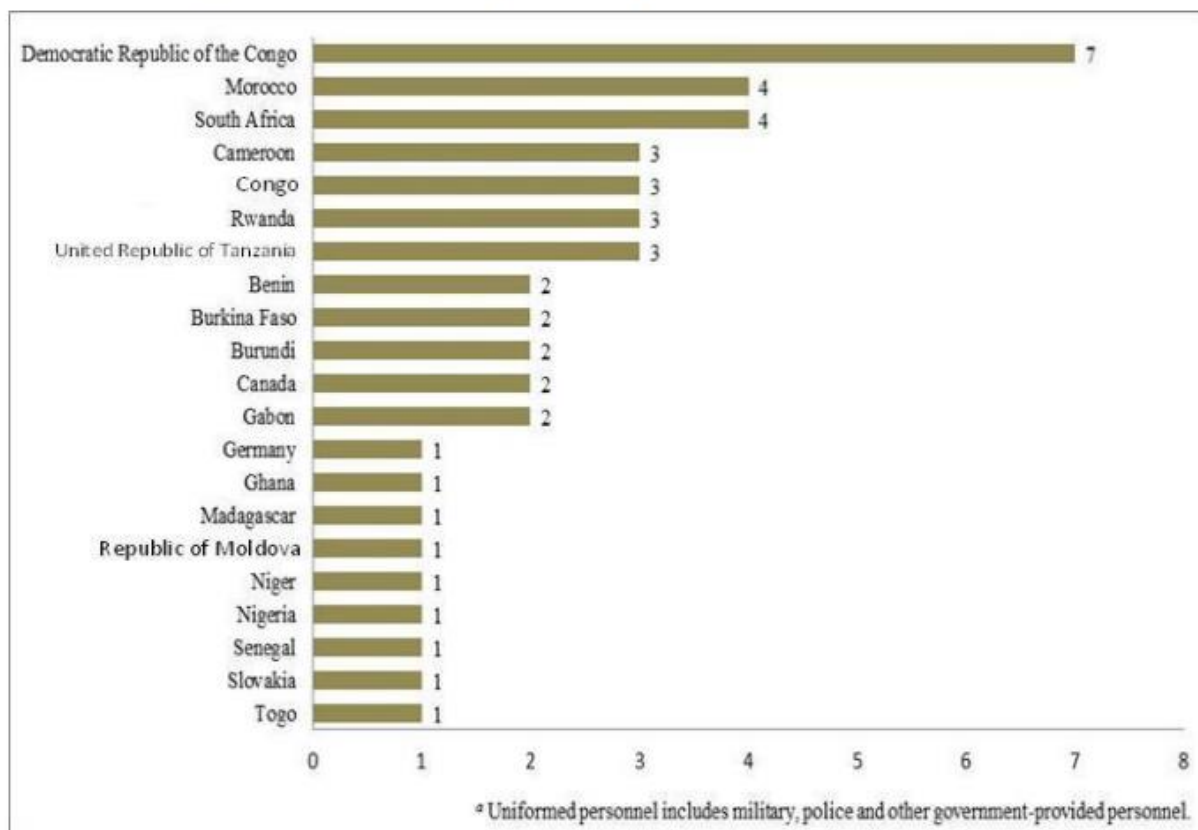
For military personnel:

- The TCC has the primary authority to investigate;
- If a Government does not notify the UN within the ten days that it will begin an investigation, or the Government declines to do so, then the UN may initiate an administrative investigation without delay;
- The Secretary-General now requests that Member States commit to a six-month timeline for completing investigations, subject to extenuating circumstances.;

- If the allegation is substantiated, disciplinary action or criminal sanctions are determined by the TCC. The UN will request that appropriate actions be taken by the deploying Member State. The UN can take only limited action against the personnel, for example repatriation and barring from future missions;
- TCCs are required to report back to the UN on the outcome of misconduct investigations and prosecutorial actions taken.

In 2015, the UN received 99 new allegations of sexual exploitation or sexual abuse, compared with 80 allegations in 2014. 69 of these allegations were reported in nine current and one closed peacekeeping missions. Furthermore, it is important to note the nationalities of the personnel with allegations of criminal misconduct in 2015, as their countries of origins are responsible for investigating and prosecuting the alleged crimes committed. (see table below)

Number of allegations for uniformed personnel per nationality^a



Source: Office of Internal Oversight Services.

