

1996 1998 1999 2003 2006 2008



thematic recommendations 1996 — 2008

HCNM

thematic recommendations

1996 - 2008



All rights reserved. Contents of this publication may be freely used and copied for educational and other non-commercial purposes provided that any such publication is accompanied by an acknowledgement of the OSCE/HCNM as the source.

Published by the OSCE High Commissioner on National Minorities
Prinsessegracht 22
2514AP The Hague
The Netherlands
www.osce-hcnm.org

ISBN 978-90-75989-13-7

© OSCE/HCNM 2010

Printed in the Netherlands

The OSCE/HCNM would like to thank the Government of Kazakhstan for providing support for the publication of this book.

Table of contents

Foreword by Kanat Saudabayev - OSCE Chairperson-in-Office, Secretary of State and Minister for Foreign Affairs of the Republic of Kazakhstan	i
Foreword by Knut Vollebaek - OSCE High Commissioner on National Minorities	iii
The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note - 1996	1
The Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note - 1998	13
The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note – 1999	35
Guidelines on the use of Minority Languages in the Broadcast Media & Explanatory Note - 2003	57
Recommendations on Policing in Multi-Ethnic Societies & Explanatory Note – 2006	77
The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note - 2008	113

Foreword

Chairperson-in-Office of the OSCE

The post of High Commissioner on National Minorities (HCNM) was established in 1992 with the aim of strengthening stability and security in the OSCE participating States through the identification and prevention of inter-ethnic conflicts at the earliest stage. By playing an active part in the resolution of conflicts at the end of the twentieth and start of the twenty-first century and by studying the international expertise accumulated over time, the HCNM has identified a number of priority areas of particular importance in maintaining balanced relations between the majority and minority groups in multi-ethnic societies.

In this context, the recommendations drafted by the HCNM for the OSCE participating States on the rights of national minorities in such spheres as education, the media, language, policing, effective participation in public and political life as well as the involvement of representatives of national minorities in inter-State relations constitute the quintessential practical and theoretical work of the HCNM.

The Hague Recommendations (1996), The Oslo Recommendations (1998), The Lund Recommendations (1999), Guidelines on the use of Minority Languages in the Broadcast Media (2003), Recommendations on Policing in Multi-Ethnic Societies (2006) and The Bolzano/Bozen Recommendations (2008) have embodied a guiding framework and standards in various spheres concerning the interests of States and the national minorities living in them. These recommendations aim to provide practical assistance to the members of our Organization and take account of the needs and interests of the population as a whole and the national minorities.

The Kazakh Chairmanship is pleased to present this compendium of the aforementioned recommendations as a joint project by the Chairmanship and the HCNM with the aim of strengthening inter-ethnic harmony in the OSCE area.

It is my hope that the dissemination of these documents in the form of a single compendium among government bodies, non-governmental organizations and other interested parties will help to promote interethnic peace and harmony throughout our Organization's area of responsibility.



*Kanat Saudabayev
Chairperson-in-Office of the OSCE
Secretary of State and
Minister for Foreign Affairs of the
Republic of Kazakhstan*

Foreword

OSCE High Commissioner on National Minorities

Let me take this opportunity to thank the Kazakh Chairpersonship of the OSCE for the initiative to publish all thematic recommendations elaborated by the office of the High Commissioner on National Minorities (HCNM) since its establishment in 1992. These recommendations have come to form an integral part of the OSCE commitments and have served as the basis of the HCNM's conflict prevention work. The fundamental question addressed through these recommendations is how various communities with different cultures, needs and aspirations can live together in peace and dignity, ensuring the sustainability of multi-ethnic States. This was the primary challenge in the early 1990s when the institution of the HCNM was set up and it remains so today as globalization brings ever-growing diversity to our national communities.

The mandate of the HCNM is that of conflict prevention at the earliest possible stage. Its purpose is to deal with tensions involving majority and minority communities that have the potential to undermine regional and international security. From the very outset, it was clear to me and my predecessors that the road to sustainable security and viability of multi-ethnic States lies, among other things, in the protection and promotion of human rights, including those of persons belonging to national minorities. The need to understand that respect for human rights and the maintenance of peace and security are closely interconnected also underpins the OSCE's approach to comprehensive security. It is for this reason that all successive High Commissioners have recognized the necessity to promote respect and guarantee minority cultures and identities and have assumed the task of contributing to the elaboration and enhancement of minority rights standards. The thematic recommendations collected in this bilingual volume represent the framework that together with other international standard-setting documents steers the HCNM's approach to conflict prevention.

The recommendations have been born out of the HCNM's practical experience, covering those recurring themes and issues which have become the subject of the HCNM's attention in different cases over the years. Often, the most violent of contemporary conflicts have been triggered by the denial of the most basic rights such as the right to use one's mother tongue, practice one's religion and participate

in public life in a climate of respect and equality. The first three sets of recommendations, therefore, cover issues of minority education, use of minority languages and effective participation of national minorities in the governance of States. These are the important aspects of state-minority relations addressed in The Hague (1996), Oslo (1998) and Lund (1999) Recommendations respectively.

The subsequent Guidelines on the use of Minority Languages in the Broadcast Media (2003) and Recommendations on Policing in Multi-Ethnic Societies (2006) deal with two other specific issues impacting on the daily lives of national minorities. The Media Guidelines were issued in response to a particular concern that the use of minority languages in the broadcast media was being limited by some States. They provide practical guidance to assist policymakers to develop media policies and legislation that respect international standards and strike the right balance between the needs of majority and minority communities. The Policing Recommendations focus on how to achieve impartial policing and respect for the rule of law in multi-ethnic societies. The issues covered include recruitment of personnel from national minorities into the police service, training of police officers, engagement with minority communities, operational practices and the prevention and, if necessary, management of conflict.

These recommendations all deal with the areas of domestic responsibility of individual States and are meant to be reference documents for practitioners who are often confronted with having to find answers to complex questions that involve minority matters. The minority question, however, often engages the interest of more than one State and constitutes a potential source of inter-State tension, if not conflict. Conversely, solutions to minority questions are often not only found *within*, but also *between* States. This is the subject of the most recent set of HCNM recommendations The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (2008), which expressly address the international dimension of the minority question. They provide guidance on how, under which conditions and within which limitations States may support minorities abroad without straining interethnic or jeopardizing friendly inter-State relations.

All HCNM recommendations have been elaborated with either the direct involvement or support of eminent international experts. They represent a wide range of cultural and academic backgrounds, enriching every document with their broad knowledge and experience. The recommendations aim to provide both

normative and practical guidance to States based on international norms and standards. Each set of recommendations is explained in greater detail and with reference to relevant international standards in the Explanatory Notes that form an integral part of each document. The standards have been interpreted specifically to ensure the coherence of their application in open and democratic States. It is my hope that by encouraging good and democratic governance and respect for human rights, including those of minorities, the ultimate conflict prevention goal of my mandate will be fulfilled.



Knut Vollebaek
Knut Vollebaek
High Commissioner on National Minorities

The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note - 1996

Introduction

In its Helsinki Decisions of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities to be "an instrument of conflict prevention at the earliest possible stage". This mandate was created largely in reaction to the situation in the former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by the Heads of State and Government in November 1990.

On 1 January 1993, Mr. Max van der Stoel took up his duties as the first OSCE High Commissioner on National Minorities (HCNM). Drawing on his considerable personal experience as a former Member of Parliament, Foreign Minister of The Netherlands, Permanent Representative to the United Nations, and long-time human rights advocate, Mr. van der Stoel turned his attention to the many disputes between minorities and central authorities in Europe which had the potential, in his view, to escalate. Acting quietly through diplomatic means, the HCNM has become involved in over a dozen States, including Albania, Croatia, Estonia, Hungary, Kazakstan, Kyrgyzstan, Latvia, the Former Yugoslav Republic of Macedonia, Romania, Slovakia and Ukraine. His involvement has focused primarily on those situations involving persons belonging to national/ethnic groups who constitute the numerical majority in one State but the numerical minority in another State, thus engaging the interest of governmental authorities in each State and constituting a potential source of inter-State tension if not conflict. Indeed, such tensions have defined much of European history.

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and cooperative actor. While the HCNM is not a supervisory mechanism, he employs the international standards to which each State has agreed as his principal framework of analysis and the foundation of his specific recommendations. In this relation, it is important to recall the commitments undertaken by all OSCE participating States, in particular those of the 1990 Copenhagen Document of the Conference on the Human Dimension which, in Part IV, articulates detailed obligations relating to national minorities. It is also important to note that all OSCE States are bound by United Nations obligations relating to human rights, including minority rights, and that the great majority of OSCE States are also bound by the standards of the Council of Europe.

After almost four years of intense activity, the HCNM has been able to identify certain recurrent issues and themes which have become the subject of his attention in a number of States in which he is involved. Minority education, in particular minority language education, is a high priority among these since, as the HCNM has recently stated, "It is clear that education is an extremely important element for the preservation and the deepening of the identity of persons belonging to a national minority." With this in mind, the HCNM requested, in the autumn of 1995, the Foundation on Inter-Ethnic Relations to consult a small group of internationally recognized experts with a view to receiving their recommendations on an appropriate and coherent application of minority education rights in the OSCE region.

The Foundation on Inter-Ethnic Relations – a non-governmental organization established in 1993 to carry out specialized activities in support of the HCNM – facilitated a series of consultations of experts from various pertinent disciplines, including two meetings in The Hague. Among the experts consulted were, on the one hand, jurists specializing on international law and, on the other hand, linguists and educationalists specializing on the situations and needs of minorities. Specifically the experts were:

A.G. Boyd Robertson, Senior Lecturer in Gaelic, University of Strathclyde (United Kingdom); Dr. Pieter van Dijk, Member of the State Council (the Netherlands); Dr. Asbjørn Eide, Director of the Norwegian Institute of Human Rights (Norway); Professor Rein Müllerson, Chair of International Law, King's College (United Kingdom); Professor Allan Rosas, Åbo Akademi University (Finland); Dr. Tove Skutnabb-Kangas, Associate Professor, Department of Languages and Culture, Roskilde University (Denmark); Professor György Szépe, Department of Language Sciences, University Janus Pannonius (Hungary); Professor Patrick Thornberry, Department of Law, Keele University (United Kingdom); Mr. Jenne van der Velde, Senior Curriculum Adviser, National Institute for Curriculum Development (the Netherlands).

In so far as existing standards of minority rights are part of human rights, the starting point of the consultations was to presume compliance by States with all other human rights obligations including, in particular, freedom from discrimination. It was also presumed that the ultimate object of all human rights is the full and free development of the individual human personality in conditions of equality. Consequently, it was presumed that civil society should be open and fluid and, therefore, integrate all persons, including those belonging to national minorities.

The resultant Recommendations Regarding the Education Rights of National Minorities attempt to clarify in relatively straight-forward language the content of minority education rights generally applicable in the situations in which the HCNM is involved. In addition, the standards have been interpreted in such a way as to ensure their coherence in application. The Recommendations are divided into eight sub-headings which respond to the educational issues which arise in practice. A more detailed explanation of the Recommendations is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is to be found.

Recommendations

The spirit of international instruments

- 1) The right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process. At the same time, persons belonging to national minorities have a responsibility to integrate into the wider national society through the acquisition of a proper knowledge of the State language.
- 2) In applying international instruments which may benefit persons belonging to national minorities, States should consistently adhere to the fundamental principles of equality and non-discrimination.
- 3) It should be borne in mind that the relevant international obligations and commitments constitute international minimum standards. It would be contrary to their spirit and intent to interpret these obligations and commitments in a restrictive manner.

Measures and resources

- 4) States should approach minority education rights in a proactive manner. Where required, special measures should be adopted by States to actively implement minority language education rights to the maximum of their available resources, individually and through international assistance and cooperation, especially economic and technical.

Decentralization and participation

- 5) States should create conditions enabling institutions which are representative of members of the national minorities in question to participate, in a meaningful way, in the development and implementation of policies and programmes related to minority education.
- 6) States should endow regional and local authorities with appropriate competences concerning minority education thereby also facilitating the participation of minorities in the process of policy formulation at a regional and/or local level.
- 7) States should adopt measures to encourage parental involvement and choice in the educational system at a local level, including in the field of minority language education.

Public and private institutions

- 8) In accordance with international law, persons belonging to national minorities, like others, have the right to establish and manage their own private educational institutions in conformity with domestic law. These institutions may include schools teaching in the minority language.
- 9) Given the right of persons belonging to national minorities to establish and manage their own educational institutions, States may not hinder the enjoyment of this right by imposing unduly burdensome legal and administrative requirements regulating the establishment and management of these institutions.
- 10) Private minority language educational institutions are entitled to seek their own sources of funding without any hindrance or discrimination from the State budget, international sources and the private sector.

Minority education at primary and secondary levels

- 11) The first years of education are of pivotal importance in a child's development. Educational research suggests that the medium of teaching at pre-school and kindergarten levels should ideally be the child's language. Wherever possible, States should create conditions enabling parents to avail themselves of this option.
- 12) Research also indicates that in primary school, the curriculum should ideally be taught in the minority language. The minority language should be taught as a subject on a regular basis. The official State language should also be taught as a subject on a regular basis preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Towards the end of this period, a few practical or non-theoretical subjects should be taught through the medium of the State language. Wherever possible, States should create conditions enabling parents to avail themselves of this option.
- 13) In secondary school, a substantial part of the curriculum should be taught through the medium of the minority language. The minority language should be taught as a subject on a regular basis. The State language should also be taught as a subject on a regular basis, preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Throughout this period, the number of subjects taught in the State language, should gradually be increased. Research findings suggest that the more gradual the increase, the better for the child.
- 14) The maintenance of the primary and secondary levels of minority language education depends a great deal on the availability of teachers trained in all disciplines in the mother tongue. Therefore, ensuing from their obligation to provide adequate opportunities for minority language education, States

should provide adequate facilities for the appropriate training of teachers and should facilitate access to such training.

Minority education in vocational schools

- 15) Vocational training in the minority language should be made accessible in specific subjects when persons belonging to the national minority in question have expressed a desire for it, when they have demonstrated the need for it and when their numerical strength justifies it.
- 16) The curriculum of vocational schools providing training in the mother tongue should be devised in a way which ensures that, upon completion of these programmes, students are able to practice their occupation both in the minority and the State language.

Minority education at tertiary level

- 17) Persons belonging to national minorities should have access to tertiary education in their own language when they have demonstrated the need for it and when their numerical strength justifies it. Minority language tertiary education can legitimately be made available to national minorities by establishing the required facilities within existing educational structures provided these can adequately serve the needs of the national minority in question. Persons belonging to national minorities may also seek ways and means to establish their own educational institutions at the tertiary level.
- 18) In situations where a national minority has, in recent history, maintained and controlled its own institutions of higher learning, this fact should be recognised in determining future patterns of provision.

Curriculum development

- 19) In view of the importance and value that international instruments attach to intercultural education and the highlighting of minority histories, cultures and traditions, State educational authorities should ensure that the general compulsory curriculum includes the teaching of the histories, cultures and traditions of their respective national minorities. Encouraging members of the majority to learn the languages of the national minorities living within the State would contribute to the strengthening of tolerance and multiculturalism within the State.
- 20) The curriculum content related to minorities should be developed with the active participation of bodies representative of the minorities in question.

- 21) States should facilitate the establishment of centres for minority language education curriculum development and assessment. These centres could be linked to existing institutions providing these can adequately facilitate the achievement of the curriculum related objectives.

Explanatory Note

General introduction

The Universal Declaration of Human Rights of 1948 broke new ground in that it was the first international instrument to declare education to be a human right.

Article 26 of the Declaration refers to elementary education as compulsory. It engages States to make technical and professional education generally available and higher education accessible on the basis of merit. It also makes clear that the objective of education should be the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. Article 26 goes on to say that education shall promote understanding, tolerance and friendship among nations, racial or religious groups and contribute to the maintenance of peace. It also makes clear that parents have a prior right to choose the kind of education that shall be given to their children. The provisions of article 26 are reiterated with greater strength in the context of treaty law and in greater detail in article 13 of the **International Covenant on Economic, Social and Cultural Rights**.

Article 26 sets the tone of openness and inclusiveness for the subsequent international instruments which have emerged over time and have confirmed and further elaborated the right to education both generally and with reference to minorities specifically.

- Article 27 of the **International Covenant on Civil and Political Rights**.
- Article 30 of the **Convention on the Rights of the Child**.

The above mentioned articles guarantee the right of minorities to use their language in community with other members of their group. The articles below, for their part, provide guarantees relating to the possibility for national minorities of learning their mother tongue or learning in their mother tongue.

- Article 5 of the **UNESCO Convention Against Discrimination in Education**.
- Paragraph 34 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE**.
- Article 4 of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**.
- Article 14 of the **Framework Convention for the Protection of National Minorities**.

To varying degrees, all of these instruments declare the right of minorities to maintain their collective identity through the medium of their mother tongue. This right is exercised, above all, through education. These same instruments, however, underline that the right to maintain the collective identity through the minority language must be balanced by the responsibility to integrate and participate in the wider national society. Such integration requires the acquisition of a sound knowledge of both that society and the State language(s). The promotion of tolerance and pluralism is also an important component of this dynamic.

The international human rights instruments that make reference to minority language education remain somewhat vague and general. They make no specific reference to degrees of access nor do they stipulate which levels of mother tongue education should be made available to minorities and by what means. Such concepts as "adequate opportunities" to be taught the minority language or to receive instruction in this language, as outlined in article 14 of the Council of Europe's **Framework Convention for the Protection of National Minorities**, should be considered in the light of other elements. These include the necessity of beneficial conditions facilitating the preservation, maintenance and development of language and culture as outlined in article 5 of the same Convention or the requirement to take the necessary measures to protect the ethnic, cultural, linguistic and religious identity of national minorities as stipulated in paragraph 33 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE**.

Irrespective of the level of access which may be afforded by States, it should not be established in an arbitrary fashion. States are required to give due consideration to the needs of national minorities as these are consistently expressed and demonstrated by the communities in question.

For their part, national minorities should ensure that their demands are reasonable. They should give due consideration to such legitimate factors as their own numerical strength, their demographic density in any given region (or regions), as well as their capacity to contribute to the durability of these services and facilities over time.

The spirit of international instruments

Over the years there has been an evolution in the manner in which the rights of minorities have been formulated in international standards. Such passive formulae as "...persons belonging to minorities shall not be denied the right..." as expressed in the **International Covenant on Civil and Political Rights** (1966) have given way to a more positive, proactive approach such as "...States will protect the ethnic, cultural, linguistic and religious identity of national minorities..." as contained in the **Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE** (1990). This progressive change of approach would indicate that a restrictive or minimalistic interpretation of the instruments is not in line with the spirit in which they have been formulated.

In addition, the level of access must be established in conformity with the underlying principles of equality and non-discrimination as these are formulated in article 1 of **The Charter of the United Nations** and in article 2 of **The Universal Declaration of Human Rights** and as reiterated in most international instruments. Consideration must also be given to the conditions specific to each State.

Measures and resources

OSCE States are encouraged to approach the issue of minority rights in a proactive manner, i.e. in the spirit of paragraph 31 of the **Copenhagen Document** which encourages them to adopt special measures to ensure full equality for members of national minorities. In this same sense, paragraph 33 of the **Copenhagen Document** requires States to protect the ethnic, cultural, linguistic and religious identity of national minorities living in their territory and to create conditions for the promotion of that identity.

In some cases OSCE States are faced with serious fiscal limitations which could legitimately hamper their capacity to implement education policies and programmes for the benefit of national minorities. Although some rights must be implemented immediately States should strive to achieve, progressively, the full realization of minority language education rights to the maximum of their available resources, including through international assistance and cooperation in the spirit of article 2 of the **International Covenant on Economic, Social and Cultural Rights**.

Decentralization and participation

Article 15 of the **Framework Convention for the Protection of National Minorities**, paragraph 30 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE** and article 3 of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** all underline the necessity for national minorities to participate in the decision-making process, especially in cases when the issues being considered affect them directly.

Effective participation in the decision-making process, especially as it affects minorities, is an essential component of the democratic process.

The active involvement of parents at local and regional levels, as well as the effective participation of institutions representing national minorities in the educational process (including the process of curriculum development as it relates to minorities), should be facilitated by States in the spirit of paragraph 35 of the **Copenhagen Document** which stresses the importance of effective participation of members of national minorities in public affairs including in the affairs relating to the protection and promotion of their own identity.

Public and private institutions

Article 27 of the **International Covenant on Civil and Political Rights** refers to the right of minorities to use their language in community with other members of their group. Article 13 of the **International Covenant on Economic, Social and Cultural Rights** guarantees the right of parents to choose for their children schools other than those established by public authorities. It also guarantees the right of individuals and bodies to establish and manage alternative educational institutions as long as these conform to minimum educational standards as laid down by the State. Article 13 of the **Framework Convention for the Protection of National Minorities** refers to the right of minorities to establish and manage their own educational institutions, although the State has no obligation to fund these institutions. Paragraph 32 of the **Copenhagen Document** imposes no obligation on the State to fund these institutions, but it does stipulate that these institutions may "seek public assistance from the State in conformity with national legislation".

The right of national minorities to establish and manage their own institutions, including educational ones, is well grounded in international law and must be recognized as such. Although the State has the right to oversee this process from an administrative perspective and in conformity with its own legislation, it must not prevent the enjoyment of this right by imposing unreasonable administrative requirements which might render it practically impossible for national minorities to establish their own educational institutions.

Although there is no formal obligation for States to fund these private establishments, these institutions should not be prevented from seeking resources from all domestic and international sources.

Minority education at primary and secondary levels

International instruments relating to minority language education declare that minorities not only have the right to maintain their identity through the medium of their mother tongue but that they also have the right to integrate into and participate in the wider national society by learning the State language.

In view of the above, the attainment of multilingualism by the national minorities of OSCE States can be seen as a most effective way of meeting the objectives of the international instruments relating to the protection of national minorities as well as to their integration. The recommendations relating to primary and secondary schooling are meant to serve as a guide in the development of minority language education policy and in the provision of related programmes.

The approach proposed is suggested by educational research and constitutes a realistic interpretation of relevant international norms.

The effectiveness of this approach depends on a number of factors. First there is the extent to which this approach strengthens the weaker minority mother tongue by using

it as the medium for teaching. Another factor is the extent to which bilingual teachers are involved in the entire process.

Yet another factor to be considered is the extent to which both the minority and the State language are taught as subjects throughout the 12 years of schooling and finally the extent to which both languages are used as a medium of education in an optimal way in different phases of the child's education.

This approach strives to create the space that is required for the weaker minority language to thrive. It is in marked contrast with other approaches whose objective is to teach the minority language or even to carry out minimum instruction in the minority language only with a view to facilitating an early transition to teaching exclusively in the State language.

Submersion-type approaches whereby the curriculum is taught exclusively through the medium of the State language and minority children are entirely integrated into classes with children of the majority are not in line with international standards. Likewise, this applies to segregated schools in which the entire curriculum is taught exclusively through the medium of the minority mother tongue, throughout the entire educational process and where the majority language is not taught at all or only to a minimal extent.

Minority education in vocational schools

The right of persons belonging to national minorities to learn their mother tongue or to receive instruction in their mother tongue as formulated in paragraph 34 of the **Copenhagen Document** should imply the right to vocational training in the mother tongue in specific subjects. In the spirit of equality and non-discrimination, OSCE States should ensure access to such training where the desire for it is made evident and the numbers justify it.

On the other hand, the capacity of the State to plan and control its economic and educational policies should not be diminished. The ability of graduates of minority language vocational training schools also to function professionally in the State language, would be an advantage. It would enable them to work both in the region in which the minority in question is concentrated as well as anywhere else in the State. At a time of transition to the market economy which presupposes the unfettered movement of goods, services and labour, such a limitation can make it difficult for the State to facilitate opportunities for employment and overall economic development. Therefore, vocational training in the mother tongue of national minorities should ensure that the students concerned also acquire appropriate training in the State language(s).

Minority education at tertiary level

As in the previous case, the right to learn their mother tongue or to receive instruction in the mother tongue as formulated in paragraph 34 of the **Copenhagen Document** could infer the right of national minorities to tertiary education in their mother tongue. In

this case again the principles of equal access and non-discrimination must be taken into consideration, as well as the needs of the community and the usual numerical justification. In the absence of government funding, the freedom of minorities to establish their own institutions of higher learning should not be restricted.

Paragraph 33 of the **Copenhagen Document** stresses the importance of the State not only protecting the identity of minorities but promoting it as well. In view of the above, States should consider the possibility of making tertiary education in the minority language available where the need has been demonstrated and the numerical strength of the minority justifies it. In this context tertiary education in the mother tongue should not be restricted to teacher training.

This having been established, the fiscal limitations faced particularly by States in transition to market economies must be taken into consideration. The provision of tertiary education in the minority language is not synonymous with the establishment of parallel infrastructures. Moreover the entrenchment of parallel educational institutions at university level could contribute to the isolation of the minority from the majority. Article 26 of the **Universal Declaration of Human Rights** stresses that the objective of education is the promotion of understanding, tolerance and friendship among nations, racial and religious groups. In this spirit, and with integration in mind, the intellectual and cultural development of majorities and minorities should not take place in isolation.

Curriculum development

Since the end of the Second World War an ever-growing number of international instruments have placed increasing emphasis on the objectives of education. According to these instruments education is required not only to provide strictly academic or technical training but it is also required to inculcate such values as tolerance, pluralism, anti-racism and international and inter-communal harmony. Such requirements evidently put a special onus on States that have national minorities within their borders. In these States, the issue of inter-group/inter-ethnic cohabitation and harmony is also of vital importance to their internal stability. Such cohabitation and harmony is also an important factor in the preservation of regional peace and security.

Article 4 of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** requires States to "encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory". Article 12 of the **Framework Convention for the Protection of National Minorities** requires States to "foster knowledge of the culture, history, language and religion of their national minorities".

Paragraph 34 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE** refers to the requirement that, in the school curriculum, States "will also take account of the history and culture of national minorities".

These requirements make it incumbent upon States to make room in the school curriculum for the teaching of the history and traditions of the various national minorities living within their borders. This can be achieved in a unilateral manner by the State authorities without due regard to the participation of the minorities in question. Such an approach, however, is not advisable and could be detrimental.

Article 15 of the **Framework Convention for the Protection of National Minorities**, paragraph 30 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE** and article 3 of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** all underline the necessity for national minorities to participate in the decision-making process especially in cases when the issues being considered affect them directly.

The emergence of centres for minority language educational curriculum development would therefore facilitate this dual process and ensure its quality and professionalism.

Final remarks

The subject of minority education rights is a sensitive issue in a number of participating States of the OSCE. At the same time the educational process has the potential to effectively facilitate and strengthen mutual respect and understanding between the various communities within participating States.

In view of the delicate nature of this issue at the present time, and in view of the somewhat vague and general nature of the standards contained in the various international human rights instruments, the elaboration of a series of recommendations may contribute to creating a better understanding of, and approach to issues of minority education rights. The Hague Recommendations are not intended to be comprehensive. They are meant to serve as a general framework which can assist States in the process of minority education policy development.

The Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note - 1998

Introduction

In its Helsinki Decisions of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities to be "an instrument of conflict prevention at the earliest possible stage". This mandate was created largely in reaction to the situation in the former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by the Heads of State and Government in November 1990.

On 1 January 1993, Mr. Max van der Stoep took up his duties as the first OSCE High Commissioner on National Minorities (HCNM). Drawing on his considerable personal experience as a former Member of Parliament and Foreign Minister of The Netherlands, Permanent Representative to the United Nations, and long-time human rights advocate, Mr. Van der Stoep turned his attention to the many disputes between minorities and central authorities in Europe which had the potential, in his view, to escalate. Acting quietly through diplomatic means, the HCNM has become involved in the following States: Albania, Croatia, Estonia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, the Former Yugoslav Republic of Macedonia, Romania, Slovakia and Ukraine. His involvement has focused primarily on those situations involving persons belonging to national/ethnic groups who constitute the numerical majority in one State but the numerical minority in another (usually neighbouring) State, thus engaging the interest of governmental authorities in each State and constituting a potential source of inter-State tension if not conflict. Indeed, such tensions have defined much of European history.

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and cooperative actor. While the HCNM is not a supervisory mechanism, he employs the international standards to which each State has agreed as his principal framework of analysis and the foundation of his specific recommendations. In this relation, it is important to recall the commitments undertaken by all OSCE participating States, in particular those of the 1990 Copenhagen Document of the Conference on the Human Dimension which, in Part IV, articulates detailed obligations relating to national minorities. It is also important to note that all OSCE States are bound by United Nations obligations relating to human rights, including minority rights, and that the great majority of OSCE States are also bound by the standards of the Council of Europe.

After five years of intense activity, the HCNM has been able to identify certain recurrent issues and themes which have become the subject of his attention in a number of States in which he is involved. The linguistic rights of national minorities, i.e. the right of persons belonging to national minorities to use their language in the private and public spheres, is such an issue. International human rights instruments refer to this right in a number of different contexts. On the one hand, language is a personal matter closely connected with identity. On the other hand, language is an essential tool of social organisation which in many situations becomes a matter of public interest. Certainly, the use of language bears on numerous aspects of a State's functioning. In a democratic State committed to human rights, the accommodation of existing diversity thus becomes an important matter of policy and law. Failure to achieve the appropriate balance may be the source of inter-ethnic tensions.

It is with this in mind that, in the summer of 1996, the HCNM requested the Foundation on Inter-Ethnic Relations to consult a small group of internationally recognised experts with a view to receiving their recommendations on an appropriate and coherent application of the linguistic rights of persons belonging to national minorities in the OSCE region. A similar request from the HCNM had previously resulted in the elaboration of **The Hague Recommendations Regarding the Education Rights of National Minorities and Explanatory Report**.¹ Insofar as The Hague Recommendations address comprehensively the use of the language or languages of national minorities in the field of education, it was decided to exclude this issue from consideration of the experts.

The Foundation on Inter-Ethnic Relations – a non-governmental organisation established in 1993 to carry out specialised activities in support of the HCNM – facilitated a series of consultations of experts from various pertinent disciplines, including two meetings in Oslo and one in The Hague. Among the experts consulted were jurists specialising in international law, as well as linguists, advocates and policy analysts specialising in the situations and needs of minorities. Specifically, the experts were:

Professor Gudmundur Alfredsson, Co-Director, Raoul Wallenberg Institute (Sweden); Professor Asbjørn Eide, Senior Fellow, Norwegian Institute of Human Rights (Norway); Ms. Angelita Kamenska, Senior Researcher, Latvian Centre for Human Rights and Ethnic Studies (Latvia); Mr. Dónall Ó Riagáin, Secretary General, European Bureau of Lesser Used Languages (Ireland); Ms. Beate Slydal, Advisor, Norwegian Forum for the Freedom of Expression (Norway); Dr. Miquel Strubell, Director, Institute of Catalan Sociolinguistics, Government of Catalonia (Spain); Professor György Szepe, Department of Language Sciences at Janus Panonius University (Hungary); Professor Patrick Thornberry, Department of Law, Keele University (United Kingdom); Dr. Fernand de Varennes, Director of the Asia-Pacific Centre for Human Rights and the Prevention of Ethnic Conflict (Australia); Professor Bruno de Witte, Faculty of

¹ Copies of The Hague Recommendations Regarding the Education Rights of National Minorities and Explanatory Report (October 1996) are available in several languages from the OSCE Office of the High Commissioner on National Minorities.

Law, University of Maastricht (the Netherlands); Mr. Jean-Marie Woehrling, Institut de droit local alsacien-mosellan (France).

Insofar as existing standards of minority rights are part of human rights, the starting point for the consultations was to presume compliance by States with all other human rights obligations including, in particular, equality and freedom from discrimination, freedom of expression, freedom of assembly and of association, as well as all the rights and freedoms of persons belonging to national minorities.

It was also presumed that the ultimate object of all human rights is the full and free development of the individual human personality in conditions of equality. Consequently, it was presumed that civil society should be open and fluid and, therefore, integrate all persons, including those belonging to national minorities. Insofar as the use of language is also a fundamentally communicative matter, the essential social dimension of the human experience was also fully presumed.

