

ABSTRACT

The goal of this research project was to discuss the pertinence, implications, and possible issues of a human rights convention to safeguard the basic rights of all peoples regardless of SOGIESC. The project outlines how the UN is currently mishandling the issue of SOGIESC human rights, how many countries worldwide are allowing the abuse of this community through legal frameworks and other means such as hate crimes, and how the mental and physical health of people of diverse SOGIESC are at stake in bringing light to this issue. I looked at the Convention on the Elimination of Discrimination Against Women (CEDAW) as an example of a core human rights treaty that has had a tangible effect on improving domestic legislation in many countries as a form of comparison and imitation, and the Yogyakarta Principles Plus 10 (YP+10) as a guide for what rights are needed to be protected for all peoples regardless of SOGIESC. In terms of possible hurdles, I discuss and refute the effects of Shari'ah and colonial law, as well as the problems with the framework of UN human rights conventions and international law itself. Finally, I make an argument for the precedent that is set by international law and what effect it can have on domestic legislation in nation-states worldwide.

INTRODUCTION

I began by exploring the way the UN Office of the High Commissioner on Human Rights is currently handling the issue of the persecution of those of diverse SOGIESC and infringements upon their human rights, and I found that they are doing very little to pursue equality for this vulnerable community. I found that there were specific human rights conventions beyond the Universal Declaration of Human Rights that focused on groups that are at higher risk of mistreatment, including women, disabled peoples, and children (see Image A), but not people of diverse SOGIESC, despite the fact there are laws in seventy-one UN member states that outlaw consensual same-sex relationships, including eight where it is punishable by death. I took this information and attempted to assess the possible impact and effectiveness such a convention could have on promoting and protecting the rights of all peoples regardless of SOGIESC through improvements of legislation in nation-states worldwide.

METHODS

My methods primarily involved secondary research of qualitative and quantitative studies done on human rights and the diverse SOGIESC community, mostly through the JSTOR online database. I also used data and documents from the UN itself (primarily the CEDAW), the YP+10, studies done by federal crime bureaus, as well as primary reporting from news outlets such as the New York Times and primarily LGBTQ+-focused publications like the Washington Blade and the Bay Area Reporter. Data from NGOs such as the Human Rights Campaign (HRC), Human Rights Watch (HRW), the What We Know Project, and the Gay & Lesbian Alliance Against Defamation (GLAAD) supplemented my analysis.

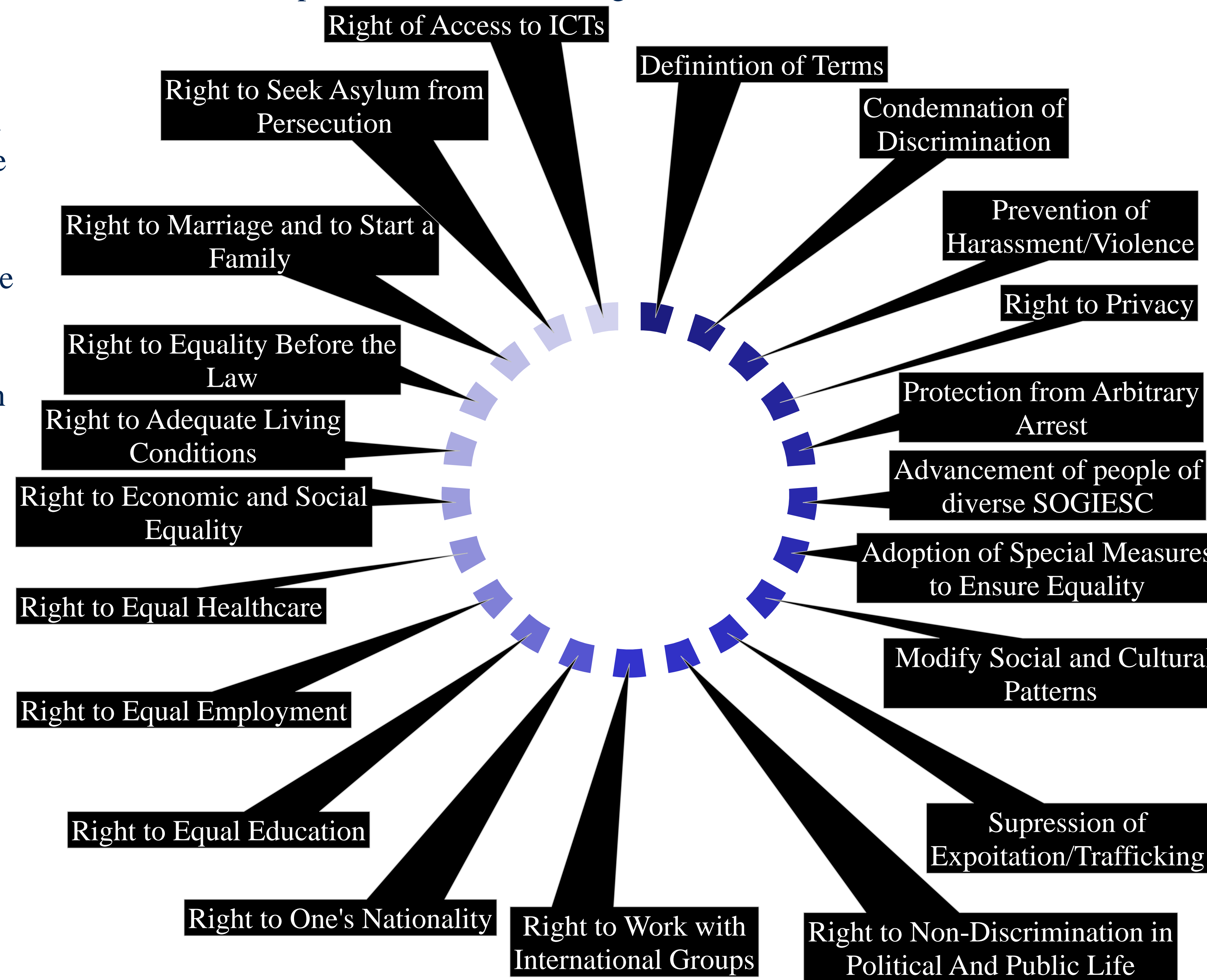
The Case for a Convention on Human Rights on the Basis of Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics (SOGIESC)