Numerous reports of criminal misconduct by UN staff and especially peacekeepers have been reported in the past.

The first widely publicised cases of sexual exploitation and abuse committed by Peacekeepers took place in the Democratic Republic of the Congo in 2005, in the wake of which the '*comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations*' (view appendix) was created, the first thorough analysis of the problem of sexual exploitation and abuse by United Nations peacekeepers. The report addressed criminal misconduct ranging from solicitation of prostitutes, which was legal in some host countries, to acts considered criminal offenses in virtually all countries—such as rape and paedophilia. This included rape disguised as prostitution—for instance when the victim was given money or food to give the acts the appearance of consent. Furthermore, there is also the issue of “peacekeeper babies” which is very difficult to address because of the gaps in legislation and frequent lack of an effective legal system in the host country.

A new DPKO strategy for prevention of misconduct, enforcement of DPKO standards, and remedial action to be taken in response to allegations of misconduct was also created. These were accompanied by longer-term initiatives to restructure the UN's internal administrative justice system and explore options for criminal accountability. UN efforts up to now are mostly administrative (such as setting up legal advisory panels to the Secretary General) and emphasize the responsibility of states of origin of UN personnel to prosecute criminal misconduct.

Other notable case were the UN executive missions to Kosovo in 1999 and East Timor in 2000, where the lack of a criminal code for the prosecution of criminal acts by UN staff led to the recommendation by the Panel on United Nations Peace that an “interim legal code” be developed for use in such situations.

Several barriers continue to exist that prevented effective criminal accountability.

Firstly, one barrier exists on the state level, both regarding Troop-Contributing Countries (TCCs) and host countries, namely **weak justice systems** with gaps in their legislation that allow the impunity gap to continue existing, public mistrust, and reluctance to report crimes due to fear of retaliation.

Another barrier relates to the **operational environment of UN missions**, such as lack of welfare and communication facilities to stay in contact with

home, camps which are close and not properly separated from local populations; and a lack of discipline among some of the contingents.

Underdeveloped infrastructure, lack of local resources and lack of expertise in investigation in host countries and TCCs also act as a barrier, since allegations of sexual abuse and other crimes by UN employees require quick responses in order to secure evidence and protect victims, which may not happen in states with weak justice systems. Partnership and cooperation with the UN is vital in such cases, for example through the creation of hybrid courts, where the UN partners with local court systems which lack adequate capacity to provide transitional justice for war crimes.

The fact that alleged perpetrators are tried in their country of origin (TCC) further acts as a barrier to swift and effective trials, as in this case there is no access to the victim, the crime scene, or witnesses. In those cases it is easy for the defendant to convince the jury of factors such as mistaken identity or age, child testimony not being credible, an alibi, or language or cultural misunderstandings.

Major Parties Involved

Troop Contributing Countries: and national jurisdiction hold the primary responsibility to investigate and prosecute alleged crimes committed by UN peacekeepers deployed in Peacekeeping missions. The UN can only urge these countries to provide adequate preventative training in relation to conduct, investigate allegations, hold accountable their nationals responsible, and further to report to the UN on actions undertaken.

Secretary General: It is up to the Secretary-General to determine whether an official or expert on mission acted within the scope of his or her functions, or whether they violated their code of conduct. In the case that he determines that the official on mission acted outside their function, he has the right to waiver immunity.

Office of Internal Oversight Services (OIOS): the internal oversight body of the United Nations which carries out reports of possible misconduct to guide the Secretary-General on jurisdictional or disciplinary action to be taken. There is great potential for closer co-operation of the OIOS with Member States to build the capacity of national jurisdiction to develop uniform standards of investigation and to ensure a consistent approach to investigating criminal allegations against UN staff/officials/military personnel.