The resultant Oslo Recommendations Regarding the Linguistic Rights of National Minorities attempt to clarify, in relatively straight-forward language, the content of minority language rights generally applicable in the situations in which the HCNM is involved. In addition, the standards have been interpreted in such a way as to ensure their coherence in application. The Recommendations are divided into sub-headings which respond to the language related issues which arise in practice. A more detailed explanation of the Recommendations is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is to be found. It is intended that each Recommendation is read in conjunction with the specifically relevant paragraphs of the Explanatory Note.

It is hoped that these Recommendations will provide a useful reference for the development of State policies and laws which will contribute to an effective implementation of the language rights of persons belonging to national minorities, especially in the public sphere.

Although these Recommendations refer to the use of language by persons belonging to national minorities, it is to be noted that the thrust of these Recommendations and the international instruments from which they derive could potentially apply to other types of minorities. The Recommendations which follow below are meant to clarify the existing body of rights. They are not meant to restrict the human rights of any person or groups of persons.

Recommendations

Names

- 1) Persons belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems. These shall be given official recognition and be used by the public authorities.
- 2) Similarly, private entities such as cultural associations and business enterprises established by persons belonging to national minorities shall enjoy the same right with regard to their names.
- 3) In areas inhabited by significant numbers of persons belonging to a national minority and when there is sufficient demand, public authorities shall make provision for the display, also in the minority language, of local names, street names and other topographical indications intended for the public.

Religion

- 4) In professing and practicing his or her own religion individually or in community with others, every person shall be entitled to use the language(s) of his or her choice.
- 5) For those religious ceremonies or acts pertaining also to civil status and which have legal effect within the State concerned, the State may require that certificates and documents pertaining to such status be produced also in the official language or languages of the State. The State may require that registers pertaining to civil status be kept by the religious authorities also in the official language or languages of the State.

Community life and NGOs

- 6) All persons, including persons belonging to national minorities, have the right to establish and manage their own non-governmental organisations, associations and institutions. These entities may use the language(s) of their choosing. The State may not discriminate against these entities on the basis of language nor shall it unduly restrict the right of these entities to seek sources of funding from the State budget, international sources or the private sector.
- 7) If the State actively supports activities in, among others, the social, cultural and sports spheres, an equitable share of the total resources made available by the State shall go to support those similar activities undertaken by persons belonging to national minorities. State financial support for activities which take

place in the language(s) of persons belonging to national minorities in such spheres shall be granted on a non-discriminatory basis.

The media

- 8) Persons belonging to national minorities have the right to establish and maintain their own minority language media. State regulation of the broadcast media shall be based on objective and non-discriminatory criteria and shall not be used to restrict enjoyment of minority rights.
- 9) Persons belonging to national minorities should have access to broadcast time in their own language on publicly funded media. At national, regional and local levels the amount and quality of time allocated to broadcasting in the language of a given minority should be commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs.
- 10) The independent nature of the programming of public and private media in the language(s) of national minorities shall be safeguarded. Public media editorial boards overseeing the content and orientation of programming should be independent and should include persons belonging to national minorities serving in their independent capacity.
- 11) Access to media originating from abroad shall not be unduly restricted. Such access should not justify a diminution of broadcast time allocated to the minority in the publicly funded media of the State of residence of the minorities concerned.

Economic life

- 12) All persons, including persons belonging to national minorities, have the right to operate private enterprises in the language or languages of their choice. The State may require the additional use of the official language or languages of the State only where a legitimate public interest can be demonstrated, such as interests relating to the protection of workers or consumers, or in dealings between the enterprise and governmental authorities.

Administrative authorities and public services

- 13) In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this national minority shall have the right to acquire civil documents and certificates both in the official language or languages of the State and in the language of the national minority in question from regional and/or local public institutions. Similarly regional and/or local public institutions

shall keep the appropriate civil registers also in the language of the national minority.

- 14) Persons belonging to national minorities shall have adequate possibilities to use their language in communications with administrative authorities especially in regions and localities where they have expressed a desire for it and where they are present in significant numbers. Similarly, administrative authorities shall, wherever possible, ensure that public services are provided also in the language of the national minority. To this end, they shall adopt appropriate recruitment and/or training policies and programmes.
- 15) In regions and localities where persons belonging to a national minority are present in significant numbers, the State shall take measures to ensure that elected members of regional and local governmental bodies can use also the language of the national minority during activities relating to these bodies.

Independent national institutions

- 16) States in which persons belonging to national minorities live should ensure that these persons have, in addition to appropriate judicial recourses, access to independent national institutions, such as ombudspersons or human rights commissions, in cases where they feel that their linguistic rights have been violated.

The judicial authorities

- 17) All persons, including persons belonging to a national minority, have the right to be informed promptly, in a language they understand, of the reasons for their arrest and/or detention and of the nature and cause of any accusation against them, and to defend themselves in this language, if necessary with the free assistance of an interpreter, before trial, during trial and on appeal.
- 18) In regions and localities where persons belonging to a national minority are present in significant numbers and where the desire for it has been expressed, persons belonging to this minority should have the right to express themselves in their own language in judicial proceedings, if necessary with the free assistance of an interpreter and/or translator.
- 19) In those regions and localities in which persons belonging to a national minority live in significant numbers and where the desire for it has been expressed, States should give due consideration to the feasibility of conducting all judicial proceedings affecting such persons in the language of the minority.

Deprivation of liberty

- 20) The director of a penal institution and other personnel of the institution shall be able to speak the language or languages of the greatest number of prisoners, or a language understood by the greatest number of them. Recruitment and/or training programmes should be directed towards this end. Whenever necessary, the services of an interpreter shall be used.
- 21) Detained persons belonging to national minorities shall have the right to use the language of their choice in communications with inmates as well as with others. Authorities shall, wherever possible, adopt measures to enable prisoners to communicate in their own language both orally and in personal correspondence, within the limitations prescribed by law. In this relation, a detained or imprisoned person should, in general, be kept in a place of detention or imprisonment near his or her usual place of residence.

Explanatory Note

General introduction

Article I of the **Universal Declaration of Human Rights** refers to the innate dignity of all human beings as the fundamental concept underlying all human rights standards. Article 1 of the **Declaration** states "All human beings are born free and equal in dignity and rights [...]." The importance of this article cannot be overestimated. Not only does it relate to human rights generally, it also provides one of the foundations for the linguistic rights of persons belonging to national minorities. Equality in dignity and rights presupposes respect for the individual's identity as a human being. Language is one of the most fundamental components of human identity. Hence, respect for a person's dignity is intimately connected with respect for the person's identity and consequently for the person's language.

In this context, the **International Covenant on Civil and Political Rights** is of considerable importance. Article 2 of the **Covenant** requires States to ensure that the human rights of all individuals within their territory and subject to their jurisdiction will be ensured and respected "without distinction of any kind such as [...] language [...]." Article 19 of the **Covenant** guarantees freedom of expression which, as it is formulated in the **Covenant**, not only guarantees the right to impart or receive information and ideas of all sorts, regardless of frontiers, but also guarantees the right to do so in the medium or language of one's choice. The imparting and receiving of information also suggests people acting in community. In this context, Articles 21 and 22 of the **Covenant** guaranteeing the freedoms of peaceful assembly and association may be especially relevant.

Similarly, in Europe the freedom of expression stipulated in Article 10 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** shall be, according to Article 14 of the same convention, "secured without discrimination on any ground such as [...] language [...]." With expressed reference to both the **Universal Declaration of Human Rights** and the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, the Council of Europe's **Declaration on Freedom of Expression and Information** affirms "that the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community". In this connection, the freedoms of peaceful assembly and association as guaranteed by Article 11 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** are important.

Within the context of the Organization for Security and Co-operation in Europe (OSCE), the same fundamental ideas of freedom of expression, assembly and association are enumerated in paragraphs 9.1–9.3 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension**.

In the **Charter of Paris for a New Europe**, the Heads of State and Government of the OSCE participating States "affirm that, without discrimination, every individual has the right to: [...] freedom of expression, freedom of association and peaceful assembly, [...]."

Article 27 of the **International Covenant on Civil and Political Rights** is another key provision which has direct bearing on the linguistic rights of national minorities. It affirms that "persons belonging to [...] minorities shall not be denied the right, in community with the other members of their group, to [...] use their own language".

Similarly, Article 2(1) of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** proclaims the right of persons belonging to national minorities to "use their own language, in private and in public, freely and without interference or any form of discrimination". Article 10(1) of the Council of Europe's **Framework Convention for the Protection of National Minorities** stipulates that States will recognise the right of persons belonging to national minorities "to use freely and without interference his or her minority language, in private and in public, orally and in writing."

Although the instruments refer to the use of minority languages in public and in private, these same instruments do not precisely delimit the "public" as opposed to the "private" spheres. Indeed the spheres may overlap. This may well be the case, for example, when individuals acting alone or in community with others seek to establish their own private media or schools. What might begin as a private initiative may become the subject of legitimate public interest. Such an interest may give rise to some public regulation.

The use of minority languages "in public and in private" by persons belonging to national minorities cannot be considered without making reference to education.

Education issues as they relate to the languages of national minorities are treated in detail in The Hague Recommendations Regarding the Education Rights of National Minorities which were developed for the benefit of the OSCE High Commissioner on National Minorities by The Foundation on Inter-Ethnic Relations in collaboration with experts of international repute in the fields of both international human rights and education. The Hague Recommendations were developed with a view to facilitating a clearer understanding of the international instruments pertaining to the rights of persons belonging to national minorities in this area which is of such vital importance to the maintenance and development of the identity of persons belonging to national minorities.

International human rights instruments stipulate that human rights are universal and that they must be enjoyed equally and without discrimination. Most human rights, however, are not absolute. The instruments do foresee a limited number of situations in which States would be justified in restricting the application of certain rights. The restrictions permitted by international human rights law can be invoked in life-threatening emergencies and in situations which pose a threat to the rights and freedoms of others, or in situations which threaten public morals, public health, national security and the general welfare in a democratic society². In human rights law, restrictions on freedoms are to be interpreted restrictively.

The rights of persons belonging to national minorities to use their language(s) in public and in private as set forth and elaborated in The Oslo Recommendations Regarding the Linguistic Rights of National Minorities must be seen in a balanced context of full participation in the wider society. The Recommendations do not propose an isolationist approach, but rather one which encourages a balance between the right of persons belonging to national minorities to maintain and develop their own identity, culture and language and the necessity of ensuring that they are able to integrate into the wider society as full and equal members. From this perspective, such integration is unlikely to take place without a sound knowledge of the official language(s) of the State. The prescription for such education is implied in Articles 13 and 14 of **the International Covenant on Economic, Social and Cultural Rights** and Articles 28 and 29 of the **Convention on the Rights of the Child** which confer a right to education and oblige the State to make education compulsory. At the same time, Article 14(3) of the **Framework Convention for the Protection of National Minorities** provides that the teaching of a minority language "shall be implemented without prejudice to the learning of the official language or the teaching in this language."

² The above mentioned limitations are included, e.g., in the following provisions:

Art. 30 Universal Declaration of Human Rights

Art. 19(3) International Covenant on Civil and Political Rights

Art. 10(2) European Convention for the Protection of Human Rights and Fundamental Freedoms

Names

- 1) Article 11(1) of the **Framework Convention for the Protection of National Minorities** stipulates that persons belonging to national minorities have the right to use their first name, their patronym and their surname in their own language. This right, the enjoyment of which is fundamental to one's personal identity, should be applied in light of the circumstances particular to each State. For example, public authorities would be justified in using the script of the official language or languages of the State to record the names of persons belonging to national minorities in their phonetic form. However this must be done in accordance with the language system and tradition of the national minority in question. In view of this very basic right relating closely to both the language and the identity of individuals, persons who have been forced by public authorities to give up their original or ancestral name(s) or whose name(s) have been changed against their will should be entitled to revert to them without having to incur any expenses.

- 2) Names are an important element of corporate identity as well, especially in the context of persons belonging to national minorities acting "in community". Article 2(1) of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** proclaims the right of persons belonging to national minorities to "use their own language, in private and in public, freely and without interference or any form of discrimination". Article 10(1) of the **Framework Convention for the Protection of National Minorities** stipulates that States will recognise the right of persons belonging to national minorities to "use freely and without interference his or her minority language, in private and in public, orally and in writing." Article 27 of the **International Covenant on Civil and Political Rights** declares that "persons belonging to [...] minorities shall not be denied the right, in community with other members of their group [...] to use their own language". A person's right to use his or her language in public, in community with others and without any interference or any form of discrimination is a strong indication that legal entities such as institutions, associations, organisations or business enterprises established and run by persons belonging to national minorities enjoy the right to adopt the name of their choice in their minority language. Such a corporate name should be recognised by the public authorities and used in accordance with the given community's language system and traditions.

- 3) Article 11(3) of the **Framework Convention** states that "in areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour [...] to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is sufficient demand for such indications". Refusal to recognise the validity of historic denominations of the kind described can constitute an attempt to revise history and to assimilate minorities, thus constituting a serious threat to the identity of persons belonging to minorities.

Religion

- 4) Article 27 of the **International Covenant on Civil and Political Rights** affirms that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group [...] to profess and practice their own religion, or to use their own language." Article 3(1) of the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** stipulates that "Persons belonging to minorities may exercise their rights [...] individually as well as in community with other members of their group, without any discrimination."

Religious belief and its practice "in community" is an area of great importance to many persons belonging to national minorities. In this context it is worth noting that the right to one's own religion is unlimited and guaranteed by Article 18(1) of the **International Covenant on Civil and Political Rights** and Article 9(1) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**. However, the freedom to manifest one's religion and beliefs, including public worship, is subject to a number of limitations listed in subsidiary paragraphs of the same articles. These limitations must be prescribed by law and relate to the protection of public safety, order, health, morals and the protection of the fundamental rights and freedoms of others. They must be reasonable and proportional to the end sought, and States may not invoke them with a view to stifling the legitimate spiritual, linguistic or cultural aspirations of persons belonging to national minorities.

In minority contexts, the practice of religion is often especially closely related to the preservation of cultural and linguistic identity. The right to use a minority language in public worship is as inherent as the right to establish religious institutions and the right to public worship itself. Hence, public authorities may not impose any undue restrictions on public worship nor on the use of any language in public worship, be it the mother tongue of the national minority in question or the liturgical language used by that community.

- 5) Religious acts such as wedding ceremonies or funerals may also constitute legal civil acts determining civil status in certain countries. In such cases, public interest must be taken into consideration. Keeping in mind the principle that administrative considerations should not prevent the enjoyment of human rights, public authorities should not impose any linguistic restrictions on religious communities. This should apply equally to any administrative functions which religious communities assume and which may overlap with civil jurisdiction. The State may, however, require the religious community to record legal civil acts for which it has authority also in the official language or languages of the State so that the State may perform its legitimate regulatory and administrative tasks.

Community life and NGOs

- 6) The collective life of persons belonging to national minorities, their acting "in community" as stated by the international instruments, finds its expression in numerous activities and areas of endeavour. Not least of these is the life of their non- governmental organisations, associations and institutions whose existence is usually vital for the maintenance and development of their identity and is generally seen as beneficial and conducive to the development of civil society and democratic values within States.

Articles 21 and 22 of the **International Covenant on Civil and Political Rights** and Article 11 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantee the right of persons to peaceful assembly and the freedom of association. The right of persons to act "in community" with other members of their group – their right to establish and manage their own non-governmental organisations, associations and institutions – is one of the hallmarks of an open and democratic society. Article 27 of that same **Covenant** affirms that "Persons belonging to [...] minorities shall not be denied the right, in community with the other members of their group, to [...] use their own language". As a rule, therefore, public authorities should not be involved in the internal affairs of such entities "acting in community", nor may they impose any limits on them, other than those permitted under international law. Article 17(2) of the **Framework Convention for the Protection of National Minorities** similarly engages States "not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels".

Article 2(1) of the **International Covenant on Civil and Political Rights** stipulates that each State undertakes "to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present **Covenant**, without distinction of any kind such as [...] language". In line with this standard, States may not discriminate against NGOs on the basis of language nor impose any undue language requirements on them. This having been said, public authorities may require that such organisations, associations and institutions conform to the requirements of domestic law on the basis of a legitimate public interest, including the use of the official language(s) of the State in situations requiring interface with public bodies.

With regard to resources, paragraph 32.2 of the **Copenhagen Document** states that persons belonging to national minorities have the right "to establish and maintain their own educational, cultural and religious institutions, organisations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation." Accordingly, States should not prevent these entities from seeking financial resources from the State budget and from public international sources as well as from the private sector.

- 7) With regard to State financing of non-governmental activities in, among others, the social, cultural or sports fields, application of the principles of equality and non-discrimination requires that the public authorities provide an appropriate share of funding to similar activities taking place in the language of the national minorities living within their borders. In this context, Article 2(1) of the **International Covenant on Civil and Political Rights** stresses not only that there will be no distinction based on language in the treatment of individuals, but stipulates in Article 2(2) that States are required to "take the necessary steps [...] to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the [...] Covenant". Furthermore, Article 2(2) of the **International Covenant on the Elimination of Racial Discrimination**, (which seeks to eliminate any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin) stipulates that "States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms [...]". Insofar as language is often a defining criterion of ethnicity as protected by the aforementioned convention, minority language communities may also be entitled to the benefits of such "special and concrete measures".

At the European level, paragraph 31 of the **Copenhagen Document** stipulates that "States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms". Paragraph 2 of Article 4 of the **Framework Convention for the Protection of National Minorities** obligates the States Parties "to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority"; paragraph 3 of the same Article further specifies that such "measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination." Moreover, Article 7(2) of the **European Charter for Regional or Minority Languages** stipulates that "the adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of the languages and the rest of the population or which take account of their specific conditions is not considered to be an act of discrimination against the users of more widely used languages." In this context, therefore, public authorities should provide an equitable share of resources from the State budget to the activities of persons belonging to national minorities in, among others, the social, cultural and sports related fields. Such support can be made available through subsidies, public benefits and tax exemptions.

The media

- 8) Article 19 of the **International Covenant on Civil and Political Rights**, which guarantees the right to hold opinions as well as the right to express them, is a fundamental point of reference regarding the role and place of media in democratic societies. While Article 19(1) provides that "everyone shall have the right to hold opinions without interference", Article 19(2) proceeds to guarantee to everyone the freedom "to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through the media of his choice." Article 10 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantees the right to freedom of expression in a similar way. The member States of the Council of Europe reiterated in Article I of the **Declaration on the Freedom of Expression and Information** "their firm attachment to the principles of freedom of expression and information as a basic element of democratic and pluralist society". On this basis, States declared in the same instrument that "in the field of information and mass media they seek to achieve [...] d) The existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions".

Article 9(1) of the **Framework Convention for the Protection of National Minorities** states clearly that persons belonging to national minorities are free "to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers [...]". Further on, the same provision engages States to "ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media." Article 9(3) of the **Framework Convention** stipulates that States "shall not hinder the creation and the use of printed media by persons belonging to national minorities." The same provision requires that "in the legal framework of sound radio and television broadcasting, [States] shall ensure, as far as possible [...] that persons belonging to national minorities are granted the possibility of creating and using their own media." It is also to be noted that media may constitute entities of the kind foreseen in *inter alia*, paragraph 32.2 of the **Copenhagen Document** which provides for the right of persons belonging to national minorities to "establish and maintain their own educational, cultural and religious institutions, organisations or associations [...]" Even though the media are not cited expressly in this standard, the media often plays a fundamental role in the promotion and preservation of language, culture and identity.

Although there can be no doubt that persons belonging to national minorities have the right to establish and maintain private media, it is also true that this right is subject to the limitations provided by international law as well as such legitimate requirements of the State regarding the regulation of the media. Article 9(2) of the **Framework Convention** makes this very clear by underlining that the freedom of expression referred to in article 9(1) of the **Convention** "shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema

enterprises." Regulatory requirements, where justified and necessary, may not be used to undermine the enjoyment of the right.

- 9) The issue of access to publicly funded media is closely linked with the concept of freedom of expression. Article 9(1) of the **Framework Convention** stipulates that the freedom of expression of persons belonging to national minorities includes the freedom to impart information and ideas in the minority language, without interference by public authorities, and goes on to say that "members of minorities shall not be discriminated against in their access to the media." Article 9(4) of the **Framework Convention** stipulates that "Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities." This implies that a national minority consisting of a substantial number of members should be given access to its fair share of broadcast time, on public radio and/or television, with the numerical size of the minority in question having a bearing on its share of broadcast time.

Numerical strength and concentration, however, cannot be seen as the only criteria when judging the amount of broadcast time to be allocated to any given national minority. In the case of smaller communities, consideration must be given to the viable minimum of time and resources without which a smaller minority would not meaningfully be able to avail itself of the media.

Moreover, the quality of the time allotted to minority programming is an issue that needs to be approached in a reasonable, non-discriminatory manner. The time-slots allotted to minority language programming should be such as to ensure that persons belonging to a national minority can enjoy programming in their language in a meaningful way. Hence, public authorities should ensure that this programming is transmitted at reasonable times of the day.

- 10) In an open and democratic society the content of media programming should not be unduly censored by the public authorities. The freedom of expression as guaranteed by Article 19(1) of the **International Covenant on Civil and Political Rights** and Article 10(1) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** is important in this regard. Any restrictions which might be imposed by the public authorities must be in line with Article 19(3) of the **Covenant** which stipulates that these restrictions "shall only be such as are provided by law and are necessary a) For the respect of the rights and reputations of others, b) For the protection of national security or of public order (ordre public), or of public health and morals." Article 10(2) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** stipulates almost identical restrictions on any interference by public authorities with the enjoyment of freedom of expression.

Mechanisms should be put in place to ensure that the public media programming developed by or on behalf of national minorities reflects the interests and desires of the community's members and is seen by them as independent. In this context, the participation of persons belonging to national

minorities (acting in their private capacity) in the editorial process would go a long way in ensuring that the independent nature of the media would be preserved and that it would be responsive to the needs of the communities to be served.

In line with the principle of equality and non-discrimination, the composition of public institutions should be reflective of the populations they are designed to serve. This also applies to public media. Article 15 of the **Framework Convention** engages States to "create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them." Article 2 of **International Labour Organisation Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation** is more explicit in committing States to "pursue a national policy designed to promote [...] equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof." The non-discriminatory hiring of persons belonging to national minorities to work in the media will contribute to the representativity and objectivity of the media.

- 11) In keeping with the spirit of Articles 19(2) of the **International Covenant on Civil and Political Rights** and Article 9(1) of the **Framework Convention for the Protection of National Minorities** and of the principle of non-discrimination, access to programming in the language of persons belonging to a national minority, transmitted from another State or from the "kin-State", should not justify a diminution of programme time allotted to the minority on the public media of the State in which its members live.

Transfrontier access to information and media networks is a fundamental element of the right to information which, in the context of accelerated technological progress, is of growing importance. Consequently, when cable licensing is involved, for example, it is not legitimate for a State to refuse to license television or radio stations based in a kin-State when the desire for access to these stations has been clearly expressed by the national minority concerned. This right applies not only to cable media but also to electronic information networks in the language of the national minority.

As a general matter, the member States of the Council of Europe resolved in Article III(c) of the **Declaration on the Freedom of Expression and Information** "to promote the free flow of information, thus contributing to international understanding, a better knowledge of convictions and traditions, respect for the diversity of opinions and the mutual enrichment of cultures". In relation to media contacts across frontiers, States should conform their policies to the spirit of this provision.

Economic life

- 12) International instruments make little reference to the rights of persons belonging to national minorities in the field of economic activity. International instruments do, however, refer to the right of persons belonging to national minorities to use their language in public and in private, freely and without any form of discrimination, orally and in writing, individually and with others. Article 19(2) of the **International Covenant on Civil and Political Rights** and Article 10(1) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantee freedom of expression with respect not only to ideas and opinions which may be transmitted to others (i.e. the content of communications), but also to language as a medium of communication. These rights, coupled with the right to equality and non-discrimination, imply the right of persons belonging to national minorities to run their businesses in the language of their choice. In view of the importance to private entrepreneurs to be able to communicate effectively with their clientele and to pursue their initiatives in fair conditions, there should be no undue restrictions on their free choice of language.

Article 11(2) of the **Framework Convention** stipulates that "every person belonging to a national minority has the right to display in his or her minority language, signs, inscriptions and other information of a private nature visible to the public." In the **Framework Convention** the expression "of a private nature" refers to all that is not official. Hence, the State may not impose any restrictions on the choice of language in the administration of private business enterprises.

Notwithstanding the above, the State may require that the official language or languages of the State be accommodated in those sectors of economic activity which affect the enjoyment of the rights of others or require exchange and communication with public bodies. This follows from the permissible restrictions on freedom of expression as stipulated in Article 19(3) of the **International Covenant on Civil and Political Rights** and Article 10(2) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**. While the limited permissible restrictions expressed in the aforementioned articles could justify restrictions on the content of communications, they would never justify restrictions on the use of a language as a medium of communication. However, protection of the rights and freedoms of others and the limited requirements of public administration may well justify specific prescriptions for the additional use of the official language or languages of the State. This would apply to sectors of activity such as workplace health and safety, consumer protection, labour relations, taxation, financial reporting, State health and unemployment insurance and transportation, depending on the circumstances. On the basis of a legitimate public interest, the State could, in addition to the use of any other language, also require that the official language or languages of the State be accommodated in such business activities as public signage and labelling – as expressly stated in paragraph 60 of the **Explanatory Report to the Framework Convention for the Protection of National Minorities**. In sum, the State could never prohibit the use of a

language, but it could, on the basis of a legitimate public interest, prescribe the additional use of the official language or languages of the State.

In keeping with the logic of legitimate public interest, any requirement(s) for the use of language which may be prescribed by the State must be proportional to the public interest to be served. The proportionality of any requirement is to be determined by the extent to which it is necessary. Accordingly, for example, in the public interest of workplace health and safety, the State could require private factories to post safety notices in the official language or languages of the State in addition to the chosen language(s) of the enterprise. Similarly, in the interest of accurate public administration in relation to taxation, the State could require that administrative forms be submitted in the official language or languages of the State and that, in the case of an audit by the public authorities, relevant records be made available also in the official language or languages of the State; the latter eventuality would not require that private enterprise maintain all records in the official language or languages of the State, but only that the burden of possible translation rests with the private enterprise. This is without prejudice to the possible entitlement of persons belonging to national minorities to use their language(s) in communications with administrative authorities as foreseen in Article 10(2) of the **Framework Convention for the Protection of National Minorities**.

Administrative authorities and public services

13/14/15)

OSCE Participating States are committed to taking measures which will contribute to creating a dynamic environment, conducive not only to the maintenance of the identity of persons belonging to national minorities (including their language) but also to their development and promotion. As a consequence, these States have undertaken to respect "the right of persons belonging to national minorities to effective participation in public affairs" as outlined in paragraph 35 of the **Copenhagen Document**. Article 10(2) of the **Framework Convention for the Protection of National Minorities** expressly requires States to "make possible the use of minority languages in communications with administrative authorities." Paragraph 35 of the **Copenhagen Document** also makes reference to the possibility of creating an environment that would be conducive to the participation of national minorities in public affairs, in their own language, by establishing "appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of minorities in accordance with the policies of the State concerned". Article 15 of the **Framework Convention** engages States to "create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them." These provisions engage public authorities to enable persons belonging to national minorities to deal with local authorities in their language or to receive civil certificates and attestations in their own language. In line with the principles of equality and non-discrimination,

these provisions also imply a dynamic participatory relationship wherein the language of the minority may be a full-fledged vehicle of communication in local political life and in the interface between citizens and public authorities including in the provision of public services.

The ethnic representativity of administrative institutions and agencies designed to serve the population is usually reflective of a pluralistic, open and non-discriminatory society. In order to counter the effects of past or existing discrimination within the system, Article 2 of **International Labour Organisation Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation** requires States to "pursue a national policy designed to promote [...] equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof."

When designing and implementing programmes and services intended to serve the public, it is reasonable to expect that governments committed to the principles outlined above should take into consideration the expressed desires of persons belonging to national minorities as well as the principle of numerical justification. Where the need is expressed and the numbers are significant, equity requires that taxpayers belonging to national minorities have access to services also in their own language. This is particularly so in the case of health and social services which affect the quality of peoples' lives in an immediate and fundamental manner.

In line with the principles of equality and non-discrimination, administrative authorities are expected to deal with persons belonging to national minorities in an inclusive and equitable manner. States must recognise the demographic realities of the regions under their jurisdiction. Above all, States should not seek to avoid their obligations by changing the demographic reality of a region. Specifically Article 16 of the **Framework Convention** engages States to refrain from measures which might arbitrarily alter the proportion of the population in areas inhabited by persons belonging to national minorities with the objective of restricting the rights of these minorities. Such measures could consist of arbitrary expropriations, evictions, expulsions as well as the arbitrary redrawing of administrative borders and census manipulation.

Independent national institutions

- 16) Human rights acquire real meaning for their intended beneficiaries when the public authorities of the State establish mechanisms to ensure that the rights guaranteed in international conventions and declarations, or in domestic legislation, are effectively implemented and protected. As a complement to judicial procedures, independent national institutions usually provide quicker and less expensive recourses and are as such more accessible.

Discrimination as referred to in the **Convention on the Elimination of Racial Discrimination** is not defined according to criteria relating strictly to race. Article 1(1) of the **Convention** stipulates that the concept of racial discrimination shall mean "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." Article 6 of the **Convention** declares that "State Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention [...]" In this context, the establishment by States of independent national institutions that can act as mechanisms of redress and compensation, such as the institution of ombudsperson or a human rights commission is a measure of a given State's democratic and pluralistic nature. Accordingly, and with reference to **United Nations resolution 48/134 of 20 December 1993**, the Council of Europe has encouraged, in **Committee of Ministers Recommendation No. R(97)14 of 30 September 1997**, the establishment of "national human rights institutions, in particular human rights commissions which are pluralist in their membership, ombudsmen or comparable institutions." Such mechanisms of redress should be made available also to persons belonging to national minorities who consider that their linguistic and other rights have been violated.

Judicial authorities

17/18)

International law requires public authorities to ensure that all persons who are arrested, accused and tried be informed of the charges against them and of all other proceedings in a language they understand. If need be, an interpreter must be made available to them free of charge. This standard of due process of law is universal in its application and does not relate to the linguistic rights of national minorities as such. Rather, the underlying principles are those of equality and non-discrimination before the law. Respect for these principles is particularly vital in relation to criminal charges and proceedings. As a consequence, Article 14(3)(a) of the **International Covenant on Civil and Political Rights** requires that everyone charged with a criminal offense shall "be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him". Article 6(3)(a) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** stipulates the same requirement in almost identical language. In addition, Article 5(2) of the aforementioned convention stipulates the same requirement in relation to arrest. Furthermore, Article 14(3) of the **International Covenant on Civil and Political Rights** stipulates the entitlement of everyone "in full equality" [...] "(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him". In this connection, Article 14(3)(f)

of the **International Covenant on Civil and Political Rights** and Article 6(3)(e) of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** guarantee the right of everyone "to have the free assistance of an interpreter if he cannot understand or speak the language used in court." While these guarantees concern expressly the use of language are prescribed specifically in relation to criminal procedures, it follows from the fundamental guarantee of equality before courts and tribunals, as stipulated in the first sentence of Article 14(1) of the **International Covenant on Civil and Political Rights**, that legal proceedings of all kinds are to be considered more perfectly fair to the extent that the conditions are more strictly equal. This determination, which applies equally with respect to the choice of language for proceedings as a whole, should guide States in the development of their policies concerning the equal and effective administration of justice.

More generally, Article 7(1) of the **European Charter for Regional or Minority Languages** declares that States shall base their policies, legislation and practice on such objectives and principles as "the recognition of the regional or minority languages as an expression of cultural wealth [...]" and "the need for resolute action to promote regional or minority languages in order to safeguard them". Article 7(4) of the **European Charter** stipulates that "in determining their policy with regard to regional and minority languages, [...] Parties shall take into consideration the needs and wishes expressed by the groups which use such languages." Moreover, Article 15 of the **Framework Convention** engages States to "create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them." If one considers the above-mentioned standards while taking into consideration the importance, in democratic societies, of effective access to justice, it is reasonable to expect that States should, so far as possible, ensure the right of persons belonging to national minorities to express themselves in their language in all stages of judicial proceedings (whether criminal, civil or administrative) while respecting the rights of others and maintaining the integrity of the processes, including through instances of appeal.

