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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMITTEE OF EXPERTS ON ISSUES RELATING TO THE PROTECTION OF
NATIONAL MINORITIES
(DH-MIN)**

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ACTIVITY REPORT
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Period between 1 January 2005 and 31 December 2006

I. Introduction

1. In November 2004¹, the Ministers' Deputies adopted the specific terms of reference of the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN), which expire on 31 December 2006 (Appendix I). The Committee of Ministers also agreed to re-examine the extension of these terms of reference beyond 31 December 2006, in the light of the budgetary means available. The DH-MIN prepared the present report at its fourth meeting on 19-20 October 2006, with a view to providing the CDDH and others concerned an overview of the activities undertaken by the Committee since 2005.
2. The DH-MIN held four meetings, respectively, on 10-12 May 2005, 26-28 October 2005, 8-10 March 2006 and 19-20 October 2006 with Mr Detlev REIN (Germany) in the chair and Mr Eero J. AARNIO (Finland) as the Vice-Chairperson. At its 4th meeting the DH-MIN elected Ms Judit SOLYMOSI (Hungary) as its Chair (subject to the approval of the CDDH) and Mr Detlev REIN (Germany) as Vice-Chair, both for a term of one year starting on 1 January 2007, subject to the extension of the Committee's mandate.
3. In addition, two international events were organised in connection with the DH-MIN plenary meetings and with the participation of the DH-MIN members. The conference on the role of consultative bodies of national minorities held on 7 March 2006 in Braşov (Romania) was organised in the framework of the Romanian Chairmanship of the Committee of Ministers. The said event was directly relevant to the DH-MIN's work. The seminar on the international legal guarantees for the protection of national minorities and problems in their implementation, with a special focus on minority education was held on 18 October 2006 in Strasbourg (France) within the framework of the Chairmanship of the Russian Federation of the Committee of Ministers.

II. General approach and working methods

4. Bearing in mind its terms of reference, the DH-MIN focused on carrying out in-depth analysis of selected transversal issues relevant to Member States, mainly with a view to preparing documents of good practices and possible recommendations relating to the protection of national minorities. In this context, the DH-MIN commissioned research in some relevant areas. The DH-MIN also contributed to the work of the Ministers' Deputies, *inter alia*, by preparing a draft opinion on the draft Recommendation of the Committee of Ministers to Member States on the promotion of the participation of minority young people (Appendix II).
5. In carrying out its activities, the DH-MIN has refrained from any interference, and acted in full complementarity, with the existing monitoring mechanisms in the field of minority protection, in particular with the Advisory Committee, which is involved in the monitoring of the Framework Convention for the Protection of National Minorities (hereafter: the Framework Convention). The DH-MIN acted as a forum for the exchange of information, views and experience on policies and good practices for the protection of national minorities, through, *inter alia*, regular *tours de table*. Its role in relation to the monitoring bodies was reflected, for example, in the discussion it had with the Chairs of the Advisory Committee and other relevant committees on the modalities of state reporting practices and on the efforts to streamline them at the second meeting of the DH-MIN held on 26-28 October 2005.

¹ Decision No. (CM/Del/Dec(2003)845/11.6) adopted at the 902nd meeting of the Committee of Ministers held on 3 November 2004.

6. The DH-MIN based its work on i) exchanges of information, views and experience with experts in the fields concerned, as well as with other bodies dealing with issues relating to national minorities; ii) information provided by Member States supplied in response to a questionnaire relating to consultative arrangements; iii) additional information and comments submitted by the DH-MIN members in relation to particular themes.

III. Work on selected themes

A - Consultative arrangements of national minorities

7. During its first meeting, held on 10-12 May 2005, the DH-MIN decided to examine the theme of consultative arrangements of national minorities, with a view to preparing a document on good practices in this field. A targeted questionnaire on this matter was sent to the Member States (Appendix III). Replies submitted by the DH-MIN members provided first-hand information on the situation with regard to this issue in the Council of Europe Member States (DH-MIN(2005)010) and served as a basis for an analytical report prepared by Mr Marc WELLER, Director of the European Centre for Minority Issues (DH-MIN(2005)011-final). The replies to the questionnaire showed the diversity and the complexity of existing models of participation of national minorities in public life, ranging from informal consultation to cultural autonomies. A matrix containing different country situations with specific types of consultative bodies of national minorities was also drawn up in order to identify possible good practices.
8. In this report, it was emphasized that consultative bodies are important elements for ensuring the implementation of the principle of effective participation of national minorities in public life. In order to complement the report with a perspective of minorities, Mr Romedi ARQUINT, President of the Federal Union of the European Nationalities (FUEN), was invited to provide comments on the report.
9. In the context of the DH-MIN work on this theme, a conference entitled the “Participation of national minorities in public life: the role of consultative bodies” was organised within the framework of the Romanian Chairmanship of the Committee of Ministers of the Council of Europe on 7 March 2006 in Braşov (Romania). The conference facilitated an exchange of views between consultative bodies of national minorities, governmental experts, researchers, representatives of civil society and other stakeholders from the Council of Europe Member States on the issue of participation of national minorities in public life. It explored the role of such bodies, including their composition, mandate and functioning. It provided a unique opportunity for the representatives of consultation bodies of minorities to discuss their respective experiences and to meet with representatives of equivalent institutions dealing with similar challenges in other Member States.
10. The outcome of this conference as well as the discussions held during the third DH-MIN meeting contributed to the drafting of a final document on this theme. The document entitled the ‘DH-MIN Handbook on minority consultative mechanisms’ (DH-MIN(2006)012) was issued by the DH-MIN on 20 October 2006 and submitted to the CDDH (Appendix IV). The handbook is not a normative document, but it aims rather to assist States in developing further their consultation policies of minorities, including through the enhancement of their minority consultative mechanisms. Its dissemination does not necessarily imply that all Member States agree with its content.

B - Specific regulations contained in electoral law and the law of political parties relevant to national minorities

11. At its third meeting, the DH-MIN decided to examine the issue relating to recent developments as regards specific regulations contained in electoral law and the law of political parties at national, regional and local levels that are of relevance to national minorities. The regulations on language use in electoral procedures and campaigns were also addressed within this theme.
12. In order to assist the DH-MIN in its work on this subject, the Secretariat of the European Commission for Democracy through Law (the Venice Commission) gave an overview of the work of the Venice Commission in the field of electoral legislation, including the main findings of the report on electoral law and national minorities published in 2000.
13. A paper on this theme was prepared by Mr David HINE of the Centre for the Study of Democratic Government in Oxford (DH-MIN(2006)013) and was complemented by a paper prepared by Professor Joseph MARKO from the University of Graz (DH-MIN(2006)014). Information contained in contributions submitted by the DH-MIN members and in already existing documents on this subject, including those prepared by the Venice Commission, were taken into account in these papers (DH-MIN(2006)002rev2).
14. The aim of the above-mentioned papers is to provide an overview of the existing electoral systems, including their advantages and disadvantages, and their impact on the representation of national minorities in elected bodies at different levels. They also contain information on the recent practice in electoral systems constructed specifically with a view to ensuring the effective participation of national minorities. They contain, *inter alia*, information on the provisions on minimum threshold clauses for access of national minorities to elected assemblies, drawing of electoral boundaries, preference-voting system and dual voting provisions contained in the electoral laws. The likely impact of such systems on the representation of national minorities in the elected bodies was evaluated in the light of recent developments. These papers were introduced and discussed at the fourth DH-MIN meeting. After a debate on these questions, the DH-MIN invited Mr HINE to complete his paper, taking into account the information provided by Member States. As it continues its work on the issue, the DH-MIN will also draw on the on-going related work of the Venice Commission and the OSCE High Commissioner on National Minorities.