Previous Attempts to Resolve the Issue

- Conduct and Discipline Units (CDU): cooperate with Conduct and Discipline Teams on the ground in larger peacekeeping missions and Conduct and Discipline Focal Points in smaller peacekeeping and special political missions. Their job is to implement the mission strategy on training, prevention, enforcement and remedial action and advise the Heads of Mission on related issues. Their action strategy encompasses 3 pillars: prevention of misconduct, enforcement of UN Standards and remedial action.
- Memorandum of Understanding (MOU) between Troop Contributing Countries (TCCs) and the UN: states the obligations of States regarding conduct and discipline of their troops.
- UN Misconduct Tracking System: used to vet UN international staff applying to work in field missions against records of misconduct in prior assignments to field missions.
- Immediate Response Teams have been established in peacekeeping missions to gather and preserve evidence for use in investigations;
- Enhanced complaint reception framework aims to ensure mechanisms within communities where people can come forward, in confidence, to raise complaints regarding UN personnel.
- Administrative measures against staff members found to have committed these acts (e.g. withholding entitlements)
- A Trust fund that provides support and assistance to victims, complainants and children born as a result of sexual exploitation and abuse.
- An independent review panel in 2015 that published a report, *Taking Action on Sexual Exploitation and Abuse by Peacekeepers*, in December 2015 and appointed a special coordinator to improve the UN response to the issue.
- On 11 March 2016, the Security Council adopted its first ever resolution focused solely on addressing sexual abuse by UN peacekeepers. (SC Resolution 2272).

Possible Solutions

Note: The UN is able to repatriate the officials with substantiated allegations, however its work in ensuring justice relies heavily on co-operation with member states (especially troop-contributing countries) and countries in which the alleged crimes took place. Therefore many possible solutions relate to the judicial systems and institutional capacity of host countries and countries of origin of peacekeepers/staff.

- Strengthening the legal framework of states with failed juridical systems
- Investing in capacity building of Host Countries and Troop Contributing Countries
- Requiring peacekeepers to provide DNA pre-deployment
- Setting up *in situ* military courts
- Better planning in the deployments and rotations of troops

Appendix

[A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations \(A/59/710\)](#) (also called Zeid Report)

[UN CDU Strategy](#)

[UN Security Council Resolution 2272 \(2016\)](#)

[UN General Assembly Resolution 70/114 \(2015\)](#)

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Topic 2: Measures to prevent the illegal raw diamond and mineral trade for the funding of armed conflicts

Introduction

The trade in illicit diamonds, also called 'conflict diamonds' and 'blood diamonds' has had devastating consequences for peace, safety and security of people in countries affected by the armed conflicts funded and fuelled by it. Equally pressing issues are the systematic and widespread human rights violations that have been perpetrated in such conflicts. Hence, the UN's involvement in curbing this phenomenon is imperative in reinstating peace and security in these areas.

Despite the rich reserves of diamonds and minerals found in underdeveloped countries, especially in the African continent, the large scale illegal trade and environmental crime robs these countries of revenues that could have been spent on sustainable development and the eradication of poverty. The revenue lost is so large that it amounts to approx. four times Africa's current external debt.

Definition of Key Terms

Conflict diamonds/blood diamonds: Diamonds that originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military action in opposition to those governments, or in contravention of the decisions of the Security Council (UN definition).

Mineral trade: mineral resources trading which includes all solids that must be mined, including coal and uranium.

General Overview

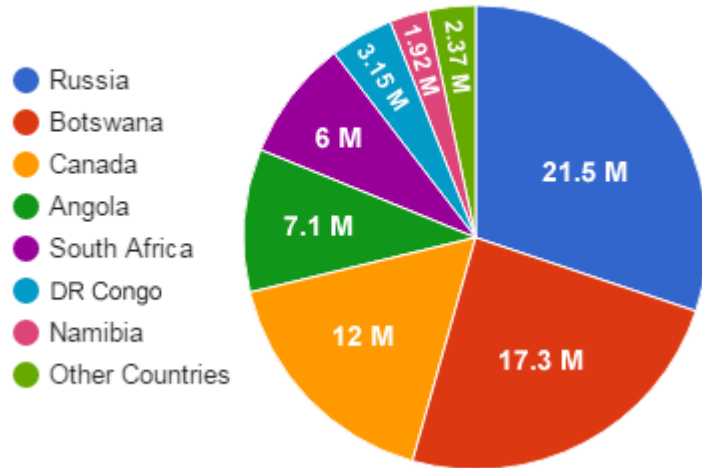
One of the first and most serious cases of conflict diamonds was in the late 1990s in Sierra Leone, which suffered a long lasting civil war from 1991-2002. During this time period, the Revolutionary United Front (RUF) attempted to overthrow the government and formed a military junta with the help of the army in 1997. The rebels were able to buy weapons and continue their armed rebellion using money from illicit diamond trade. The consequences of the civil war were huge, with over 75,000 deaths, 500,000 refugees, and half of the country's 4.5 million people became internally displaced. The systematic rape and abduction of women and girls as sex