- 19) Insofar as access to justice is vital to the enjoyment of human rights, the degree to which one may participate directly and easily in available procedures is an important measure of such access. The availability of judicial procedures functioning in the language(s) of persons belonging to national minorities, therefore, renders access to justice more direct and easy for such persons.

On this basis, Article 9 of the **European Charter for Regional or Minority Languages** provides that, to the extent feasible and pursuant to the request of one of the affected parties, all judicial proceedings should be conducted in the regional or minority language. The Parliamentary Assembly of the Council of Europe, has come to the same conclusion in Article 7(3) of its **Recommendation 1201** which provides that "In regions in which substantial numbers of a national minority are settled, the persons belonging to a national minority shall have the right to use their mother tongue in their contacts with the

administrative authorities and in proceedings before the courts and legal authorities." Accordingly, States should adopt appropriate recruitment and training policies for the judiciary.

Deprivation of liberty

- 20) Rule 51, paragraphs 1 and 2, of the **United Nations Standard Minimum Rules for the Treatment of Prisoners** as well as Rule 60, paragraphs 1 and 2 of the **European Prison Rules of the Council of Europe** stress the importance of the right of the incarcerated to be understood by the prison administration as well as the importance for the prison administration to be understood by the inmate population. These provisions do not relate to minority rights as such. However, taken into consideration along with the expressed desire of affected populations, their numerical strength and the principle of equality and non-discrimination, the aforementioned provisions are even more compelling in regions or localities where persons belonging to national minorities are present in significant numbers.

- 21) Rule 37 of the United **Nations Standard Minimum Rules for the Treatment of Prisoners** as well as Article 43(1) of the **European Prison Rules of the Council of Europe** uphold the right of prisoners to communicate with their families, reputable friends and persons or representatives of outside organisations. In view of the importance of such human rights as freedom of expression and the right to use one's language in public and in private, it is incumbent upon authorities to respect these rights within the limitations prescribed by law even in penitentiary institutions. As a rule, prisoners should be able to communicate in their own language both orally with other inmates and with visitors and also in personal correspondence. Nevertheless, certain human rights and freedoms of persons detained for criminal acts may legitimately be restricted or suspended for reasons of public security in conformity with the limitations prescribed by the international instruments. As a practical matter, enjoyment of the linguistic rights of detained persons may be best facilitated by their detention in a place where their language is usually spoken.

The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note - 1999

Introduction

In its Helsinki Decisions of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities to be “an instrument of conflict prevention at the earliest possible stage”. This mandate was created largely in reaction to the situation in the former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by the Heads of State and Government in November 1990.

On 1 January 1993, Mr. Max van der Stoel took up his duties as the first OSCE High Commissioner on National Minorities (HCNM). Drawing on his considerable personal experience as a former Member of Parliament, Foreign Minister of The Netherlands, Permanent Representative to the United Nations, and long-time human rights advocate, Mr. van der Stoel turned his attention to the many disputes between minorities and central authorities in Europe which had the potential, in his view, to escalate. Acting quietly through diplomatic means, the HCNM has become involved in over a dozen States, including Albania, Croatia, Estonia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, the Former Yugoslav Republic of Macedonia, Romania, Slovakia and Ukraine. His involvement has focused primarily on those situations involving persons belonging to national/ethnic groups who constitute the numerical majority in one State but the numerical minority in another State, thus engaging the interest of governmental authorities in each State and constituting a potential source of inter-State tension if not conflict. Indeed, such tensions have defined much of European history.

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and cooperative actor. While the HCNM is not a supervisory mechanism, he employs the international standards to which each State has agreed as his principal framework of analysis and the foundation of his specific recommendations. In this relation, it is important to recall the commitments undertaken by all OSCE participating States, in particular those of the 1990 Copenhagen Document of the Conference on the Human Dimension which, in Part IV, articulates detailed standards relating to national minorities. All OSCE States are also bound by United Nations obligations relating to human rights,

including minority rights, and the great majority of OSCE States are further bound by the standards of the Council of Europe.

Through the course of more than six years of intense activity, the HCNM has identified certain recurrent issues and themes which have become the subject of his attention in a number of States in which he is involved. Among these are issues of minority education and use of minority languages, in particular as matters of great importance for the maintenance and development of the identity of persons belonging to national minorities. With a view to achieving an appropriate and coherent application of relevant minority rights in the OSCE area, the HCNM requested the Foundation on Inter-Ethnic Relations – a non-governmental organization established in 1993 to carry out specialized activities in support of the HCNM – to bring together two groups of internationally recognized independent experts to elaborate two sets of recommendations: **The Hague Recommendations regarding the Education Rights of National Minorities** (1996) and **The Oslo Recommendations regarding the Linguistic Rights of National Minorities** (1998). Both sets of recommendations have subsequently served as references for policy- and law-makers in a number of States. The recommendations are available (in several languages) from the Foundation on Inter-Ethnic Relations free of charge.

A third recurrent theme which has arisen in a number of situations in which the HCNM has been involved is that of forms of effective participation of national minorities in the governance of States. In order to gain a sense of the views and experiences of OSCE participating States on this issue and to allow States to share their experiences with each other, the HCNM and the OSCE's Office for Democratic Institutions and Human Rights convened a conference of all OSCE States and relevant international organisations entitled "Governance and Participation: Integrating Diversity", which was hosted by the Swiss Confederation in Locarno from 18 to 20 October 1998. The Chairman's Statement issued at the end of the conference summarized the themes of the meeting and noted the desirability of "concrete follow-up activities, including the further elaboration of the various concepts and mechanisms of good governance with the effective participation of minorities, leading to integration of diversity within the State." To this end, the HCNM called upon the Foundation on Inter-Ethnic Relations, in co-operation with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, to bring together a group of internationally recognized independent experts to elaborate recommendations and outline alternatives, in line with the relevant international standards.

The result of the above initiative is **The Lund Recommendations on the Effective Participation of National Minorities in Public Life** – named after the Swedish city in which the experts last met and completed the recommendations. Among the experts were jurists specializing in relevant international law, political scientists specializing in constitutional orders and election systems, and sociologists specializing in minority issues. Specifically, under the Chairmanship of the Director of the Raoul Wallenberg Institute, Professor Gudmundur Alfredsson, the experts were:

Professor Gudmundur Alfredsson (Icelandic), Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund University; Professor Vernon Bogdanor (British), Professor of Government, Oxford University; Professor Vojin Dimitrijevi (Yugoslavian), Director of the Belgrade Centre for Human Rights; Dr. Asbjørn Eide (Norwegian), Senior Fellow at the Norwegian Institute of Human Rights; Professor Yash Ghai (Kenyan), Sir YK Pao Professor of Public Law, University of Hong Kong; Professor Hurst Hannum (American), Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University; Mr. Peter Harris (South African), Senior Executive to the International Institute for Democracy and Electoral Assistance; Dr. Hans-Joachim Heintze (German), Director of the Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht, Ruhr-Universität Bochum; Professor Ruth Lapidoth (Israeli), Professor of International Law and Chairman of the Academic Committee of the Institute for European Studies, The Hebrew University of Jerusalem; Professor Rein Müllerson (Estonian), Chair of International Law, King's College, University of London; Dr. Sarlotta Pufflerova (Slovak), Director, Foundation Citizen and Minority/Minority Rights Group; Professor Steven Ratner (American), Professor of International Law, University of Texas; Dr. Andrew Reynolds (British), Assistant Professor of Government, University of Notre Dame; Mr. Miquel Strubell (Spanish and British), Director of the Institute of Catalan Socio-Linguistics, Generalitat de Catalunya; Professor Markku Suksi (Finnish), Professor of Public Law, Åbo Akademi University; Professor Danilo Türk (Slovene), Professor of International Law, Ljubljana University; Dr. Fernand de Varennes (Canadian), Senior Lecturer in Law and Director of the Asia-Pacific Centre for Human Rights and the Prevention of Ethnic Conflict, Murdoch University; Professor Roman Wieruszewski (Polish), Director of the Poznan Human Rights Centre, Polish Academy of Sciences.

Insofar as existing standards of minority rights are part of human rights, the starting point of the consultations among the experts was to presume compliance by States with all other human rights obligations including, in particular, freedom from discrimination. It was also presumed that the ultimate object of all human rights is the full and free development of the individual human personality in conditions of equality. Consequently, it was presumed that civil society should be open and fluid and, therefore, integrate all persons, including those belonging to national minorities. Moreover, insofar as the objective of good and democratic governance is to serve the needs and interests of the whole population, it was presumed that all governments seek to ensure the maximum opportunities for contributions from those affected by public decision-making.

The purpose of the Lund Recommendations, like The Hague and Oslo Recommendations before them, is to encourage and facilitate the adoption by States of specific measures to alleviate tensions related to national minorities and thus to serve the ultimate conflict prevention goal of the HCNM. The Lund Recommendations on the Effective Participation of National Minorities in Public Life attempt to clarify in relatively straight-forward language and build upon the content of minority rights and other standards generally applicable in the situations in which

the HCNM is involved. The standards have been interpreted specifically to ensure the coherence of their application in open and democratic States. The Recommendations are divided into four sub-headings which group the twenty-four recommendations into general principles, participation in decision-making, self-governance, and ways of guaranteeing such effective participation in public life. The basic conceptual division within the Lund Recommendations follows two prongs: participation in governance of the State as a whole, and self-governance over certain local or internal affairs. A wide variety of arrangements are possible and known. In several recommendations, alternatives are suggested. All recommendations are to be interpreted in accordance with the General Principles in Part I. A more detailed explanation of each recommendation is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is found.

Recommendations

I. General principles

- 1) Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities. These Recommendations aim to facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.
- 2) These Recommendations build upon fundamental principles and rules of international law, such as respect for human dignity, equal rights, and nondiscrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights. States have a duty to respect internationally recognized human rights and the rule of law, which allow for the full development of civil society in conditions of tolerance, peace, and prosperity.
- 3) When specific institutions are established to ensure the effective participation of minorities in public life, which can include the exercise of authority or responsibility by such institutions, they must respect the human rights of all those affected.
- 4) Individuals identify themselves in numerous ways in addition to their identity as members of a national minority. The decision as to whether an individual is a member of a minority, the majority, or neither rests with that individual

and shall not be imposed upon her or him. Moreover, no person shall suffer any disadvantage as a result of such a choice or refusal to choose.

- 5) When creating institutions and procedures in accordance with these Recommendations, both substance and process are important. Governmental authorities and minorities should pursue an inclusive, transparent, and accountable process of consultation in order to maintain a climate of confidence. The State should encourage the public media to foster intercultural understanding and address the concerns of minorities.

II. Participation in decision-making

A. Arrangements at the level of the central government

- 6) States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary. These may include, depending upon the circumstances:
 - special representation of national minorities, for example, through a reserved number of seats in one or both chambers of parliament or in parliamentary committees; and other forms of guaranteed participation in the legislative process;
 - formal or informal understandings for allocating to members of national minorities cabinet positions, seats on the supreme or constitutional court or lower courts, and positions on nominated advisory bodies or other high-level organs;
 - mechanisms to ensure that minority interests are considered within relevant ministries, through, e.g., personnel addressing minority concerns or issuance of standing directives; and
 - special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority.

B. Elections

- 7) Experience in Europe and elsewhere demonstrates the importance of the electoral process for facilitating the participation of minorities in the political sphere. States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination.
- 8) The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes the freedom to establish political parties based on communal

identities as well as those not identified exclusively with the interests of a specific community.

- 9) The electoral system should facilitate minority representation and influence.
- Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation.
 - Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities.
 - Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal cooperation.
 - Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.
- 10) The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.

C. Arrangements at the regional and local levels

- 11) States should adopt measures to promote participation of national minorities at the regional and local levels such as those mentioned above regarding the level of the central government (paragraphs 6-10). The structures and decision-making processes of regional and local authorities should be made transparent and accessible in order to encourage the participation of minorities.

D. Advisory and consultative bodies

- 12) States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities. Such bodies might also include special purpose committees for addressing such issues as housing, land, education, language, and culture. The composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.
- 13) These bodies should be able to raise issues with decision makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in order to contribute to the satisfaction of minority

concerns and to the building of confidence. The effective functioning of these bodies will require that they have adequate resources.

III. Self-governance

- 14) Effective participation of minorities in public life may call for non-territorial or territorial arrangements of self-governance or a combination thereof. States should devote adequate resources to such arrangements.
- 15) It is essential to the success of such arrangements that governmental authorities and minorities recognize the need for central and uniform decisions in some areas of governance together with the advantages of diversity in others.
 - Functions that are generally exercised by the central authorities include defence, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs.
 - Other functions, such as those identified below, may be managed by minorities or territorial administrations or shared with the central authorities.
 - Functions may be allocated asymmetrically to respond to different minority situations within the same State.
- 16) Institutions of self-governance, whether non-territorial or territorial, must be based on democratic principles to ensure that they genuinely reflect the views of the affected population.

A. Non-territorial arrangements

- 17) Non-territorial forms of governance are useful for the maintenance and development of the identity and culture of national minorities.
- 18) The issues most susceptible to regulation by these arrangements include education, culture, use of minority language, religion, and other matters crucial to the identity and way of life of national minorities.
 - Individuals and groups have the right to choose to use their names in the minority language and obtain official recognition of their names.
 - Taking into account the responsibility of the governmental authorities to set educational standards, minority institutions can determine curricula for teaching of their minority languages, cultures, or both.
 - Minorities can determine and enjoy their own symbols and other forms of cultural expression.

B. Territorial arrangements

- 19) All democracies have arrangements for governance at different territorial levels. Experience in Europe and elsewhere shows the value of shifting certain legislative and executive functions from the central to the regional level, beyond the mere decentralization of central government administration from the capital to regional or local offices. Drawing on the principle of subsidiarity, States should favourably consider such territorial devolution of powers, including specific functions of self-government, particularly where it would improve the opportunities of minorities to exercise authority over matters affecting them.
- 20) Appropriate local, regional, or autonomous administrations that correspond to the specific historical and territorial circumstances of national minorities may undertake a number of functions in order to respond more effectively to the concerns of these minorities.
 - Functions over which such administrations have successfully assumed primary or significant authority include education, culture, use of minority language, environment, local planning, natural resources, economic development, local policing functions, and housing, health, and other social services.
 - Functions shared by central and regional authorities include taxation, administration of justice, tourism, and transport.
- 21) Local, regional, and autonomous authorities must respect and ensure the human rights of all persons, including the rights of any minorities within their jurisdiction.

IV. Guarantees

A. Constitutional and legal safeguards

- 22) Self-governance arrangements should be established by law and generally not be subject to change in the same manner as ordinary legislation. Arrangements for promoting participation of minorities in decision-making may be determined by law or other appropriate means.
 - Arrangements adopted as constitutional provisions are normally subject to a higher threshold of legislative or popular consent for their adoption and amendment.
 - Changes to self-governance arrangements established by legislation often require approval by a qualified majority of the legislature, autonomous bodies or bodies representing national minorities, or both.

- Periodic review of arrangements for self-governance and minority participation in decision-making can provide useful opportunities to determine whether such arrangements should be amended in the light of experience and changed circumstances.
- 23) The possibility of provisional or step-by-step arrangements that allow for the testing and development of new forms of participation may be considered. These arrangements can be established through legislation or informal means with a defined time period, subject to extension, alteration, or termination depending upon the success achieved.

B. Remedies

- 24) Effective participation of national minorities in public life requires established channels of consultation for the prevention of conflicts and dispute resolution, as well as the possibility of ad hoc or alternative mechanisms when necessary. Such methods include:
- judicial resolution of conflicts, such as judicial review of legislation or administrative actions, which requires that the State possess an independent, accessible, and impartial judiciary whose decisions are respected; and
 - additional dispute resolution mechanisms, such as negotiation, fact finding, mediation, arbitration, an ombudsman for national minorities, and special commissions, which can serve as focal points and mechanisms for the resolution of grievances about governance issues.

Explanatory Note

I. General principles

- 1) Both the **Charter of the United Nations** (hereafter the “UN Charter”) and the foundational documents of the CSCE/OSCE seek to maintain and strengthen international peace and security through the development of friendly and co-operative relations between equally sovereign States respecting human rights, including the rights of persons belonging to minorities. Indeed, history shows that failure to respect human rights, including minority rights, can undermine stability within the State and negatively affect relations between States, thus endangering international peace and security.

Beginning with Principle VII of the decalogue of the 1975 **Helsinki Final Act**, the OSCE participating States have emphasised the fundamental link

between respecting the legitimate interests of persons belonging to national minorities and the maintenance of peace and stability. This link has been reiterated in subsequent basic documents such as the 1983 **Concluding Document of Madrid** (Principle 15), the 1989 **Concluding Document of Vienna** (Principles 18 and 19), and the 1990 **Charter of Paris for a New Europe**, in addition to subsequent Summit Documents, e.g. the 1992 **Helsinki Document** (Part IV, paragraph 24) and the 1996 **Lisbon Document** (Part I, **Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century**, paragraph 2). At the level of the United Nations, the link between protection and promotion of minority rights and maintenance of peace and stability is expressed, *inter alia*, in the preamble to the 1992 **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** (hereafter the “UN Declaration on Minorities”). Moreover, following adoption of the **Charter of Paris for a New Europe**, all OSCE participating States are committed to democratic governance.

Full opportunities for the equal enjoyment of the human rights of persons belonging to minorities entails their effective participation in decision-making processes, especially with regard to those decisions specially affecting them. While situations vary greatly and ordinary democratic processes may be adequate to respond to the needs and aspirations of minorities, experience also shows that special measures are often required to facilitate the effective participation of minorities in decision-making. The following international standards commit States to take such action in such situations: according to paragraph 35 of the 1990 **Document of the Copenhagen Meeting on the Human Dimension** (hereafter the “Copenhagen Document”), OSCE participating States “will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities”; according to Article 2, paragraphs 2 and 3, of the 1992 **UN Declaration on Minorities**, “[p]ersons belonging to minorities have the right to participate effectively in [...] public life” and “the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live”; and, according to Article 15 of the Council of Europe’s 1994 **Framework Convention for the Protection of National Minorities** (hereafter the “Framework Convention”), States Parties “shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”

The creation of opportunities for effective participation takes for granted that such participation will be voluntary. Indeed, the underlying notion of social and political integration is distinguished from processes and outcomes which constitute coerced assimilation, as cautioned in Article 5 of the **Framework Convention**. Only through voluntary processes may the pursuit of the legitimate interests of persons belonging to minorities be a peaceful process

which offers the prospect of optimal outcomes in public policy- and law-making. Such inclusive, participatory processes thus serve the objective of good governance by responding to the interests of the whole population – weaving all interests into the fabric of public life and ultimately strengthening the integrity of the State. The international standards referring to effective participation of minorities in public life underscore the fact that they do not imply any right to engage in activities contrary to the purposes and principles of the United Nations, OSCE or Council of Europe, including sovereign equality, territorial integrity and political independence of States (see paragraph 37 of the **Copenhagen Document**, Article 8(4) of the **UN Declaration on Minorities**, and the preamble of the **Framework Convention**).

- 2) In the spirit of paragraph 25 of Part VI of the 1992 **Helsinki Document**, these recommendations build upon the relevant commitments insofar as they offer OSCE participating States “further avenues for more effective implementation of their CSCE commitments, including those related to the protection and the creation of conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities”.

Article 1(3) of the **UN Charter** specifies that one of the purposes of the organisation is “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” – which is further specified in Article 55(c) as including “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” The **Charter** is based upon the intimate relationship between respect for human rights and international peace and security, and the fundamental value of human dignity is further expressed in Article 1 of the 1948 **Universal Declaration of Human Rights** and the preambles of the 1966 **International Covenant on Civil and Political Rights**, the 1966 **International Covenant on Economic, Social and Cultural Rights**, and the 1965 **International Convention on the Elimination of All Forms of Racial Discrimination**. Such dignity is equally inherent in all human beings and accompanied by equal and inalienable rights.

Following from the premise of equal dignity and inalienable rights is the principle of non-discrimination as expressed in virtually all international human rights instruments, including notably Article 2 of the **Universal Declaration of Human Rights**, Articles 2 and 26 of the **International Covenant on Civil and Political Rights**, and Article 2 of the **International Covenant on Economic, Social and Cultural Rights**. Article 1 of the **International Convention on the Elimination of All Forms of Racial Discrimination** makes clear that this instrument prohibits discrimination also on the basis of “descent, or national or ethnic origin”. Article 14 of the 1950 **European Convention for the Protection of Human Rights and Fundamental**

Freedoms (hereafter the “European Convention on Human Rights”) also expressly extends the principle of non-discrimination to cover grounds of “national or social origin, [or] association with a national minority”, whenever the rights and freedoms guaranteed by the convention are engaged. Indeed, the constitutions of most OSCE participating States incorporate these affirmations and principles.

Insofar as persons belonging to national minorities are entitled to the right to effective participation in public life, they are to enjoy this right without discrimination, as expressed in paragraph 31 of the **Copenhagen Document**, Article 4 of the **Framework Convention**, and Article 4(1) of the **UN Declaration on Minorities**. However, according to Article 4(2) of the **Framework Convention**, concern for equal dignity extends beyond the principle of non-discrimination towards “full and effective equality between persons belonging to a national minority and those belonging to the majority” for which States should “adopt, where necessary, adequate measures [...] in all areas of [...] political [...] life” in respect of which “they shall take due account of the specific conditions of the persons belonging to national minorities.”

The connection made in the recommendation between respect for human rights and the development of civil society reflects the call for an “effective political democracy” which, according to the Preamble of the **European Convention on Human Rights**, is intimately related to justice and peace in the world. OSCE participating States have further affirmed in the **Charter of Paris for a New Europe** that democratic governance, including respect for human rights, is the basis for prosperity.

- 3) When specific institutions are established to ensure the effective participation of national minorities in public life, this must not be at the expense of others’ rights. All human rights must be respected at all times, including by such institutions which may be delegated authority by the State. According to paragraph 33 of the **Copenhagen Document**, when participating States take measures necessary for the protection of the identity of persons belonging to national minorities, “Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.” The **Copenhagen Document** further stipulates at paragraph 38 that OSCE “participating States, in their efforts to protect and promote the rights of persons belonging to national minorities, will fully respect their undertakings under existing human rights conventions and other relevant international instruments”. The **Framework Convention** has a similar stipulation in Article 20: “In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.” This addresses in particular the case of “minorities within minorities”, especially in the territorial context (see recommendations 16 and

21 below). This would also include respect for the human rights of women, including freedom from discrimination in relation to “the political and public life of the country” as stipulated at Article 7 of the 1979 **Convention on the Elimination of All Forms of Discrimination against Women**.

- 4) The principle of self-identification of persons belonging to minorities is based on several fundamental commitments. Paragraph 32 of the **Copenhagen Document** specifies that “To belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice”. Article 3(1) of the **Framework Convention** provides similarly that “Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.” Article 3(2) of the **UN Declaration on Minorities** includes the same prohibition against any disadvantage resulting “for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.”

An individual’s freedom to identify oneself as one chooses is necessary to ensure respect for individual autonomy and liberty. An individual may possess several identities that are relevant not only for private life, but also in the sphere of public life. Indeed, in open societies with increasing movements of persons and ideas, many individuals have multiple identities which are coinciding, coexisting or layered (in an hierarchical or non-hierarchical fashion), reflecting their various associations. Certainly, identities are not based solely on ethnicity, nor are they uniform within the same community; they may be held by different members in varying shades and degrees. Depending upon the specific matters at issue, different identities may be more or less salient. As a consequence, the same person might identify herself or himself in different ways for different purposes, depending upon the salience of the identification and arrangement for her or him. For example, in some States a person may choose a certain language for submission on tax forms, yet identify herself or himself differently in a local community for other purposes.

- 5) In the framework of democracy, the process of decision-making is as important as the substance of decisions made. Since good governance is not only of the people but also for the people, its processes should always be inclusive of those concerned, transparent for all to see and judge, and accountable to those affected. Only such processes will inspire and maintain public confidence. Inclusive processes may comprise consultation, polling, referenda, negotiation and even the specific consent of those directly affected. Decisions resulting from such processes are likely to inspire voluntary compliance. In situations where the views of the public authorities and the affected community may differ substantially, good governance may suggest using the services of a third party to assist in finding the most satisfactory arrangement.

In relation specifically to national minorities, paragraph 33 of the **Copenhagen Document** commits OSCE participating States to take measures to “protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity [...] after due consultations, including contacts with organizations or associations of such minorities”. In Part VI, paragraph 26, of the **Helsinki Document**, OSCE participating States further committed themselves to “address national minority issues in a constructive manner, by peaceful means and through dialogue among all parties concerned on the basis of CSCE principles and commitments”. In connection with “all parties concerned”, paragraph 30 of the **Copenhagen Document** recognizes “the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.”

Inclusive processes require conditions of tolerance. A social and political climate of mutual respect and equality needs to be assured by law and also taught as a social ethic shared by the whole population. The media have a special role in this regard. Article 6(1) of the **Framework Convention** provides that “the Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.” In particular, States should act to stop the public use of derogatory or pejorative names and terms and should take steps to counteract negative stereotypes. Ideally, the representatives of the affected community should participate in the choice and design of any steps taken to overcome such problems.

II. Participation in decision-making

A. Arrangements at the level of the central government

- 6) Building upon paragraph 35 of the **Copenhagen Document**, paragraph 1 of Part III of the 1991 **Report of the CSCE (Geneva) Meeting of Experts on National Minorities** underlines that “when issues relating to the situation of national minorities are discussed within their countries, they themselves should have the effective opportunity to be involved [...] [and] that [such] democratic participation of persons belonging to national minorities or their representatives in decision-making or consultative bodies constitutes an important element of effective participation in public affairs.” Paragraph 24 of Part VI of the **Helsinki Document** committed OSCE participating States to “intensify in this context their efforts to ensure the free exercise by persons belonging to national minorities, individually or in community with others, of their human rights and fundamental freedoms, including the right to

participate fully, in accordance with the democratic decision-making procedures of each State, in the political, economic, social, and cultural life of their countries including through democratic participation in decision-making and consultative bodies at the national, regional, and local level, *inter alia*, through political parties and associations.”

The essence of participation is involvement, both in terms of the opportunity to make substantive contributions to decision-making processes and in terms of the effect of those contributions. The notion of good governance includes the premise that simple majoritarian decision-making is not always sufficient. In terms of the structure of the State, various forms of decentralization may be appropriate to assure the maximum relevance and accountability of decision-making processes for those affected, both at the level of the State and at sub-State levels. This may be accomplished through various ways in a unitary State or in federal and confederal systems. Minority representation in decision-making bodies may be assured through reserved seats (by way of quotas, promotions or other measures), while other forms of participation include assured membership in relevant committees, with or without voting rights. Representation on executive, judicial, administrative and other bodies may be assured through similar means, whether by formal requirement or by customary practice. Special bodies may also be established to accommodate minority concerns. Meaningful opportunities to exercise all minority rights require specific steps to be taken in the public service, including ensuring “equal access to public service” as articulated in Article 5(c) of the International **Convention on the Elimination of All Forms of Racial Discrimination**.

B. Elections

- 7) Representative government through free, fair and periodic elections is the hallmark of contemporary democracy. The fundamental objective is, in the words of Article 21(3) of the **Universal Declaration of Human Rights**, that “The will of the people shall be the basis of the authority of government”. This basic standard is articulated in universal and European treaties, namely Article 25 of the **International Covenant on Civil and Political Rights** and Article 3 of Protocol I additional to the **European Convention on Human Rights**. For OSCE participating States, paragraphs 5 and 6 of the **Copenhagen Document** specify that, “among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings”, “the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government”.

While States have considerable latitude in choosing the specific manner in which to comply with these obligations, they must do so without discrimination and should aim for as much representativeness as possible. Indeed, within the context of the United Nations, the Human Rights Committee has explained in paragraph 12 of its **General Comment 25** on Article 25 (57th Session 1996) that “Freedom of expression, assembly and

association are essential conditions for the effective exercise of the right to vote and must be fully protected. [...] Information and materials about voting should be available in minority languages.” Moreover, paragraph 5 of **General Comment 25** clarifies that “The conduct of public affairs [...] is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”

Insofar as no electoral system is neutral from the perspective of varying views and interests, States should adopt the system which would result in the most representative government in their specific situation. This is especially important for persons belonging to national minorities who might otherwise not have adequate representation.

- 8) In principle, democracies should not interfere with the way in which people organize themselves politically – as long as their means are peaceful and respectful of the rights of others. Essentially, this is a matter of freedom of association, as articulated in a wide variety of international instruments including: Article 20 of the **Universal Declaration of Human Rights**; Article 22 of the **International Covenant on Civil and Political Rights**; Article 11 of the **European Convention on Human Rights**; and paragraph 6 of the **Copenhagen Document**. Freedom of association has also been guaranteed specifically for persons belonging to national minorities under paragraph 32.6 of the **Copenhagen Document** and Article 7 of the **Framework Convention**. More specifically, paragraph 24 of Part VI of the **Helsinki Document** commits OSCE participating States “to ensure the free exercise by persons belonging to national minorities, individually or in community with others, of their human rights and fundamental freedoms, including the right to participate fully, [...] in the political [...] life of their countries including [...] through political parties and associations.”

While full respect for equal rights and non-discrimination will reduce or eliminate the demand and need for political parties formed on the basis of ethnic ties, in some situations such communal parties may be the only hope for effective representation of specific interests and, thus, for effective participation. Of course, parties may be formed on other bases, e.g. regional interests. Ideally, parties should be open and should cut across narrow ethnic issues; thus, mainstream parties should seek to include members of minorities to reduce the need or desire for ethnic parties. The choice of electoral system may be important in this regard. In any event, no political party or other association may incite racial hatred, which is prohibited by Article 20 of the **International Covenant on Civil and Political Rights** and Article 4 of the **Convention on the Elimination of All Forms of Racial Discrimination**.

- 9) The electoral system may provide for the selection of both the legislature and other bodies and institutions, including individual officials. While single

member constituencies may provide sufficient representation for minorities, depending upon how the constituencies are drawn and the concentration of minority communities, proportional representation might help guarantee such minority representation. Various forms of proportional representation are practised in OSCE participating States, including the following: “preference voting”, whereby voters rank candidates in order of choice; “open list systems”, whereby electors can express a preference for a candidate within a party list, as well as voting for the party; “*panachage*”, whereby electors can vote for more than one candidate across different party lines; and “*cumulation*”, whereby voters can cast more than one vote for a preferred candidate. Thresholds should not be so high as to hamper minority representation.

- 10) In drawing the boundaries of electoral districts, the concerns and interests of national minorities should be taken into account with a view to assuring their representation in decision-making bodies. The notion of “equity” means that no one should be prejudiced by the chosen method and that all concerns and interests should be given fair consideration. Ideally, boundaries should be determined by an independent and impartial body to ensure, among other concerns, respect for minority rights. This is often accomplished in OSCE participating States by means of standing, professional electoral commissions.

In any event, States should not alter electoral boundaries, or otherwise alter the proportions of the population in a district, for the purpose of diluting or excluding minority representation. This is expressly prohibited by Article 16 of the **Framework Convention**, while Article 5 of the **European Charter of Local Self-Government** stipulates that “Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute” (see recommendation 19 regarding territorial arrangements).

C. Arrangements at the regional and local levels

- 11) This Recommendation applies to all levels of government below the central authorities (e.g. provinces, departments, districts, prefectures, municipalities, cities and towns, whether units within a unitary State or constituent units of a federal State, including autonomous regions and other authorities). The consistent enjoyment of all human rights by everyone equally means that the entitlements enjoyed at the level of the central government should be enjoyed throughout the structures below. However, the criteria used to create structures at the regional and local level may be different from those used at the level of the central government. Structures may also be established asymmetrically, with variation according to differing needs and expressed desires.

