

# **The Lund Recommendations**

**on the Effective Participation**

**of National Minorities in Public Life**

**& Explanatory Note**

Foundation on Inter-Ethnic Relations

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## **INTRODUCTION**

In its Helsinki Decisions of July 1992, the Organization for Security and Cooperation 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 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 Dimitrijević (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.

## **THE LUND RECOMMENDATIONS ON THE EFFECTIVE PARTICIPATION OF NATIONAL MINORITIES IN PUBLIC LIFE**

### **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 decisionmakers, 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 defense, 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 TO THE LUND RECOMMENDATIONS ON THE EFFECTIVE PARTICIPATION OF NATIONAL MINORITIES IN PUBLIC LIFE**

### **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 [¼ ] 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 input. 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: defense, 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.