slaves, and the mutilation and torture of men, women and children was also used as a tactic to terrorize civilians into submission.

Likewise, during the civil war in Angola (1974-2001) the rebel group UNITA was able to finance their activities and equip themselves using bartered diamonds.

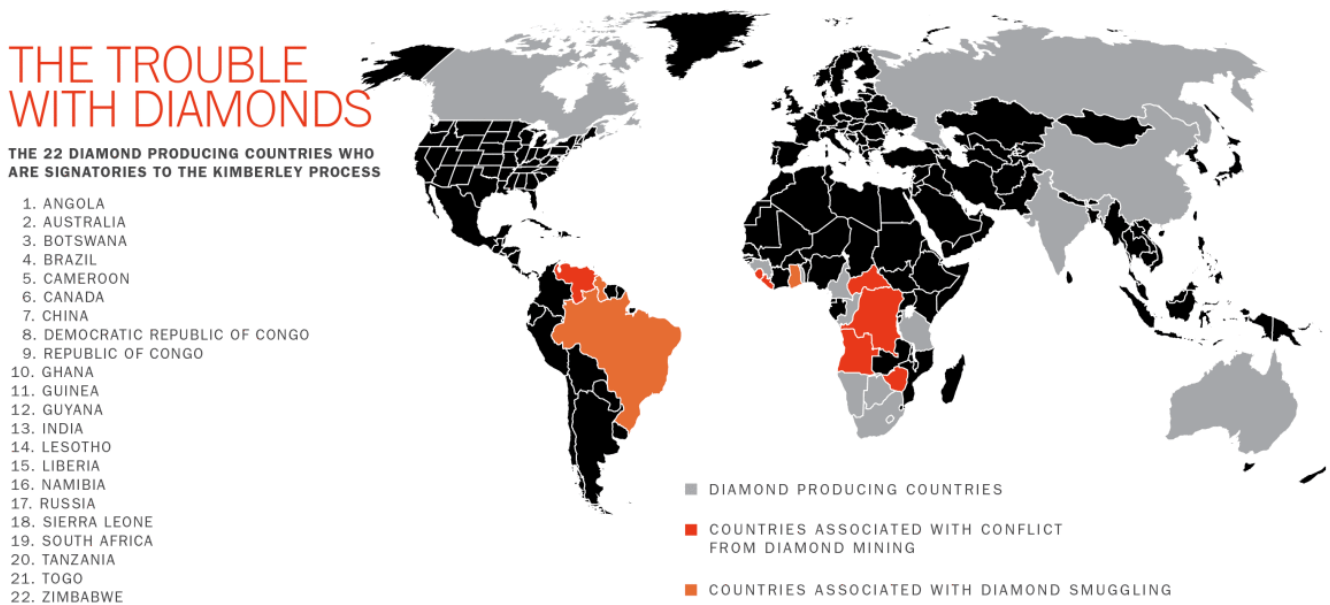
Chart showing the major diamond producers globally

Top Gem Diamond Producers
Millions of carats -- 2015 Data from USGS



Map showing areas of illegal diamond trade

The UN has taken several measures in response to these humanitarian tragedies that were fuelled by the illicit diamond trade. It implemented diamond sanctions on Angola in 1998 and banned all sales of diamonds from Sierra Leone until the government established a certification system for legal exports in 2000. Another action taken is the Kimberley Process (KP), a government-led certification scheme, initiated in a bid to clean up the diamond trade launched in 2003. This scheme implements controls over imports and exports of diamonds and has been successful in integrating 75% of diamond producing countries in it. Diamonds are certified as conflict free before entering the trading market.