C - Access of national minorities to the media

15. During its second meeting, held on 26-28 October 2005, the DH-MIN decided to examine the issue relating to the access of national minorities to the media. In this connection, it decided to co-operate closely with governmental and other experts dealing specifically with media issues. Mr Günther RAUTZ from the European Academy of Bolzano and the Secretary General of the Association of Daily Newspapers in Minority and Regional Languages (MIDAS) was invited to provide the DH-MIN members with an overview of some issues arising with regard to the print media. He outlined the latest trends in the media field and the new challenges emerging for the press produced in minority languages. He also reviewed the various forms of direct and indirect state support given to the print media.
16. Considering the absence of a consensus on the scope of the theme to be examined, an informal working group composed of the DH-MIN members in respect of Austria, Moldova and the

Russian Federation was established with a view to formulating proposals on a theme(s) to be further examined in this field. To assist the working group in its task, an analytical study devoted to the 'Access to national minorities to the media: new challenges' was prepared by Mr Tom MORING, Professor in Communication and Journalism, the Swedish School of Social Science, University of Helsinki (DH-MIN(2006)015). Mr Karol JAKUBOWICZ, Chair of the Steering Committee on the Media and New Communication Services (CDMC) of the Council of Europe and Mr Tarlach MCGONAGLE from the University of Amsterdam provided comments on this analytical study (DH-MIN(2006)016) and (DH-MIN(2006)017) respectively.

17. Taking into account the recent developments, considerable attention was paid by the experts to the role of the new media technologies and their relevance to national minorities. Following an in-depth discussion on the above study at the 4th meeting of the DH-MIN, the Committee agreed to commission additional expert analysis on the way in which minorities' access to new media is covered by the pertinent provisions of the Framework Convention and the Language Charter. It further decided to make public the paper on the topic by Mr MORING, as well as comments thereon by Mr JAKUBOWICZ and Mr MCGONAGLE, as DH-MIN information documents.

D - Impact of international non-discrimination norms relevant to Europe on the protection of national minorities

18. From the outset of its activities, the DH-MIN decided to work also on the issues relating to the impact of international non-discrimination norms relevant to Europe on the protection of national minorities. It held several exchanges of views with experts in this field.
19. In the light of these exchanges of views, the DH-MIN decided to launch a study on the impact of international non-discrimination norms relevant to Europe on the protection of national minorities outlining all the relevant approaches in this area. Consequently, a document composed of four chapters was prepared with individual chapters drafted by Mr Rainer HOFMANN, Professor at the University of Frankfurt, Mr Olivier de SCHUTTER, Professor at the University of Louvain (UCL), and Ms Kristin HENRARD, Senior lecturer at the University of Groningen.
20. The above reports were introduced at the 4th meeting of the DH-MIN. Mr Rainer HOFMANN, Professor at the University of Frankfurt, gave a presentation on 'The impact of non-discrimination norms and of the norms of the Framework Convention on the protection of national minorities' (DH-MIN(2006)018) outlining the various international non-discrimination norms existing at international level which have an impact on national minorities. Mr Olivier de SCHUTTER gave detailed information on the non-discrimination guarantees in the EU context, drawing also on the report on national minorities prepared by the EU Network of independent experts on fundamental rights. Ms Kristin HENRARD introduced reports on the impact of the case-law of the European Court of Human Rights in the field of non-discrimination on the protection of national minorities (DH-MIN(2006)020) and on the impact of the case-law of the United Nations bodies in the field of non-discrimination on the protection of national minorities (DH-MIN(2006)021).
21. In the ensuing discussion, various delegations welcomed the contributions of the experts. A number of delegations emphasised the necessity to take into account the diversity of opinions and approaches expressed within the DH-MIN on the protection of the rights of persons belonging to minorities. Also, they underlined the importance and the effectiveness of the principle of non-discrimination in the field of protection of rights of persons belonging to minorities or vulnerable groups. The Committee decided to issue the reports, together with the comments of the Governments as documents accessible to the public.

Themes for future work

22. As regards **future themes proposed by delegations**, the DH-MIN agreed at its 4th meeting that new issues should be taken up gradually, so as not to over-burden the Committee's agenda, which already includes a range of important topics that need to be examined in more detail. It also recalled that all future work is subject to a decision on the extension of the Committee's mandate. Against this background, the DH-MIN decided as follows:

- i. In respect of the proposal of Germany **to discuss the issue of permissibility of data collection and appropriate methods for gathering such data**, the DH-MIN decided, as a first step, to invite representatives of the international actors active in this field to its meeting to inform the Committee of their work, so as to help the DH-MIN to decide on its possible future work on this theme.
- ii. In respect of the proposal of Hungary **to address the promotion of use of native languages in minority communities**, the DH-MIN decided that the Bureau should streamline the proposal and bring it to the Committee for further consideration.
- iii. In respect of the proposal of Poland **to examine the use of the existing binding and non-binding instruments concerning the protection of national minorities and non-discrimination in relation to new communities**, the DH-MIN agreed to discuss at its 5th meeting whether it should address this question in its future work.

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APPENDIX I

**SPECIFIC TERMS OF REFERENCE OF THE
COMMITTEE OF EXPERTS ON ISSUES RELATING TO THE
PROTECTION OF NATIONAL MINORITIES
(DH-MIN)**

1. Name of Committee:
Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN)
2. Type of Committee:
Committee of Experts subordinate to the Steering Committee for Human Rights (CDDH)
3. Source of terms of reference:
Committee of Ministers
4. Terms of reference:
 - i. To act as a forum for the exchange of information, views and experience on policies and good practices for the protection of national minorities at the domestic level and in the context of relevant international legal instruments, including those of the Council of Europe, without pursuing activities relating to monitoring the situation in individual member states;
 - ii. To carry out a reflection on transversal issues relevant to member states, drawing on the results of the monitoring mechanism of the Framework Convention for the Protection of National Minorities and, where appropriate, the work of other bodies dealing with related issues and especially the OSCE High Commissioner on National Minorities;
 - iii. To identify and assess ways and means of further enhancing European cooperation on issues relating to the protection of national minorities and, where appropriate, to make proposals to this effect for consideration by the CDDH, including studies and draft recommendations on issues of general interest;
 - iv. To prepare draft opinions for the CDDH, on relevant issues, including in particular recommendations of the Parliamentary Assembly or the Congress of Local and Regional Authorities of the Council of Europe;
 - v. In so doing it shall, where appropriate,
 - carry out or commission relevant policy-research;
 - involve in its work representatives of national minorities and non-governmental organisations with recognised competence in this field, notably by organising hearings with them.