D. Advisory and consultative bodies

- 12) Paragraph 24 of Part VI of the **Helsinki Document** commits OSCE participating States “to ensure the free exercise by persons belonging to national minorities, individually or in community with others, of their human rights and fundamental freedoms, including the right to participate fully [...] in the political [...] life of their countries including through democratic participation in [...] consultative bodies at the national, regional, and local level”. Such bodies can be standing or ad hoc, part of or attached to the legislative or executive branch or independent therefrom. Committees attached to parliamentary bodies, such as minority round tables, are known in several OSCE participating States. They can and do function at all levels of government, including self-government arrangements. In order to be effective, these bodies should be composed of minority representatives and others who can offer special expertise, provided with adequate resources, and given serious attention by decisionmakers. Aside from advice and counsel, such bodies can constitute a useful intermediary institution between decisionmakers and minority groups. They can also stimulate action at the level of government and among minority communities. Such bodies may also perform specific tasks related to the implementation of programs, e.g. in the field of education. In addition, special purpose committees may hold particular significance for certain minorities who should be represented therein.

- 13) The possibilities for constructive use of such bodies vary with the situations. However, in all cases, good governance requires positive steps on the part of the authorities to engage established advisory and consultative bodies, to refer to them as needs may arise and to invite their in-put. An open and inclusive approach on the part of the authorities vis-à-vis these bodies and their members will contribute to better decisions and to greater confidence of the wider society.

III. Self-governance

- 14) The term “self-governance” implies a measure of control by a community over matters affecting it. The choice of the term “governance” does not necessarily imply exclusive jurisdiction. In addition, it may subsume administrative authority, management, and specified legislative and judicial jurisdiction. The State may achieve this through delegation or devolution, or, in the case of a federation, an initial division of constituent powers. Among OSCE participating States, “self-governance” arrangements are variously referred to as delegations of autonomy, self-government, and home rule. In no case is this to include any ethnic criterion for territorial arrangements. In paragraph 35 of the **Copenhagen Document**, OSCE participating States have noted “the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve

these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.” Following upon this, the **Report of the CSCE (Geneva) Meeting of Experts on National Minorities** noted in paragraph 7 of Part IV “that positive results have been obtained by some [participating States] in an appropriate democratic manner by, *inter alia*: [...] local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies chosen through free and periodic elections; self-administration by a national minority of aspects concerning its identity in situations where autonomy on a territorial basis does not apply; decentralized or local forms of government; [...] provision of financial and technical assistance to persons belonging to national minorities who so wish to exercise their right to establish and maintain their own educational, cultural and religious institutions, organizations and associations [...]”. Of a more general nature, the Preamble to the **European Charter of Local Self-Government** stresses “the principles of democracy and the decentralisation of power” as a contribution to “the safeguarding and reinforcement of local self-government in the different European countries”. In this last connection, the **European Charter of Local Self-Government** provides in Article 9 for the entitlement of adequate financial resources for the exercise of such decentralized authorities.

- 15) Insofar as the State holds responsibility in certain fields affecting the whole State, it must assure their regulation through the central authorities of the State. These typically include: defence, which is essential to maintain the territorial integrity of the State; macroeconomic policy, which is important insofar as the central government serves as a sort of equalizer between economically disparate regions; and the classical affairs of diplomacy. Insofar as other fields may have important national implications, these too must be regulated at least to some degree by the central authorities.

Regulation in these fields may also be shared, including with specially affected territorial units or minority groups (see recommendations 18 and 20). Such sharing of regulatory authority must nevertheless be consistent with human rights standards and be managed in a practical and coordinated manner.

One field which is well-established as being shared on either a territorial or a non-territorial basis, or both, and holds special importance both for the State as a whole and also for minority groups, is education. Article 5.1 of the **UNESCO Convention against Discrimination in Education** spells out in some detail how such sharing in this field should be achieved: “The States Parties to this Convention agree that: [...]”

- (b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or

approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction;

- (c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however: (i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty; (ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and (iii) That attendance at such schools is optional.”
- 16) The principle of democratic governance, as articulated in Article 21 of the **Universal Declaration of Human Rights**, Article 25 of the **International Covenant on Civil and Political Rights**, Article 3 of Protocol I to the **European Convention on Human Rights** and in OSCE standards is applicable at all levels and for all elements of governance. When institutions of self-governance are needed or desirable, the equal enjoyment by everyone of their rights requires application of the principle of democracy within these institutions.

A. Non-territorial arrangements

- 17) This section addresses non-territorial autonomy – often referred to as “personal” or “cultural autonomy” – which is most likely to be useful when a group is geographically dispersed. Such divisions of authority, including control over specific subject-matter, may take place at the level of the State or within territorial arrangements. In all cases, respect for the human rights of others must be assured. Moreover, such arrangements should be assured adequate financial resources to enable performance of their public functions and should result from inclusive processes (see Recommendation 5).
- 18) This is not an exhaustive list of possible functions. Much will depend upon the situation, including especially the needs and expressed desires of the minority. In different situations, different subjects will be of greater or lesser interest to minorities, and decisions in these fields will affect them to varying degrees. Some fields may be shared. One area of special concern for minorities is control over their own names, both for representative institutions and individual members, as provided in Article 11(1) of the **Framework Convention**. With regard to religion, the Recommendation does not advocate governmental interference in religious matters other than in relation to those powers (e.g. concerning personal civil status) delegated to religious

authorities. This Recommendation also does not intend that minority institutions should control the media – although persons belonging to minorities should have the possibility to create and use their own media, as guaranteed by Article 9(3) of the **Framework Convention**. Of course, culture has many aspects extending to fields such as welfare, housing and child care; the State should take into account minority interests in governance in these fields.

B. Territorial arrangements

- 19) There is a general trend in European States towards devolution of authority and implementation of the principle of subsidiarity, such that decisions are taken as close as possible to, and by, those most directly concerned and affected. Article 4(3) of the **European Charter of Local Self-Government** expresses this objective as follows: “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.” Territorial self-government can help preserve the unity of States while increasing the level of participation and involvement of minorities by giving them a greater role in a level of government that reflects their population concentration. Federations may also accomplish this objective, as may particular autonomy arrangements within unitary States or federations. It is also possible to have mixed administrations. As noted in recommendation 15, arrangements need not be uniform across the State, but may vary according to needs and expressed desires.
- 20) Autonomous authorities must possess real power to make decisions at the legislative, executive or judicial levels. Authority within the State may be divided among central, regional and local authorities and also among functions. Paragraph 35 of the **Copenhagen Document** notes the alternatives of “appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances”. This makes clear that there need not be uniformity within the State. Experience shows that powers can be divided even with respect to fields of public authority traditionally exercised by central government, including devolved powers of justice (both substantive and procedural) and powers over traditional economies. At a minimum, affected populations should be systematically involved in the exercise of such authority. At the same time, the central government must retain powers to ensure justice and equality of opportunities across the State.
- 21) Where powers may be devolved on a territorial basis to improve the effective participation of minorities, these powers must be exercised with due account for the minorities within these jurisdictions. Administrative and executive authorities must be accountable to the whole population of the territory. This follows from paragraph 5.2 of the **Copenhagen Document** which commits OSCE participating States to assure at all levels and for all persons “a form of

government that is representative in character, in which the executive is accountable to the elected legislature or the electorate”.

IV. Guarantees

A. Constitutional and legal safeguards

- 22) This section addresses the issue of “entrenchment”, that is, solidifying arrangements in law. Very detailed legal arrangements may be useful in some cases, while frameworks may be sufficient in other cases. In all cases, as noted in recommendation 5, arrangements should result from open processes. However, once concluded, stability is required in order to assure some security for those affected, especially persons belonging to national minorities. Articles 2 and 4 of the **European Charter of Local Self-Government** express a preference for constitutional arrangements. To achieve the desired balance between stability and flexibility, it may be useful to specify some reconsideration at fixed intervals, thereby depoliticizing the process of change in advance and making the review process less adversarial.
- 23) This Recommendation differs from Recommendation 22 insofar as it encourages the testing of new and innovative regimes, rather than specifying terms for alteration of existing arrangements. Responsible authorities may wish to follow different approaches in different situations among central authorities and minority representatives. Without compromising final positions, such an approach may yield good experiences, not least through the processes of innovation and implementation.

B. Remedies

- 24) In paragraph 30 of the **Copenhagen Document**, OSCE participating States “recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary.” The idea of effective remedies is also provided in Article 2(3) of the **International Covenant on Civil and Political Rights**, while “a judicial remedy” is specified in Article 11 of the **European Charter of Local Self-Government**.

Judicial review can be performed by constitutional courts and, in effect, by relevant international human rights bodies. Non-judicial mechanisms and institutions, such as national commissions, ombudspersons, inter-ethnic or “race” relations boards, etc., may also play critical roles, as envisaged by paragraph 27 of the **Copenhagen Document**, Article 14(2) of the International Convention on the Elimination of All Forms of Racial Discrimination, and paragraph 36 of the **Vienna Declaration and Programme of Action** adopted by the World Conference on Human Rights in 1993.

Guidelines on the use of Minority Languages in the Broadcast Media & Explanatory Note - 2003

Introduction

In its Helsinki Decisions of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities (HCNM) to be “an instrument of conflict prevention at the earliest possible stage”. This mandate was created largely in reaction to the situation in the former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by the Heads of State and Government in November 1990.

The first High Commissioner, Mr. Max van der Stoel, took up his duties on 1 January 1993. Drawing on his considerable personal experience as a former Member of Parliament, Foreign Minister of The Netherlands, Permanent Representative to the United Nations, and long-time human rights advocate, Mr. van der Stoel turned his attention to the many disputes between minorities and State authorities in Europe which had the potential, in his view, to escalate. He was succeeded on 1 July 2001 by the Swedish diplomat Ambassador Rolf Ekéus who was active in the Conference on Security and Co-operation in Europe (CSCE) during the period of post-Communist transition and is well known for his work on arms control and disarmament, most particularly as Executive Chairman of the United Nations Special Commission on Iraq (UNSCOM) where he led the weapons inspectors between 1991 and 1997. Acting quietly through diplomatic means, the HCNM has through the years been involved in over a dozen States, including Albania, Croatia, Estonia, Greece, Hungary, Kazakstan, Kyrgyzstan, Latvia, the former Yugoslav Republic of Macedonia, Moldova, Romania, Serbia and Montenegro, Slovakia and Ukraine. Involvement has focused primarily on situations where persons belonging to national/ethnic groups constitute the numerical majority in one State but the numerical minority in another (often neighbouring) State, thus engaging the interest of governmental authorities in each State and constituting a potential source of inter-State tension if not conflict. Indeed, such tensions have defined much of European history.

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and co-operative actor. While the HCNM is not a supervisory mechanism, he employs the international standards to which each State has agreed as his principal framework of analysis and the foundation of his specific recommendations. In this relation, it is important to recall

the commitments undertaken by all OSCE participating States, in particular those of the 1990 Copenhagen Document of the Conference on the Human Dimension which, in Part IV, articulates detailed standards relating to national minorities. All OSCE States are also bound by United Nations obligations relating to human rights, including minority rights, and the great majority of OSCE States are further bound by the standards of the Council of Europe.

Through the course of more than ten years of intense activity, the HCNM has identified certain recurrent issues and themes which have become the subject of his attention in a number of States in which he is involved. Among these are issues of minority education and use of minority languages, in particular as matters of great importance for the maintenance and development of the identity of persons belonging to national minorities. A third recurrent theme which has arisen in a number of situations in which the HCNM has been involved is that of forms of effective participation of national minorities in the governance of States. With a view to achieving an appropriate and coherent application of relevant minority rights in the OSCE area, the HCNM requested the Foundation on Inter-Ethnic Relations – a non-governmental organization (now defunct) established in 1993 to carry out specialized activities in support of the HCNM – to bring together three groups of internationally recognized independent experts to elaborate three sets of recommendations: **The Hague Recommendations Regarding the Education Rights of National Minorities** (1996); **The Oslo Recommendations regarding the Linguistic Rights of National Minorities** (1998); and **The Lund Recommendations on the Effective Participation of National Minorities in Public Life** (1999). These recommendations have subsequently served as references for policy- and law-makers in a number of States. The recommendations are available (in several languages) free of charge from the Office of the HCNM and may be accessed electronically at: <<http://www.osce.org/hcnm/publications>>.

One further issue which has engaged the interest of the HCNM is the use of minority language(s) as a vehicle of communication in the broadcast media. A number of States have taken steps to limit this use, most commonly through the adoption of legislation prescribing quotas for broadcasting time in a certain language (typically that of the majority, and usually designated the “official” or “State” language) – a practice which has generated negative reactions among minorities in a number of countries insofar as broadcasting possibilities are in effect restricted.

At the March 2001 OSCE Supplementary Human Dimension Meeting on Freedom of Expression a strong interest in issues concerning media and minorities was expressed by a number of OSCE participating States. Later that month in the Permanent Council, some delegations requested that the HCNM and the OSCE Representative on Freedom of the Media address these issues in co-operation with one another.

In seeking to respond to these concerns, the HCNM decided to undertake two parallel and complementary processes focusing on the use of language as a means of communication in the broadcast media. The first was a survey of State practice across the OSCE region in order to clarify the basic facts (essentially in terms of

legislation, principal regulations and critical jurisprudence) with regard to the regulation of minority languages in the broadcast media. The survey was carried out at the High Commissioner's request by the Programme in Comparative Media Law and Policy at the Centre for Socio-Legal Studies, Wolfson College, University of Oxford, and the Institute for Information Law, University of Amsterdam. The resulting study can be accessed electronically at: <www.ivir.nl/publications/mcgonagle/minority-languages.pdf>. In a second, separate but closely related process, the HCNM (in close co-operation with the Office of the OSCE Representative on Freedom of the Media), together with the directly responsible international organisations, engaged in a process of analysis of the specific content of relevant provisions of the applicable international instruments (and relevant case law). An initial meeting of experts comprising representatives of relevant international organizations, along with independent persons and non-governmental actors with particular expertise in this field was convened by the HCNM in March 2002. A further expert meeting took place in June 2003 to discuss a set of draft Guidelines on the Use of Minority Language(s) in the Broadcast Media based on a commissioned paper. On the basis of this work, the independent experts agreed in the autumn of 2003 on the accompanying Guidelines.

The independent experts were:

Ms. Julia Apostle (Canadian), Legal Officer, Article 19, United Kingdom; Dr. Elena Chernyavska (Ukrainian), Head of CEE Projects, MADP, European Institute for the Media, Germany; Ms María Amor Martín Estébanez (Spanish), Researcher and Consultant, Centre for Socio-Legal Studies University of Oxford, United Kingdom; Professor Karol Jakubowicz (Polish), Expert, National Broadcasting Council of Poland; Mr. Mark Lattimer (British), Director, Minority Rights Group International, United Kingdom; Mr Tarlach McGonagle (Irish), Researcher/Editor, the Institute for Information Law (IVIR), University of Amsterdam, the Netherlands; Professor Tom Moring (Finnish), Swedish School of Social Science, University of Helsinki, Finland; Professor Monroe Price (American), Cardozo School of Law, New York, and Co-Director, Programme in Comparative Media Law and Policy, Centre for Socio-Legal Studies, University of Oxford, United Kingdom.

Valuable input was also received at both meetings and in subsequent communications from: the Secretariat of the Council of Europe; the Legal Service of the European Commission; the office of the Council of the Baltic Sea States Commissioner on Democratic Development; and the office of the OSCE Representative on Freedom of the Media.

Insofar as existing standards of minority rights are part of human rights, the starting point of the consultations among the experts was to presume compliance by States with all other human rights obligations including, in particular, freedom from discrimination. It was also presumed that the ultimate object of all human rights is the full and free development of the individual human personality in conditions of equality. Consequently, it was presumed that civil society should be open and fluid and, therefore, integrate all persons, including those belonging to national minorities.

Moreover, insofar as the objective of good and democratic governance is to serve the needs and interests of the whole population, it was presumed that all governments seek to ensure the maximum opportunities for all those within their jurisdiction, including persons belonging to national minorities, to access the media and impart and receive information, including in their own language. This follows, *inter alia*, from the principles of pluralism, tolerance and broadmindedness and from the special role of independent and pluralistic media which is a basic condition for free, open and democratic societies.¹

The purpose of the accompanying Guidelines like The Hague, Oslo, and Lund Recommendations before them, is to encourage and facilitate the adoption by States of specific measures to alleviate tensions relating to national minorities and thus to serve the ultimate conflict prevention goal of the HCNM. It is the experience of the HCNM and consistent with international standards, that this be pursued in an open and inclusive manner which seeks to accommodate – and to integrate in the broader society – the range of express demands and existing diversity. This maximises and contributes to social cohesion.

In seeking to clarify the content of existing rights, the Guidelines aim to provide States with some practical guidance in developing policies and law which fully respect the letter and spirit of internationally agreed standards and which can balance and meet the needs and interests of all sectors of the population, including those of persons belonging to linguistic minorities. While consistently reflecting the international standards, the Guidelines are sensitive to real situations in various States – including perceptions regarding the vulnerability of (and consequent desire to promote) certain languages. In order to provide further guidance in practical situations and drawing on examples of good practice identified in the survey of State practice, suggestions are provided for ways in which States may meet their obligations with respect to linguistic minorities.

The Guidelines are also intended to be read and implemented in the context of technological developments in the modern broadcast media with the increasing possibilities in the field of communication for the use of multiple languages. The important role of the free market in ensuring a flourishing diverse and independent broadcast media are also reflected in the Guidelines, which provide options for the realisation of obligations relating to minority language use whether through public or private sector broadcasting.

The Guidelines are divided into four sub-headings which group the seventeen individual Guidelines under general principles, policy, regulation, and the promotion of minority languages. All guidelines are to be interpreted in accordance with the General Principles in Part I. In Part II, the need for States to develop policy and law in this area is established and guidance in this respect is provided. Some parameters for the limits of permissible regulation are then defined. In the final

¹ See, e.g., *Handyside v. United Kingdom*, Judgment of European Court of Human Rights of 7 December 1976, Series A. No. 24, para. 49. See also the preamble to the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension in which OSCE participating States expressed their commitment to the ideals of democracy and pluralism.

section, a number of alternatives are suggested for the promotion of minority languages. A more detailed explanation of each recommendation or guideline is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is found.

It is hoped that the Guidelines will be widely used and broadly distributed.

Recommendations

I. General principles

1) *Freedom of Expression*

The freedom of expression of every person, including persons belonging to national minorities, includes the right to receive, seek and impart information and ideas in a language and media of their choice without interference and regardless of frontiers.

The exercise of this freedom may be subject only to such limitations as are compatible with international law.

2) *Cultural and Linguistic Diversity*

States should guarantee the freedom of choice by creating an environment in which a variety of ideas and information can flourish as communicated in various languages.

3) *Protection of Identity*

All persons, including persons belonging to national minorities, have the right to maintain and develop their identity, including through the use of their language(s), in and through the broadcast media.

4) *Equality and Non-Discrimination*

All persons, including persons belonging to national minorities, have the right to enjoy the freedom of expression and to maintain and develop their identity in and through the broadcast media in conditions of equality and without discrimination. States should take special and concrete measures, where necessary, to ensure that persons belonging to national minorities enjoy effective equality with regard to the use of their language in the broadcast media.

II. Policy

- 5) States should develop policy to address the use of minority language(s) in the broadcast media. Policy should be based on an ascertainment of the needs of persons belonging to national minorities to maintain and develop their identities.

In the development and application of such policy, persons belonging to national minorities should enjoy effective participation, including in consultative processes and representation in relevant institutions and bodies.

- 6) Independent regulatory bodies should be responsible for the implementation and enforcement of State policy. Such bodies should be established and should function in a transparent manner.
- 7) State policy should support public service broadcasting which provides a wide and balanced range of informational, educational, cultural and entertainment programming of high quality in order, *inter alia*, to meet the needs of persons belonging to national minorities. States should maintain and, where necessary, establish the financial, technical and other conditions for public service broadcasters to fulfill their mandates in this field.
- 8) State policy should facilitate the establishment and maintenance by persons belonging to national minorities of broadcast media in their own language.

III. Regulation

- 9) *Permissibility of regulation*

States may regulate the broadcast media for the protection and promotion of the freedom of expression, cultural and linguistic diversity, the maintenance and development of cultural identity, and for the respect of the rights or reputations of others. Such regulation, including licensing, must be prescribed by law, based on objective and non-discriminatory criteria and shall not aim to restrict or have the effect of restricting broadcasting in minority languages.

- 10) *Promotion of languages*

In regulating the use of language in the broadcast media, States may promote the use of selected languages. Measures to promote one or more language(s) should not restrict the use of other languages. States may not prohibit the use of any language in the broadcast media. Measures to promote any language in broadcast media should not impair the enjoyment of the rights of persons belonging to national minorities.

11) *Proportionality of regulation*

Any regulation, whether prescriptive or proscriptive, must pursue a legitimate aim and be proportionate to that aim. When assessing the proportionality of any regulation, specific factors concerning the nature of the media and wider social environment should be considered. Such factors include:

- **The nature and objectives of the measure**, including its potential to contribute to the quality and balance of programming, in pursuit of the protection and promotion of freedom of expression, cultural and linguistic diversity, and the maintenance and development of cultural identity.
- **The existing political, social and religious context**, including cultural and linguistic diversity, structures of governance, and regional characteristics.
- **The number, variety, geographical reach, character, function and languages of available broadcasting services** – whether public, private or foreign – at all levels (national, regional and local). The financial costs to the audience of the various services, technical possibilities for reception and the quantity as well as the quality of broadcasting, both in terms of the scheduling of slots and the type of programming, are all relevant considerations.
- **The rights, needs, expressed desires and nature of the audience(s) affected**, including their numerical size and geographical concentration, at each level (national, regional and local).

12) *Translation Restrictions*

Minority language broadcasting should not be subject to the imposition of undue or disproportionate requirements for translation, dubbing, post-synchronisation or subtitling.

13) *Transfrontier Broadcasting*

The free reception of transfrontier broadcasts, whether direct or by means of retransmission or rebroadcasting, shall not be prohibited on the basis of language.

The availability of foreign broadcasting in a minority language does not negate the State's obligation to facilitate domestically produced broadcasting in that language nor does it justify a reduction of the broadcast time in that language.

IV. Promotion of minority languages

14) *State Support*

The State should support broadcasting in minority languages. This may be achieved through, *inter alia*, provision of access to broadcasting, subsidies and capacity building for minority language broadcasting.

15) *Access to Broadcasting*

States should provide meaningful access to minority language broadcasting through, *inter alia*, the allocation of frequencies, establishment and support of broadcasters, and program scheduling. In this regard, account should be taken of the numerical size, geographical concentration, and location of persons belonging to national minorities together with their needs and interests.

The availability of minority language broadcasting at regional or local level does not justify the exclusion of minority language programming in nationwide broadcasting, including for dispersed minorities.

A. FREQUENCIES

- When awarding licenses, States should consider providing frequencies for minority language broadcasting in whole or in part.
- States should consider providing “open channels” – i.e. program transmission facilities, which use the same frequency, shared by a number of linguistic groups within the service area – where there are technical limitations on the number of frequencies available and/or groups that do not have sufficient resources to sustain their own services.

B. BROADCASTERS

- States should prescribe appropriate requirements for State or public service broadcasters with regard to the provision of programming in minority languages.
- States should also consider creating favourable conditions (financial or otherwise) to encourage private minority language broadcasting. This may be achieved through the allocation of licenses, including calls for tender or in response to a proposal from an applicant. States may also choose to exempt minority language broadcasters from competition legislation or create special regimes to relieve them of certain administrative burdens.
- Where there is no private minority language broadcasting, States should actively assist its establishment, as necessary.

C. PROGRAMMING

States should ensure that the amount of time allocated and the scheduling of minority language broadcasting should reflect the numerical size and concentration of the national minority and be appropriate to their needs and interests. Consideration must also be given to the minimum amount of time and appropriate scheduling needed for small minorities to have meaningful access to broadcast media in their language. These aims may be achieved through licensing, including through stipulation of lengths and periods of minority language broadcasting.

16) *Public Funding*

States should consider providing financial support for minority language broadcasting. This can be achieved through direct grants, favourable financing/tax regimes, and exemption from certain fees payable on award or alteration of a license. To ensure effective equality, minority language broadcasters in numerically smaller communities may require funds or facilities disproportionate to their size as a percentage of available resources.

States should encourage and facilitate, including through the provision of financial assistance, the production and distribution of audio and audiovisual works in minority languages.

17) *Capacity Building*

States should contribute to the building of the capacity of minority language broadcasting. This may be done through technical support to distribute minority language productions both domestically and abroad and to facilitate transfrontier broadcasting in minority languages. In addition, States should consider supporting the education and training of personnel for minority language broadcasting.

Explanatory Note

This explanatory note provides a brief overview of the principal international standards upon which the Guidelines are based.

I. General principles

- 1) The right to **freedom of expression** is a cornerstone of international human rights protection. It comprises the right to receive and impart information and ideas by everyone without interference from public authority and regardless of frontiers. It is enshrined in Article 19 of the 1948 Universal Declaration of

Human Rights (UDHR), Article 19 of the 1966 International Covenant on Civil and Political Rights (ICCPR), and Article 10 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). For example, paragraphs 2 and 3 of Article 19 of the ICCPR state:

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

The U.N. Human Rights Committee, established to supervise implementation of the ICCPR, has clarified in its General Comment 10 (1983) that the right to freedom of expression enshrined in Article 19 includes not only the freedom to seek and receive information and ideas of all kinds, but also in whatever medium. With regard to the ECHR, the European Court of Human Rights in the cases of *Oberschlick v. Austria* (judgment of 22 May 1991, Series A, No. 204, para. 57) and *Autronic AG v. Switzerland* (judgment of 22 May 1990, Series A, No. 178, para. 47) has held that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. Within the CSCE/OSCE, the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension (Copenhagen Document, para. 9.1) and the 1991 Document of the Cracow Symposium on the Cultural Heritage of the CSCE participating States (Cracow Document, para. 6.1) reiterate the right to freedom of expression. According to the Copenhagen Document, persons belonging to national minorities have the right to use their mother tongue in private and in public (para. 32.1) as well as the right to disseminate, have access to, and exchange information in their mother tongue (para. 32.5).

In *Handyside v. United Kingdom* (judgment of 7 December 1976, Series A, No. 24, para. 49), the European Court of Human Rights has provided the following further interpretation of Article 10 of the ECHR: "Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. This means, amongst other things, that every

‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued”.

- 2) Under Article 15(a) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) States parties recognize the right of everyone to take part in cultural life. Article 27 of the ICCPR protects the right of persons belonging to, *inter alia*, linguistic minorities to enjoy their own culture or to use their own language in community with other members of the group. The safeguarding and promotion of pluralism in the broadcast media, reflecting **cultural and linguistic diversity**, is a necessary component of the freedom of expression. According to Article 2 of the 2001 UNESCO Universal Declaration on Cultural Diversity, policies ensuring cultural pluralism give expression to the reality of cultural diversity. In Article 6, the Declaration notes that cultural diversity is guaranteed by, *inter alia*, the freedom of expression, media pluralism and multilingualism. In the Case of *Informationsverein Lentia and Others v. Austria* (judgment of 24 November 1993, Series A, No. 276), the European Court of Human Rights has emphasised the importance of pluralism for freedom of expression. In that case, the Court specified (in para. 38) that the public’s entitlement to receive information and ideas of general interest “cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor. This observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely.” In the same vein, Article 9(4) of the Council of Europe’s 1994 Framework Convention for the Protection of National Minorities (Framework Convention) requires States Parties to “adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism”.

Moreover, Article 10*bis* of the 1989 (amended 2002) European Convention on Transfrontier Television (ECTT) requires States Parties to endeavor to avoid endangering **media pluralism**. The Declaration on the Freedom of Expression and Information, adopted by the Committee of Ministers of the Council of Europe in 1982, in Article II(d) stipulates the objective to achieve “the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions”. The OSCE participating States, in paragraph 6.2 of the Cracow Document, have expressed their conviction that a diversity of private-sector broadcasters “helps to ensure pluralism and the freedom of artistic and cultural expression”.

- 3) The duty of the State to protect the **linguistic (and other) identity** of persons belonging to national minorities is entrenched in a number of international instruments and in the jurisprudence of the European Court of Human Rights. Article 1 of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (U.N. Declaration on Minorities) is particularly relevant:

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 4(2) further stipulates that “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards”. Article 17(a) of the 1989 U.N. Convention on the Rights of the Child requires States Parties to “encourage the mass media to disseminate information and material” in accordance with the Convention’s educational goals, including the development of respect for the child’s own cultural identity and language as prescribed in Article 29. The Framework Convention echoes these provisions. In its Preamble, the Framework Convention states that a pluralist and genuinely democratic society should not only respect the linguistic identity of each person belonging to a national minority, but should “also create appropriate conditions enabling them to express, preserve and develop this identity.” Article 5(1) of the same instrument explicitly places an obligation on States Parties to promote the conditions necessary for persons belonging to national minorities “to preserve the essential elements of their identity,” including their language. OSCE participating States are committed to protect, *inter alia*, the linguistic identities of persons belonging to national minorities according to the 1989 Concluding Document of the Vienna Follow-up Meeting 1986-1989 of the Conference on Security and Co-operation in Europe (Vienna Document, Principles, para. 19), the Copenhagen Document (paras. 32 and 33), and the 1991 Report of the CSCE Meeting of Experts on National Minorities in Geneva (Geneva Document, Chapters I, III, IV and VII).

- 4) The **prohibition of discrimination** on the basis of, *inter alia*, language is a bedrock principle of international human rights law. International instruments that prohibit discrimination expressly on the basis of language include: the UDHR (Article 2); the ICCPR (Articles 2(1) and 26); the ICESCR (Article 2(2)); the U.N. Declaration on Minorities (Article 2(1)); the ECHR (Article 14 and Article 1 of Protocol 12); and the 2000 Charter of Fundamental Rights of the European Union (Article 21). Among OSCE documents, analogous commitments appear in the 1975 Helsinki Final Act (Principle VII) and the Vienna Document (Principles, para. 13.7), while the Copenhagen Document prohibits “any discrimination” (para. 5.9).

The principle of non-discrimination includes a duty to treat differently persons whose situations are different, so that **effective equality** can be achieved. Paragraph 19 (under Principles) of the Vienna Document, for example, commits OSCE participating States to ensure the “full equality” of persons

belonging to national minorities. If difference in treatment is to be non-discriminatory, it must be based on reasonable and objective criteria, have a legitimate aim, and must exhibit a reasonable relationship of proportionality between the differential treatment and the aim pursued. This principle is discussed by the U.N. Human Rights Committee in its General Comment 18 on Non-Discrimination (1989) and by the European Court of Human Rights specifically in connection with linguistic rights in its seminal decision in the *Belgian Linguistics Case* (judgment of 23 July 1968, Series A, No. 6).

The principle of non-discrimination includes the possible use of **special and concrete measures** which are aimed at accelerating and achieving *de facto* equality for persons belonging to national minorities. This concept appears explicitly in Articles 1(4) and 2(2) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and Articles 3 and 4 of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. In paragraph 31 of the Copenhagen Document, OSCE participating States have committed to adopt, “where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms”. Article 4(1) of the U.N. Declaration on Minorities similarly stipulates that States “shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”. Article 4(2) of the Framework Convention also requires States Parties to adopt adequate measures in order to promote full and effective equality for persons belonging to national minorities, in respect of which due account shall be taken of their specific conditions. Article 7(2) of the 1992 European Charter for Regional or Minority Languages (European Language Charter) explicitly states that measures aimed at promoting the equality of minority languages should not be considered discriminatory.

II. Policy

- 5) OSCE participating States have undertaken to protect and **create conditions** for the promotion of linguistic and other aspects of the identity of persons belonging to national minorities on their territory (Copenhagen Document, para. 33). The Framework Convention prescribes essentially the same obligation in Article 5(1). Article 9(4) of the Framework Convention also requires States Parties to adopt “adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism”. Article 7(1) of the European Language Charter requires that States Parties “base their policies, legislation and practice” on, *inter alia*, “the need for resolute action to promote regional and minority languages in order to safeguard them,” and “the facilitation and/or encouragement of the use of regional or minority languages, in speech [...] in public and private life”. In Article 7(3), the Parties undertake to encourage the mass media to promote “mutual understanding

between all the linguistic groups of the country". The Convention on the Rights of the Child, in Article 17(d), stipulates that "States Parties shall encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous".