There is also widespread illegal smuggling and laundering of natural resources and specifically minerals that fuels conflicts today, for example in the eastern Democratic Republic of the Congo (DRC). Annually gold, minerals, timber, charcoal and wildlife products such as ivory, valued between US\$ 0.7-1.3 billion, are traded illegally out of the conflict zone and surrounding areas in eastern DRC. It has been reported that transnational organized criminal networks operating in and outside DRC gain approx. 98 percent of the net profit from illegal natural resource exploitation - particularly gold, charcoal and timber. The remaining 2% (amounting to US\$ 13.2 million per annum) are left to local, DRC based, armed groups. This amount, however small it may seem in contrast, still enables them to arm themselves and continue destabilising the region.

Major Parties Involved

Kimberley process: joint governments, industry and civil society initiative to stem the flow of conflict diamonds – rough diamonds used by rebel movements to finance wars against legitimate governments.

National governments of diamond trading countries: Revenues from diamonds help to provide necessary counselling, testing, education, treatment programs, clinics and hospices, along with homes and care for children orphaned through this disease therefore diamond trade is significant especially in African countries. To government also is responsible for the supply of diamonds in each country.

Diamond Development Initiative : aims to find sustainable methods of ensuring that diamonds are mined and distributed for the benefit of local communities and local governments.(implement projects that ensure safety and good working conditions in small scale diamond digging)

World trade organisation: dealing with the rules of trade between nations. WTO agreements are negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. It has an active role in the trade of minerals and diamonds.

Previous Attempts to Resolve the Issue

- In May 2000, the House Committee on International Relations (Subcommittee on Africa) held hearings for the first time on the issue of conflict diamonds. During the hearings, De Beers, Eli Haas of the Diamond Dealers Club along with Global Witness and other NGOs testified on the conflict diamonds issue and what needed to be done to end the flow of such diamonds. The diamond industry was called upon to examine its current trading systems and to come up with a system that would help curb the trade in conflict diamonds. Global Witness called for a system of control that would be able to determine the source of diamonds and thereby assist in preventing the trade of illicit diamonds
- The July 2000 Congress, which was sponsored by WFDB and IDMA, resulted in the creation of the World Diamond Council (WDC) and the passing of a resolution on conflict diamonds. The resolution contained different proposals aimed at monitoring the trade in diamonds.
- The Clean Diamond Trade Act – HR 2722 was passed by the US House of Representatives on 28 November 2001.

- Kimberley Process Certification Scheme (KPCS): an initiative bringing together governments, industry and civil society to stem the flow of conflict diamonds by imposing requirements on participants to certify that shipments of rough diamonds are conflict-free. Specifically, the diamonds are sealed in containers, and given warranties after being collected from a mine. As they move are transported, they are given further identifications to verify their origin.

Possible Solutions

Today 74 governments have enshrined into their national law the Kimberley Process Certification System, and now more than 99% of the world's diamonds are from conflict free sources. However, conflict diamonds still exist and have to be eliminated through:

- The creation and implementation of a simple and workable international certification scheme for rough diamonds.
- The need for national practices to meet internationally agreed minimum standards.
- The cooperation with the Kimberley project and the enhancement of it.
- Monitoring of diamond trade (prevent illicit diamonds as cover for conflict diamonds)
- The creation of a statistical base (since there is lack of information)

Appendix/Appendices

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Topic 3: Combating glorification of Nazism, neo-Nazism and other practices that contribute to fueling contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Introduction

All human beings were born free and equal in dignity and rights and had the potential to contribute constructively to the development and well-being of their societies. Any doctrine of racial superiority was scientifically false, morally condemnable, socially unjust and dangerous, and must be rejected. The role of the UN includes the protection of people against discrimination and segregation and to engender the full enjoyment of economic, social and cultural rights as well as civil and political rights. Despite efforts in that regard, millions of human beings continue to be victims of racism, racial discrimination, xenophobia and related intolerance, including their contemporary manifestations, some of which were taking violent forms.