5. Membership of the Committee:

- a. The governments of all member states are entitled to appoint members with the following desirable qualifications: persons having expertise and experience in the field of protection of national minorities. The Council of Europe's budget bears travelling and subsistence expenses for one expert per member state (two in the case of member states whose expert is elected to the Chair);
- b. The Parliamentary Assembly is entitled to designate one representative, without the right to vote;
- c. The Congress of Local and Regional Authorities of the Council of Europe is entitled to designate one representative, without the right to vote;
- d. The Council of Europe Commissioner for Human Rights, without the right to vote;
- e. The European Commission may send a representative, without the right to vote or defrayal of expenses;
- f. The following observers with the Council of Europe may send a representative, without the right to vote or defrayal of expenses:

Canada,
Holy See,
Japan,
Mexico,
United States of America;

- g. The following organisations may send a representative, without the right to vote or defrayal of expenses:

United Nations High Commissioner for Human Rights,
OSCE High Commissioner on National Minorities.

6. Working structures and methods:

Within its terms of reference, the DH-MIN will have the possibility, if need be, to establish groups of specialists, working parties, etc. of limited membership for the consideration of specific issues. It may call on external experts or consultants. It will also have the possibility to establish contacts or have consultations with other bodies dealing with issues relating to national minorities. The DH-MIN shall carry out its terms of reference with full and due regard for the functioning of the monitoring mechanism of the Framework Convention for the Protection of National Minorities and other monitoring mechanisms in related fields.

7. Duration:

The present terms of reference shall be reviewed before 31 December 2006.

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APPENDIX II**DRAFT OPINION OF THE DH-MIN ON THE
DRAFT RECOMMENDATION OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE
PROMOTION OF THE PARTICIPATION OF MINORITY YOUNG PEOPLE**

The Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN) notes with interest the draft recommendation of the Committee of Ministers on the promotion of the participation of minority young people, contained in document GR-C(2005)21.

The DH-MIN agrees that participation of young persons belonging to national minorities, in political, social and economic life is an important factor in ensuring cohesion in pluralist societies.

The DH-MIN notes, however, that the draft recommendation's scope of application *ratione personae* is extremely wide. The Preamble refers *inter alia* to "national, linguistic, religious, ethnic and social minorities" while acknowledging that these "categories often overlap". The DH-MIN further notes that the Explanatory Memorandum attached to the draft recommendation emphasises that the definition of "minority" used in the present draft recommendation is meant to be as inclusive as possible and includes, for example, minorities on the basis of nationality, ethnicity, religion, language, disability, sexual orientation, etc.

This means that the draft recommendation at issue goes well beyond the concept of "national minorities", as understood under the Framework Convention for the Protection and other relevant Council of Europe instruments. While the Framework Convention does not contain a definition of the term "national minorities" and while different approaches have been pursued in this respect, the essential elements of identity that are relevant in the context of the Framework Convention include religion, language, traditions and cultural heritage, as is suggested in Article 5 of the Framework Convention.

It follows that the present draft recommendation is meant to apply to a wide range of situations. Measures required to advance participation of young persons belonging to the various groups concerned are likely to vary significantly according to the group concerned and the approaches developed in respect of national minorities do not cover all the contexts concerned.

At the same time, the DH-MIN would like to highlight in this context that the principles contained in the Framework Convention for the Protection of National Minorities, in particular Article 15 of the Framework Convention, are of direct relevance in so far as the draft recommendation pertains to young persons belonging to national minorities. In this respect, a number of proposed measures contained in the draft recommendation, including support for consultative structures and emphasis on gender perspective, are issues that have already been highlighted in the monitoring of the Framework Convention.

However, considering that the scope of the draft recommendation is markedly larger than the protection of national minorities, the DH-MIN considers that it is not in a position to analyse the entire draft recommendation and its possible implications on questions that are outside its competence and expertise.

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APPENDIX III

**QUESTIONNAIRE ON THE CONSULTATION ARRANGEMENTS
CONCERNING NATIONAL MINORITIES**

- 1. What are the current institutional and other arrangements, if any, of consultation of persons belonging to national minorities on issues affecting them in your country (advisory body of national minorities or other mechanisms of consultation of national minorities)? ***
- 2. Please provide information on the normative basis, mandate/scope of action and functioning of the existing consultation mechanisms/advisory bodies. Please use the attached table (appendix 1), where relevant, as a reference for structuring the information you will provide.**
- 3. Please provide information as to the main factors that affected the decision to opt for a particular form of consultation mechanism/advisory body?**
- 4. Please provide a critical assessment of the functioning of the consultation mechanisms/advisory bodies in place. Are there any suggestions debated at domestic level to improve their status, mandate/scope of action and functioning? Have good practices been identified?**
- 5. Please indicate any suggestions you may have concerning the ways in which intergovernmental co-operation could contribute to enhancing further consultation of persons belonging to national minorities?**

Appendix 1

STATUS

- What is the legal basis for the consultation mechanism/ advisory body of national minorities (constitutional, ordinary law, other),
- What status does the consultation mechanism/advisory body have: NGO status/public body status/ personal autonomy arrangements with advisory functions, other status?
- If the advisory body is a public body, what is its relation to public authorities (is it independent and how is its independence ensured)?
- At what level do these consultation mechanisms/bodies operate: central level bodies/ local or regional bodies, both levels?

* Please list all relevant bodies and assign them abbreviations as follows :
A.1., A.2, etc. for bodies at the national level;
B.1., B.2, etc. for bodies at the sub-national levels (regional, provincial, *Länder*, etc. levels),
C.1., C.2,etc. for bodies at the local level.

Please use these abbreviations in your replies to this questionnaire.

MANDATE/FUNCTIONS

Please specify the main functions of the consultative mechanism/advisory body, which may include some of the following:

- Taking initiatives and making proposals/recommendations,
- Possibility to request information,
- Monitoring the situation of persons belonging to national minorities, preparation of studies, conducting research,
- Increasing public awareness of problems related to the situation of national minorities,
- Consultation and participation in the preparation of public policies on national minorities: existence of an obligation to consult in the legislative process and other public policy decisions affecting national minorities, areas where consultation is foreseen (culture, education, language, social and economic participation, other areas),
- Coordination functions among different minorities, other coordination functions,
- Other specific tasks assigned, including distribution of resources directed to cultural activities.

MEMBERSHIP/MINORITIES INVOLVED

- Does the consultation mechanism/advisory body include all minorities or are there minority-specific bodies or forms of consultation?
- Is the advisory body composed of representatives of national minorities only or is it a mixed structure with representation of both national minorities and state officials?
- What is the role of state officials in the work of advisory body/consultation mechanism?
- How is the formal and/or factual influence of representatives of minority groups safeguarded?
- How are the minorities' representation and representativity (representation of numerically small minorities, representatives of minority NGOs, minority representatives from Parliament, political parties of minorities, others) ensured in the advisory body/within the consultation mechanism?
- Please describe the appointment procedure for participation in the advisory body/consultation mechanism: who proposes (national minorities, political parties, churches, others), who decides (Government, Parliament, others)?

FUNCTIONING/ WORKING METHODS

- Are there any procedural guidelines in place for consultation of persons belonging to national minorities/advisory bodies?