OSCE participating States have undertaken to create conditions for persons belonging to national minorities to have equal opportunity to be effectively involved in the public life, economic activities, and building of their societies (Chapter IV of the Geneva Document). Article 15 of the Framework Convention states that "The Parties shall create the conditions necessary for the **effective participation** of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them". In paragraph 33 of the Copenhagen Document, OSCE participating States have undertaken when adopting measures to, *inter alia*, protect the linguistic identity of national minorities, and to conduct "due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State". In Chapter III of the Geneva Document, OSCE participating States have recognized that appropriate democratic participation of persons belonging to national minorities or their representatives in decision-making or consultative bodies constitutes an important element of effective participation in public affairs. Article 11(3) of the European Language Charter requires Parties to ensure that the interests of minority language users are represented or taken into account specifically within broadcast media regulatory bodies.

- 6) The need for **independent regulatory bodies** derives from the principles of democracy and good governance and from international best practices. The Council of Europe's Committee of Ministers Recommendation No. R (99) 1 to Member States on Measures to Promote Media Pluralism notes that "national bodies responsible for awarding licences to private broadcasters should pay attention to pluralism in the discharge of their mission" (Appendix, item I, Regulation of ownership: broadcasting and the press). More specifically, the 1998 Oslo Recommendations regarding the Linguistic Rights of National Minorities states in Recommendation 10 that public media bodies "overseeing the content and orientation of programming should be independent and should include persons belonging to national minorities serving in their independent capacity".

- 7) In Recommendation No. R (96) 10 of the Committee of Ministers of the Council of Europe to Member States on the Guarantee of the Independence of Public Service Broadcasting, the role of **public service broadcasting** is underlined "as an essential factor of pluralistic communication which is accessible to everyone at both national and regional levels, through the provision of a basic comprehensive programme service comprising information, education, culture and entertainment". The role of public service broadcasting in ensuring programming of quality and balance has been recognized by the European Court of Human Rights in, e.g., the *Lentia Case*

(para. 33). The European Language Charter explicitly contemplates in Article 11(1) broadcasters carrying out “a public service mission” to address the needs of users of minority languages. The Council of Europe’s Committee of Ministers Recommendation Rec (2003) 9 to Member States on Measures to Promote the Democratic and Social Contribution of Digital Broadcasting stresses that the role of public service broadcasters in a democratic society is to support “the values underlying the political, legal and social structures of democratic societies, and in particular respect for human rights, culture and political pluralism”.

According to the Committee of Ministers of the Council of Europe “while public service broadcasters have a special commitment to promote a culture of tolerance and understanding, the broadcasting media as a whole are a potent force for creating an atmosphere in which intolerance can be challenged” (Appendix to Recommendation No. R (97) 21 to Member States on The Media and the Promotion of a Culture of Tolerance, item 5). In Recommendation No. R (99) 14 to Member States on Universal Community Service Concerning New Communication and Information Services, the Committee of Ministers points to the synergetic effects of co-operation between public authorities and the private sector for the benefit of users of new communication and information services.

- 8) The possibility for persons belonging to minorities to **establish and maintain broadcast media** in their own language is guaranteed by Article 9(3) of the Framework Convention. Article 11 of the European Language Charter specifies options which States may pursue in order to realize such possibilities for linguistic minorities.

III. Regulation

- 9) Regulation of the broadcast media must be **in conformity with the general principles** enumerated in these Guidelines, including freedom of expression, the protection of cultural and linguistic diversity through minority language broadcasting, and the protection of linguistic identity, without discrimination. Regulations that interfere with the right to freedom of expression are subject to the requirements of Article 19(3) of the ICCPR and Article 10(2) of the ECHR, the latter of which stipulates in part that no restrictions shall be placed on the exercise of these freedoms other than such “as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

In accordance with Article 10(1) of the ECHR, licensing constitutes a possible avenue for media regulation. Article 9(2) of the Framework Convention states

that with regard to freedom of expression and access by national minorities to the media, States Parties may require “licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.” Within the OSCE, in both the Cracow Document (para. 6.1) and the report of the Geneva Document (Chapter VII), participating States have committed to regulating the broadcast media only as prescribed by law and consistent with international standards.

- 10) The OSCE participating States recognize the right of persons belonging to national minorities to “disseminate, have access to and exchange information in their mother tongue” (Vienna Document, Co-operation in Humanitarian and Other Fields, Human Contacts, para. 45; Copenhagen Document, para. 32.5). This right should not be impaired through licensing or other types of regulation. The European Commission of Human Rights in its decision on admissibility in the *Case of Verein Alternatives Lokalradio Bern v. Switzerland* (16 October 1986, App. No. 10746/84), citing the *Handyside* judgment, stated that a licensing system must respect the requirements of pluralism, tolerance and broadmindedness. The Commission explained that this includes the language of the broadcast:

[...] Refusal to grant a broadcasting licence may raise a problem under Article 10, in conjunction with Article 14 of the [European] Convention in specific circumstances. Such a problem would arise, for example, if the refusal to grant a licence resulted directly in a considerable proportion of the inhabitants of the area concerned being deprived of broadcasts in their mother tongue.

With regard to private media, the Parliamentary Assembly of the Council of Europe in paragraph 17(vi) of Recommendation 1589 (2003) on Freedom of Expression in the Media in Europe has urged Member States “to abolish restrictions on the establishment and functioning of private media broadcasting in minority languages”.

- 11) With regard to the **proportionality of any regulation**, the European Court of Human Rights has consistently found Article 10 of the ECHR to require that broadcasting regulations pursue a legitimate aim and be proportionate to that aim.

In paragraph 32 of the *Lentia Case*, the Court enumerated the following considerations, other than technical, for appropriate licensing: “the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of the specific audience and the obligations derived from international legal instruments”. In its judgment in the case of *Tele 1 Privatfernsehgesellschaft MBH v. Austria* (21 September 2000, App. No. 32240/96, paras. 39-40), the Court found that the **size of the target audience and their ease of access** to alternative broadcasts (e.g., through cable television) are relevant factors in determining the proportionality of restrictions. In the *Verein Alternatives Case*, the

Commission specified that political circumstances – “such as cultural and linguistic pluralism, balance between lowland and mountain regions and a balanced federalist policy” – may also be taken into account when assessing proportionality of regulation.

- 12) The regulation of the **translation, dubbing, post-synchronisation and subtitling** of audiovisual works in minority languages and into minority languages should be consistent with the right to freedom of expression, contribute to the fulfilment of international obligations regarding minority protection as well as the promotion of understanding, tolerance and friendship between persons belonging to national minorities and the majority population of the State. Regulations should not interfere with the broadcasting or the receipt of broadcasts in minority languages. Article 12 of the European Language Charter requires States Parties to foster access to works produced in regional or minority languages by aiding and developing translation, dubbing, post-synchronisation and subtitling, and, if necessary, by creating, promoting and financing translation and terminological research services.
- 13) The ICCPR and ECHR guarantee the freedom of expression “regardless of frontiers”. The **free reception of transfrontier broadcasting** is an aspect of the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers particularly with those with whom they share an ethnic, cultural, linguistic or religious identity, or common cultural heritage, as stipulated in Article 17 of the Framework Convention and, in similar terms, in paragraph 32.4 of the Copenhagen Document.

Article 4 of the ECTT states, in part, that the Parties shall “guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this convention”. In addition, Article 11(2) of the European Language Charter, while permitting regulation, states that “The Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language”.

Finally, the principle that transfrontier broadcasting does not relieve States of their obligation to facilitate domestically produced broadcasting is derived from Article 9 of the Framework Convention. According to the Advisory Committee under the Framework Convention, “availability of [...] programmes from neighbouring states does not obviate the necessity for ensuring programming on domestic issues concerning national minorities and programming in minority languages” (2002 Opinion on Albania, para. 50). More specifically, Recommendation 11 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities states that “Access to media originating from abroad shall not be unduly restricted. Such access

should not justify a diminution of broadcast time allocated to the minority in the publicly funded media of the State of residence of the minorities concerned”.

IV. Promotion of minority languages

- 14) The principle that States should **support broadcasting in minority languages** is reflected in a variety of international instruments. Under Article 27 of the ICCPR States Parties are obliged to ensure the effective enjoyment of the rights of minorities and to take such positive measures as may be necessary in order to protect the rights of members of minority groups to enjoy and develop their culture and language. The U.N. Declaration on Minorities states in Article 4(1) that “States shall take measures where required” to ensure that persons belonging to national minorities effectively exercise their human rights. The Framework Convention states in Article 6(1) that Parties shall “promote mutual respect and understanding and co-operation” among persons, “irrespective of linguistic identity”, through, *inter alia*, the media. The European Language Charter states in Article 7(1)(c) that the Parties agree on “the need for resolute action to promote regional or minority languages in order to safeguard them”. Under Article 10(3) of the ECTT, States Parties “undertake to look together for the most appropriate instruments and procedures to support, without discrimination between broadcasters, the activity and development of European production, particularly in countries with a low audiovisual production capacity or restricted language area”. More specifically, Article 11(1)(a, b and c) of the European Language Charter requires the State to create, encourage or facilitate radio or television channels or programming in regional or minority languages. Moreover, Article 11(1)(d) of the European Language Charter requires States Parties “to encourage and/or facilitate the production and distribution of audio and audiovisual works in regional or minority languages”.

Likewise, international instruments point explicitly to the need to provide **meaningful access** to minority language broadcasting. The Framework Convention, for example, provides in Article 9(4) that: “In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities”. Article 9(1) forbids discrimination against persons belonging to national minorities in their access to the media. The European Language Charter obliges States Parties in Article 12(1)(a) to “foster the different means of access to works produced in [regional or minority] languages”.

- 15) The requirements that States, when providing meaningful access to minority language broadcasting, take into account the **numerical size, concentration and distribution as well as needs and interests** of persons belonging to national minorities, are intended to assist States in implementing effective equality of access. The European Language Charter, in Article 11(1), states that policy towards the media should be designed,

inter alia, “according to the situation of each language”. Recommendation 9 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities states more specifically that broadcast time and quality should be “commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs”. In facilitating access to the media for persons belonging to national minorities, the Framework Convention requires States Parties to permit cultural pluralism and to promote tolerance (Article 9(4)) as well as to promote mutual respect and understanding and co-operation among all persons (Article 6(1)). Article 7(1)(e) of the European Language Charter highlights the importance of the maintenance of links, including through broadcasting, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages. The same instrument also underlines the importance of the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire (Article 7(1)(g)). Accordingly, an appropriate level of minority language broadcasting should be encouraged at the nationwide level. This is particularly relevant for dispersed minorities.

Subparts A, B and C of this section of the Guidelines present a non-exhaustive list of recommended ways that States may promote minority languages in the broadcast media. They reflect best State practices as well as the principles set out in the Guidelines. The special responsibility to enable the existence of **public service broadcasting** in minority languages is highlighted. The Central European Initiative’s 1994 Instrument for the Protection of Minorities states in Article 19, *inter alia*, that “In [the] case of TV and radio in public ownership, the States will assure, whenever appropriate and possible, that persons belonging to national minorities have the right of free access to such media including the production of such programmes in their own language.” In the framework of the EU, the June 1997 Protocol on the System of Public Broadcasting in the Member States to the Treaty of Amsterdam establishes that “the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”.

Encouragement of minority language broadcasting by the **private media** is possible through a variety of means, including **licensing**. The Council of Europe’s Committee of Ministers has recommended to Member States that “national bodies responsible for awarding licences to private broadcasters should pay particular attention to the promotion of media pluralism in the discharge of their mission” (Appendix to Recommendation No. R (99) 1 to Member States on Measures to Promote Media Pluralism, item I, Regulation of ownership: broadcasting and the press). The OSCE Geneva Document, in Chapter VII, calls for specific support by the State to the electronic mass media by providing information so that the latter takes into account in their programmes, *inter alia*, the linguistic identity of national minorities.

- 16) The call for States to consider providing **financial support** for minority language broadcasting is derived from the requirements of effective equality in access to the broadcast media for persons belonging to national minorities. Article 19 of the Central European Initiative's Instrument for the Protection of Minority Rights stipulates, *inter alia*, that "States guarantee the right of persons belonging to a national minority to avail themselves of the media in their own language, in conformity with relevant State regulations and with possible financial assistance". The principle of non-discrimination requires that minority language broadcasters receive an equitable proportion of State support for the media. Article 11(1)(f) of the European Language Charter stipulates that States Parties must either "cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media," or "apply existing measures for financial assistance also to audiovisual production in the regional or minority languages".

Regarding the **production and distribution of audiovisual works** in minority languages, as noted above Article 11(1)(d) of the European Language Charter obliges States Parties "to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages." In Recommendation No. R (93) 5 of the Committee of Ministers of the Council of Europe, entitled Containing Principles Aimed at Promoting the Distribution and Broadcasting of Audiovisual Works Originated in Countries or Regions with a Low Audiovisual Output or a Limited Geographic or Linguistic Coverage on the European Television Markets, the Committee has expressed the view that the freedoms enshrined in Article 10 of the ECHR "can be exercised meaningfully by audiovisual producers in countries and regions with a low audiovisual output or a limited geographic or linguistic coverage by enabling them to have an effective access to the European television markets for the distribution of their works". Within the European Union, Recital 31 of the Preamble to Directive 97/36/EC stresses the need for the Community to promote independent producers "taking into account the audiovisual capacity of each Member State and the need to protect lesser used languages of the European Union." In defining the notion of "independent producer", Member States should "take appropriate account of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights" (Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on The Co-ordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities).

- 17) The requirement to **build the capacity** of minority language broadcasting is implicit in the requirements of many of the instruments cited above. Article 11(1)(g) of the European Language Charter explicitly requires States Parties "to support the training of journalists and other staff for media using regional or minority languages".

Recommendations on Policing in Multi-Ethnic Societies & Explanatory Note - 2006

Introduction

In its Helsinki Decisions of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities (HCNM) to be “an instrument of conflict prevention at the earliest possible stage”. This mandate was created largely in reaction to the situation in the former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by the Heads of State and Government in November 1990.

Through the course of more than ten years of intense activity, the HCNM has identified certain recurrent issues and themes concerning minorities which have become the subject of his attention in a number of States in which he is involved. Among these are the issues of minority education and the use of minority languages, which are of particular importance for the maintenance and development of the identity of persons belonging to national minorities. Other important issues are the effective participation of national minorities in the governance of States and the use of minority languages as a vehicle of communication in the broadcast media. With a view to achieving an appropriate and coherent application of relevant minority rights in the OSCE area, the HCNM requested four groups of internationally recognized independent experts to elaborate four sets of guidance on these recurrent issues: **The Hague Recommendations regarding the Education Rights of National Minorities** (1996); **The Oslo Recommendations regarding the Linguistic Rights of National Minorities** (1998); **The Lund Recommendations on the Effective Participation of National Minorities in Public Life** (1999); and **Guidelines on the use of Minority Languages in the Broadcast Media** (2003). These documents have subsequently served as references for law and policy makers in a number of States. The recommendations are available (in several languages) free of charge from the Office of the HCNM and may be accessed electronically (<www.osce.org/hcnm>).

Another issue which has arisen in several situations in which the HCNM has been involved is that of policing in multi-ethnic societies. In a number of States, the HCNM has encountered the absence of institutional mechanisms to support the interaction and co-operation between police and persons belonging to national minorities. In combination with the lack of appropriate training for operation in a multi-ethnic society, an often mono-ethnic composition of the police service and discriminatory practices, police have generated negative reactions among national minority communities in a

number of situations and even become a conflict catalyst. In contrast, the HCNM has seen in other States how efforts to make the police service more representative of the community it serves and to enhance communication between police and national minority communities not only strengthened inter-ethnic relations but also increased the operational effectiveness of police.

Reflecting this important role of the police, the HCNM engaged in a process of analysis of international standards and practices in the area of policing. To this end, the HCNM, in consultation with the Strategic Police Matters Unit in the OSCE Secretariat, appointed a consultant (Dr Robin Oakley, independent consultant and Honorary Research Fellow at the Centre for Ethnic Minority Studies, Royal Holloway – University of London) to advise him and brought together a group of highly experienced experts comprising representatives of relevant international organizations along with senior police officers, independent experts and non-governmental actors with particular expertise in the field. An initial meeting of the experts was convened by the HCNM in June 2005, followed by a meeting in October and a concluding meeting in December. As a result of this process, the following set of recommendations on policing in multi-ethnic societies was elaborated.

The independent experts were:

Mr. Steve Bennett, Director, Police Education and Development, OSCE Mission in Kosovo; Ms. Ilze Brands Kehris, Director, Latvian Centre for Human Rights and Ethnic Studies; Dr Anastasia Crickley, Chairperson, European Monitoring Centre on Racism and Xenophobia; Mr. Francesc Guillen, Chief of Staff, Deputy Minister of the Interior, Government of Catalunya, Spain; Professor Kristin Henrard, Department of International and Constitutional Law, University of Groningen; Dr Gordan Kalajdziev, Member Executive Board, Macedonian Helsinki Committee on Human Rights; Dr Jenő Kaltenbach, Parliamentary Commissioner of Hungary for National and Ethnic Minorities Rights; Mr. Michael Kellett, Representative of the Network of Police and Human Rights Co-ordinators of the Council of Europe, Head of North West Regional Asset Recovery Team, United Kingdom; Dr Robin Oakley, Independent Consultant; Mr. Stig Odorf, Police Unit, General Secretariat of the European Union, Council of the European Union; Mr. Timothy Parsons, Hate Crimes Expert, OSCE ODIHR Tolerance and Non-Discrimination Programme; Mr. Karl Pettersson, Police Affairs Officer, Strategic Police Matters Unit, OSCE Secretariat; Mr. Ivan Shushkevich, Police Colonel (ret.), Deputy Director General, Military Chiefs Club of the Russian Federation; Mr. Chris Taylor, Independent Consultant; Mr. Rinus Visser, Police Academy of the Netherlands.

The purpose of the accompanying Recommendations like The Hague, Oslo, Lund Recommendations and the Media Guidelines before them, is to encourage and facilitate the adoption by States of specific measures to alleviate tensions relating to national minorities and thus to serve the ultimate conflict prevention goal of the HCNM. The Recommendations are formulated in terms of the policing of “national

minorities” in “multi-ethnic societies”. In the view of the experts, the term “national minorities” encompasses a wide range of minority groups, including religious, linguistic and cultural as well as ethnic minorities. In principle, the Recommendations are relevant for all of those groups. Similarly, it should be noted that the word “minorities” is used at some points in the Recommendations as a convenient abbreviation for the phrase “persons belonging to national minorities”.

The Recommendations aim to provide States with some practical guidance in developing policies and law in accordance with international norms and standards, and based on international experience and best practice which can balance and meet the needs and interests of all sectors of the population, including those of persons belonging to national minorities. Obviously the Recommendations need to be implemented in a way which is sensitive to the specific situation in each State – including such factors as the ongoing police reform process and the actual situation on the ground.

The Recommendations are divided into six sub-headings which group the twenty-three individual recommendations under general principles; recruitment and representation; training and professional support; engaging with ethnic communities; operational practices; and the prevention and management of conflict. All guidelines are to be interpreted in accordance with the General Principles in Part I which also establish the need for States to develop policy and law in this area and provide guidance in this respect. In Part II through Part VI some specific points of action are suggested to the governments, police services and national minority communities. A more detailed explanation of each recommendation or guideline is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is found and examples of good practice are elaborated.

The central message of the Recommendations is that good policing in multi-ethnic societies is dependent on the establishment of a relationship of trust and confidence, built on regular communication and practical co-operation, between the police and the minorities. All parties benefit from such a relationship. The minorities benefit from policing which is more sensitive to their concerns and more responsive to their requirements for personal protection and access to justice. The police benefit from greater effectiveness, since good communication and co-operation are keys to effective policing in any community. The state benefits both from the integration of minorities and from the greater effectiveness of its policing. For States seeking to integrate minorities, and at the same time develop professional service-oriented community policing, the Recommendations provide a practical way forward.

It is hoped that the Recommendations will be broadly disseminated and widely used.

Recommendations

I. General principles

- 1) States should adopt policies which clearly recognize the importance of policing for inter-ethnic relations. These policies should form part of wider policies and programmes to promote the integration of minorities at national and local levels. They should also be co-ordinated with wider action to promote professionalisation and a service-orientation in policing, and to ensure that all policing is carried out in accordance with international standards on human rights, including rights of persons belonging to minorities.
- 2) States will need to ensure that the police and the general public, including minorities, understand the role of the police in promoting good inter-ethnic relations. They will also need to ensure that the police are tasked and equipped to carry this role out. Political and police leaders should publicly state their support for this role, and promote understanding and support for it generally among the public.
- 3) Action plans to implement these policies, and also to monitor their implementation on a regular basis, should be developed by state authorities and police in close co-operation with minority representatives.

II. Recruitment and representation

- 4) The composition of the police – at local, regional and national levels and including senior as well as junior ranks, and also civilian personnel – should reflect the diversity of the population. The public image of the police as an ethnically representative body needs to be actively promoted.
- 5) Statistical targets should be set for increasing the representativeness of the police, and monitoring of the ethnic composition of the police should be introduced in order to measure progress.
- 6) Initiatives to increase recruitment of underrepresented minorities will need to be introduced. These should include special measures to encourage applicants and to assist them to achieve the required standards, together with actions to remove any direct or indirect discriminatory barriers.
- 7) Measures will also need to be introduced to ensure that police officers from a minority background are accepted and treated equally inside the police organization, which should provide a neutral working environment, and have equal opportunities for progression in their careers.

III. Training and professional development

- 8) Police need to receive training and other forms of professional support required to understand and respond appropriately to the sensitivities of minorities, and so that they are able to carry out their policing roles effectively in ways which promote harmony and reduce tensions.
- 9) It is recommended that training in minority issues and inter-ethnic relations is included in both initial and in-service training, and provided for senior as well as junior police officers. Representatives of minorities should be involved in both the planning and delivery of training.
- 10) Police codes of conduct should include professional standards for policing in multi-ethnic societies, and police training programmes should include components specifically designed to achieve these standards. Breaches of these standards should be subject to remedial action, and exemplary good practice should receive professional and public recognition.
- 11) It is recommended that police managers and supervisors are clearly tasked with the responsibility to ensure that their staff achieve these standards in their dealings with minorities, and should provide leadership and set examples of good practice in their own work.

IV. Engaging with ethnic communities

- 12) Police should be tasked with developing methods and practices to communicate and co-operate with minorities and to build confidence together at local, regional and national levels.
- 13) Police will need to ensure they have the capability to communicate with minorities in minority languages, wherever possible by recruitment and training of multilingual staff, and also by use of qualified interpreters.
- 14) Police should play a proactive role in providing encouragement and support to minorities to assist them to communicate and co-operate with the police, for example by acting as partners in initiatives to promote recruitment and to provide training on minority issues. Minorities for their part should be ready to communicate and co-operate with the police for the purpose of increasing community safety and access to justice.
- 15) It is recommended that mechanisms are established to ensure that police are democratically accountable for their actions to people from all sections of the community. These need to include effective systems for making and following up complaints, which are accessible to persons belonging to national minorities. All sections of the community need to be aware of their rights and responsibilities in relation to the police, and of the powers of the police and the services they are expected to provide.

V. Operational practices

- 16) Measures should be taken to ensure that police enforce the law in an impartial and non-discriminatory manner which does not single out any particular group, e.g. by engaging in “racial profiling”. Such measures should include codes for the conduct of operational practices, such as use of police powers to stop and search people on the street and in other public places.
- 17) Police should take steps to encourage the reporting by persons belonging to national minorities of crime, in order to promote community safety and access to justice.
- 18) When undertaking regular patrols in multi-ethnic areas, police should where possible deploy ethnically mixed teams in order to build public confidence and increase their operational effectiveness. Police should also ensure their tactics and appearance (e.g. numbers, visibility of weapons, choice of uniforms) are appropriate to the task and do not unnecessarily provoke fear and tension.
- 19) Police should ensure that anti-discrimination law is enforced vigorously and effectively. In particular, police should take steps to encourage the reporting of crimes motivated by ethnic hatred, and ensure that they are fully recorded and investigated.
- 20) States need to ensure that mechanisms to provide advice and support for victims of crime are equally accessible to and effective for persons belonging to national minorities.

VI. Prevention and management of conflict

- 21) Police should be tasked and trained to play a proactive role in developing a relationship with minorities aimed at identifying and if possible reducing tensions which can lead to inter-ethnic conflicts.
- 22) Police also need to be trained and equipped to manage civil disturbances and incidents of inter-ethnic conflict in a professional and non-partisan manner, with the aim of de-escalating conflicts and of resolving them through mediation where possible and with minimal use of force.
- 23) Especially at the local level, police should co-operate closely with other public authorities to ensure their actions to prevent and manage inter-ethnic conflict are co-ordinated with wider action to promote the integration of minorities and to build a successful multi-ethnic society.

Explanatory Note

I. General principles

- 1) *States should adopt policies which clearly recognize the importance of policing for inter-ethnic relations. These policies should form part of wider policies and programmes to promote the integration of minorities at national and local levels. They should also be co-ordinated with wider action to promote professionalisation and a service-orientation in policing, and to ensure that all policing is carried out in accordance with international standards on human rights, including rights of persons belonging to minorities.*

In a multi-ethnic society good inter-ethnic relations and the integration of persons belonging to national minorities depend on the perception of all ethnic groups that the activities of the state are legitimate and effective.¹ In particular, the role of the police as the “front-line” and most visible law enforcement agency is crucial: police are gate-keepers to justice for minorities. Minorities who perceive the police as enforcing the law impartially and providing access to justice and community safety are likely to hold the state in respect; failure by police and other responsible authorities to establish their legitimacy in the eyes of minorities can result in resentment and fear and a climate in which extremism can flourish.

Acceptance of the police as legitimate and effective, whether at national, regional or local level, depends on the establishment of a relationship of trust, based on good communication and practical co-operation, between the police and minorities. The establishment of such a relationship will not only improve inter-ethnic relations but will also contribute to the efficiency of policing. The recommendations below, based on experience, are intended to help States achieve such relationships.

Governments need to demonstrate leadership by setting out a clear “vision” of the role of police in building and sustaining an effective democratic multi-ethnic society. They need to consult widely in order to win multi-party and multi-ethnic consensus on their policies on policing and minorities, which may otherwise prove socially divisive or may become the target of political rivalries. The policies and the measures required to implement them need to be expressed in clear formal “policy statements”, which are publicly supported by political leaders and put into effect through legislative and other instruments.

¹ The Recommendations are formulated in terms of the policing of “national minorities” in “multi-ethnic societies”. In the view of the experts, the term “national minorities” encompasses a wide range of minority groups, including religious, linguistic and cultural as well as ethnic minorities. In principle, the Recommendations are relevant for all of those groups. Similarly, it should be noted that the word “minorities” is used at some points in the Recommendations as a convenient abbreviation for the phrase “persons belonging to national minorities”.

A policy on policing needs to be part of a wider national strategy to promote integration and to build a multi-ethnic society. This should include measures to encourage participation by persons belonging to minorities in the political and economic life of the state, as well as measures in fields such as education, language, political representation, broadcasting and tackling poverty and exclusion. Progress on broader aspects of integration will make it easier to introduce measures needed for multi-ethnic policing.

A policy on minority policing needs to be an integral – though clearly targeted and identifiable – part of police development programmes. Good communication and co-operation based on trust is the key to effective policing of majority, as well as minority, communities. A repressive or “control-oriented” approach, in which basic human and minority rights are ignored or violated, cannot provide a context in which good relations between police and minorities can flourish.

The democratisation and professionalisation of the police are therefore essential pre-conditions for enabling police to play their role in building a successful democratic multi-ethnic society, as is the introduction of a service-oriented and human rights-based approach to policing accompanied by “community policing” at the local level.²

- 2) *States will need to ensure that the police and the general public, including minorities, understand the role of the police in promoting good inter-ethnic relations. They will also need to ensure that the police are tasked and equipped to carry this role out. Political and police leaders should publicly state their support for this role, and promote understanding and support for it generally among the public.*

Implementation of policies designed to strengthen the capacity of police to promote good inter-ethnic relations is not simply a technical exercise but involves a change in police culture. It requires understanding and commitment on the part of policy makers, and of police at all levels in the organization. The established culture within

² For details of relevant international norms and standards on policing and human rights see the *United Nations Code of Conduct for Law Enforcement Officials* (1979), available at <<http://www.uncjin.org/Standards/Conduct/ conduct.html>> and the *Council of Europe European Code of Police Ethics* (2001), available at <http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Police_and_internal_security/Documents/Intro_Documents.asp#P234_5187>. These documents set out clear international standards for professional policing that are in accordance with international human rights. These standards should serve as the basis for all policing policy and practice relating to minorities and inter-ethnic relations, and police leaders need to be vigilant in ensuring that such standards are observed at all times. The Rotterdam Charter *Policing for a Multi-Ethnic Society* (1996), available at <<http://www.rotterdamcharter.nl/>>, a legally non-binding document which was produced jointly by representatives of police, municipal authorities and NGOs from across Europe, also provides general guidance based on practical experience. Policing policy relating to minorities should also take account of the more general rights set out in the *European Convention on Human Rights* and in the Council of Europe *Framework Convention for the Protection of National Minorities* (1994), available at <http://www.coe.int/T/E/human_rights/minorities/>.

the police organization may not be sympathetic to addressing these issues: it may indeed be hostile to them, and may also be generally resistant to change. Moreover, police may see themselves (consciously or unconsciously) as representing the dominant ethnic group, and as protecting its interests, and may therefore view such policies as an unwelcome threat. It is important to recognize that exploitative treatment of particular ethnic groups, like the practice of demanding bribes from vulnerable ethnic groups, is a form of police corruption which is not only contrary to international law and human rights, but also seriously undermines the capability of the police to promote good inter-ethnic relations.

It is therefore essential that political leaders ensure that senior police officials fully understand the importance of their role in promoting good inter-ethnic relations, and are fully committed to implementing it. Their role involves not only promoting good ethnic relations externally, but also internally within the police organization, including ensuring that discrimination on ethnic or related grounds does not take place (or if it does, is dealt with effectively). Police leaders in turn need to ensure that all police personnel – in all regions, all specialisms and all ranks in the hierarchy – also appreciate this role, and its implication for their everyday practice. Clear statements of support for this role therefore need to be made by police leaders at all levels, and it should be emphasized in all training. Actions which undermine this role, which favour particular ethnic groups, or which exploit, discriminate against or express hostility towards minorities, should not be tolerated. Both policy makers and police leaders need to work towards establishing a culture in the police organization that welcomes and respects ethnic diversity both internally and externally, and in which police see themselves as positive agents and role models for creating a successful multi-ethnic society (see also under Recommendation 7).

- 3) *Action plans to implement these policies, and also to monitor their implementation on a regular basis, should be developed by state authorities and police in close co-operation with minority representatives.*

It is important to know whether policies and measures are being effective and are achieving the results intended. Minorities in particular are likely to be keen to know whether progress is being made. It is important that accurate information is collected and made available. Action plans and monitoring can help to overcome these challenges. Action plans to implement these policies should:

- Involve an integrated approach, incorporating all fields of action identified in the Recommendations;
- Be based on analysis of specific problems and needs in police-minority relations: independent research may need to be commissioned for this purpose;
- Identify and task the persons responsible (in both the government and the police organization) for implementing policies on policing and minorities;

- Establish where appropriate specific posts or units to carry out or co-ordinate the necessary work;
- Include provision for sufficient financial and other resources;
- Provide for continuing consultation and co-operation with police (e.g. through professional associations) and with minorities (e.g. through NGOs) at all stages;
- Include establishing local pilot projects, as a useful first step.

