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

CONSULTATION ARRANGEMENTS CONCERNING NATIONAL MINORITIES

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Introduction

On 7 June 2005, the Committee of experts on issues relating to the protection of national minorities (DH-MIN) of the Council of Europe issued a questionnaire on consultation arrangements concerning national minorities which was circulated to governments of Member States. This study is based on the replies to this questionnaire received by 10 October 2005.² In addition, the Opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter “The Advisory Committee”), the Comments by the Governments concerned as well as other sources have been taken into account.

The DH-MIN questionnaire seeks information on the legal status of the relevant consultative bodies, their mandate and functions, their membership and working methods. This structure has also been adopted in this study. The decision of the DH-MIN when requesting information from Member States was to invite them to provide indications as to their motivations when choosing a particular set of minority consultative mechanisms.³ The Member States were also asked to provide critical views in relation to their experience in this respect. However, very few answers contain critical comments on the subject (with the exception of Finland and the Czech Republic).

It is of course not the aim of for instance this study to review the performance of the relevant minority consultative mechanisms in any great detail, nor to comment on the claims relating to their effectiveness that may have been made in the replies. Instead, the study seeks to show the diversity of minority consultative mechanisms, and to start extracting from the information provided the initial elements needed in order to prepare a

² The following replies were considered: Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Lithuania, Moldova, Netherlands, “the former Yugoslav Republic of Macedonia”, Norway, Romania, Serbia and Montenegro, Slovak Republic, Slovenia, Sweden, Switzerland, United Kingdom. See DH-MIN (2005) 010. A few additional comments have been received since.

³ DH-MIN (2005) 008.

guide on good practices. However, where the Advisory Committee has made critical remarks, on occasion these are noted in a general way, to help clarify expectations of good practice. The study concludes by offering a number of practical steps that might be taken to further enhance knowledge on this subject.

I. Legal Framework

Effective participation of persons belonging to national minorities in public affairs is well established in international documents relating to the protection of national minorities. Provisions related to effective participation in public life include notably mechanisms of ensuring participation in the electoral process and representation in parliament, representation in judicial and executive organs and in the public administration. Minority consultative mechanisms play a particularly important role in this respect, especially in situations where minorities lack direct representation in legislative and/or in executive bodies.

The development of the relevant international legal basis of the right to full and effective participation of national minorities in public affairs 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.⁴ This right has been fleshed out in greater detail in a number of subsequent OSCE documents.⁵ At the universal level, the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* confirms – albeit in soft law, the right to effective participation in public life, stating 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.*⁶

At the level of the Council of Europe area, the *Framework Convention for the Protection of National Minorities* is the first international instrument that introduces this right in hard law. Under Article 15 of this Convention, State Parties commit themselves to create:

... the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

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

⁴ Copenhagen Document, para 35.

⁵ In particular, the Lund Recommendations on the effective participation of national minorities in public life that will be considered in greater detail below.

⁶ General Assembly Resolution 47/135, 18 December 1992, Article 2, para. 3.

political, economic, social and cultural life of the State [...] , and shall promote conditions for the exercising of those rights”.⁷ This is to be achieved, in particular, by opening the decision-making process to national minorities and creating conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities through appropriate measures.⁸

The official *Explanatory Report* attached to the *Framework Convention for the Protection of National Minorities* expands upon the terms of Article 15 of the Convention, providing 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.⁹ 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 that effect, after due consultation, including contacts with organisations or associations of [...] minorities, in accordance with the decision-making procedures of each State.”¹⁰ The OSCE HCNM expanded on this requirement in the *Lund Recommendations for the Effective Participation of National Minorities in Public Life* of 1999:

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, languages and culture.

Particularly intensive consultative and co-decision mechanisms have also been established in the ILO Convention (N°169) relating to indigenous peoples, on which one might draw by analogy in this instance.¹¹ Consultation mechanisms are also specifically required in relation to certain issue areas addressed by specific instruments, especially those concerning minority identity and culture. For instance, the European Charter for Regional or Minority Languages of the Council of Europe 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.”¹²

The Advisory Committee has repeatedly referred to the issue of national 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

⁷ Article 20.