- What are the working methods used, including the forming of sub-bodies dealing with specific areas or specific consultation mechanisms for certain areas?
- What channels of co-operation exist between the advisory body/consultation mechanism and Parliament (including through the relevant Parliamentary committees) and the Government (including governmental offices for national minorities where relevant)?
- What is the situation with regard to the resources allocated to the advisory bodies/consultation mechanisms (finance, staff) and what is the source of funding (central/local authorities, mixed funding)?
- What links exist between the advisory bodies/consultation mechanisms at the different levels (local/central)?
- What channels of co-operation/links have been created between various advisory bodies working at the same level (if such bodies exist)
- Are the recommendations and/or the findings of the advisory bodies/consultation mechanisms publicised or otherwise communicated to a wider audience?
- Where can the public seek and find information about the mandate, composition and activities of the advisory body/consultation mechanism (for instance, does a specific website exist)?

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APPENDIX IV

**COMMITTEE OF EXPERTS ON ISSUES RELATING TO THE PROTECTION OF NATIONAL
MINORITIES
(DH-MIN)**

DH-MIN HANDBOOK ON MINORITY CONSULTATIVE MECHANISMS*

* This handbook is based on contributions prepared by Marc Weller, Director of the European Centre for Minority Issues and Reader in International Law, University of Cambridge. It is aimed at assisting States in developing further their consultation policies of minorities, including through the enhancement of their minority consultative mechanisms. The handbook is not a normative document, and its dissemination does not necessarily imply that all Member States agree with its content.

INTRODUCTION

This handbook is based on reports presented by Mr Marc Weller to the Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN) in March 2006 and in October 2006. These reports, in turn, were based, inter alia, on answers to a questionnaire (DH-MIN (2005)009) put by DH-MIN to governments relating to current practice concerning minority consultative mechanisms. These replies can be found in the document DH-MIN (2005)010.

The purpose of this handbook is to show the variety of approaches that have been pioneered over the past years. There is no pretence that the one or other approach is more suitable in general than others. It is clear that different circumstances in different societies demand different answers. Of course, there are some common threads that are clearly identifiable as patterns of good practice when analyzing present arrangements, however diverse.

Accordingly, there is a wide menu of possible minority consultative arrangements. It is up to democratic societies to decide on the appropriate mix of such mechanisms that may be applied. Nevertheless, however that mix is designed, there are legitimate expectations by minority communities as to a comprehensive and effective set of consultation mechanisms that must result in the end. Moreover, the pronouncement of the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereafter: Advisory Committee) confirms and highlights certain expectations as to governmental performance with respect to minority consultative processes. This Handbook may help clarify these expectations, and the different possible ways of meeting them.

Basing itself on the initial report presented earlier, the Handbook first lays out the legal basis for the expectations relating to of minority consultative mechanisms (section I). It then introduces the different basic approaches that may be taken in relation to minority consultation (section II). Finally, there follows more specific guidance as to the legal establishment and functioning of such mechanisms, arranged around seven operating principles that ensure good quality of performance.

The handbook is not a normative document, but it aims rather to assist States in developing further their consultation policies of minorities, including through the enhancement of their minority consultative mechanisms.

I. Legal Framework

1. Effective political participation of persons belonging to national minorities is established in international minority rights law. Provision for effective participation includes mechanisms to ensure electoral participation and representation in parliament, executive representation and a variety of other means. Minority consultative mechanisms play a particularly important role in this respect, especially in situations where minorities lack direct representation in legislative bodies and in the executive.

2. The development of the relevant international legal basis for the right to full and effective participation was presaged in the OSCE Copenhagen Document of the Conference on the Human Dimension of 1990. This document affirms the need to respect the right of persons belonging to national minorities to effective participation in public affairs.¹ This right has been fleshed out in greater detail in a number further OSCE documents.² At the universal level, the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* confirms the right of effective participation in public life, adding that:

Persons belonging to minorities have 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 in a manner not incompatible with national legislation.³

3. In the Council of Europe area, the parties to the *European Framework Convention for the Protection of National Minorities* have committed themselves to creating:

... 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.⁴

4. At a sub-regional level, the *Central European Initiative Instrument for the Protection of Minority Rights* of 19 November 1994 confirms that states shall guarantee the right of persons belonging to national minorities to participate without discrimination in the political life of the society of the state, and shall, in a proactive way, promote conditions for the exercising of those rights.⁵ This is to be achieved, in particular, by opening the decision-making process on matters relating to the promotion of the identity of national minorities through appropriate measures.⁶

5. The *Explanatory Report of the Framework Convention for the Protection of National Minorities* expands upon the terms of Article 15 of the Convention, offering detailed guidance on how effective participation can be achieved. Greatest emphasis is placed in that report on minority consultative mechanisms and their mandate and functions.⁷ In fact, specific provision for minority consultative mechanisms was emphasized at the early stage in the development of the right to effective participation in public life. Hence, the Copenhagen document required that states should take the necessary measures to ensure ‘due consideration, including contacts with organizations or associations of ... minorities, in

¹ Copenhagen Document, para 35.

² In particular, the Lund Recommendations that will be considered in greater detail below.

³ General Assembly Resolution 47/135, 18 December 1992, para. 3.

⁴ Article 15.

⁵ Article 20.

⁶ Article 22.

⁷ See below, section IV

accordance with the decision-making procedures of each state.⁸ This requirement was expanded upon in the OSCE *Lund Recommendations* of 1999:⁹

12. States should established advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorise and national minorities. Such bodies might also include special purpose committees for addressing such issues as housing, land, education, languages and culture.

6. Particularly intensive consultative and co-decision mechanisms have also been established in ILO convention 169 relating to indigenous peoples, on which one might draw by analogy in this instance.¹⁰ Consultation mechanisms are also specifically required in relation to certain issue areas addressed by special instruments, especially those concerning minority identity and culture. For instance, the European Charter for Regional or Minority Languages indicates that states shall take into consideration the needs and wishes expressed by groups using such languages in determining their language policy. To this end ‘they are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.’¹¹

7. The Advisory Committee has repeatedly concerned itself with the issue of Minority Consultative mechanisms. It has recommended the firm legal entrenchment of consultative mechanisms, a broad mandate, widely representative membership and effective functioning. Where such bodies contain a significant number of governmental representatives, these bear a special responsibility for ensuring that the relevant mechanism contributes effectively to participation in decision-making.¹² The general absence of any provision for minority consultative mechanisms, or the failure to establish such bodies if they have been provided for in legislation, has been criticised by the Advisory Committee and the Committee of Ministers on a number of occasions, and the governments so criticised have generally taken measures to improve performance.¹³

8. In conclusion, one may therefore note that the right to full and effective participation in public life has been established in international legal standards. The creation of minority consultative mechanisms is frequently referred to in international authoritative documents and international practice as one of the key mechanisms towards achieving this aim. However, effective participation of minorities in public life is no longer considered to be achievable through the provision of one central consultative body. Instead, the practice of states emphasizes a multi-layered and multi-dimensional provision for consultation.

⁸ Para. 33.

⁹ *Lund Recommendations for the Effective Participation of National Minorities in Public Life*.

¹⁰ ILO Convention No. 169 Concerning Indigenous and Tribal Peoples and Tribal Peoples in Independent Countries.

¹¹ Article 7, para. 4.

¹² See Weller, *The Rights of Minorities*, Oxford University Press, 1995, pp. 446-450.

¹³ E.g., Armenia, Azerbaijan, Bosnia and Herzegovina.