In the 21st century numerous factors bring Nazi ideologies, of racial discrimination and xenophobia back. Unemployment in Europe and stagnant wages in America hurt a cohort of older working-class white men, whose jobs are threatened by globalisation and technology. In their despair they hold immigrants accountable and complain for benefits, commit crimes and flout local customs. In combination with the financial crisis and Europe's stagnation, and the mistakes of politicians and decisions imposed on citizens, people turn to extremism. Jihadist terrorism pours petrol on this resentment-and may even extend populism's appeal. Whenever ISIS inspires or organises murderous attacks, the fear of immigrants and foreigners grows.

Definition of Key Terms

Nazism: the body of political and economic doctrines held and put into effect by the Nazis in Germany from 1933 to 1945 including the totalitarian principle of government, predominance of especially Germanic groups assumed to be racially superior, and supremacy of the Führer.

Neo Nazism: a member of a group espousing the programs and policies of Hitler's Nazis.

Racism: a belief that race is the primary determinant of human traits and capacities and their racial differences produce an inherent superiority of a particular race leading to prejudice and discrimination.

Xenophobia: fear and hatred of strangers or foreigners or of anything that is strange or foreign.

General Overview

Nazism developed out of the influences of the German nationalist movement and the anti-communist Freikorps paramilitary groups that emerged during the Weimar Republic after German defeat in World War I. It includes theories of racial hierarchy and social divisions, identifying Germans as part of what Nazis regarded as a master race. Its purpose was the creation of an Aryan race, a homogeneous society of racial purity. Anyone outside German territory was considered part of the inferior. Such extremist ideas were supported by people in times of crisis and despair. Nazism was established under a totalitarian dictatorship with the use of propaganda, censorship and terror. The concepts of racism and xenophobia are now a contemporary form of Nazism.

In light of the financial crisis, globalisation and immigration racial discrimination has wide spread across the globe. Some possible reasons are:

- The Great Depression of the 1930s which greatly affected political developments in Europe. Economic stagnation proved beneficial for far-right parties, which generally saw their influence increasing. Authoritarian regimes became established in most European countries at the time, the most important being the Nazi regime in Germany. In recent years, the global financial crisis has also increased the appeal of far-right extremists. All over Europe anti-system political parties that are anti-liberal, racist, anti-Semitic and xenophobic are gaining ground: the European Parliament elections held in May 2014 offer the latest example of this. Historical experience shows that when economic conditions remain bad for a significant period of time people tend to become more radical as far as their electoral behaviour is concerned.
- Recent economic crises can lead to increased racism and xenophobia against minority groups, particularly foreign nationals. This may be due to the perception that migrants may take away jobs or scarce welfare benefits; and extremist groups may seize on such fears. For example, research based on an analysis of Eurobarometer surveys showed that anti-foreigner sentiment is higher among those who are unemployed.

- Across the world, millions of people live outside their countries of origin. For many, migration offers the potential for protection from crises, poverty reduction, and heightened profits and innovation as they contribute to the economic and social lives of their host countries. However, with increased migration flows, the world has also witnessed the exacerbation of existing xenophobia and of xenophobic discrimination across the globe. Migrant centres are increasingly being attacked around Europe, in what seems to be “revenge” attacks for much publicized crimes committed by people who are either migrants or of migrant descent. During the year 2015, Sweden saw four more times the number of attacks on asylum shelters than in the period between 2011 and 2014 combined. Sweden has more asylum seekers and migrants per capita than any other country in Europe. Many of the suspects apprehended following such attacks are members of far right groups who act as a result of rumours or news of attacks on ethnic Swedes by migrants.
- Besides the injuries and deaths immediately brought about by terrorist attacks, survivors often suffer from post-traumatic stress disorder, anxiety and major depression. The economy suffers an immediate impact due to building and infrastructure damage, but it also suffers long-term effects from trauma to financial markets, a rise in spending on security and defence, and the impact on supply chains of enhanced security at land, sea and air border crossings. People experiencing such attacks directly or indirectly may adopt racist ideas and stigmatize the race or religion of those involved in the terrorist attacks. In essence a reaction to fanaticism and terrorism is presented as a form of hate against Muslims and prejudice to anyone of the Muslim religion creating racism and xenophobia to people in Algiers, Cairo, Tel Aviv, Madrid, Tunis, Islamabad, Baghdad, Bali, Bombay, New York, London, Paris and San Bernardino where attacks took place and all over the world.