⁸ Article 22.

⁹ See below, section IV

¹⁰ Para. 33.

¹¹ ILO Convention (No. 169) concerning Indigenous and Tribal Peoples and Tribal Peoples in Independent Countries.

¹² Article 7, para. 4.

mechanism contributes effectively to their participation in decision-making.¹³ 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 performance¹⁴.

In conclusion, one may therefore note that full and effective participation of national minorities in public life has firmly established itself as a right in international documents concerning the protection of national minorities. The establishment 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. As will be shown in section IV, 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 revealed through the questionnaire consists of multi-layered and multi-dimensional provisions for consultation.

At the outset, one should also note (as the DH-MIN has done when commissioning the questionnaire) that minority consultative bodies are only one of several mechanisms that should be deployed in order to ensure full and effective participation of national minorities in public life.

II. Types of Minority Consultative Bodies

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

There are four principal categories of minority consultative mechanisms. These are:

- Co-decision mechanisms
- Consultation mechanisms
- Co-ordination mechanisms
- Minority self-governance mechanisms

It will be convenient to consider each of these separately.

1. Co-decision mechanism

Co-decision occurs where minority consultative councils must be heard before certain decisions can be made, or where minority consultative councils have genuine decision-making powers. Co-decision in the former sense will take place mostly where consultative councils are attached to national or regional parliaments. Generally, minority consultative councils attached to parliaments, and often also those attached to

¹³ See Weller, *The Rights of Minorities*, Oxford University Press, 2005, pp. 446-450.

¹⁴ E.g., Armenia, Azerbaijan, Bosnia and Herzegovina.

government, will at least have the right to review draft legislation of special interest to them and to provide views on such draft legislation. Where the legislation cannot be adopted without such views at least 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. The latter would be considered hard powers of co-decision.

In some instances, minority consultative councils will exercise principal decision-making powers, rather than merely powers of co-decision. Such functions may relate to programming, planning and funding issues in relation to minority self-governance. While the central government will set the general framework of, and funding level for, minority policy and programmes, decisions relating to their implementation 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 organisations.¹⁵

2. Consultation mechanisms

The mechanisms of consultation can be organized in a variety of ways. At the central level, there tend to be three principal models. First, there are minority consultative councils that are principally composed and organized by minority representative organisations. These consultative councils will assist in coordinating and articulating minority interests from among the broad spectrum of minorities within the State and to represent these jointly to government or parliament. Such bodies will mainly be self-organised. While at times enacted in legislation, the minority representative groups themselves set up conditions of membership, working methods and activities. In addition to the external representation of minority interests, such consultative councils will also perform an important function in mobilising minority communities and in streamlining their own ability to represent themselves through umbrella organisations.

A sub-group of national minority councils organised principally by the minorities themselves comprises 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, of various 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.

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

¹⁵ Para 166.

Coordinator for Minority Affairs. The membership of such councils tends to be mixed, being composed both of governmental representatives and minority representative groups. This kind of body gives minorities access to high-level officials in the governments.

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, led by the Deputy Prime Minister, is composed of 14 ministries and 6 State agencies and the Secretariat lies in the hands of a governmental Directorate. Membership of minority representative organisations, on the other hand, is left fairly open, and there is as yet no practice to indicate whether minority representation will be open and broad. While it is of course beneficial to place a significant number of high-ranking members of government at the disposal of minorities, 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.

Similarly, the establishment of contact offices at the office of the 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 have proven to be 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 limited number of minority groups, or perhaps only one. In cases where contact offices are accessible to a larger number of minorities, or minorities that do not have the ability to represent themselves through one strong, central representative body, this model will be less effective. Even where contact offices have the pro-active mandate of searching out minority views and engaging with various minority representative organisations, one can really only speak of minority consultative mechanisms where these organisations have a formal role in an established joint institutional setting. However, to deal with this deficiency, such contact offices are often complemented by the parallel establishment of minority consultative councils.