II. Types of Minority Consultative Bodies

9. Before considering aspects of good practice, it may be useful to consider the breadth and depth of provision for minority consultation. Minority consultative bodies can be best distinguished according to the type of consultation activity, and to the subject area to which it relates.

A. Types of Activities

10. One could divide minority consultative bodies into four principal categories, as follows:

- Mechanisms of co-decision
- Mechanisms of consultation
- Mechanisms of co-ordination
- Mechanisms of minority self-governance

It will be convenient to consider each of these in turn.

i. Mechanisms of co-decision

11. Co-decision occurs where minority consultative councils must be heard before certain decisions can be taken, or where minority consultative councils have original decision-making powers. Co-decision in the former sense will take place mostly where consultative council's are attached to national or regional parliaments. Generally, minority consultative councils attached to parliaments, and often also those attached to government, will at least have the right to review draft legislation of special interest to them and to offer views. Where such legislation cannot be taken without such views having been obtained and considered, one may speak of a soft form of co-decision. In some instances, minority representative groups or minority consultative councils will have a right of legislative initiative, and possibly even blocking powers where the adoption of sensitive legislation affecting their interests is concerned.

12. On the other hand, original decision-making power by minority consultative council will relate to programming and planning. While the central government will set the general framework of, and funding level for, minority policy and programmes, implementation of programming decisions may be left to the relevant minority consultative council. For instance, in its second Opinion on Croatia, the Advisory Committee observed that the newly established Council for National Minorities had enhanced the role of minorities in the decision-making process in the allocation of funds to minority organizations.

ii. Mechanisms of Consultation

13. The mechanisms of consultation can be organized in a variety of ways. At the level of central government, there tend to be three principal models. First, there are minority consultative councils that are principally composed and organized by minority representative organizations. These will serve to articulate minority interests and to represent these to government or parliament and will mainly be self-organizing. While at times established in legislation, the minority representative groups themselves arrange for membership, working methods and activities.

14. A sub-group of national minority councils organized principally by the minorities themselves relates those that serve to organize and mobilize just one particular national minority. In a number of cases, provision has been made for national minority councils that are composed, in the first instance, only the diverse NGOs and other bodies representing one particular minority. Either, these minority councils will then have direct access to a governmental contact office or to a minority consultative mechanism also involving governmental representatives set up specifically for that specific minority, or the representatives

of the individual national minority council will nominate representatives to a consultative body where other minorities are represented as well.

15. A second model would establish a minority consultative council around a high-ranking governmental official, or a governmental contact office for minority issues. This official will often be affiliated with the office of the State President or Prime Minister or Federal Chancellor, or he or she may hold office as a Minister of Minority Issues or National Coordinator for Minority Affairs. The membership of such councils tends to be mixed, being composed of both governmental representatives and minority representative groups. This kind of body gives minorities access to government at a high level.

16. A third type of coordination mechanism would be led by governmental representatives. These may constitute the majority of the membership and may dominate the process of selection of other members and the working process. An example of such a mechanism is provided by the Bulgarian Decree No.333 of 2004, establishing a National Council for Cooperation on Ethnic and Demographic Issues at the Bulgarian Council of Ministers. This body is led by a senior minister, there is representation of 14 ministries and 6 state agencies, and the secretariat lies in the hands of a governmental Directorate. Membership of minority representative organizations, on the other hand, is left fairly open. While it is of course beneficial to place at the disposal of minorities a significant number of high-ranking members of government, consultative councils of this kind may be at risk of coming close to mechanisms of coordination of governmental policy, rather than of genuine consultation with the minorities.

17. Similarly, the establishment of contact offices, say at the office of Prime Minister, or in individual ministries, can only be regarded as a partial answer to the issue of minority consultation. In some instances, such contact offices can prove very effective. For instance, the German minority in Denmark benefits significantly from a contact facility at high governmental level. In this way, it can influence policy directly and often effectively. Such a mechanism may be appropriate where provision needs to be made to a very small number of minorities, or perhaps only one. Where contact offices serve to offer access to a larger number of minorities, or minorities that do not possess the ability to represent themselves through one strong, central representative body, this design will be less effective. Even where contact offices have the pro-active mandate of searching out minority views and engaging with diverse minority representative organizations, one can really only speak of minority consultative mechanisms where these organizations have a formal role in an established joint institutional setting. However, to make up for this deficiency, such contact offices are often complemented by the parallel establishment of minority consultative councils.

18. At times, it may happen that there is competition between bodies set up by the government and by the minorities themselves. For instance, in the first report of the Advisory Committee on Armenia, it was found that a minority consultative council, led by a presidential advisor, and representatives of 11 minorities, stood in a certain tension with a Union of Nationalities, representing 12 national minority cultural organizations.¹⁴

¹⁴ Para 79.

iii. Mechanisms of coordination

19. Mechanisms of coordination are not really minority consultative bodies. Instead, these will be inter-ministerial working parties, charged with ensuring that minority policy is delivered in a consistent way throughout all relevant branches of government. For instance, Cyprus reports that the Permanent Secretary of the Ministry of the Interior acts as coordination point for minority issues across government. Similarly, within individual ministries, there may be coordination points with a view to mainstreaming concern for minority issues in relation to governmental policy. Occasionally, such bodies will be given a limited role of consultation, for instance by inviting minority representative organizations to give presentations at meetings, or by maintaining contacts with relevant NGOs. It should be noted that in a number of answers to the questionnaire on which this paper is based, governments have referred to coordination mechanisms, instead of genuine minority consultative mechanisms, which may have been lacking.

20. In some instances, less formal process of coordination may be established, for instance in the form of presidential round tables. The Advisory Committee has found that such expert bodies, intended to advise the executive, and lacking in representativeness of minority organizations and in the ability to influence legislation, cannot be considered to be genuine consultative mechanisms.¹⁵

iv. Mechanisms of minority self-governance

21. Where a minority council has been established in order to organize or mobilize individual minorities, such bodies will often have functions that go beyond the external representation of minority interests. Such minority councils may be provided with decision-making powers of their own in an internal sense. This will generally be the case where there is provision for functional or cultural autonomy for minorities at the national, regional or local level. In such instances, national councils will function as the executive organ of the respective cultural autonomy.

B. Areas of activities

22. In addition to these categories of mechanisms, it is also necessary to distinguish three further points of interest. These relate to multi-level consultation, to specialized consultative mechanisms, and to particular mechanisms focusing on just one minority group.

i. Multi-level consultation

23. Multi-level consultation concerns what is known as the vertical layering of public authority. That is to say, most of the modalities of consultation outlined above can be applied throughout the hierarchy of public power within the state, from the central government to the local. For instance, within a particular state there may be a national minority consultative council, a regional minority consultative council as part of a devolved authority, and local consultative councils on education, language and culture. Good practice of minority consultation would suggest that provision should be made at all levels, depending, of course, on the demographic and geographic distribution of the relevant minority within the state.