It is also essential that the implementation of policies on policing and minorities is monitored on a regular basis. Government and police officials should routinely do this for their own administrative purposes, and they should produce reports that are publicly accessible. However, to increase public confidence and ensure democratic accountability, such monitoring should also be undertaken by an independent body. The role can be played by parliamentary human rights institutions (e.g. Parliamentary Commissions or Ombudspersons) or other public oversight bodies. Such bodies should have the right to question public officials and hold open hearings, and their reports too should be publicly available. Whatever the methods used to monitor the implementation of such policies, it is essential that both the minorities and the police are consulted effectively, and that their perceptions and experiences are recorded and addressed in preparing reports and recommendations. Police should welcome rather than resist such independent scrutiny, recognizing the benefits that it can bring to an open-minded and progressive organization. If there have been mistakes or failures, these should not be concealed, but analysed for the positive lessons that can be learned for the future. Developing and implementing such policies is not a task that should be undertaken quickly, but needs to be based on a step-by-step approach over a period of time.³

II. Recruitment and representation

- 4) *The composition of the police – at local, regional and national levels and including senior as well as junior ranks, and also civilian personnel – should reflect the diversity of the population. The public image of the police as an ethnically representative body needs to be actively promoted.*

Equitable representation of minorities in the police organization is important for several reasons:

- a) As an indicator that members of all ethnic groups have equal opportunity as individuals to join and progress in careers in the police;

³ For further information and advice on implementing police reform programmes see the Council of Europe's *Police and Human Rights Programme*, and in particular the publication: *Policing in a Democratic Society – Is Your Police Service a Human Rights Champion?* Available at <http://www.coe.int/t/e/human_rights/police/2_publications/>.

- b) As a way of promoting integration of minorities through their participation in the public life of the state and its institutions;⁴
- c) As a way of providing the police organization internally with a range of knowledge and skills (including language skills) that are required for working in an ethnically diverse community;
- d) As a means of helping police to build relationships externally with minority communities based on effective communication, co-operation and mutual confidence.

For all of these reasons, increasing the representativeness of the police should be regarded as a major priority. This has been endorsed in Opinions of the Council of Europe Advisory Committee for the Framework Convention on National Minorities.⁵ Police therefore need not only to actively promote their public image as an ethnically representative body, but also to publicise the steps they are taking to make this a reality (e.g. by methods set out under Recommendation 12). They should take care that these efforts encompass smaller and marginalised minorities as well as larger and more integrated groups. They also need to ensure that in all police activity, minorities are treated fairly and with respect, so that minorities perceive the police organization as a desirable place of employment.

It is important that the multi-ethnic character of the police is both present and visible in all regions. This is as important in mono-ethnic as well as multi-ethnic localities, and especially so in regions where minorities are the main residential group. It is also important that minorities are present in senior positions within the hierarchy, and not only in the lowest ranks. This not only shows that opportunities to achieve senior rank are open to all groups, but brings a minority perspective directly into policy-making at senior executive levels, and indicates that in their policy management the police are a genuinely multi-ethnic organization. Where police organizations are not in the short term able to recruit minority persons directly to senior posts, then the appointment of suitably experienced persons from minorities as specialist advisers is an alternative method of bringing minority perspectives into the management of policing.

- 5) *Statistical targets should be set for increasing the representativeness of the police, and monitoring of the ethnic composition of the police should be introduced in order to measure progress.*

A strategic approach should be adopted for ensuring that the ethnic composition of the police will become representative of the population. The desired ethnic composition should be identified as the goal to be achieved, and interim targets should be set that are realistic to achieve within a set time-frame.

⁴ See the OSCE HCNM *Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note* (1999), available in several languages at <http://www.osce.org/hcnm/documents.html>.

⁵ Available at http://www.coe.int/T/E/human_rights/minorities/.

“Targets” should be clearly distinguished from “quotas”. Targets are aims or goals for the increased representation of particular groups which can be achieved in various ways. Examples of methods which ensure equal opportunities for individuals at the point of selection are described under Recommendation 6. The use of targets to ensure that staff are representative of the population constitutes good practice. Quotas are allocations of places for members of particular groups to be filled during a selection process. The use of quotas as a means of achieving targets for recruitment of minorities often gives rise to complaints of unfairness and risks lowering standards and should be avoided if possible.

However the use of quotas may be appropriate and justifiable in special circumstances. Where, for example, as part of a police reform programme in a multi-ethnic State an entirely or largely new cadre of police personnel is being established, it may be essential for legitimacy and effectiveness that this cadre is from the outset ethnically representative of the population as a whole. In such circumstances it may be justifiable to set and fill ethnic quotas, especially at the initial stage of selection and training, provided that the proper minimum professional standards are required for members of all groups at the stage at which they become confirmed as police officers. However, the use of ethnic quotas should be considered only for a transitional period after which the aim should be to achieve the targets by other means.

Data need to be collected on a regular basis to test whether these targets are being met. Governments need to determine what bodies are responsible for each of these tasks, and assign responsibilities accordingly. Such “ethnic monitoring” should be linked to, or integrated with, more general monitoring of the workforce to ensure compliance with international law and the state’s wider employment policies.

The collection of ethnic data is a sensitive and controversial issue, and data protection laws appear to hinder the collection of data on ethnicity in some countries. However, States should not avoid this issue, and such data should be collected and processed with due regard to European standards concerning the protection of personal data and the right to self-identification (every person’s right to choose whether to be treated or not to be treated as belonging to a minority). Ethnic data should be anonymised, converted into statistical data, and any possibility of its being traced back to the personal databases should be avoided. Provided these safeguards are met, the rights of individuals should not be violated. But without such data, it will not be possible for States to monitor whether actions taken to improve the ethnic representativeness of the police are having the desired effect.

- 6) *Initiatives to increase recruitment of underrepresented minorities will need to be introduced. These should include special measures to encourage applicants and to assist them to achieve the required standards, together with actions to remove any direct or indirect discriminatory barriers.*

Underrepresentation of minorities in the police occurs for a variety of reasons. These include ignorance of opportunities, lack of educational qualifications, past experience of abuse by police in such communities, and direct or indirect discrimination in recruitment processes. If recruitment of minorities is to be increased, the precise reasons for underrepresentation in any particular State need first to be analysed, and then addressed by means of special measures.

The special measures that are likely to be appropriate are the following:

- a) Initiatives to increase information in minority communities about employment opportunities in the police, to create a positive image of the police, and to positively encourage interested persons to apply. Such initiatives could include distribution of leaflets, use of radio and television (including advertisements), visits by police to schools and community centres (including cultural and religious centres), opportunities for young people to visit police stations or training schools, and joint initiatives with community leaders and ethnic associations/NGOs. Targeted recruitment campaigns, using many or all of these methods, could be aimed at particular underrepresented groups.
- b) Measures to address the lack of sufficient educational qualifications in potential applicants who are otherwise suitable and well motivated. These might be intensive short courses designed to bring provisionally selected candidates up to the required entry level.
- c) Action to identify and address any possible causes of discrimination against minority applicants in the recruitment and selection process. These could include providing training in fair recruitment and selection for those responsible for these tasks; reviewing procedures (e.g. reliance on personal interviews) for possible bias or unnecessary disadvantage to minority candidates; and reviewing criteria for selection to ensure they are fully justifiable and do not set unnecessary hurdles that indirectly disadvantage minorities.

When introducing such initiatives, it is essential that standards are not lowered for minority applicants at the point of entry into the police. Persons belonging to ethnic majorities (and the media) are sometimes quick to suspect and allege that standards are being lowered, and that they themselves are now being discriminated against while special favours are being granted to minorities. Police leaders need to provide assurances that this is not happening. In fact, those who are likely to be most concerned that standards should not be lowered are the police officers from a minority background themselves: they will not want to be regarded as “second-class police officers”.

- 7) *Measures will also need to be introduced to ensure that police officers from a minority background are accepted and treated equally inside the*

police organization, which should provide a neutral working environment, and have equal opportunities for progression in their careers.

When promoting ethnic representativeness in the police, it is not sufficient to focus on recruitment alone. Experience shows that unless minorities feel they are treated equally and with respect inside the organization, and have the same opportunities to progress in their careers, they are likely to leave their employment in the police. This tendency may occur especially in the early stages of minority recruitment, when numbers are still small and minority officers may feel personally isolated from other members of their communities. Women police from ethnic backgrounds may also face similar pressures, given that they are a “double minority” in terms of both their gender and ethnicity.

For these reasons it is important to ensure that there is a neutral working environment, i.e. one in which police from minority backgrounds are fully accepted as equals and individuals, and are not subject to any disadvantage or negative stereotyping on account of their ethnic identity. However, this should also be an environment that is sensitive to diversity in the needs, customs and religions of different groups (e.g. with regard to matters of dress, diet, and religious observances such as prayer and holy days). Positive measures should also be considered to support and encourage police officers from minority backgrounds to progress in their careers: these could include specific career development training programmes or provision of “mentoring” schemes for those with potential for advancement. At the same time, it is important that effective internal complaints mechanisms are in place, so that police officers who experience discrimination do not have to endure such behaviour in silence. Managers need to encourage minorities to make complaints when they experience discrimination or other forms of ethnically-motivated behaviour, so that they are aware of such problems and can deal with them directly.

Given the specific issues affecting them, some police officers from minority backgrounds may feel there are benefits in coming together to form their own professional associations. Police authorities should in principle support such initiatives, and be willing to facilitate their establishment. Formation of such associations is a human right, and they can provide mutual personal support for minority police especially when they are small in numbers and geographically isolated. They can also provide a channel of communication between the police authorities and police officers from minority backgrounds, and a source of valuable advice to the authorities on minority issues. The authorities should ensure that members of the wider majority understand the reasons for the formation of such associations, and that they appreciate that such associations can help to provide a more secure foundation on which the integration of police officers from minority backgrounds into the organization can be built. However, there should be no compulsion on these police officers to join or form such associations, as some may not wish to affirm their minority identity in this way.

Particular care needs to be taken over the posting and deployment of police officers from minority backgrounds. These police officers should not be recruited specifically to work in their own communities: they should be recruited to become generic professional police officers who are capable of working with all sections of society. Nonetheless, in States where minorities tend to be concentrated in particular localities or regions, most police officers from minority backgrounds are likely to be recruited in such regions and to work in them. As noted under Recommendation 4 above, this brings important benefits to the police organization in terms of community awareness, contacts and public confidence. However, such officers should always be regarded first and foremost as generic police officers, and then secondly as ones whose particular minority background may qualify them for undertaking particular roles or contributing certain skills. Police officers from minority backgrounds should not be pressured to work in minority areas or communities, and indeed should be encouraged to gain experience through working in mixed areas or communities other than their own. When these police officers do work in their own communities, managers should always aim to deploy them where possible in ethnically mixed teams.

As already noted, the types of initiatives and changes set out above call for a fundamental shift in the culture of the police – from a mono-cultural to a multi-cultural organization – and for other fundamental aspects of police reform, including the professionalisation of the police and the development of a “public-service” orientation. The process of cultural change needs to be carefully managed, so that the benefits are gained as quickly as possible and organizational resistance is minimised. Leadership, commitment and skilled management by police officials at the highest levels are required for this purpose.⁶

III. Training and professional development

- 8) *Police need to receive training and other forms of professional support required to understand and respond appropriately to the sensitivities of minorities, and so that they carry out their policing roles effectively in ways which promote harmony and reduce tensions.*

Training is an essential, though by no means the only form of professional support that police require in order to be able to carry out their role effectively in multi-ethnic contexts. The aim of such training should be to provide police with the specific competences (i.e. awareness, knowledge and skills) that are required for working in such environments. A “training needs analysis” should be carried out in order to identify these requirements.

The main areas of need likely to be identified will include: cultural and religious awareness, mediation and community relations skills, language training, and training

⁶ Further guidance on issues relating to recruitment and representation is included in the booklet published by the European Policing and Human Rights Platform: *The Recruitment and Retention of Police Officers from Minority Communities*, available at <<http://www.epphr.dk/downloads.htm>>.

in human rights, including rights of persons belonging to national minorities. In multi-ethnic societies, all police should receive a minimum of training in these areas. However, the extent to which language training is required, and the precise content of cultural and religious awareness training, will depend on local circumstances.

Experience shows that it is essential that such training should be practical and job-related. If the training is purely theoretical, it is likely to have little or no impact on behaviour even if cognitive learning takes place. The training needs to show police the relevance and practical implications of new knowledge and skills, and to demonstrate how these will assist them to carry out their role effectively and professionally and bring benefits to them in their everyday work.

Care should also be taken before attempting to use training to directly change police attitudes, especially among experienced police officers. Among most adults, personal attitudes are deeply rooted, and any attempt to change these during short training courses is likely to be resisted or even counter-productive, unless highly skilled trainers are involved. However, it is essential that training does address the subject of prejudice and stereotyping of ethnic groups as a potential obstacle to fair and professional treatment of minorities. Such training should provide police with an opportunity to reflect on their own attitudes and prejudices and on how to ensure these do not impact negatively on their work.

The main emphasis in training, therefore, should neither be on simply providing information nor on changing attitudes, but rather on helping police in a practical way to carry out their everyday work in multi-ethnic contexts in a manner that accords with professional standards and international human rights. Training should therefore be seen as one particular, though very important, form of professional support, and as a resource for professional development. Other forms of professional support are referred to under Recommendations 10 and 11 below.

In view of the need to make training practical, it is important that appropriate methods are used. Formal lectures are likely to have limited value on their own. They need to be accompanied by interactive methods such as structured discussion and debate, involving exchange of opinion and experience. Most valuable of all are likely to be practical exercises and role plays which simulate real policing tasks in multi-ethnic societies.

This practical approach to training requires a change in the role of the trainer. Rather than being the expert who delivers specialist knowledge, the trainer needs to be a facilitator of debate and experiential learning, and to have the skills and credibility to carry out this role. The subject expert still has an important role, but becomes a resource person whose knowledge of minorities and inter-ethnic relations can be drawn on. The existing knowledge and experience of trainees (especially where they are experienced officers) relating to minorities is also an extremely important resource, which must be drawn on, shared and evaluated.

- 9) *It is recommended that training in minority issues and inter-ethnic relations is included in both initial and in-service training, and provided for senior as well as junior police officers. Representatives of minorities should be involved in both the planning and delivery of training.*

Training on minority issues and ethnic relations should be an integral part of initial training for police, and should be linked to themes such as human rights, community policing and a service-oriented approach. Although minority and ethnic issues should receive specific attention, they should not be separated off from the rest of the training: new recruits should be trained to carry out all policing tasks within a multi-ethnic environment as a matter of routine. Experienced police, however, should receive dedicated training on these subjects as part of their in-service training, particularly where the subjects have not been included in their previous training. For front-line police, such training should focus on actual operational tasks (patrol, investigation, arrest, etc.), and should be presented as a positive contribution to their ongoing professional development. Civilian staff, especially those who may be the first point of contact for members of the public, should be included in such programmes.

Senior police who are responsible for management should also receive training on these subjects, but its focus should be different from training for police who provide (or directly supervise) front-line service delivery. While senior police need a general understanding of front-line policing issues, their training should focus on policy implementation, standard-setting and the management of organizational and cultural change, together with command responsibilities relating to the management of ethnic tensions and conflicts in the wider community.

Contributors from minority communities are also an important resource for police training on issues relating to minorities and inter-ethnic relations. Police need to learn at first hand from minorities about relevant cultural and religious practices and about minority perceptions of the police. Training also provides the opportunity for personal interaction with members of minorities, and for engaging together in discussions, exercises and role plays (in which each can “step into the other’s shoes”). Successful participation in police training by minorities also builds bridges and increases minority understanding of and confidence in the police. Minorities should not just be invited to attend specific training sessions, but should be involved at all stages, including in the planning and evaluation of such sessions and in the initial process of identifying training needs. Police should develop regular partnerships with a broad range of minority associations so they can develop confidence and skill at meeting police training needs on minority and inter-ethnic issues. They should also ensure that minority contributors from these associations are diverse in age, gender and other relevant aspects, and do not solely consist of officially- or self-appointed “community leaders”.⁷

⁷ Further guidance on such training may be found in the chapter on “Police Training on Migrants and National Minorities” in the Council of Europe publication, *Human Rights and the Police* (1997). See also <[http://www.coe.int/T/E/Human_Rights/Police/2_Publications/2.1_Trainers'_Supply_Kit/Ci\(98\)1_Workbook_for_practice_oriented_teaching.asp](http://www.coe.int/T/E/Human_Rights/Police/2_Publications/2.1_Trainers'_Supply_Kit/Ci(98)1_Workbook_for_practice_oriented_teaching.asp)>.

- 10) *Police codes of conduct should include professional standards for policing in multi-ethnic societies, and police training programmes should include components specifically designed to achieve these standards. Breaches of these standards should be subject to remedial action, and exemplary good practice should receive professional and public recognition.*

Professional training is a form of education that has a specific purpose: to equip a person to carry out a specific professional role in accordance with professional standards. In order to define those standards, codes of conduct need to be drawn up, and competences identified which enable the professional to achieve those standards. This principle should be applied in the context of police training, and in particular to police training for working in multi-ethnic environments. Training programmes, and the “training needs analyses” on which they are based (see under Recommendation 8 above), should be designed to support the implementation of such codes of conduct.

Codes of conduct are based on international standards and set out the general ethical principles on which good professional policing is based.⁸ Codes may also set out the specific actions that should be taken when carrying out specific policing tasks – in which case they are usually referred to as “codes of practice”. Codes of practice normally involve the application of ethical principles to the conduct of specific policing tasks in specific national and legal circumstances. Codes of practice therefore should be drawn up by individual States.

It is particularly important to draw up codes of conduct and specific practice with regard to policing in multi-ethnic environments due to the particular challenges such work may entail and its potentially controversial nature. Examples of potentially challenging and controversial policing tasks include managing overt ethnic conflict, de-escalating ethnic tensions, conducting stop-and-search operations in ethnically sensitive areas, or conducting police operations generally in minority residential areas. Detailed codes of practice should provide specific guidance and support for police who undertake such tasks. (See under Recommendation 16 for further explanation.) For instance, at the ethical level, there may be a greater risk of corruption linked to ethnic bonds, and thus a greater need for vigilance and action to ensure integrity. However, such ethical issues should be addressed within general codes of conduct for police, rather than by designing codes specifically for work in multi-ethnic environments.

Compliance with professional standards and codes of conduct should be recognized by police managers, and should contribute favourably to progress in a police officer’s career. Such progress should be based on individual assessments of performance, measured against such standards. Failure to comply with codes and standards should lead to remedial action and in serious cases of misconduct to disciplinary procedures against an officer. The role of training should be to assist

⁸ See the *United Nations Code of Conduct for Law Enforcement Officials* and the *Council of Europe European Code of Police Ethics*, cited in footnote 2 above.

police to act in accordance with these professional codes and standards. Police officers whose work demonstrates best practice should be invited to share their experience in training sessions. All of these professional support mechanisms should be applied specifically to the context of police relations with minorities.

- 11) *It is recommended that police managers and supervisors are clearly tasked with the responsibility to ensure that their staff achieve these standards in their dealings with minorities, and should provide leadership and set examples of good practice in their own work.*

Training and codes of conduct are not alone sufficient to ensure that actual police practice will accord with policy and professional standards. Experience has shown that the leadership provided by senior police officers, and the management and supervision of police staff, are also vital factors. More senior officers in the hierarchy need to provide role models for their juniors, and demonstrate the required standards in their everyday work. They need to make it clear that they also expect their subordinates to act in accordance with these standards, and they need to be active in monitoring that all police conduct complies with these standards and with human rights. If privately they denigrate these policies or express negative stereotypes about minorities, or if they fail to address instances of discriminatory behaviour against minorities, then their staff will quickly infer that they are not serious in their commitment. Minorities, who have a lifetime of experience of detecting different forms of discrimination practised by majorities, will also be quick to detect when they are being treated fairly and with genuine respect, and when they are not.

Police managers and supervisors should receive training to ensure they are aware of the importance of these issues and can address them effectively. The basic principles for such training are set out under Recommendations 9 and 10 above. Capability for dealing with multi-ethnic policing issues should also be taken into account in the selection procedure for promotion into senior ranks in the police hierarchy.

As is emphasized under Recommendation 7, the ultimate goal should be that, through firm and consistent leadership and management on these issues, a cultural change in the police organization comes about over a period of years. Only then will the organization itself become a genuinely multi-ethnic, professional and non-partisan body, for which operating fairly and effectively in a multi-ethnic environment is a matter of routine.

IV. Engaging with ethnic communities

- 12) *Police should be tasked with developing methods and practices to communicate and co-operate with minorities and to build confidence together at local, regional and national levels.*

A democratic service-oriented approach to policing in general, and a community policing approach in particular, require regular and effective communication between police and citizens. Effective policing in a democratic society must be based not on fear, but on consent. Police need the support of the public to carry out their work, not simply because of the need to be democratically accountable, but also because the practical co-operation of the public (e.g. in providing intelligence, reporting crime, acting as witnesses, and so on) is essential for the performance of the police role. In any democratic State, therefore, police need to establish methods and practices to communicate with the public at all levels and win their confidence.

Police in a multi-ethnic society face an additional challenge. Communication and confidence-building needs to reach out to a variety of minority groups, which may be diverse in terms of language, culture, religion and other circumstances, and which may be dispersed or residentially concentrated. Moreover, some of these groups may have experienced discrimination or other forms of oppression at the hands of the state in the past, including at the hands of the police, and may therefore continue to bear a strong sense of distrust towards police. Police therefore need to make sure that the methods and practices they use to communicate with the public take account of this diversity and past history, and can reach out effectively to all different ethnic and national groups. Special efforts may be needed to reach out to and gain the confidence of ethnic and national minorities which have experienced the most severe exclusion and disadvantage. This may require patiently building up relationships of trust with communities and their leaders over a period of time.

There are a variety of methods that police may use for developing communication with minorities. Some methods, such as the use of leaflets or radio and television, essentially involve one-way communication and are particularly useful for conveying information. To reach minorities by these means, leaflets in minority languages and broadcasts in the mass media, including in minority languages, should be used. More valuable for building confidence and mutual understanding, however, are interactive methods that involve personal contact and communication between police and minorities. These include the following:

- a) Community forums. These should have an ethnically representative membership and should meet on a regular basis to discuss issues of mutual concern. Such forums should play a routine consultative role, and serve as a source of information about and better understanding of the local community – and especially minority concerns about the operation of law enforcement agencies. They should also help to bring the national minorities closer to the state institutions, building trust in the police and helping to prevent as well as to defuse tensions.
- b) Public meetings. These should enable the police to consult with local communities on the widest possible basis. Public meetings should be open to all and should focus on a particular issue. They are especially valuable at times of community tension, as they enable the police to

listen directly to the full range of community concerns and to disseminate accurate information about the situation and about the police response.

- c) Community advisory boards. Community advisory boards serve the specific purpose of advising senior police officers how the police role can be carried out most effectively in the context of the local community, including matters such as the policing of ethnic conflicts, dealing with issues of discrimination, and engaging in community consultation. Police should invite as members of advisory boards people whom they consider have the relevant skills and experience to give them such advice. They should be people who can give such advice from an independent perspective, and not simply approve of whatever the police propose. Membership should reflect the diverse ethnic composition of the local community.
- d) Joint police-community workshops. Such workshops would bring together police and people from the community to work together on problem-solving related to specific issues in police-community relations. Participants should be small in number, and carefully selected as persons who can contribute to the solution of a defined problem or issue. This format can also be used for training purposes, to increase mutual understanding and to improve methods of co-operation generally. A skilled facilitator should be engaged to act as moderator for such events.
- e) Community contact points at police stations. These should be staffed with officers from the various ethnic backgrounds, and should provide information to persons belonging to national minorities about legal procedures and about opportunities for recruitment into the police, as well as serving as a “public reception room” where such persons can address issues of concern to the police. Contact points could also be established in regional and city police headquarters, and in police academies and training schools. In addition, “open days” could be organized in police stations and other establishments at which tours could be provided (including for schoolchildren), and these could be particularly targeted at persons from national minorities.
- f) Dedicated patrol officers regularly visiting particular communities. At local police stations, particular officers could be assigned responsibility for developing and maintaining contact with each national minority in the area. In addition to being the contact person for the minority within the police station, they should make regular patrols in and visits to the localities in which persons from such minorities live (including visits to schools), and they should establish personal contact and trust with members of such communities as widely as possible. In this way the police can ensure they are in touch with the needs and concerns of the widest possible range of people from national minorities, and establish

lines of communication and relationships of mutual understanding and trust.

Methods of these kinds need to be used at all levels: national, regional and local. Both the personnel and issues will differ according to the level. For example, at national level senior police and policy makers need to be meeting with national-level minority leaders to discuss broad policy and strategy issues, or incidents of national concern, while at local level the focus will be on practical matters relating to community policing or incidents of concern locally. Police should ensure that minority languages can be used as the medium of communication in such meetings (see under Recommendation 13 below). In addition, when making practical arrangements, police should be sensitive to diversity in religious and cultural practices, for example by taking care not to schedule events on holy days or festivals. Police also need to ensure that they reach women and young people in national minorities in their communications, and not only the older male members of such communities.

- 13) *Police will need to ensure they have the capability to communicate with minorities in minority languages, wherever possible by recruitment and training of multilingual staff, and also by use of qualified interpreters.*

The Framework Convention for the Protection of National Minorities (Article 10) sets out the rights of national minorities to use their languages in public, and, so far as possible, in their relations with the administrative authorities. It also sets out their rights to use such languages in situations involving arrest or prosecution. Police therefore need to make provision for the use of such languages in their dealings with persons belonging to national minorities, whether as employees, suspects, witnesses, or simply as members of the public generally (e.g. in consultations, crime prevention activities, or public order situations.) Given that national minorities vary in the extent to which they actually use their own languages, and vary also in the extent to which they are fluent and literate in the official language(s) of the state, it may be appropriate to undertake a needs assessment to determine what provision is in practice required. Police should particularly bear in mind that certain groups within some national minorities (for example, older people or women) may be less likely to be fluent in the majority or official language, as they may have received less formal education or have limited involvement in public life.

Recruitment of persons belonging to national minorities into the police will immediately provide the police organization with a major resource to meet this need. Police from minority backgrounds working in areas where their own minority communities reside will be able use their minority language in their work. On occasion they may also be able to act as interpreters for colleagues, although it is important that their non-minority colleagues working in such areas should receive appropriate training in minority language skills. It will also be important for police to have access to properly qualified and experienced interpreters for communicating with persons belonging to national minorities. Especially when dealing with suspects or witnesses, it is extremely important that police do not rely for interpretation on

family members or other persons whose competence is unknown, as this may give rise to misunderstandings and inaccuracies which could undermine the quality of police work and possibly give rise to serious injustice for persons belonging to national minorities.

- 14) *Police should play a proactive role in providing encouragement and support to minorities to assist them to communicate and co-operate with the police, for example by acting as partners in initiatives to promote recruitment and to provide training on minority issues. Minorities for their part should be ready to communicate and co-operate with the police for the purpose of increasing community safety and access to justice.*

Effective policing in a democracy is dependent on having an active and well-informed body of citizens who take their civic responsibilities seriously, and are willing to provide co-operation and support for police to carry out their role. In a multi-ethnic State, it is essential that national minorities also play an active part in this process. As mentioned under Recommendation 12 above, national minorities may have less experience of civic participation, may face barriers to such participation (e.g. language or discrimination), and may lack trust and confidence to engage in this way with public authorities – and particularly the police. If the police are serious about wishing to engage effectively with national minorities, then they need to be proactive in encouraging and supporting minorities to play this role, rather than waiting passively and then complaining if minorities do not come forward to the same extent as other groups.

Police therefore need to identify ways in which they can help to empower minorities to become involved in this way, and to help them to build their capacity to do so. Police also need to allocate resources for this purpose. This empowerment can be achieved partly by general confidence-building measures of the kinds set out under Recommendation 12, and by promoting public awareness of rights and responsibilities relating to policing and justice. However, it can be more effective if police can build structured and enduring relationships with minority community associations and other NGOs that are active in this field. Such associations and NGOs can assist police to develop their communication with minority communities, and can provide them with valuable advice and information on minority and ethnic issues. Police can also establish more formal partnerships with such bodies to undertake initiatives such as identifying and supporting potential recruits from national minorities, providing advice and inputs into police training, and assessing options for responding to ethnic tensions and conflict. A partnership of this kind should involve a formal agreement between two or more separate organizations to work together on an equal and continuing basis to achieve a common purpose.

Building effective co-operation with community groups and NGOs may take time, and requires the development of trust and mutual understanding. Both sides may initially be cautious: the minorities may suspect that the police have “hidden agendas” such as to extract intelligence about criminal activities among national

minorities; while the police may have little experience of working with civil society groups and may suspect these groups' motives, especially if they have been publicly critical of police in the past. What is important is to find common purposes such as to improve police-minority relations and to increase access to justice for minorities, and on this foundation to identify ways in which each can help the other while respecting their different roles and styles of working (including the continued right of NGOs to criticise the police on behalf of their communities when things are done wrong). Experience shows, however, that the benefits to be gained from such partnerships by both sides are substantial, and tend to increase with time. They also provide a framework within which any subsequent problems in police-minority relationships can be addressed and resolved through dialogue and mediation.⁹

Minorities can themselves contribute to community safety and access to justice by promoting awareness of rights and responsibilities of their members under the law, by providing advice and support for persons who are victims of crime, by encouraging civic participation in activities relating to community safety and policing, and by working to promote the interests of and fair treatment for members of their communities in matters relating to policing and justice. The resolution of many wrongs or disputes between persons within minority communities may also be able to be resolved through mediation or other traditional means within such communities, without recourse to the police or other national justice agencies. However, it is also essential that minorities, or particular groups within them, do not take justice into their own hands (e.g. by undertaking "vigilante" activities), and that all members of minorities have unrestricted access to their legal rights and the justice system of the state in general. It is particularly important that those women in minority communities, who may face gender discrimination or domestic violence, are not prevented by internal community structures from having access to their legal rights and the justice system.

- 15) *It is recommended that mechanisms are established to ensure that police are democratically accountable for their actions to people from all sections of the community. These need to include effective systems for making and following up complaints, which are accessible to persons belonging to national minorities. All sections of the community need to be aware of their rights and responsibilities in relation to the police, and of the powers of the police and the services they are expected to provide.*

In a democracy police should be accountable not only under the law through the courts and justice system, but also directly to the public, to ensure that police are able to explain their actions to the communities they serve and on whose consent they are in practice dependent. Accountability is a fundamental principle for "community policing".

⁹ Further guidance on building co-operation between police and NGOs is included in the booklet published by the European Policing and Human Rights Platform: *Police and NGOs: Why and How Human Rights NGOs and Police Services Can and Should Work Together*, available at <<http://www.epphr.dk/downloads.htm>>.

To ensure democratic accountability, formal structures need to be established at both local and national levels, such as forums or representative boards, at which police are required to report on their actions, and may be called on to explain and justify them (see also under Recommendation 12 above). National minorities need to be represented on such boards and to be able to participate in such forums, which should be held in locations which are accessible to them. National minorities also need to be free to raise their own issues of concern about policing, and to do so using minority languages. These formal structures should not be managed directly by the police themselves, but established so they operate independently. States need to facilitate the establishment of such structures, to provide resources for them, and to ensure that national minorities are able to participate in them effectively. States should also consider the potential benefits of making the establishment of accountability structures a requirement under the law.

Effective mechanisms to enable individual citizens to make complaints regarding police behaviour (including in minority languages wherever possible) should also be an integral part of accountability structures. Citizens need to be able to obtain explanations of specific actions by police that they believe have been harmful and unprofessional, and to obtain redress where appropriate, without needing to have recourse to law. Some incidents may be suitable for resolution through dialogue between the citizen and the police, and complaints procedures should allow for this possibility. More serious incidents should be referred to an independent police complaints body established for this purpose, or to a more general complaints investigation body where this exists, such as an Ombudsman. It is essential that minorities are able to have access to complaints mechanisms, so that they have the same access to redress against the abuse of police powers as other citizens. Police managers should positively support the existence of such complaints systems, not merely on principle, but because their existence helps to increase community confidence and because they generate important information for police managers about where police performance may be going wrong. States should ensure that police complaints mechanisms are in place and are working effectively, that they involve some element of civilian (including national minority) participation and oversight, and that they are fully accessible to all ethnic and national groups.

In order to participate effectively in communication with police, and indeed to exercise their responsibilities as citizens generally, minorities need to be aware of their rights and responsibilities in matters related to policing, and also the powers of the police and the services they are expected to provide. Although provision of such awareness among citizens may not be their specific responsibility, police need citizens to have such awareness in order for them to carry out their role in accordance with democratic principles. Police should therefore be willing to actively promote and participate in public education for this purpose, and in particular to support work in schools or by NGOs. They should be willing particularly to assist awareness among minorities, and to participate in meetings or training for community leaders organized for this purpose. States, however, should not leave this task solely to the police and NGOs, but should ensure that information about the rights and responsibilities of citizens in relation to policing is widely available, including in minority languages, and is included in the formal curriculum of schools.