Major Parties Involved

Poverty/inequality: Poverty is rampant throughout the known world, with billions of people living in unsafe and sickening conditions. The lack of adequate healthcare and schooling create a cycle where people are unable to remain healthy or lift themselves out of such horrid conditions.

According to the Fata Research Centre (CRC) which published a report called "Extremism and Radicalization: An Overview of the Social, Political, Cultural and Economic Landscape of (Federally Administered Tribal Areas)" in 2012 detailing the factors behind poverty that result in radicalization of youths.

The report showed a stunning correlation between poverty, lack of educational opportunities, lack of employment and growing up in a violent society that leads to youths to become religiously extremist and adopting racial ideas. Lack of education generates ideas of hatred and racial discrimination.

Economic power/unemployment: It determines the social standing of a human in society. Differences in wages and living standards may cause different behaviour to other races. A well off human being is more likely to exercise less racist behaviour due to his adequate stance in society. On the other hand a man who is unemployed is likely to blame immigrants or other races for "stealing" his jobs and therefore glorify Nazi practises. (e.g. Golden Dawn and their ideological beliefs on immigrants)

UNESCO: (United Nations Educational, Scientific and Cultural Organization) Promoting education and social acceptance. Education plays a key role in accepting and understanding other races and therefore can lead to a harmonious integration between them. Lack of education is accountable for many cases of glorification of Nazism and can therefore determine an individual's beliefs. It has taken action to reduce the level of poverty globally and is aiming to achieve education for all.

Previous Attempts to Resolve the Issue

- Creation of the International Decade for People of African Descent, entitled "Confronting the silence: perspectives and dialogue on structural racism against people of African descent worldwide".
- The eighth session of the Forum on Minority Issues, which looked at the issue of minorities in the criminal justice system.
- On 26 November 2015 the official commemoration of the fiftieth anniversary of the International Convention on the Elimination of All Forms of Racial Discrimination, in Geneva.
- The Human Rights Committee, in its general comment No. 15 (1986) on the position of aliens under the Covenant, has stated that "the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens".

- Under article 2 of the Convention, States parties undertake to encourage integrationist multiracial organizations and movements and other means of eliminating barriers between races. Article 4 requires States parties to condemn all propaganda and organizations based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, by declaring as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts, and by declaring illegal and prohibiting organizations which promote and incite racial discrimination. Finally under article 7 of the Convention States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices and to promoting understanding,
- Throughout the year, OHCHR undertook research and analysis of legislation, policies and institutional measures at the global, regional and national levels, and relevant information was uploaded into the OHCHR database on practical means to combat racism, discrimination, xenophobia and related intolerance.
- On November 19, 2015, the United Nations Third Committee Human Rights Plenary adopted Resolution A/C.3/70/L.59/Rev.1 "Combating Glorification of Nazism, neo-Nazism and Other Practices That Contribute to Fuelling Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Possible Solutions

- To facilitate the safe accommodation of migrants within the borders of these respective states.
- To educate people about the evil nature that constitutes racism and discrimination, strongly emphasizing that this is a fate that can befall all of us at one point or more in our lives.
- In order for there to be a peaceful integration there must be tolerance, law and education. These are things that should be provided at a local and national level. (Historically speaking the majority of cases regarding migration have led to positive changes. As a result of a growth in population brought about by the arrival of people willing to start a new life, countries have grown both socially and economically.)

- Criminalized racist activity as it violates the fundamental human dignity of the victims.
- To counter the dissemination of ideas based on racial superiority or hatred and to promote the values of equality, non-discrimination, diversity and democracy, while respecting their obligations under articles 19 and 20 of the International Covenant on Civil and Political Right with the use of the internet.
- To make a local diagnosis of the situation, implementing preventive actions, promoting social solidarity, identifying the appropriate scale of intervention, the complementarity of strategies, and review and assessment. (local government and local administrative and their role)

Appendix/Appendices

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