The case may arise where there is competition between bodies set up by the government and by the minorities themselves. For instance, in the First Opinion of the Advisory Committee on Armenia, it was pointed out that there was a certain tension between a minority consultative council which comprises representatives of 11 minorities and headed by a presidential advisor, and the Union of Nationalities, representing 12 national minority cultural organisations.¹⁶

3. *Coordination mechanisms*

Mechanisms of coordination are not genuine 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

¹⁶ Para 79.

instance, Cyprus reports that the Permanent Secretary of the Ministry of the Interior acts as the 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. For instance, the Finnish Ministry of Justice, the lead agency for the implementation of the Finnish Language Act (423/2003) has established an Advisory Board on Language Affairs. This body serves to help mainstream language policy according to the requirements of relevant legislation.

Occasionally, such expert bodies will only exercise a limited role of minority consultation, for instance by inviting minority representative organisations 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, governments have referred to such coordination mechanisms, instead of genuine minority consultative mechanisms, which may have been lacking.

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 organisations and in the ability to influence legislation cannot be considered to be genuine consultative mechanisms.¹⁷

4. *Minority self-governance mechanisms*

Where minority councils have been established in order to organise or mobilise 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 in an internal sense. This will generally be the case where there is provision for setting up of 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. Particular procedures apply where indigenous populations enjoy extensive powers of self-governance (e.g. Sami Parliament). In such instances, minority self-governance will be involved in maintaining regular contacts between the bodies of self-governance and both the State parliament and the executive.¹⁸

B. Areas of activities

In addition to the above-mentioned categories of mechanisms, it is also necessary to distinguish between the modalities of consultations and the specialisation of the consultative body. Three further categories may be identified: these relate to multi-level consultation, to specialised consultative mechanisms, and to particular mechanisms focusing on just one minority group.

¹⁷ 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. See also 1st Opinion on Norway, para 61.

¹⁸ A lack of such provision was noted by the Committee of Ministers in relation to Norway, ResCMN (2003) 6.

1. *Multi-level consultation*

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 different layers of public authority, from the central government to the local one. 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 for instance. 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.

2. *Specialised consultative mechanisms*

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 mechanisms 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 specific 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, as provided for in the Public Education Act. In addition to providing advice and undertaking consultations, this body even has certain powers of co-decision. Each national minority delegates one member.

3. *Mechanisms focusing on particular groups*

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 levels of governance, and they may also consist of specialised consultative mechanisms focusing on one particularly vulnerable group (e.g. Roma education). However, a number of States also maintain extensive consultative structures in parallel, for each of the main national minorities. Germany, for instance, provides individual consultative mechanisms for Sorbs, Frisians and Danes at the level of both the parliament and the executive body. Such separate provision should not detract, however, from the need to provide the respective minorities the opportunity to represent their interests together, in a joint consultative setting.

It is good practice to balance State-wide mechanisms focusing on one particular minority with regional bodies of that kind, where a particular minority is territorially compact, or where it is threatened with particular difficulties in particular geographic areas (for instance, Finnish practice relating to Roma populations).

Rather than just providing for separate consultative bodies limited to certain groups that may be at particular risk of exclusion, a number of States have provided for the establishment of a separate consultative council to each of them. In Austria, for instance, there is provision for *Volksgruppenraete*. Hungary has developed an extensive system of minority self-governance for Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian minorities. Generally this practice is followed by States favouring concepts of 'national cultural autonomies'.

C. Complex systems

A few replies to the questionnaire offer insights into just one particular type of minority consultative mechanism. It is noteworthy, however, that an impressive number of answers reveal a complex mixture of bodies and 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 specific means of consultation located at a specific ministry), and a number of other specialised mechanisms. In addition, there is a layering of mechanisms, also stretching 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 were provided, *inter alia*, by Croatia, Finland, Germany, Hungary, the Slovak Republic, Slovenia and the United Kingdom.