V. Operational practices

- 16) *Measures should be taken to ensure that police enforce the law in an impartial and non-discriminatory manner which does not single out any particular group, e.g. by engaging in "racial profiling". Such measures should include codes for the conduct of operational practices, such as the use of police powers to stop and search people on the street and in other public places.*

As has already been noted, the police in a democracy are usually the most visible of the public authorities, as well as being those with the most immediate powers over the everyday lives of citizens. It is therefore essential that the police, as representatives of the state, are seen to exercise their powers in an exemplary manner. This requires that the police always act professionally and in accordance with human rights, and apply the law in an impartial and non-discriminatory manner.

Police officers are recruited from the wider society, and may vary greatly in their knowledge about and prejudices relating to different minorities. Such prejudices may be shared and expressed openly, or they may be concealed. In either form, they may influence a police officer's behaviour towards particular ethnic groups. There may always be a danger, therefore, that police officers treat members of particular ethnic groups in different ways, whether in a direct or indirect manner, unless active steps are taken to prevent this.

Special attention needs to be given to the practice of "racial profiling". This is the inclusion of data about race or ethnicity in the profile of persons whom the police consider are more likely to commit a particular crime. Persons fitting the resulting profiles are specifically targeted by law enforcement officials and subjected to measures such as "stop and search", vehicle inspection, identity checks, etc. Racial profiling involves the use of racial or ethnic stereotypes, rather than individual behaviour, as a basis for making decisions about who is likely to be involved in criminal activity. There is extensive evidence that racial profiling is widely practised on an informal basis across the OSCE region by law enforcement agencies, even though officially it is condemned. The groups subject to racial profiling tend to differ between States, although racial profiling of Roma and Traveller groups tends to be Europe-wide.

Whatever the particular ethnic composition of their populations, all States are advised to work towards introducing ethnic monitoring of the outcomes of police operations in order to identify whether or not discrimination is taking place. Such monitoring involves measuring statistically whether or not police operations such as "stop and search" impact fairly and proportionately on different ethnic groups. Use of monitoring will assist States to ensure compliance with their international obligations (e.g. under the European Convention on Human Rights and the International Convention on the Elimination of Racial Discrimination) and their own national obligations (e.g. under their constitution and domestic law) to prevent discrimination on ethnic and related grounds. Provided such monitoring is carried out with due regard to confidentiality, and the data anonymised and aggregated in statistical form, the rights of individuals should not be violated.

States need to ensure that they have clear policies and professional standards that require equal treatment and prohibit discrimination in the application of the law by police, and that these are supported by training and detailed codes of practice. As indicated in Recommendation 10, such codes of practice should set out precisely the behaviour that is expected of police officials in carrying out specific policing tasks, so that the risk of discriminatory or other unprofessional behaviour is minimised. In particular, they should be drawn up for any tasks where there appears to be a risk of discriminatory treatment occurring: these could include use of police powers for stopping or searching people on the street or in other public places, the control of admissions at borders, the use of force in making arrests, the conduct of police “raids” in residential areas, and the management of ethnic conflicts and public disorder. Breaches of the codes should be subject to disciplinary action.

In view of the importance in multi-ethnic societies of ensuring that police apply the law in an impartial and non-discriminatory manner, States are encouraged to consider undertaking a “systematic assessment” of policing policy and practice generally with regard to ethnic and national minorities.¹⁰ This assessment should measure current policing practices against international professional policing standards and the requirements of international human rights. It should be based on evidence obtained through research, analysis of incidents, and consultation with national minorities and NGOs. Action plans should be drawn up to address those areas of policing where practice falls below international standards.

- 17) *Police should take steps to encourage the reporting by persons belonging to national minorities of crime, in order to promote community safety and access to justice.*

Police everywhere are highly dependent for the detection of crime on information from members of the public. There is extensive evidence from across the OSCE region that minorities are less likely to report crime than those from other sections of society. If police are to be able to respond equally to crime against persons belonging to national minorities, then they need to ensure that these persons are as willing to report crimes as anyone else. Police also need to be equally efficient and professional in the way they record and investigate crimes against persons belonging to national minorities, and in bringing the perpetrators of such crimes to justice. Persons belonging to national minorities are only likely to report crimes to the police if they believe they will be treated with respect and that their allegations will be taken seriously. Police should make sure that persons belonging to national minorities, like all citizens, are kept regularly informed of the progress and outcomes of any cases in which they are involved as victims or witnesses. Research by criminologists consistently shows that the personal experience of victims of crime in their treatment by the police is one of the most powerful determinants of the level of

¹⁰ As is recommended in the chapter on policing in the *OSCE Action Plan for the Improvement on the Situation of Roma and Sinti*, 2003, available at <http://www.osce.org/documents/odihhr/2003/11/1562_en.pdf>.

trust and confidence in the police, not only among minorities but in all sections of the community.

Research has shown that other factors affecting the level of reporting by minorities of crime are their knowledge about procedures for reporting crime and their understanding of the criminal justice system generally. The police can play a major role in increasing levels of knowledge and confidence among minorities, in particular, by seeking the co-operation of NGOs and community associations that can disseminate information about the reporting of crime, and encourage victims to report incidents and offer them support. Particular attention should be given to the need to ensure that such information and support reaches women in minority communities. Police should also take steps to ensure that minorities can report incidents in their own languages (see under Recommendation 13 above).

Citizens will be more willing to report crime to the police when they believe that the police are doing a good job in protecting them from crime generally. States should encourage police and governmental authorities at local level to adopt and implement policies to promote "community safety". By "community safety" is meant the goal of ensuring that the places where people live and work are free from crime, and that people feel secure both in their homes and as they go about their daily business in public places. NGOs and citizens should be actively involved in initiatives to ensure that their localities are safe places to live and work, and should be encouraged to co-operate with the police for this purpose. Minorities also need to be actively involved in such activities. Bringing together different ethnic groups with police at local level to work jointly on the promotion of community safety is a valuable method of furthering ethnic integration in a multi-ethnic society.

- 18) *When undertaking regular patrols in multi-ethnic areas, police should where possible deploy ethnically mixed teams in order to build public confidence and increase their operational effectiveness. Police should also ensure their tactics and appearance (e.g. numbers, visibility of weapons, choice of uniforms) are appropriate to the task and do not unnecessarily provoke fear and tension.*

As explained under Recommendation 4 above, it is important in a multi-ethnic society that the composition of the police is representative of that society. This is to ensure both that the police are seen to be legitimate by all ethnic groups, and so that the police have the practical skills and experience to work with all sections of society.

This is especially important at the operational level in local areas that are multi-ethnic in their population composition. Police need to be able to communicate with all groups and have their confidence, especially in situations where there might be inter-ethnic tensions. The use of mixed patrols, and mixed teams for investigative or other work, can assist police to achieve this objective. Mixed teams can also provide police with a multilingual capability when carrying out policing tasks in multi-ethnic communities. At the same time, police demonstrate to the public a good-

practice model of multi-ethnic co-operation in the provision of public services, which is the basis for a successful multi-ethnic State.

The use of mixed patrols and work teams may require careful support and management where new recruits are involved or where there have been any inter-ethnic tensions within society at large. Managers need to be sensitive to possible sources of such tensions, and to the pressures that dealing with such tensions within the community may place upon officers from particular ethnic backgrounds. Where police officers from minority backgrounds are working in their own communities, this may bring many advantages to both police and the community. However, if there is any conflict between the minority and the police generally, the police officer from a minority background may be a focus for hostility (see also under Recommendation 7 on the deployment of police officers from minority backgrounds). There may also be pressures on officers from the majority working in predominantly minority residential areas, which a colleague from a minority background can help to alleviate or resolve. The use of mixed patrols and work teams can therefore provide protection against these various tendencies, and affirms the ongoing commitment of the police to multi-ethnic co-operation and professional integration.

- 19) *Police should ensure that anti-discrimination law is enforced vigorously and effectively. In particular, police should take steps to encourage the reporting of crimes motivated by ethnic hatred, and ensure that they are fully recorded and investigated.*

The right to equal treatment is a fundamental human right, and all States have laws of some kind that address discrimination. States vary in the extent to which, and the manner in which, their laws cover different forms of discrimination. For example, in some States, discrimination is covered by civil law and is not a responsibility of the police. Also, acts of violence motivated by ethnic hatred may be covered by special laws, may be regarded as aggravated cases under a more general criminal law, or may not receive any special recognition under the law.

Whatever their responsibilities under the law for tackling crime motivated by ethnic hatred and violence, police need to ensure that they apply these laws firmly and consistently. Any democratic multi-ethnic State, for its successful functioning, is dependent on the police for ensuring that its laws against racism and discrimination are implemented effectively. Of course, this must be done in conjunction with the role of prosecutors and the courts, according to the procedures and responsibilities set out within each individual State. Everywhere, however, the police role is crucial.

Acts of physical violence motivated by ethnic hatred are the most serious forms of crime motivated by ethnic hatred, and the most serious threat to the stability and well-being of multi-ethnic democracies generally. Such acts not only do serious harm to individuals, but – because they target individuals as members of ethnic groups – also threaten whole communities and thus the fabric of society generally. It is essential that police understand the importance of their role in tackling this form of

crime (e.g. through provision of training on this subject), and that they appreciate the dependence of the whole society on their dealing with it effectively.

The element of racism or ethnic hatred in crime is often explicit, though sometimes it may be subtle or concealed. In multi-ethnic contexts, police should always consider the possibility of such motivation in crime, and (regardless of their own initial view on the matter) should always accept for investigation the allegation of the victim or any other person that an element of racial motivation was involved. The judgment by the European Court of Human Rights in the *Nachova Case* makes clear that all European States have an obligation to investigate possible racist motives behind acts of violence.¹¹

In order to combat crime motivated by ethnic hatred effectively, the first requirement is that police must have procedures for recording such crimes, and for investigating them effectively. These procedures need to ensure that evidence of the element of ethnic motivation is properly collected so that it can be presented in court. Police officers need to be trained so that they follow these procedures, and understand why they are important. Police need to ensure that not only majorities but also minorities, who are disproportionately victims of such crimes, have the confidence to report such crimes, and police should co-operate with NGOs and community groups for this purpose. Police should also compile anonymised, aggregated statistical information about such crimes, and analyse it so that they can monitor the incidence of such crime and their own effectiveness in responding to it. Such data should be made available to other public authorities and NGOs, so that they can co-operate with the police in undertaking preventive action.¹²

- 20) *States need to ensure that mechanisms to provide advice and support for victims of crime are equally accessible to and effective for persons belonging to national minorities.*

OSCE participating States currently vary in the extent to which they recognize the needs and rights of persons who have been victims of crime, and in the extent to which they make provision for advice and support for such persons. In many States, there is little or no such provision. However, in recent years, the international community has placed increasing emphasis on the need for greater recognition of the rights of victims of crime, by addressing this issue within a variety of international conventions and declarations, especially those relating to women and to children. Such documents identify specific human rights which are relevant to victims of crime, including rights to personal freedom and dignity, to compensation, to medical, physical and social assistance, to information about the progress of criminal investigations, and to access to justice generally.

¹¹ European Court of Human Rights (Grand Chamber) 6 July 2005, *Nachova and others v. Bulgaria*, (applications nos. 43577/98 and 43579/98), available at <<http://www.echr.coe.int>>.

¹² Since 2004, a specific OSCE programme – the *ODIHR Law Enforcement Officer Programme on Combating Hate Crime* – has been assisting police in OSCE participating States to address these issues. See <http://www.osce.org/odihr/item_11_16251.html>.

Even in countries where such provision does exist, research has shown that ethnic minorities, when they become victims of crime, have less access to such support and are less likely to benefit from it. This may be for a variety of reasons, including: the location of such provision, lack of awareness of (or confidence in) such services among minorities, and the lack of sensitivity of service-providers to cultural diversity or lack of ability to communicate in minority languages.

The responsibility for victim support does not lie exclusively or even mainly with the police, but with the state generally. States need to establish national structures that are capable of delivering victim support services locally and services that are accessible to and appropriate for the needs of all ethnic groups. Victim Support organizations need to be fully independent of public authorities (and seen to be independent), while also co-operating closely with them. Maximum use should be made of civil society participation, and involvement of NGOs.

However, the police have a crucial role to play in providing support for victims, and it is also very much in the interest of the effectiveness of policing that they carry out this role. Police are frequently the first point of contact with public authorities for victims of crime, who may at this stage be emotionally distressed, physically injured, unaware of their rights, and in urgent need of advice and support. As well as carrying out their duties with regard to the criminal law, police need to be able to provide emergency support, and then direct victims to other appropriate sources. It is essential that police perform these immediate victim support tasks effectively, both for the safety of the victim and in order to maintain the victim's confidence in the police. Police need to maintain this confidence so that victims will be willing to provide information for the investigation of their case, and also be willing to testify in court. For these reasons it is essential that police keep victims informed about the progress of their investigations. Police may also need to provide victims with protection in cases where there is a threat to their safety following the crime or due to their willingness to report it to the police.

Police need to make sure that minorities, as well as the majority, have confidence in their support and protection when they become victims of crime. Where there has been a history of conflict or lack of trust between minorities and police, it is important for police to take active steps to overcome this potential barrier. Police should pay special attention to the need to ensure support and protection for victims in cases of crime or violence motivated by ethnic hatred. Such cases frequently involve "repeat victimisation", or even retaliation and ongoing exchanges of threats and acts of violence between members of different ethnic groups. Whole communities, rather than just individuals, may experience victimisation when crimes motivated by ethnic hatred occur, and police should recognize the possible need to provide support and protection at a community rather than solely an individual or family level. Where appropriate, police should undertake risk assessments for this purpose.

VI. Prevention and management of conflict

- 21) *Police should be tasked and trained to play a proactive role in developing a relationship with minorities aimed at identifying and if possible reducing tensions which can lead to inter-ethnic conflicts.*

As stated in the Introduction, the HCNM has identified the police as having a key role to play in the prevention of ethnic conflict. This arises from a number of factors: the responsibility of the police for the maintenance of public order and tranquillity, the powers possessed by the police for this purpose, the intelligence available to the police about tensions or incidents that could give rise to ethnic conflict, and the professional skills that can be employed by police to help to ensure that such tensions and incidents do not actually develop into overt physical violence between different ethnic groups.

It is often supposed that the responsibility of the police with regard to ethnic conflict is limited to responding to actual incidents of overt conflict: to restoring order and to bringing to justice those in breach of the law. This view fails to appreciate the importance of the role of police at earlier stages in the potential development of such conflict, and also in the de-escalation of tensions between ethnic groups once public order has been restored. Of course, the police do not have exclusive responsibility for the prevention of such conflict and for taking remedial action, but in co-operation with other public authorities and with representatives of civic society they can play a crucial role.

A key contribution which the police can make to the prevention of ethnic conflict is monitoring the levels of tension between ethnic groups, on the basis of evidence and systematic indicators. The evidence should consist of (a) the number and seriousness of specific incidents (e.g. threats or inter-personal violence) between persons belonging to different groups that have potential for escalation, and (b) intelligence derived from community sources about general levels of inter-ethnic animosity within groups or about plans being made for specific hostile actions. Such intelligence requires police to build relationships of trust and good communication with all ethnic groups, and to develop contacts with reliable and unbiased sources of information.

Systematic indicators need to be developed so that information about levels of ethnic tension can be gathered and compared over time and from different geographical regions. Such indicators need to be monitored nationally as well as locally. Other public authorities, such as local or regional governments, and NGOs may also be able to contribute to the monitoring of such tensions. While detailed information used in such monitoring may need to be confidential, it may be important for police or governmental authorities to make their assessment publicly available in certain circumstances (for example, if the mass media or extremist groups are, for their own purposes, exaggerating the actual levels of tension).

States should ensure that systems for monitoring ethnic tensions are established by police and function effectively at both local and national levels, and that

responsibility for collecting and managing such data is clearly assigned to particular staff members and that these staff members receive training for carrying out this role.

States should also ensure that all police officers clearly understand the importance of their role in preventing ethnic tension and conflict, and that this role is reflected in police training generally. The training needs to ensure that senior police and operational managers have a good understanding of the potential causes and dynamics of ethnic conflict, have good mediation skills, and appreciate how through leadership the public authority of the police can be used to secure the commitment of potentially conflictual groups to find non-violent solutions.

States also need to ensure that “prevention of ethnic conflict” is not understood by police to justify repressive actions that infringe minority rights, but that preventive actions should form part of wider policies to promote the integration of minorities and good inter-ethnic relations. The legitimacy and effectiveness of the police in securing commitment to non-violent solutions among all ethnic groups will depend directly on whether the police are perceived and trusted to act fairly towards all groups in accordance with human rights.

- 22) *Police also need to be trained and equipped to manage civil disturbances and incidents of inter-ethnic conflict in a professional and non-partisan manner, with the aim of de-escalating conflicts and of resolving them through mediation where possible and with minimal use of force.*

The management of public order is a key responsibility of police in a democratic State. In a multi-ethnic State, overt ethnic conflict is an acutely serious form of public disorder, as it threatens the very foundations of the social cohesion of the state. The capacity of the police to manage and resolve any such outbreaks of public disorder is therefore crucial for the maintenance of a successful multi-ethnic society. Specific training should be provided for police officers responsible for the management of civil disturbances and incidents of ethnic conflict, and detailed codes of practice should be drawn up relating to this task. (General guidance on training and codes of practice is provided under Recommendations 8-10 above.)

When managing incidents of inter-ethnic conflict, the police need not only to be technically efficient, but also to maintain their legitimacy in the eyes of all groups and act at all times in accordance with international human rights. A key issue is the use of force by police. Although the police have the right to use force to resolve overt conflicts in accordance with the law, their professional aim should be to use the minimum amount of force necessary, and only to use it as a last resort. Alternative approaches such as mediation should be used wherever possible, and clear

guidelines should be produced identifying the circumstances in which use of force is justified and how it should be exercised.¹³

Police should always bear in mind that their actions are not separate from or “outside” the dynamics of inter-ethnic relations: they are an integral part of an ongoing social and political process in a democratic State. As the agency of the state responsible for managing overt conflict internally, their actions may – at least in the short or medium term – have a crucial effect on the development of inter-ethnic relations and the future of the state generally. For these reasons their ability to maintain the confidence of all ethnic groups whilst managing conflicts and restoring public order is of fundamental importance. If they act in, or are perceived to act in, an ethnically partisan manner against minorities whilst carrying out this role, in the eyes of minorities their legitimacy for acting as representatives of the state will be destroyed. It is therefore essential that all police officers, whatever their ethnic background, act with strict professional integrity in dealing with situations of inter-ethnic conflict.

- 23) *Especially at the local level, police should co-operate closely with other public authorities to ensure their actions to prevent and manage inter-ethnic conflict are co-ordinated with wider action to promote the integration of minorities and to build a successful multi-ethnic society.*

Whilst the management of overt ethnic conflict is the primary responsibility of the police, the prevention of such conflict and the resolution of tensions following its occurrence are tasks the police can and should contribute to, but not ones the police should address alone. Other public authorities also need to play a role, especially by taking the lead in addressing the underlying causes of such conflict. Which authorities need to be involved may depend to some extent on the nature of these causes: for example, in some situations where the conflict is linked to residential or property issues, housing authorities may be able to play a major role. A key role will be played by those authorities that have the capacity to bring together members of the different groups that are in conflict, to build bridges at the personal level, and to develop joint projects to advance common interests of various kinds. In the long run, education – and especially education that brings together young people from the different groups – will play a crucial role, so that education authorities must also be seen as having a key role to play. In view of the importance of addressing these issues at the local level, local government will certainly have a major role.

At both national and local levels, the police and other public authorities need to come together to develop specific strategies (including media strategies) to prevent ethnic conflict and ensure community cohesion in multi-ethnic societies. There are many instances where such conflict has developed, or has been exacerbated,

¹³ In approaching the use of force generally, the police should follow the UN Guidelines: *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, available at <http://www.unhcr.ch/html/menu3/b/h_comp_43.htm>.

primarily because those responsible did not recognize the signs early enough, did not have the commitment to act, or failed to act in an effective and co-ordinated manner. States need to ensure that they promote co-ordinated action by the relevant authorities at both national and local levels, and that this forms part of their wider strategies to promote the integration of minorities at all levels. Formal structures and partnerships will need to be established for this purpose. The role of the police needs to be recognized as integral to the process of building community cohesion in multi-ethnic societies, and police therefore need to be active partners in the process along with other public authorities and with representatives of national and ethnic minority groups.

The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note - 2008

Introduction

In its Helsinki Decision of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities (HCNM) to be an instrument of conflict prevention at the earliest possible stage in regard to tensions involving national minority issues. In the course of 15 years of sustained activity, the institution of the HCNM has gained a unique insight into identifying and addressing potential causes of conflict involving national minorities. In this context, the HCNM has devoted much attention to those situations involving persons belonging to ethnic groups who constitute the numerical majority in one State but the numerical minority in another (usually neighbouring) State. This issue engages the interest of government authorities in several States and constitutes a potential source of inter-State tension, if not conflict. Indeed, such tensions have defined much of modern and contemporary European history.

Ethno-cultural and State boundaries seldom overlap. Almost all States have minorities of some kind, with many belonging to communities which transcend State frontiers. These communities often serve as a bridge between States, contributing to prosperity and friendly relations, and fostering a climate of dialogue and tolerance. For this reason, persons belonging to national minorities should be able to establish and maintain free and peaceful contacts across State borders and to develop cultural and economic links. When transfrontier cultural ties, however, take on political significance and States unilaterally take steps to defend, protect or support what they describe as “their kin” outside their sovereign jurisdiction, there is a risk of political tension or even violence.

In the past, the HCNM has confronted such tensions in many regions of the OSCE area and remains acutely aware of potential dangers associated with excessive politicization of minority issues in inter-State relations. In the view of the HCNM, there is a need for greater clarity on how States can pursue their interests with regard to national minorities abroad without jeopardizing peace and good neighbourly relations. It is for this reason that these Recommendations have been elaborated, guided by principles of international law and based on the extensive experience of the HCNM. They are intended to clarify how States can support and

extend benefits to people belonging to national minorities residing in other countries in ways that do not strain interethnic or bilateral relations.

The Recommendations build on the experience of Rolf Ekéus (HCNM 2001-2007), as set out in his 2001 statement on “Sovereignty, Responsibility and National Minorities”, and on the “Report on the Preferential Treatment of National Minorities by their Kin-State”, issued by the Council of Europe’s Commission for Democracy through Law (Venice Commission) in the same year. Both documents explain the conditions under which and the limitations within which States may support citizens of another country based on shared ethnic, cultural or historical ties. These documents underline the dual responsibility of States, which is to protect and promote the rights of persons belonging to national minorities under their jurisdiction and act as responsible members of the international community with respect to minorities under the jurisdiction of another State.

The main tenets of the Recommendations on National Minorities in Inter-State Relations echo the two documents mentioned above and stipulate firstly, that under international law, the respect for and protection of minority rights is the responsibility of the State where the minority resides. Secondly, other States may have an interest in the well-being of minority groups abroad, especially those with whom they are linked by ethnic, cultural, linguistic or religious identity, or a common cultural heritage. This, however, does not entitle or imply a right under international law to exercise jurisdiction over people residing on the territory of another State. Finally, States can pursue this interest through extending benefits to minorities abroad only in consultation with the State of residence and with due respect for the principles of territorial integrity, sovereignty and friendly, including good neighbourly, relations. States should ensure that their policies with respect to national minorities abroad do not undermine the integration of minorities in the States where they reside or fuel separatist tendencies.

The 19 individual Recommendations are divided into four sections: general principles, State obligations regarding persons belonging to national minorities, benefits accorded by States to persons belonging to national minorities abroad and multilateral and bilateral instruments and mechanisms. They provide both normative and practical guidance to States in accordance with the general principles of sovereignty, human and minority rights and international responsibility. A more detailed explanation of the Recommendations is provided in an accompanying Explanatory Note which contains express reference to the relevant international standards. Each recommendation is intended to be read in conjunction with the specifically relevant paragraphs of the Explanatory Note and within the context of the document as a whole.

It should be noted that the question of national minorities in inter-State relations has often featured between the States of residence and the so-called “kin-States”. This term has been used to describe States whose majority population shares ethnic or cultural characteristics with the minority population of another State. These Recommendations focus on the relationship between such States to a large extent, but not exclusively. They are also applicable to a broader category of States that

may have an interest in minorities abroad with bonds such as a shared history, religion or language, which may or may not be considered as constituting kinship. In addition, “kin” is regarded as one of the essentially contested concepts that lacks agreed scientific or legal definition. For these reasons, the term “kin-State” is not used in the text of the Recommendations and is referred to only sparingly in the Explanatory Note when it has an added explanatory value.

The term “national minorities” as used in this document encompasses a wide range of minority groups, including religious, linguistic and cultural as well as ethnic minorities, regardless of whether these groups are recognized as such by the States where they reside and irrespective of the denomination under which they are recognized. These Recommendations are relevant for all these groups. In addition, the word “minorities” is often used in the Recommendations as a convenient abbreviation of the phrase “persons belonging to national minorities”.

In preparing the Recommendations on National Minorities in Inter-State Relations, the HCNM received valuable input and support from staff members, including Dr. Natalie Sabanadze, Professor Francesco Palermo, Dr. Annelies Verstichel and Mr. Bob Deen. Former HCNM staff members Dr. Walter Kemp, United Nations Office on Drugs and Crime, Professor John Packer, University of Essex, and Mrs. Dzenana Hadziomerovic, Office of the High Representative in Bosnia and Herzegovina also assisted in the drafting of the document.

In addition, the HCNM consulted the following experts:

Professor Gudmundur Alfredsson, Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund University; Prof. lect. Bogdan Aurescu, University of Bucharest and Substitute Member of the Venice Commission; Mrs. Ilze Brands-Kehris, Director, Latvian Centre on Human Rights, Riga; Professor Vojin Dimitrijevic, Director, Belgrade Centre for Human Rights; Professor Asbjørn Eide, Senior Fellow at the Norwegian Institute of Human Rights, Oslo; Ms. Simona Granata-Menghini, Head of Constitutional Co-operation Division, Secretariat of the Venice Commission, Strasbourg; Professor Jan Erik Helgesen, President of the Venice Commission, Strasbourg; Professor Kristin Henrard, Erasmus University Rotterdam; Dr. Enikő Horváth, independent expert, Paris; Mr. Antti Korkeakivi, Centre for Human Rights and Global Justice at New York University School of Law; Dr. Emma Lantschner, European Academy Bolzano/Bozen and University of Graz; Mr. Mark Lattimer, Executive Director, Minority Rights Group International, London; Professor Joseph Marko, University of Graz; Professor Anna Matveeva, London School of Economics and Political Science; Mr. Alan Phillips, President of the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe, Strasbourg; Professor Eduardo Ruiz-Vieytez, Director, Human Rights Institute, University of Deusto, Bilbao; Professor Levente Salat, Babeş-Bolyai University, Cluj-Napoca; Professor Pieter van Dijk, President of the Administrative Jurisdiction Division, Council

of State of the Netherlands, The Hague, and Member of the Venice Commission; Professor Mitja Žagar, Institute for Ethnic Studies, Ljubljana.

The purpose of these Recommendations is to provide representatives of States, national minorities and international organizations with guidance on how to address the questions concerning national minorities that arise in the context of inter-State relations in a way that protects and promotes the rights of persons belonging to national minorities, prevents conflict, maintains interethnic harmony and strengthens good neighbourly relations. By encouraging States to make the right policy choices and take measures to alleviate tensions related to national minorities abroad, it is hoped that the ultimate conflict prevention goal of the HCNM mandate will be served.

Recommendations

I. General principles

- 1) Sovereignty comprises the jurisdiction of the State over its territory and population, and is constrained only by the limits established by international law. No State may exercise jurisdiction over the population or part of the population of another State within the territory of that State without its consent.
- 2) Sovereignty also implies the obligation of the State to respect and to ensure the protection of human rights and fundamental freedoms of all persons within its territory and subject to its jurisdiction, including the rights and freedoms of persons belonging to national minorities. The respect for and protection of minority rights is primarily the responsibility of the State where the minority resides.
- 3) The protection of human rights, including minority rights, is also a matter of legitimate concern to the international community. States should address their concerns for persons or situations within other States through international co-operation and the conduct of friendly relations. This includes the full support by States of international human rights standards and their agreed international monitoring mechanisms.
- 4) A State may have an interest – even a constitutionally declared responsibility – to support persons belonging to national minorities residing in other States based on ethnic, cultural, linguistic, religious, historical or any other ties. However, this does not imply, in any way, a right under international law to exercise jurisdiction over these persons on the territory of another State without that State's consent.

II. State obligations regarding persons belonging to national minorities

- 5) States should guarantee the right of everyone, including persons belonging to national minorities, to equality before the law and to equal protection under the law. In this respect, discrimination based on belonging to a national minority or related grounds is prohibited. Achieving substantive equality may require special measures and such measures should not be regarded as being discriminatory.
- 6) States should respect and promote the rights of persons belonging to national minorities, including the right freely to express, preserve and develop their cultural, linguistic or religious identity free from any attempts at assimilation against their will.
- 7) States should promote the integration of society and strengthen social cohesion. This implies that persons belonging to national minorities are given an effective voice at all levels of governance, especially with regard to, but not limited to, those matters which affect them. Integration can only be achieved if persons belonging to national minorities, in turn, participate in all aspects of public life and respect the rules and regulations of the country they reside in.
- 8) States should not unduly restrict the right of persons belonging to national minorities to establish and maintain unimpeded and peaceful contacts across frontiers with persons lawfully residing in other States, in particular those with whom they share a national or ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

III. Benefits accorded by states to persons belonging to national minorities abroad

- 9) States may extend benefits to persons residing abroad, taking into account the aforementioned principles. Such benefits may include, *inter alia*, cultural and educational opportunities, travel benefits, work permits and facilitated access to visas. They should be granted on a non-discriminatory basis. The State of residence should not obstruct the receipt or enjoyment of such benefits, which are consistent with international law and the principles underlying these Recommendations.
- 10) States should refrain from taking unilateral steps, including extending benefits to foreigners on the basis of ethnic, cultural, linguistic, religious or historical ties that have the intention or effect of undermining the principles of territorial integrity. States should not provide direct or indirect support for similar initiatives undertaken by non-State actors.
- 11) States may take preferred linguistic competencies and cultural, historical or familial ties into account in their decision to grant citizenship to individuals

abroad. States should, however, ensure that such a conferral of citizenship respects the principles of friendly, including good neighbourly, relations and territorial sovereignty, and should refrain from conferring citizenship en masse, even if dual citizenship is allowed by the State of residence. If a State does accept dual citizenship as part of its legal system, it should not discriminate against dual nationals.

- 12) States may offer assistance to support education abroad, for example, with regard to textbooks, language training, teacher training, scholarships and school facilities. Such support should be non-discriminatory, have the explicit or presumed consent of the State of residence and be in line with applicable domestic and international educational standards.
- 13) States may provide support to cultural, religious or other non-governmental organizations respecting the laws and with explicit or implied consent of the country in which they are registered or operating. However, States should refrain from financing political parties of an ethnic or religious character in a foreign country, as this may have destabilizing effects and undermine good inter-State relations.
- 14) The free reception of transfrontier broadcasts, whether direct or by means of retransmission or rebroadcasting, may not be prohibited on the basis of ethnicity, culture, language or religion. Limitations are restricted to broadcasts that use hate speech or incite violence, racism or discrimination.
- 15) When granting benefits to persons belonging to national minorities residing abroad, States should ensure that they are consistent in their support for persons belonging to minorities within their own jurisdiction. Should States demonstrate greater interest in minorities abroad than at home or actively support a particular minority in one country while neglecting it elsewhere, the motives and credibility of their actions may be put into question.

IV. Multilateral and bilateral instruments and mechanisms

- 16) States should co-operate across international frontiers within the framework of friendly bilateral and multilateral relations and on a territorial rather than an ethnic basis. Transfrontier co-operation between local and regional authorities and minority self-governments can contribute to tolerance and prosperity, strengthen inter-State relations and encourage dialogue on minority issues.
- 17) In dealing with issues concerning the protection of persons belonging to national minorities, States should be guided by the rules and the principles established in international human rights documents, including those multilateral instruments and mechanisms which have been created specifically to support the implementation of standards and commitments relating to minorities.

