

**OSCE/ODHIR 2007 Human Dimension Seminar  
Effective Participation and representation in democratic societies  
Working Group IV**

***Participation of persons belonging to national minorities and  
underrepresented groups in democratic societies***

Friday, 18 May, 2007, Warsaw, Poland

10.00 hrs – 13.00 hrs

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**Introductory Remarks, Kate Fearon**

Ladies and Gentlemen,

Thank you, for the invitation to introduce this session today. I very much look forward to our discussion on effective participation and representation in democratic societies. Having been actively involved in politics for almost twenty years, I am a great fan of not reinventing the wheel. As a practitioner, there's never enough time for that. If someone has done a good job, adapt and implement, don't try to reinvent.

Thus, in order to frame the discussion somewhat I would like to take a few minutes and outline what I believe to be the most important instruments and concepts at our disposal thus far. I should stress that I am not a specialist in some of these matters, and I very much look forward to your input. I should also stress that most of my professional experience has been gained in the context of deeply divided post-conflict societies, so there will be an experiential bias towards them in my remarks, though I think there are even transposable lessons from those experiences into what we would term more normative societies.

There seems to be a logical sequence to looking at this question, I would like briefly to look at

1. International legal instruments,
2. Domestic systems for inclusion
3. The interface of these two, and those persons who operate them; the role therefore of political leadership
4. Examples from Northern Ireland and Bosnia and Herzegovina; gender
5. Questions to stimulate discussion.

## **1. International legal instruments**

Here I would note the genesis of group rights *protection* instruments, such as the 1948 UN Declaration on Human Rights, or the 1950 European Convention on Human Rights, before developing towards an ethos of group rights *promotion* (and obligation on the part of states to promote), as can be found in the 1966 International Covenant on Civil and Political Rights, but more substantially in the UN Declaration on Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992), and principally the European Framework Convention for the Protection of National Minorities of 1994 – the Framework Convention. Here the Lund Recommendations and Copenhagen Document also have import and, one would hope, impact.

The granting of such rights – to individuals and to groups – is not without risk, for example to other principles, such as territorial integrity and self-determination. Further, I would suggest that they cannot be granted without limit or condition.

## **2. Domestic systems for inclusion – usually of ethno-national groups**

In divided societies, particularly those emerging from conflict, institutional and electoral systems have been designed that inhibit or constrain purely majoritarian democracy, so as to guarantee the participation of certain groups – but not others - in decision making.

Broadly, institutional and electoral systems can either create incentive for and reward moderation – the *integrative* model, or promote and provide for inclusion of various groups – the *consociational* model. Both are designed to convert conflict amongst groups into political competition between groups.

Some go so far as to suggest that the electoral system *per se* can be a conflict resolution tool, but this by itself, I would contend, is not sufficient. In fact, depending on who is operating them, they may even entrench division. This doesn't mean it has to be so. But my own contexts of Northern Ireland and Bosnia and Herzegovina demonstrate that even

electoral systems that produce highly inclusive outcomes don't necessarily result in political moderation.

In any event, whatever the design, the electoral system should generate outcomes that enable the institutions to function. And these institutions themselves can be designed so as to promote inclusion. Again I would stress that this can be at the expense of moderation.

Examples can include:

- Electoral system design (reserved seats in upper house for minorities, or from certain districts, guaranteed representation from certain groups)
- Rules about representation of groups in the Executive
- Rules about representation of groups in the Legislature
- Weighted or parallel consent systems of voting on certain topics
- Weighted or parallel consent systems of voting on every topic
- Ability to seek legal recourse on the grounds of perceived group discrimination because of outvoting
- Rules about quotas or representation of groups in public services

However, these are rules that in my experience assume that these ethno-national groups are themselves monolithic, and these rules apply only to ensuring their inclusion at the institutional level.

I would contend that the *quality* of that inclusion – and the inclusion of others not defined in ethno-national terms – (on which I will say more later) can be increased by thinking about the *process* of collective decision making in a different way.

Here, the work of Ann Phillips and Iris Marion Young may be instructive. Their notion of *deliberative democracy* (sometimes termed *proceduralist democracy*) drawing on the civic republican tradition can provide opportunities for sub-institutional participation in

decision making by creating fora for policy formulation outside of the normal consultative process. So, ideas like group meetings, local discussions, citizen's juries, focus groups, policy commissions – more expensive and time consuming perhaps – can create meaningful participation, though not necessarily decision making, mechanisms. At the end of the day, with decision-making comes responsibility and accountability, and not every citizen, or every group, wants both: the privilege and power of office is not without condition.

### **3. The interface of these two, and those persons who operate them; the role of political leadership**

In any institutional architecture that constructs special provision for group representation the structure is of course operated by people, by political leaders. Inclusion often isn't enough: a zero sum game environment generally lends itself to leaders who speak exclusively for and advocate the interests of, their own ethno-national group. In many cases this is lazy politics – the politics of the lowest common denominator requires little thought and few results except not to be assimilated or dominated by the 'other'. Morrow has noted in this regard that while consociational arrangements certainly provide collective rights for distinct groups, they require no or minimal change within those groups, either vis-à-vis themselves, or the 'other'.

But the reality is that leaders, and the institutions they operate – legislative chambers and governments – do have choices as to their behaviour and the policies they pursue in exercising the institutions they have, and in adopting international instruments to their own polities.

Political leaders are responsible for the translation of ideals and obligations contained in international instruments into reality on the ground. In many cases a maximalist interpretation of these would mean placing limits on the right to elect and the right to be elected. I would contend that it is often the case that, once their group is especially provided for, the ladder of participation gets pulled up, not extended further, so that States often pay lip service to extending participation.