¹⁵ E.g., the comments of the Advisory Committee in its 1st Opinion on the Presidential Round Table in Estonia, para 8, that were answered by the establishment of a chamber of representatives of national minorities, 2nd opinion, para 153.

ii. Specialized consultative mechanisms

24. A second feature that is common to most modalities for minority consultation is that they may also be arranged according to specific issue areas, or horizontally. Hence, in addition to general mechanism for minority consultation, one will often find an additional layer of consultative mechanisms, addressing specific issue areas that are of special concern to minorities. These issue areas will typically include education or cultural policy. The relevant state ministries and regional or local authorities will often establish dedicated consultative mechanisms in these areas with an expert membership from government and minority representative group. For instance, the Hungarian Ministry of Education has established a National Committee of Minorities based on formal provisions of the Public Education Act. In addition to advising and consulting, this body even has certain powers of co-decision. Each national minority delegates one member.

iii. Mechanisms focusing on particular groups

25. A third feature concerns specialization according to minority groups. Again, in addition to general consultative mechanisms, a special process may be established in relation to minorities that face unique or particularly pronounced problems. Often, this is the case where large Roma communities are at risk of structural disenfranchisement within a given society. Such mechanisms may exist at all level of governance, and they may also consist of specialized consultative mechanisms focussing on one particularly vulnerable group (say, Roma education). However, a number of states also maintain extensive consultative structures in parallel, for each of the principal national minorities. Germany, for instance, provides individual consultative mechanisms for Sorbs, Frisians and Danes at the level of both the parliament and the executive. Such separate provision should not detract, however, from the need to provide the respective minorities the opportunity to represent their interest together, in a joint consultative setting.

C. Complex systems

26. Generally, it can be increasingly observed that there is a mixing of a variety of differing types of mechanisms. Bulgaria, for instance, has established a national contact office with a somewhat limited consultative function. However, it has also generated a Commission on the Integration of Roma (a body focused on one particular group), a Centre on Educational Integration of Children and Pupils Belonging to Ethnic Minorities (a subject of specific means of consultation located at a specific ministry), and a number of other specialist mechanisms. In addition, there is a layering of mechanisms, also ranging from regional Councils for Cooperation on Ethnic Issues to local Councils. While it is not clear that this structure performs as yet in a fully integrative and effective way, it offers some glimpse of the increasingly interlocking nature of different types of mechanisms. In addition to the developing system in Bulgaria, a significant number of other replies indicate that there exist quite complex, multi-layered and interlocking consultative mechanisms covering all of the types indicated above. Such examples are furnished, *inter alia*, by Croatia, Finland, Germany, Hungary, the Slovak Republic, Slovenia and the United Kingdom.

27. This complexity of provision suggests that it may be useful to devise a matrix that relates the type of state (centralized, devolved, federal), demographic conditions (number of location of minorities) to the level or their representation in decision-making bodies, and to particular problems encountered by minorities (say in education, cultural and linguistic matters). One may then relate these factors the kinds of minority consultative bodies that good practice would suggest in answer to these factors.

III. Specific Suggestions

i. Quality of Design

28. The design of minority consultative structures within any society will be influenced by a number of factors. These relate to the breadth of provision for minority political participation, the demographic situation within the respective state, and any special problems minorities may face.

A. Overall Provision

29. The Advisory Committee has confirmed that minority consultation becomes particularly important where minorities are not directly represented at points of political decision-making. For instance, if minority communities are persistently unable to achieve representation in parliament, or in government at ministerial or deputy ministerial level, the need for extensive consultative mechanisms increases. It is therefore necessary to analyze the overall provision for minority political participation within a given state, before designing structures for consultation. This applies both to the state-wide, as well as to the regional, and even local level.

B. Demographic Situation

30. Obviously, a linkage between demographic situation and provision for consultation can be expected. Where minorities are widely dispersed throughout a territory, one might expect an emphasis on so-called cultural autonomies. That is to say, minorities would establish their own 'national' councils, both as a tool of minority self-government, and as a contact and consultation mechanism with the government. Where there is more than one minority so organized, an overall consultative council combining the various individual bodies, and bringing them into contact with government, would be expected.

31. In instances of minorities residing in compact areas, more territorially based approaches to minority representation would normally be expected, including enhanced local self-government. In these instances, it may be that those who constitute the majority in the state overall require special provision of consultation at the local or regional level.

C. Specific Situation

32. Just as there is no general recipe for minority consultation, there will always be particular circumstances that need to be taken into account. This may include the tradition of minority self-governance within the state concerned, the level of minority mobilization, and the level of exclusion faced by individual minority groups. Where minority mobilization is limited and there is no tradition of self-representation, it may be necessary to offer capacity-building to minority groups concurrently with the establishment of consultative structures. Where a particular minority community faces pronounced exclusion, particular mechanisms to improve access to decision-makers would be expected. If such exclusion relates to special areas (education, health, etc), it would also be expected that there would be special, sectoral consultation devices accessible to the relevant minority.

D. An Integrated Design

33. Generally speaking, it would be desirable to provide a comprehensive and integrated design of minority consultative structures. To summarize again, this would include, in addition to mechanisms to enhance direct participation in parliamentary and governmental decision-making:

- An overall minority consultative council operating at the national level, and including all minorities within the respective state;
- Specialist contact points, or consultation structures, within key ministries covering issue areas of interest to minorities;
- Particular mechanisms addressing an individual minority that faces unique and special exclusion (e.g. Roma);
- Regional or local consultative mechanisms that may also, in turn, include particular or specialist consultation procedures.

ii. Quality of Establishment

34. Clearly, practice on the legal establishment of minority consultative bodies is diverse. At the top end is the constitutional entrenchment of the existence, membership and mandate of such bodies, or at least of the principal consultative body operating at the national level. This may be the case in relation to consultative bodies attached to national parliaments, or bodies established in settlement agreements after violent ethnic conflict. In federal states, the constitution of those constituent republics where minorities live may offer specific provision for them (e.g. Germany).

35. Minority consultation may be entrenched in superior legislation (status law on national minorities, organic laws, and special laws of constitutional standing). Again, this approach is preferable where interethnic relations are fragile, and it is important to reassure the minority communities about the permanence of the arrangements that have been adopted. In other instances, legislation on national minorities, their rights and institutions, will take the form of ordinary legislation. Often, this will either be an omnibus law on national minority questions also referring to consultative mechanisms. In other cases, there may be a specialist law dealing only with the establishment of minority consultative mechanisms.

36. The Advisory Committee has repeatedly emphasized that such entrenchment in legislation is preferable, if not necessary, if confidence in the effectiveness and seriousness of the consultative process is to be achieved. The spread of such legislative entrenchment in state practice across the Council of Europe area is therefore much to be welcomed.

37. While principal legislation is certainly the preferable way of establishing consultative bodies, a significant number of mechanisms have been established by governmental decree. These will at times, however, tend to be mechanisms that are billed as being focused on minority consultation, while they may in practice serve more in the nature of governmental coordination bodies with some minority representation attached to it. As governmental decrees somehow imply a discretionary grant by the government, such a solution is not generally optimal. Moreover, the involvement of parliament when establishing at least the principal structures of minority consultation in legislation broadens the legitimacy and potency of such bodies. It also requires an active and open engagement by society with the problem of minority representation that can be beneficial in many instances.