This complexity of such systems suggests that it may be useful to devise a matrix that relates the type of State (centralised, devolved, federal), demographic conditions (number and location of minorities) to the level of representation of minorities in decision-making bodies, and to particular problems encountered by them (e.g. in educational, cultural and linguistic matters). One may then relate this data and draw conclusions regarding the kinds of minority consultative bodies that good practice would suggest for each type of situation.

III. Legal Establishment

It is clear that the legal establishment of minority consultative bodies varies greatly between States. At the top end, there is the constitutional entrenchment of the existence, membership and mandate of such bodies. This may be the case in relation to consultative bodies attached to national parliaments, or bodies established by agreements following violent ethnic conflicts. Hungary provides in Article 68 of its Constitution for collective representation of minorities and enacts this requirement through the Minorities Act. In

federal States, the constitution of those constituent republics where minorities reside may offer specific provision for them (e.g. Germany).

In other cases, minority consultation will be entrenched in superior legislation, e.g. minority laws of constitutional rank, which is the case of Serbia and Montenegro. This will either be often an omnibus law on national minority questions, or it will be a specific law on the establishment of minority consultative mechanisms. The Advisory Committee on the Framework Convention has repeatedly emphasised 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.

While principal legislation is certainly the preferable way of establishing consultative bodies, a significant number of mechanisms have been established by governmental decrees. 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.

Finally, in a few cases, these consultative bodies seem not to be fully established, which is not in compliance with the requirements stipulated by the Advisory Committee in its Opinions in relation to good practices in this field.

IV. Mandates and Functions

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

The *Explanatory Report* attached to the *Framework Convention for the Protection of National Minorities* adds:

- 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.

The nature of the respective consultative mechanisms (national, regional or local; co-decision, consultation or coordination; general, issue-specific, focused on just one particular group) will clearly have an impact on the mandate and functions of these bodies. However, a review of State practice 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 (A) the organisation, mobilization and coordination among minority representative organisations (B) contribution to legislation (C) contribution to governmental programming and (D) participation in reporting to international mechanisms.

A. Organisation, Mobilization and Coordination among Minority Representative Organisations

- assist in organising and mobilising individual minority communities;
- enhance capacity building among minority representative groups;
- ensure coordination of interests among different minority groups and minority representative organisations;
- contribute to the standards of democratic and transparent governance of minority representative organisations in seeking representation in consultative bodies;
- request and receive information and data from public authorities;
- assist in maintaining contacts between minorities and other populations across borders.

The role of consultative mechanisms in enhancing the competence of minority representative organisations and in assisting minority communities in generating umbrella bodies that can be engaged by the State represents an interesting recent development (see for instance, the Finnish Advisory Board for Ethnic Relations). It is observed that the effectiveness of minority consultation, even in countries where reliable mechanisms were established, is severely hampered by the inability of minorities to ensure the effective representation of their own interests in these bodies. Another benefit arising from this function is the facility of inter-ethnic dialogue that is particularly useful in States where ethnic tensions persist.

B. Contribution to Legislation

- take legislative initiatives;
- review and comment on legislative initiatives which are of relevance to minorities;
- campaign to support the drafting of legislation which is of relevance to minority communities;
- contribute to the awareness-raising on adopted legislation pertaining to national minorities and campaign in favour of its implementation.

It should be noted that almost all minority consultative mechanisms functioning at central/general level provide for some involvement in relation to legislative initiatives. Good practice would indicate that such a right should be clearly established, and it needs to be meaningful. That is to say, advice given by the consultative councils should be followed, or where this is not the case, reasons should be given and substantive dialogue should be pursued.