Borrowing again from Morrow, electoral systems that promote inclusion or moderation have the additional function of submitting political – and often personal – antagonism to wider rules. They thus provide a (theoretically) safe framework within which to develop new political relationships over time – enabling a discovery of shared, hopefully democratic, values between former protagonists.

Since all parties have subscribed to the election system, perhaps through a peace accord, it should further enable them to accept the legitimacy of some decisions with which they disagree – the social contract that we find in more peaceful democracies.

However, in practice this opportunity to develop new relationships and craft new polities is rarely taken up, or takes so long to take up that the citizenry is exhausted and has completely lost its faith in the transformative capacity of politics.

#### **4. Examples from Northern Ireland and Bosnia and Herzegovina; gender – lessons for other groups?**

However, sometimes, as is the case in Bosnia and Herzegovina, or Northern Ireland the institutional design, hugely inclusive as it is, can easily ossify political life. Particularly for Bosnia, complicated and cumbersome quorums exist for virtually every parliamentary decision – the so called ‘entity vote’ about which there is so much current discussion in the context of constitutional reform. The Bosnian entity vote is a version of parallel consent – it requires that there must be sufficient votes from the territory of each entity plus an overall majority for a particular vote to pass. This was necessary in the immediate aftermath of the war, and many argue that it remains necessary today. But it sets the contours of political life in stone, and structurally it has not enabled a new relationship between the warring factions to be negotiated, never mind to flourish. I think questions have to be raised if the system itself inherently inhibits even the navigation of new political relationships between leaders and thus the development of a truly post conflict polity that learns from the past but is not bound by it, or to it. The existence of a *deus ex machina* such as OHR – for whom I work – does not help matters: there is no incentive

for local politicians to develop the capacity for normal political skills such as compromise or transformational leadership, and so the problem is compounded.

Additionally, in Bosnia and Herzegovina the rigid institutional inclusion – necessary as it was, and remains – has created an expectation that all the key pillars of public life – policing, the judiciary, the public broadcasting services have at least leaderships that are divisible by three. Thus the potential not only to paralyze political life but also public life needs to be recognized and managed if possible.

In Northern Ireland there is a similar parallel consent mechanism, that requires sufficient cross-community endorsement, but it only applies to certain decisions, such as the election of the First Minister and Deputy First Minister, although it can also be invoked to include other decisions on a case by case basis, should one of the groups feel their national interest is in question.

As both I and my colleague Rachel Rebouché have noted previously, the Belfast Agreement and the General Framework Agreement for Peace value identity primarily in the singularized terms of ethnicity & nationality. The electoral system and the institutions are constructed so as to promote and accommodate ethno-nationalism. Of course, the goals of conflict management are such that prioritizing national group identity is generally necessary to stop violence and encourage participation in democratic structures. In the immediate aftermath of a war, it makes sense to design systems in the ways described above, to put constraints on democratic norms. But these structures can become moribund, if the opportunity is not taken by political leaders to use the structures to build trust, and enable transition into new structures that reflect a new post-war society.

And there is a certain artificiality about arranging structures along ethno-national lines for the long term, about privileging one facet of identity over all others, especially as time moves on, and societies develop – absorbing new immigrant communities, perhaps, as is happening very rapidly in Northern Ireland, in terms of the growing communities from

central and eastern Europe and more slowly in Bosnia, in terms of an increasing Chinese community.

Identity is multi-faceted and cross-cutting. Sometimes groups wish to highlight a component that does not fit the norm. Such was the case with the Northern Ireland Women's Coalition, with whom I also worked, who in the Northern Ireland Assembly changed their ethno-national designation – it was, and is, a requirement upon taking the oath of office as an MP to designate as Unionist, Nationalist or Other – on a key vote that effectively helped save the Assembly from collapse. The point is that their re-designation was not proscribed at that time because none of the other parties had anticipated that another party would *want* to do this. However, a new rule was added preventing further re-designations, illustrating how seriously dominant unionist and nationalist parties viewed identity and how committed they were to its rigidity and continuance.

No group is monolithic, but the existence of special powersharing arrangements in post conflict environments demonstrate that it is possible to treat them as if they are, for the purposes of inclusion and participation in decision-making.

If it is possible to design power sharing mechanisms that reward moderates, or include extremes, then it must be possible to design mechanisms that similarly create greater space for women, or new immigrant communities, or other categories of people that can reasonably be treated as groups. My comments on the cross-cutting nature of identity notwithstanding, of course it is. But to do so involves the sharing of power, the division of power between more groups, so the original groups see themselves as losing and the new groups as gaining power. Which is why it doesn't happen so much.

However, even if such arrangements did exist, I would suggest the limits would have to be carefully defined.

## **5. Questions to stimulate discussion**

- Is it desirable to design electoral systems or institutions that create greater space for women or for immigrant communities? If so, what should the nature of the institutionalized inclusion be?
- Which groups should be accorded rights? How to define? And how much right, or power or access should they be entitled to?
- What are the limits of participation from groups that are not elected directly?
- What if one belongs to several groups, and one identifier (e.g. ethnic) comes into conflict with another (e.g. religion or gender)?
- Should states adopt domestic legislation on minority participation if it is meaningless in practice – e.g. BiH has 17 identified minorities, all of which can lay claim to seats at municipal level if they organize well because BiH's law on national minorities is very generous, in line with the Framework Convention – what happens if they all organize and there is no room for other representatives?
- How can democracy - specifically institutional design - evolve and change over time, in response to changing social realities?