38. Finally, in a few instances, the relevant consultative bodies appear to be principally disorganised. This would not meet the requirements stipulated by the Advisory Committee relating to good practice and should only apply in a transitional phase, while a permanent set of consultative mechanisms is being created.

iii. Quality of Mandate

39. The Lund Recommendations provide for the following functions of minority consultative bodies:

*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 satisfaction of minority concerns and to the building of confidence.*¹⁶

40. The *Explanatory Report of the Framework Convention for the Protection of National Minorities* states that in order to create the necessary conditions for participation by persons belonging to national minorities, Parties could promote – in the framework of their constitutional systems – *inter alia* the following measures:

- consultation with these persons [belonging to national minorities], by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;
- involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;
- undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities;
- effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels.

41. Obviously, the nature of the respective consultative mechanism (national, regional or local; co-decision, consultation or coordination; general, issue-specific, focused on just one particular group) will have an impact on the mandate and function of the respective body. However, a review of the practice of states reveals that the following functions should be covered in relation to each layer of governance (national and, where minorities are present, regional or local), every minority, and all issue areas of concern to the respective minorities. These concern: (1) the organization, mobilization and coordination among minority representative organizations; (2) contribution to the drafting of legislation; (3) contribution to governmental programming; and (4) participation in reporting to international mechanisms.

Functions focused on minority representative organizations:

- assist in organizing and mobilizing individual minority communities;
- provide a focus for capacity building among minority representative groups;
- ensure coordination of interests among different minority groups and minority representative organizations;
- contribute to the standards of democratic and transparent governance of minority representative organizations seeking representation in consultative bodies;
- assist in maintaining contacts between minorities and other populations across borders.

42. The performance of these functions through minority consultative structures is not without problems. Some governments are reluctant themselves to contribute to minority mobilization, capacity

¹⁶ Lund Recommendations.

building and the organization of a political will on their part. In their view, this might lead to unwarranted interference with the representation of minority interests within the state. However, it is possible to provide means to minority consultative mechanisms to achieve these aims in relation to minority communities, and leave control over the application of these means principally to those communities. Moreover, it is also possible to utilize NGOs as a filter between government and minority organizations when such support is delivered. Finally, in several instances, capacity and competence has been very successfully transmitted by minority representative organizations that are already well developed to others, still in need of development.

Legislative involvement:

- take legislative initiatives;
- review and comment on legislative projects of relevance to minorities;
- campaign in support of legislative projects of relevance to minority communities;
- contribute to awareness-raising in relation to legislation that has been adopted and campaign in favour of implementation action.

43. The extent of the involvement of minority consultative bodies in legislative processes will depend, of course, on the level of minority parliamentary participation. However, even where some minorities are so represented, this should not obscure the fact that numerically smaller minorities may not enjoy this benefit. Moreover, where members of minorities are elected to parliament, it cannot always be expected that they perform actually as representatives of ‘their’ minority. And even where there is parliamentary representation by those specifically professing to represent their minority community, their influence within the overall parliament may be small.

Involvement in programming:

- participate in surveys and needs assessment exercises relating to minorities;
- participate in setting policy priorities in areas of relevance to minorities;
- educate public officials about minority sensitivities, concerns and perspectives;
- participate in governmental programming in relation to minorities, or in relation to issues of particular relevance to them (education, culture, etc.);
- participate in funding decisions concerning programme implementation;
- monitor, supervise and evaluate programme delivery;
- support relations between the centre, the regions and local units of government in which minority issues are concerned;
- highlight minority concerns in relation to the general public and support programmes aimed to combat discrimination and assist integration;
- contribute to other public education and awareness raising campaigns.

44. A significant emphasis is being placed in recent practice on empowering minority representatives to participate, or take themselves, programming decisions. In the past, it has often been the case that significant sums were made available for programmes intended to assist minority communities, with little visible results at the end. Participation of minority representatives in shaping such decisions, in evaluating the impact of programmes, and in shaping the next funding cycle in the light of these results, has proved to be a very potent means of enhancing results.

Relations with international bodies:

- engage in consultations with international funders of programmes relevant to minorities (e.g. EU, UNDP, etc) in relation to programming priorities, even where the recipient of such programmes is the government in the first instance;
- contribute to the development of international standards affecting minorities, in particular the drafting of minority rights standards, through national authorities and representation at the international level as may be facilitated by them;
- contribute to reporting to international human and minority rights monitoring bodies.

45. Again, on this final point, recent practice has accelerated fairly rapidly. Many governments will now regularly invite representatives of national minorities to provide comments on draft reports to monitoring bodies, or to append their own views to these reports. This process in itself has been shown to clarify significantly the expectations of governments and minority groups. Of course, such a collaborative attitude does not diminish the need for parallel NGO reporting (shadow reports) that need to be generated at some distance from the government.

46. It is of course unlikely, and probably undesirable, that one single minority consultative body could best fulfil all of these functions. Accordingly, the functions will ordinarily be distributed across a number of the types of bodies that have been considered in the preceding section. Again, governments may wish to check whether they presently cover these functions.

iv. Quality of Membership

47. The balance of membership from among minority representative bodies and the government or other public bodies depends on the type of minority consultative organization. The Lund recommendations stipulate that the composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.¹⁷

48. Where consultative bodies are attached to parliament and principally created to contribute to the drafting of legislation, they will often be entirely composed of minority representatives, or of members of minority representative groups, minority representatives from parliament (where there are any), and other members of parliament. There are also instances of mixed mechanism, where a minority group is given access to a joint committee composed of parliamentarians and governmental agencies (e.g. Germany).

49. Membership of national minority consultative councils varies and can cause controversy. First, there is the issue of access to the minority consultative body. In this respect, the following problems may arise:

- The legislation or decree establishing the consultative body enumerates exclusively and expressly the minorities that are to be represented. This can lead to exclusion of other groups.
- The relevant instrument draws on the wider definition by the state of which groups it considers to be national minorities. Such definitions may be found in the constitution, national minority laws, or declarations made in connection with the ratification of international treaties. Again, this may exclude certain groups, including autochthonous minorities that plainly exist according to objective criteria, but have not been accorded 'recognition' by the relevant government.

¹⁷ Lund Recommendations, D.12.

- The relevant instrument limits representation to minority representative bodies that qualify according to a rather restrictive and at times subjective catalogue of criteria that are administered by the government.
- The relevant instrument limits minority representation to their achievement of representation in other bodies, for instance in parliament. Such an attitude would be controversial, given the particularly pronounced need for representation in consultative bodies of those minorities that do not have access to processes of co-decision.
- The relevant instrument does not appear to restrict membership to certain groups, but in actual fact certain minority communities are not invited to participate.

50. The Advisory Committee has repeatedly urged states to ensure full and comprehensive representation of all communities, whether recognized by the respective state or not. While this may pose problems for some governments, there is clearly a strong trend that opposes restrictive definitions of the kind mentioned immediately above and governments will over time wish to ensure that they open up genuine consultative mechanisms with all minority communities.

v. Quality of Representation

51. There are also different models for the process of selecting representatives in minority consultative councils. Ordinarily, it should be up to minority representative organizations to appoint their own representatives. In what appears to be the majority of instances, minority representative bodies will nominate representatives, which are then appointed by the relevant public body in charge of organizing the consultative process. In some cases, the government alone will select the representatives. This latter alternative would not be in accordance with good practice. However, this appears to occur principally in the case of coordination bodies, rather than consultative mechanism, where the government appoints external members more in the form of experts, rather than as representatives of minorities.