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RESULTS

As there isn't a true way to show the statistical impact of a conceptual human rights convention protecting all peoples regardless of SOGIESC, I have chosen to include a chart of the rights that are included in the articles of the prospective document determined to be needed for an effective charter. These rights make up Part I of the proposed convention, with Part II involving the creation of the monitoring committee, a discussion of its responsibilities, creation of reporting and reservation procedures, and the obligations of the States Parties.



IMPLICATIONS

The benefit of a successful SOGIESC human rights treaty would be the saving of lives, and what can be more important than that? My hope would be that this research provides a baseline for human rights experts to draw from in crafting SOGIESC legislation at the international level in the future, utilizing the framework I've adapted from the CEDAW and considering the rights I have pulled from both the CEDAW and the YP+10. If such a treaty were to be proposed within the United Nations, I believe there would be hurdles in the form of Shari'ah Law nations and colonialist legal systems, but these could be overcome if the current human rights treaty structure were continued, as there has been progress made on both fronts with respect to human rights. The reservation procedure would allow for such states to accede to the treaty while maintaining the rights they deem to be amicable, and the committee can later attempt to reverse these reservations. Simply attempting to organize such a major international document could give hope to those in civil society who fight for SOGIESC equality, as well as encourage states to take a hard look at their own efforts. It also gives a legal precedent for courts and legislative bodies to build upon, as with the CEDAW.

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965
ICCPR	International Covenant on Civil and Political Rights	16 Dec 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights	16 Dec 1966
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984
CRC	Convention on the Rights of the Child	20 Nov 1989
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec 1990
CPED	International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec 2006
CRPD	Convention on the Rights of Persons with Disabilities	13 Dec 2006

Image A: The image above is of a list of the current nine core international human rights conventions and what groups they monitoring and expanding protections for, as well as when they were adopted.

"Core International Instruments." OHCHR, United Nations OHCHR, 2020, www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx.

DISCUSSION & CONCLUSION

I have found that despite the shortcomings of international law, a human rights treaty is the best option currently available within the framework of the international legal system. The general success of the CEDAW has shown both the positive effects of the human rights treaty as well as the limitations of its reach. In combining the YP+10 with the framework of the CEDAW, one can hope to emulate the accomplishments of the CEDAW while respecting the separate rights that are needed to ensure the equality of all peoples regardless of SOGIESC. The committee procedure established to review a country's practices in regards to the protection of people of diverse SOGIESC has shown to be a practical force under the CEDAW for improving domestic legislation and safeguards. Finally, an Optional Protocol would be established concurrently with the proposed convention to ensure full accountability of nation-states to their people and civil society as a whole. A first step is what is needed, and the human rights treaty system in place, despite its flaws, is still a good way of achieving that. A Convention on SOGIESC equality would make for a groundbreaking leap forward for the SOGIESC movement, and it is certainly necessary and feasible within the current framework, all is needed is the bravery to follow through.

KEY REFERENCES

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