- 18) States are encouraged to conclude bilateral treaties and make other bilateral arrangements in order to enhance and further develop the level of protection for persons belonging to national minorities. These mechanisms offer vehicles through which States can share information and concerns, pursue interests and ideas, and further support minorities on the basis of friendly relations. A bilateral approach should follow the spirit of fundamental rules and principles laid down in multilateral instruments.
- 19) States should make good use of all available domestic and international instruments in order to effectively address possible disputes and to avert conflicts over minority issues. This may include advisory and consultative bodies such as minority councils, joint commissions and relevant international organizations. Mediation or arbitration mechanisms should be established in advance through appropriate bilateral or multilateral agreements.

Explanatory Note

I. General principles

- 1) *Sovereignty comprises the jurisdiction of the State over its territory and population, and is constrained only by the limits established by international law. No State may exercise jurisdiction over the population or part of the population of another State within the territory of that State without its consent.*

The principle of State sovereignty is a cornerstone of international law, as codified in Articles 1 and 2 of the Charter of the United Nations (hereinafter: “UN Charter”) and reaffirmed in several other international documents. These include the 1975 CSCE Helsinki Final Act (Principle IV), the 1990 Charter of Paris for a New Europe, and, in particular with regard to national minorities, the 1990 CSCE Document of the Copenhagen Meeting on the Human Dimension (hereinafter: “Copenhagen Document”) (paragraph 37), the 1995 Framework Convention for the Protection of National Minorities of the Council of Europe (hereinafter: “FCNM”) (Preamble and Article 21), the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereinafter: “UN Declaration on Minorities”) (Article 8 (4)), and the 1994 EU Concluding Document of the Inaugural Conference for a Pact on Stability in Europe (hereinafter: “Stability Pact”) (paragraph 1.6). International law provides for extraterritorial jurisdiction for specific cases and in certain situations, but in a restricted form.

- 2) *Sovereignty also implies the obligation of the State to respect and to ensure the protection of human rights and fundamental freedoms of all*

persons within its territory and subject to its jurisdiction, including the rights and freedoms of persons belonging to national minorities. The respect for and protection of minority rights is primarily the responsibility of the State where the minority resides.

Since the Second World War, a legal regime has been developed following the principle that protection of human rights and fundamental freedoms, including those of persons belonging to national minorities, is the responsibility of the State that has jurisdiction over the persons concerned. Under international law, therefore, States are obliged to secure to everyone within their jurisdiction the enjoyment of human rights and freedoms, including minority rights. This responsibility to protect is included in, among others, the Helsinki Final Act (Principle VII, para.4), the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "ECHR") (Article 1), and with regard to national minorities in particular, in the 1966 UN International Covenant on Civil and Political Rights (hereinafter: "ICCPR") (Article 27), the UN Declaration on Minorities (Article 1(1)), the CSCE Copenhagen Document (paragraphs 33(1) and 36(2)) and the FCNM (Article 1). Consequently, the protection of minority rights is primarily but not exclusively the responsibility of the State where the minority resides: it is also a matter of legitimate concern for the international community, as further elaborated in Recommendation 3 below.

The preservation of peace and stability requires that persons belonging to minorities are treated and protected in an integrated way to the extent that their special status and situation allows this. The fundamental link between protection and promotion of minority rights and the maintenance of peace and stability has been emphasized a number of times by the OSCE participating States, beginning with Principle VII of the Decalogue of the Helsinki Final Act. This link has been reiterated in subsequent documents such as the 1983 Concluding Document of Madrid (Principle 15), the 1989 Concluding Document of Vienna (Principles 18 and 19) and the 1990 Charter of Paris for a New Europe, as well as in the Organization's Summit Documents, including the 1990 Copenhagen Document (Part IV, paragraph 30), the 1992 Helsinki Document (Part IV, paragraph 24) and the 1996 Lisbon Document (Part I, Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century, paragraph 2). A more specific link is established, *inter alia*, in the preamble to the 1992 UN Declaration on Minorities, in the preamble of the FCNM and in the Final Declaration of the Council of Europe 1993 Vienna Summit. Protection of minority rights by the State in which minorities reside is, therefore, not only one of the cornerstones of international law but also a precondition for peace, security and democratic governance, especially in multi-ethnic States.

- 3) *The protection of human rights, including minority rights, is also a matter of legitimate concern to the international community. States should address their concerns for persons or situations within other States through international co-operation and the conduct of friendly relations. This includes the full support by States of international human rights standards and their agreed international monitoring mechanisms.*

While the protection of human rights, including minority rights, is primarily the responsibility of the State where the minority resides, it is also a matter of legitimate international concern. This has been emphasized, *inter alia*, by the OSCE participating States in the 1991 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, as respect for these rights and freedoms constitutes one of the foundations of international legal order. With regard to minority rights in particular, this has been underlined in Section II, paragraph 3 of the 1991 Report of the CSCE Meeting of Experts on National Minorities in Geneva, which states that “issues concerning minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State”.

As the protection of human rights, including minority rights, falls within the scope of international co-operation, the concerns of States for people or situations within other States must be expressed within the framework of the basic principles of international law, including the conduct of friendly relations. While pursuing bilateral agreements, States should ensure that these do not undermine or contradict international standards set out in multilateral instruments. This issue is elaborated in Section IV of these Recommendations. States should co-operate on questions relating to persons belonging to minorities, *inter alia*, by exchanging information and experiences, including for example through joint commissions, in order to promote mutual understanding and confidence. The procedural principles of good neighbourliness, friendly relations and international co-operation are stated in, *inter alia*, the UN Charter (Article 1(2)), the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and the CSCE Charter of Paris for a New Europe. These principles, in particular regarding minorities, are reaffirmed in the UN Declaration on Minorities (Articles 6 and 7), in the CSCE Copenhagen Document (paragraph 36(1)), in the FCNM (Articles 1, 2 and 18) and in the Stability Pact (paragraph 1(5)).

In the context of international responsibility to respect and protect human rights, including minority rights, States are obliged to fulfil their reporting obligations to international supervisory bodies and to ensure that the rights of communication to international courts and tribunals are observed. Supervisory and advisory bodies play an important role in promoting transparency, understanding and goodwill, and ensure that international legal norms are upheld; States should support, develop and fully participate in these mechanisms.

- 4) *A State may have an interest – even a constitutionally declared responsibility – to support persons belonging to national minorities residing in other States based on ethnic, cultural, linguistic, religious, historical or any other ties. However, this does not imply, in any way, a right under international law to exercise jurisdiction over these persons on the territory of another State without that State's consent.*

This principle points to the distinction between rights and interests, as well as between international and domestic law. A State may have an interest in supporting persons living abroad sharing ethnic, cultural, linguistic, religious, historical or other characteristics with its majority population and this may even be enshrined in its constitution. This interest, however, even if laid down in domestic law, does not imply, in any way, a right under international law to exercise jurisdiction over these persons. A State cannot exercise its powers, in any form, on the territory of other States without the consent of those States. International law only provides for strictly defined exceptions to this rule, such as the exercise of jurisdiction related to States' embassies, ships or citizens abroad.

As a rule, a State may provide consular protection to its citizens abroad only after consultation and agreement with the State of residence or sojourn, with the exception of the most urgent humanitarian circumstances when such consultation is not possible or stands in the way of effective protection. This requirement of previous consultation applies a fortiori if the person abroad is not a citizen of the intervening State. The fact that the State considers a person abroad to be one of its "kin", does not justify any unilateral intervention on that person's behalf.

II. State obligations regarding persons belonging to national minorities

- 5) *States should guarantee the right of everyone, including persons belonging to national minorities, to equality before the law and to equal protection under the law. In this respect, discrimination based on belonging to a national minority or related grounds is prohibited. Achieving substantive equality may require special measures and such measures should not be regarded as being discriminatory.*

The principles of non-discrimination and equality are expressed in virtually all international human rights instruments, including notably the 1948 Universal Declaration of Human Rights (Article 2 and 7), the ICCPR (Articles 2, 26 and 27) and the 1966 International Covenant on Economic, Social and Cultural Rights (Article 2). Article 1 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination makes clear that this instrument also prohibits discrimination on the basis of "descent, or national or ethnic origin". Article 14 of the ECHR also expressly extends the principle of non-discrimination to cover grounds of "national or social origin, [or] association with a national minority" and Protocol 12 additional to the ECHR establishes a general clause against discrimination.

In more recent times, the principle of non-discrimination on grounds of, *inter alia*, national and ethnic origin has been codified by the European Union in the 1997 Amsterdam Treaty (Article 13 TEU), the 2000 Charter of Fundamental Rights of the European Union (Article 22) and the Directives 2000/43/EC and 2000/78/EC. The OSCE has also included the principles of non-discrimination and equality in the Helsinki Final Act (Principle VII), in the 1989 Concluding Document of Vienna (paragraphs 13.7 and 13.8) and in the Copenhagen Document (paragraphs 5.9, 25.3 and 25.4). With regard to minorities in particular, the enjoyment of minority

rights without discrimination is contained in the UN Declaration on Minorities (Article 2.1) and in the CSCE Copenhagen Document (paragraph 31). Not least, most OSCE participating States incorporate these principles and standards in their constitutions.

The FCNM (Article 4) specifically prohibits discrimination based on belonging to a minority in paragraph 1. Paragraph 2 also specifies that additional and adequate measures may be required to promote the full and effective equality between persons belonging to minorities and those belonging to the majority. Such measures need to be in conformity with the proportionality principle in order not to be considered discriminatory. This issue is further elaborated in Recommendation 10.

- 6) *States should respect and promote the rights of persons belonging to national minorities, including the right freely to express, preserve and develop their cultural, linguistic or religious identity free from any attempts at assimilation against their will.*

Lessons from the past have shown that respect for minority rights is essential for peace and stability within and between States. Persons belonging to minorities have the right to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage. This right can only be exercised if States abstain from any attempts to assimilate minorities against their will.

International law affirms the obligation of States to promote the right of persons belonging to minorities to maintain their identity by providing adequate opportunities to develop their culture, to use their language, to practice their religion and to effectively participate in public affairs. This obligation is laid down in, *inter alia*, the ICCPR (Article 27), in the 1960 UNESCO Convention against Discrimination in Education (Article 5.1.c.), in the UN Declaration on Minorities (Articles 1, 2(2) and 2(3)), in the CSCE Copenhagen Document (paragraphs 33 and 35) and in the FCNM (Articles 5(1), 8 and 10-15). Specific recommendations and guidelines on the effective implementation of these rights have been published by the HCNM, including in regard to education (The Hague Recommendations regarding the Education Rights of National Minorities, 1996), use of language (Oslo Recommendations regarding the Linguistic Rights of National Minorities, 1998) and effective participation in public life (Lund Recommendations on the Effective Participation of National Minorities in Public Life, 1999).

- 7) *States should promote the integration of society and strengthen social cohesion. This implies that persons belonging to national minorities are given an effective voice at all levels of governance, especially with regard to, but not limited to, those matters which affect them. Integration can only be achieved if persons belonging to national minorities, in turn, participate in all aspects of public life and respect the rules and regulations of the country they reside in.*

Based on the experience of the HCNM, peace, stability, security and prosperity can only be achieved in societies promoting the integration of minorities while respecting their diversity. Integration with respect for diversity is not a matter of “either/or”, but a question of finding the appropriate balance, acknowledging the right of minorities to maintain and develop their own language, culture and identity and at the same time achieving an integrated society where every person in the State has the opportunity to take part in and influence the political, social and economic life of mainstream society. This principle is underpinned, *inter alia*, by the FCNM (Articles 5 and 6).

A well-integrated society in which all participate and interact is in the interest of both States and minorities. It is the result of a continuous and democratic process that contributes to good governance and requires commitment from both sides. Separation between communities and groups is not usually a good basis on which to build a well-functioning society with good prospects of future stability. Integration involves interaction, not just tolerating a plurality of cultures.

Against such a background, persons belonging to minorities not only have the right to opportunities to develop their identity (as reiterated in Recommendation 6 above), but also a responsibility to participate in cultural, social and economic life and in public affairs, thus integrating into the wider national society. This includes, for instance, the need to learn the State language while at the same time enjoy adequate opportunities for learning of, and in, the minority language, as put forward in the Copenhagen Document (paragraph 34), The Hague Recommendations Regarding the Education Rights of National Minorities (no. 1) and the Explanatory Report to Article 14 of the FCNM. Integration also implies that national minorities should participate in all aspects of governance of their country of residence; their involvement should not be restricted to those areas that specifically concern them.

- 8) *States should not unduly restrict the right of persons belonging to national minorities to establish and maintain unimpeded and peaceful contacts across frontiers with persons lawfully residing in other States, in particular those with whom they share a national or ethnic, cultural, linguistic or religious identity, or a common cultural heritage.*

Establishing and maintaining unimpeded and peaceful contacts across frontiers with people lawfully residing in other States, with whom they share a common national or ethnic origin, a cultural heritage or a religious belief, is a fundamental right of persons belonging to minorities. This fundamental minority right is stipulated in the UN Declaration on Minorities (Article 2(5)), in the CSCE Copenhagen Document (paragraph 32 (4)), and in the FCNM (Article 17 (1)). This Recommendation therefore concerns an individual right and States should refrain from interfering with it except in situations where there is a substantiated overriding security risk. Multilateral and bilateral instruments and mechanisms for transfrontier co-operation among States are dealt with in Section IV of the Recommendations.

III. Benefits accorded by states to persons belonging to national minorities abroad

- 9) *States may extend benefits to persons residing abroad, taking into account the aforementioned principles. Such benefits may include, inter alia, cultural and educational opportunities, travel benefits, work permits and facilitated access to visas. They should be granted on a non-discriminatory basis. The State of residence should not obstruct the receipt or enjoyment of such benefits, which are consistent with international law and the principles underlying these Recommendations.*

States may have an interest in supporting persons residing abroad, including by according benefits to them. According to the 2001 “Report on the Preferential Treatment of Minorities by their Kin-State” adopted by the European Commission for Democracy Through Law (hereinafter: “Venice Commission Report” - CDL-INF (2001) 19), the possibility for States to adopt unilateral measures on the protection of “kin-minorities”, irrespective of whether they live in neighbouring or in other countries, is conditional on respect for the following principles: a) the territorial sovereignty of States; b) *pacta sunt servanda*; c) friendly relations amongst States, and d) the respect of human rights and fundamental freedoms, in particular the prohibition of discrimination. The mere fact that the beneficiaries of this kind of support are foreigners does not constitute an infringement of the principle of territorial sovereignty of other States.

The same report acknowledges that a State can legitimately issue laws or regulations concerning citizens of other countries without seeking the prior consent of the State in which they reside, as long as the effects of these laws or regulations are to take place within its own borders only. For example, a State can unilaterally decide to grant a certain number of scholarships to meritorious foreign students who wish to pursue their studies in the universities of that State.

However, when a law is specifically directed at foreigners residing in a foreign country and the effects of this law are to take place abroad, the State of residence of the individuals concerned should be consulted. In this regard, a distinction should be made between situations in which the consent of the State affected is implied, namely in the fields covered by treaties or international customs, and those in which consent should be explicit (Section D.a.i. of the Venice Commission Report).

Peace, stability and friendly relations between States require that the State of residence does not obstruct the receipt or enjoyment of benefits as long as they comply with international law and standards. These provide that benefits should be non-discriminatory, i.e. they should pursue a legitimate aim and be proportionate.

As set out in the Venice Commission Report, a legitimate aim can be the fostering of cultural links between the target population and the population of the “kin-State”. The promotion of educational or personal links could also constitute a legitimate aim. Benefits extended by States therefore may include cultural and educational

opportunities, travel benefits, work permits, facilitated access to visas and acquisition of property.

The enjoyment of such benefits is frequently made conditional on the possession of identity documents issued by the “kin-State”. These documents should only be a proof of entitlement to the services provided for under a specified law or regulation. They should not aim at establishing a political bond between its holder and the “kin-State” and should not substitute for an identity document issued by the authorities of the State of residence.

To be non-discriminatory, preferential treatment must target and affect persons in the same circumstances equally. This requires that the impact of measures granting preferential benefits to certain foreigners is proportionate, i.e. the least limiting on the formal equal treatment of all persons belonging to the same category. For example, as pointed out in the Venice Commission report, differential treatment in granting benefits in education may be justified by the legitimate aim of fostering the cultural links of the targeted population with the population of the “kin-State”. In order to be acceptable, however, the benefits accorded must be genuinely linked with the culture of the “kin-State”, be open to all interested and qualified individuals, irrespective of their ethnic background and be proportionate. For instance, educational benefits provided on a non discriminatory basis such as linguistic proficiency can legitimately be used as a precondition for the enjoyment of such a benefit.

- 10) *States should refrain from taking unilateral steps, including extending benefits to foreigners on the basis of ethnic, cultural, linguistic, religious or historical ties that have the intention or effect of undermining the principles of territorial integrity. States should not provide direct or indirect support for similar initiatives undertaken by non-State actors.*

Extending benefits to particular groups abroad that could fuel separatist tendencies and have a weakening or fragmenting effect in the States where the foreigners reside, violates the principles of sovereignty and friendly relations between States. Unilateral steps of this kind may include selective financing of foreign political parties based on ethnic, cultural, linguistic or religious ties, distribution of identity papers certifying ethnic origin, or granting citizenship en masse to citizens of another State, as further elaborated in Recommendation 11.

Furthermore, international peace and security can be threatened by acts that undermine the societal integration and social cohesion of other States. Article 1 of the UN Charter underlines the importance of preventing and removing threats to peace. History shows that when States pursue unilateral policies – including those of a symbolic nature – on the basis of national kinship to protect minorities living outside of the jurisdiction of the State, this sometimes leads to tensions and frictions; even violent conflict.

The same effect can be caused by initiatives with the same aim taken by non-State actors, including religious institutions, with direct or indirect support from State authorities. In addition, States should take preventive and remedial action against non-State actors within their borders who introduce measures or support initiatives in relation to minority groups abroad that incite violence or fuel separatist tendencies. This must be read in close connection with Recommendation 3, which stresses the importance of international co-operation and the conduct of friendly relations in dealing with concerns about people or situations in other States.

- 11) *States may take preferred linguistic competencies and cultural, historical or familial ties into account in their decision to grant citizenship to individuals abroad. States should, however, ensure that such a conferral of citizenship respects the principles of friendly, including good neighbourly, relations and territorial sovereignty, and should refrain from conferring citizenship en masse, even if dual citizenship is allowed by the State of residence. If a State does accept dual citizenship as part of its legal system, it should not discriminate against dual nationals.*

The conferral of citizenship is generally considered to fall under the exclusive domestic jurisdiction of each individual State and may be based on preferred linguistic competencies as well as on cultural, historical or familial ties. When this involves persons residing abroad, however, it can be a highly sensitive issue. Contested claims or competing attempts by the States concerned to exercise jurisdiction over their citizens, irrespective of the place of residence, have the potential to create tensions. This is particularly likely to happen when citizenship is conferred en masse, i.e. to a specified group of individuals or in substantial numbers relative to the size of the population of the State of residence or one of its territorial subdivisions. States should therefore refrain from granting citizenship without the existence of a genuine link between the State and the individual upon whom it is conferred, as ruled by the International Court of Justice in the *Nottebohm Case* (1955 I.C.J. 4).

Even though States have the right to freely determine who their citizens are, they should not abuse this right by violating the principles of sovereignty and friendly, including good neighbourly, relations. Full consideration should be given to the consequences of bestowing citizenship on the mere basis of ethnic, national, linguistic, cultural or religious ties, especially if conferred on residents of a neighbouring State. It could for example lead to differential treatment for these individuals as compared with other residents of the “kin-State” who may be denied access to citizenship. Article 5 of the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination and Article 5 of the 1997 European Convention on Nationality provide that the rules of a State on citizenship must not contain distinctions or include any practice that constitutes discrimination on the grounds of, *inter alia*, national or ethnic origin.

It should be noted in this regard that while States have limited jurisdiction over their citizens residing abroad, this should be exercised with respect for the principles of sovereignty and friendly, including good neighbourly, relations. Moreover, the State of residence holds primary responsibility for the protection of its residents, including persons belonging to minorities, even though they may hold multiple citizenship, and should not discriminate against dual citizens. To avoid conflict of loyalties, a State can legitimately ask its citizens to rescind other citizenships before taking up high political positions such as Head of State or a member of government.

- 12) *States may offer assistance to support education abroad, for example, with regard to textbooks, language training, teacher training, scholarships and school facilities. Such support should be non-discriminatory, have the explicit or implied consent of the State of residence and be in line with applicable domestic and international educational standards.*

Culture does not stop at State borders. Assistance and support in educational matters abroad can contribute in a constructive way to the development and the promotion of linguistic and cultural pluralism. States may express their interest in specific linguistic, cultural or ethnic groups living abroad by assisting them with cultural initiatives. This could include for instance the provision of textbooks, language training, teacher training, scholarships and school premises and facilities, support for libraries, museums, the arts and the like. Such support should wherever possible be provided by involving the authorities of the State of residence. With regard to textbooks, States should ensure that all educational materials, including those provided by other States, correspond to their domestic and international educational standards and provide a balanced picture that respects commonly accepted values of tolerance and a plurality of views and cultures.

The UN Convention against Discrimination in Education (Article 5) stipulates, on the one hand, that education shall promote understanding, tolerance and friendship among all nations, racial or religious groups. On the other hand, it acknowledges that persons belonging to minorities have the right to carry on their educational activities without prejudice to national sovereignty. The importance of international co-operation in the field of education is recognized, *inter alia*, in the Hague Recommendations Regarding the Education Rights of National Minorities (Recommendation nos. 1-3) and in the 1989 UN Convention on the Rights of the Child (Article 28.3). The function of education to foster tolerance and intercultural understanding is acknowledged in the same Convention (Article 29.1 lit b-d / (b), (c), and (d)).

Following the principle of good relations, cultural and educational support to particular groups abroad should be provided with the explicit or implied consent of the State where the beneficiary group resides. According to the Venice Commission Report, when benefits provided by “kin-States” have an obvious cultural aim such as promoting the study of their national language and culture, consent of the State of residence can even be presumed. In this case, “kin-States” may take unilateral

administrative or legislative measures that should not be unduly restricted by the State of residence, as long as their effect is compatible with the principles set out in Recommendation 10 and does not violate the principle of non-discrimination as set out in Recommendation 9.

- 13) *States may provide support to cultural, religious or other non-governmental organizations respecting the laws and with explicit or implied consent of the country in which they are registered or operating. However, States should refrain from financing political parties of an ethnic or religious character in a foreign country, as this may have destabilizing effects and undermine good inter-State relations.*

Support for civil society abroad can take many forms. In fields other than education and culture, the preferential treatment of minority groups residing in another State is more problematic and, as pointed out in the Venice Commission Report, should be considered to be the exception rather than the rule. Measures that have extraterritorial effects in fields other than cultural and educational support should only be undertaken with the explicit consent of the States in whose jurisdiction such effects would occur.

As mentioned in Recommendation 10, support by a foreign State must not have destabilizing or fragmenting effects. Assistance to organizations abroad should be provided in the spirit of good neighbourliness and enhance regional co-operation without jeopardizing sovereignty or cohesion within multi-ethnic States. In this context support and financing of political parties and movements abroad with an ethnic or religious character should be discouraged, as this has an impact on the domestic political processes and often contributes to excessive politicization of minority issues to the detriment of societal integration and good inter-State relations.

- 14) *The free reception of transfrontier broadcasts, whether direct or by means of retransmission or rebroadcasting, may not be prohibited on the basis of ethnicity, culture, language or religion. Limitations are restricted to broadcasts that use hate speech or incite violence, racism or discrimination.*

States should not obstruct the free reception of transfrontier broadcasting. This would be an encroachment on freedom of expression, as guaranteed by international human rights instruments and, with regard to transfrontier television in particular, by Article 4 of the 1989 European Convention on Transfrontier Television (hereinafter: ECTT). Recommendation 13 of the Guidelines on the use of Minority Languages in the Broadcast Media (hereinafter: Media Guidelines) underlines that the free reception of transfrontier broadcasts “shall not be prohibited on the basis of language”. In addition, Article 9 (1) of the FCNM states that freedom of expression includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of

frontiers. States should, therefore, ensure that persons belonging to national minorities are not discriminated against in their access to domestic and foreign media. Moreover, Article 11(2) of the 1992 European Charter for Regional or Minority Languages, while permitting regulation, states that “[t]he Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language”.

The States where minorities reside can impose limitations on foreign print, broadcast and other, including new, media that advocate national, racial or religious hatred that constitute incitement to discrimination, racism, violence and hostility or use hate speech. Article 20 of the ICCPR is express in this regard (including prohibition of any propaganda for war). The ECHR (Article 10) affirms that the right to freedom of expression includes “freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. The same article provides that the exercise of these freedoms “may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime [...]”. According to the European Court of Human Rights, restrictions must be proportionate to the legitimate aim pursued (see for example *Handyside v. UK*, judgment of 7 December 1976, Series A, No. 24).

At the same time, the availability of foreign broadcasting in a minority language does not exonerate the State from fulfilling its obligation to facilitate domestically produced broadcasting in that language nor does it justify a reduction of the broadcast time in that language. This principle is set out in the HCNM’s Media Guidelines (Recommendation 13(2)) and in the Oslo Recommendations regarding the Linguistic Rights of National Minorities (Recommendation 11). The same principle is reaffirmed by the Advisory Committee on the FCNM (ACFC/INF/OP/I(2003)004, paragraph 50), which states that “availability of [...] programmes from neighbouring States does not obviate the necessity for ensuring programming on domestic issues concerning national minorities and programming in minority languages”. In order to foster social cohesion and the promotion of integration of minorities into the wider society, it is important that they have access not only to foreign broadcasting in their language, but also to the media in their country of residence. States should therefore facilitate both domestically produced broadcasting in minority languages and the accessibility of mainstream media.

- 15) *When granting benefits to persons belonging to national minorities residing abroad, States should ensure that they are consistent in their support for persons belonging to minorities within their own jurisdiction. Should States demonstrate greater interest in minorities abroad than at home or actively support a particular minority in one country while neglecting it elsewhere, the motives and credibility of their actions may be put into question.*

The protection and promotion of the rights of persons belonging to minorities is first and foremost the obligation of the State in whose jurisdiction these persons reside. Consequently, there is a logical expectation that when a State offers, pursues or promotes rights or policies concerning the situation of certain minorities abroad, this same State will also protect and promote the rights of persons belonging to minorities within its own borders in a proportional way. States should also be consistent in their treatment of “kin-minorities” in the different countries in which they reside and avoid overt discrepancies between similar situations. The State where the minority in question resides may draw attention to such discrepancies and question the underlying motives.

Under no circumstances should this example be read as a pretext to deviate from the principles contained in Recommendations 2, 5 and 6 or, more generally, from the international standards concerning the protection of persons belonging to minorities. States that refrain from pursuing active policies with regard to minorities abroad are not entitled to neglect the minorities residing in their territories. Conversely, this Recommendation should not be interpreted as encouraging full reciprocity in inter-State relations regarding protection of minorities, since domestic standards set by individual States are not always applicable to the situation in other States.

IV. Multilateral and bilateral instruments and mechanisms

- 16) *States should co-operate across international frontiers within the framework of friendly bilateral and multilateral relations and on a territorial rather than an ethnic basis. Transfrontier co-operation between local and regional authorities and minority self-governments can contribute to tolerance and prosperity, strengthen inter-State relations and encourage dialogue on minority issues.*

As reaffirmed in the Preamble of the FCNM, “the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State”. An increasing number of international and supranational instruments have been developed over recent decades to promote transfrontier relations. The first was the 1980 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its additional protocols. More recently, the European Union also made an important contribution in developing the legal instruments for transfrontier co-operation by adopting the 2006 Regulation (EC) No. 1082/2006 of the European Parliament and the Council on a European Grouping of Territorial Cooperation (EGTC).

With regard to minorities in particular, Articles 17 and 18 of the FCNM encourage States to take measures to promote transfrontier co-operation as a means to implement the protection and promotion of the identity of persons belonging to national minorities. Transfrontier co-operation should, however, take place on a

territorial rather than an ethnic basis: it should be designed for the benefit of the whole population residing in the territory of a sub-State entity. Moreover, such co-operation should be conducted on the basis of friendly bilateral and multilateral relations, stemming from the general international legal principle of friendly and good neighbourly relations, already elaborated in Recommendation 3.

- 17) *In dealing with issues concerning the protection of persons belonging to national minorities, States should be guided by the rules and the principles established in international human rights documents, including those multilateral instruments and mechanisms which have been created specifically to support the implementation of standards and commitments relating to minorities.*

As part of international human rights, the rights of persons belonging to national minorities are universal. Against this background, it is important that these rights are interpreted in a uniform way and according to the standards contained in multilateral instruments, notably of the United Nations, the OSCE, the Council of Europe and the EU. As stated in Recommendation 3, minority rights are a matter of international concern. States may therefore prefer to voice their concerns through multilateral mechanisms, as bilateral relations may be affected by unequal negotiating positions and may overlook minorities without a “kin-State”.

It should be noted that transparency helps to promote understanding and goodwill, and that independent monitoring helps ensure that international legal norms are upheld. States could, therefore, benefit from reporting consistently on all their activities involving national minorities abroad to international bodies such as the Committee on Elimination of Racial Discrimination (CERD) or the Advisory Committee on the FCNM.

- 18) *States are encouraged to conclude bilateral treaties and make other bilateral arrangements in order to enhance and further develop the level of protection for persons belonging to national minorities. These mechanisms offer vehicles through which States can share information and concerns, pursue interests and ideas, and further support minorities on the basis of friendly relations. A bilateral approach should follow the spirit of fundamental rules and principles laid down in multilateral instruments.*

In recent times there has been a considerable increase of bilateral treaties on transfrontier co-operation in inter-State relations that aim to improve minority protection through, *inter alia*, the establishment of joint commissions. Within the framework of international standards, bilateral treaties and the mechanisms they envisage can serve a useful function in respecting and promoting the rights of persons belonging to minorities. Article 18 of the FCNM encourages States to conclude such agreements. They can offer a vehicle through which States can share information and concerns, pursue interests and ideas, and further protect

particular minorities on the basis of the consent of the State in whose jurisdiction the minority resides. Articles 26 and 31 of the 1969 Vienna Convention on the Law of Treaties stipulate that treaties should be implemented and interpreted in good faith. Bilateral treaties should not fall below and preferably should go beyond and complement international minimum standards. They should not be formulated in such a way that gives rise to interpretation divergent from the multilaterally set standards and should supplement rather than substitute the obligations of the State of residence.

- 19) *States should make good use of all available domestic and international instruments in order to effectively address possible disputes and to avert conflicts over minority issues. This may include advisory and consultative bodies such as minority councils, joint commissions and relevant international organizations. Mediation or arbitration mechanisms should be established in advance through appropriate bilateral or multilateral agreements.*

Bilateral agreements for the protection of the rights of persons belonging to minorities on the territory of both States often provide for joint commissions to monitor and implement such agreements. Moreover, legislation in many States provides for advisory bodies on minority issues. In order to be effective, these bodies should include minority representatives and others who can offer specific expertise, be provided with adequate resources and be given serious attention by decision makers. This has been affirmed by the UN Declaration on Minorities (Articles 2(2) and 2(3)), the Copenhagen Document (paragraph 35), the FCNM (Article 15) and, with regard to advisory and consultative bodies in particular, by the Lund Recommendations on the Effective Participation of National Minorities in Public Life (12 and 13).

Advisory and expert bodies such as the Venice Commission may offer useful guidance and legal advice to the States on contentious legislative initiatives and should be consulted prior to their adoption. Moreover, such legislation should be subject to domestic periodic review and may include sunset clauses.

In the case of disputes, international experience, including that of the High Commissioner on National Minorities, has revealed the value of the involvement of independent third parties or multilateral mediation and arbitration mechanisms in finding peaceful and viable solutions. The combined use of multilateral and bilateral instruments can also be useful and lead to a more dispassionate discourse and remedial action.

Notes

Notes