52. Where the organization of minority representation is concerned, it is up to the relevant communities to arrange for their own minority representative structures. Where there is just one representative organization that is accepted by the members of the minority as their umbrella organization, or perhaps a very small number of these, few difficulties arise. However, in circumstances where minorities have not managed to arrange for centralized representation through NGOs and representative organizations abound, the issue of selection becomes difficult. In such circumstances, the government may be well advised to encourage the relevant community to seek consensus on representation, or to form an umbrella organization for the purpose of ensuring representation.

53. In circumstances where there are fewer, but competing organizations representing a particular minority, the Advisory Committee has cautioned governments against selecting just some of them to represent their particular minority. Where there are objective reasons for being unable to accommodate all major groups in such circumstances, good practice would suggest that the criteria for selection should be public, transparent and as inclusive as possible. Where the inclusion of all organizations meeting the criteria is not possible, the formation of umbrella organizations could be supported, or the possibility of rotation considered. If it is not possible to organize the process in this way, for instance, because the groups themselves are unable to agree and participate in such a modality, and if the government takes a decision as to which group to choose, there should be transparent criteria for decision-making. Such a decision should possibly be subject to a review.

54. An appeals process, perhaps administered through the relevant minority consultative council itself, should be available. There are also double layered systems, where each minority will itself, first, generate its own representative council at the local, regional and/or national level. The leaders of these

individual councils can in turn constitute the core membership of the national minority consultative council at the state level. This method corresponds to good practice.

55. In consultative councils that are composed of a significant number of representatives of government and minority representative organizations, best practice would suggest a preponderance of minority representatives, or at least equality of representation. This issue is a difficult one, as it may well be in the interest of the minorities themselves to have represented on the consultative council all of the ministries and governmental agencies that are of relevance to them. On the other hand, as was already noted above, a preponderance of governmental representation can have a significant impact on the functioning of the consultative council, turning it rather into a body of governmental coordination. In some situations, minority representatives may well feel intimidated by broad and dominant high-level governmental representation. The working process, which may then resemble that of governmental agencies, may also not be conducive to producing uninhibited and effective participation of minority representatives.

vi. Quality of Process

56. Ordinarily, consultative bodies with dominant or significant minority representation will be in charge of determining their own working procedures. In some instances, governmental decrees establishing the mechanism will provide for procedural guidance. Generally, such documents will assign the chairmanship of the body to a senior governmental representative. Where consultative mechanisms at the state level are concerned, this will often be a minister or a senior representative of the Prime Minister or President. In such instances, it is good practice to ensure that at least the deputy chair is assigned to a minority representative.

57. Where working procedures are established by government, and there is strong governmental representation on the consultative council, it is necessary to ensure that these procedures focus on ensuring that genuine minority consultation takes place. For instance, such procedures will ensure that individual members can generate items for consideration for the agenda and that minority representatives can force inclusion of such items on the agenda. Minority representative groups will also have the right to offer information surveys, experts they may nominate, and any other sources of information they deem relevant for the consideration of the council. There should also be a provision for ensuring the transparency of the council's work. While it may sometimes be necessary to agree confidentially on the consideration of specific items, good practice revealed in the questionnaires and other documents indicates that the outcome of all deliberations should be public. There should be a provision for regular press briefings, and for dissemination of information on activities relating to the work of the council.

58. Minority consultative bodies will generally establish their own work programme. This programme should in itself be the result of consultation and consensus among the members, rather than simply reflecting the priorities of the government of the day. Work programmes will generally cover a review of legislative provision on a particular issue area, suggestions for improvements in that area, needs assessments, programming and programme evaluation action, and dissemination activities. These steps will normally be accompanied by an agreed set of milestones of achievement that is envisaged, and projected dates for such achievements.

59. Many minority representative councils will organize themselves into working groups that function under the authority of the overall consultative council. These working groups carry out the more detailed work according to the work programme they may have drawn up for approval by the plenary. Good practice requires that steps be taken to ensure that smaller minorities that may have only limited representation on the overall minority council can fully contribute to the work of such working groups.

60. Good practice revealed through the questionnaires would also indicate that the decision-making process of minority consultative bodies should be arranged in a way that dominance by governmental representatives is precluded. Accordingly, where minority representatives are not in the majority on the consultative council, they should have the ability to inhibit decisions to which a significant number among their ranks objects. However, it is general practice to make a special provision for decisions that have resource implications beyond those means that have been assigned to the council in the state, regional or local budget for disposition within its regular mandate. Similarly, it is clear that consultative councils cannot take decisions that are *ultra vires* of the functions or mandate granted to them in their constituent instruments.

61. The effective functioning of these bodies will require that they have adequate resources.¹⁸ This concerns (a) the infrastructure costs for the functioning of the consultative council itself; (b) funding for projects and activities that the consultative council is charged with implementing; and (c) financing for minority representative groups and association that is channelled through the minority consultative council. In a few instances, it is to be noted that minority consultative councils have been unable to function effectively, as no provision has been made for the minimum infrastructure necessary for the operation of the council itself. Programme funding, too, is often very limited indeed, and on some occasions, funding that may have been budgeted was not actually disbursed. This reduces the credibility of the relevant consultative body.

62. Where decisions about the funding of minority representative organizations and associations are concerned, good practice requires that particular care be taken to ensure transparency in the decision-making process. There should be objective criteria for judging funding applications. Where some of the potential recipients are represented on the council, while others are not, conflict of interest provisions need to be complied with. An appeals procedure should be available.

vii. Quality of Decisions and Visible Impact

63. Thus far, much mention has been made of the need for government to establish the right framework for minority consultation, and to facilitate a smooth and effective functioning of the relevant institutions. However, in reality government and minority representative groups do of course share an equal burden and responsibility in ensuring that the consultative process is a genuine and meaningful one. This does require an effort on the part of minority communities to ensure that their own representation is democratically mandated, conducts its business transparently, and is indeed widely representative of the community in question. Similarly, minority representatives and government share an interest in ensuring that the work of the respective consultative mechanism is in fact meaningful. That means that it must organize its business in a timely way, to allow the formulation of recommendations of the consultative council and ensure that they can feed into governmental decision-making. This also means that government must apprise the minority representatives of its own plans for the future. Ideally, this is done through the presentation of an action-document at the beginning of the consultative cycle, outlining an overall strategic plan covering legislative projects, programming, and other matters. Such a document would then itself be subject to consultation and joint development and, once agreed, can establish a timetable for preparation and input or decision from the consultative council.

64. Where the council does offer input, it can legitimately expect that its decisions are heeded, where decision-making authority has been devolved to it, or that its recommendations are considered seriously, where it has a right to be heard. Where action does not correspond to the outcome of

¹⁸ Lund Recommendations, D.13.

deliberations in the council, there is at least an expectation of a reasoned response from the government, explaining in some detail the grounds for its attitude. The council will then have the opportunity to offer its own assessment of this result, also in public.

65. While there may be instances where confidentiality must be maintained, it is generally very useful to ensure that the work of the council or of other consultative mechanisms attracts public attention. As the very aim of consultation is to share a sense of ownership and responsibility in relation to decisions taken by public authorities, publicity is necessary to transmit this sense of joint action from the members of the council to the members of minorities and the population at large. Hence, the council itself may wish to develop standing procedures for press briefings and a public information strategy, and it will be prudent to establish a small budget for this purpose.

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