C. Contribution to Governmental Programming

- participate in surveys and needs assessment exercises relating to minorities;
- participate in establishing policy priorities in areas which are of relevance to minorities;
- educate public officials about sensitive issues, concerns and perspectives pertaining to minorities;
- participate in governmental programming in relation to minorities, or in relation to issues of particular relevance to them (e.g. education, culture, etc.);
- participate in decisions regarding the funding to be allocated to the implementation of programmes;
- monitor, supervise and evaluate the implementation of various programmes;
- strengthen relations between central, regional and local governments when minority issues are in question;
- highlight minority concerns in relation to the general public and support programmes aimed at combating discrimination and assisting the integration of minorities;
- contribute to awareness raising and other information campaigns

The involvement of consultative bodies in programming contributes to the reinforcement of the minority participation in public life. Firstly, it ensures that minority communities develop the technical competences needed for carrying out activities such as needs assessment, programme development, implementation and evaluation. Secondly, it ensures that minority constituencies are involved in decision-making processes, especially on issues affecting or targeting them. Thirdly, minority constituencies will start sharing a sense of responsibility in relation to such policies and programmes. In this way, rivalry amongst minority consultative groups can be avoided and unrealistic demands or expectations vis-à-vis the government may be reduced. It is to be noted that the government will be also involved in a permanent dialogue with minorities and will be under higher pressure to be more efficient and make the resources which may have been budgeted at the outset, available.

D. Participation in Reporting to International Mechanisms

- engage in consultations with international funders of programmes relevant to minorities (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.

It is already standard practice for minority organisations to play a role in preparing reports on minority policy to international bodies. They may either be involved in the drafting of reports, or may attach separate statements to it. However, even in cases where there exists such a formal involvement, there is still a need for shadow reports aiming at providing international bodies with another perspective than the one provided by governments.

Minority consultative councils have met the Advisory Committee members in the course of various country visits and it should be emphasised that their views are an important source of information for the Advisory Committee.

Minority consultative councils may be also invited to give views on the drafting of international treaties concerning national minorities and their subsequent signatures and ratifications by States. The inclusion of representatives of minorities in international delegations addressing issues of special concern to minorities, including human and minority rights, discrimination, sub-regional developments, or international programmes aiming at supporting particular minorities (such as the Roma Decade) is considered to be good practice.

V. Membership

The *Lund Recommendations* stipulate:

12. ...The composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.

The balance of membership from among minority representative bodies on the one hand and the government or other public bodies on the other depends on the type of minority consultative organisation as well as on its function. Bodies of minority-self-governance, or umbrella *fora* of a specific minority or a coordination body of national minorities, will generally be composed only of minority representatives. The Sami parliament whose members are elected is one such example. It is to be pointed out that the compliance with principles of internal democracy, transparency and accountability is to be expected even in less wide-ranging minority self-administration such as associations or other minority organisations. It is up to the minority representative organisations to create such criteria of conduct rather than leave it to governments to make such provision. In fact, there might be a role for the Council of Europe to generate such a code of good practice.

Where consultative bodies are assigned to parliaments with a view to contributing to the drafting of legislation touching upon national minorities, they will usually be entirely composed of minority representatives, members of minority representative groups, minority representatives from parliaments (where there are any), and other members of

parliament. There are also mixed mechanisms, where a minority group is given access to a joint committee composed of parliamentarians and governmental agencies (e.g. Germany). Consultative bodies with mixed minority and governmental membership may be established with a view to ensuring regular exchange of views between the government and minorities.

In consultative councils that are composed of a significant number of representatives of government and minority representative organisations, 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 be represented on the consultative council together with representatives of 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 significantly 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.

When considering the first State Report of Germany, the Advisory Committee noted that members of the Sorbian minority constituted only a minority of members on the relevant Sorbian consultative body, and did not possess veto powers in relation to the decisions of that body.¹⁹ Germany explained that the body had decision-making powers relating to funding issues, where the government concerned would be unable to assign principal decision-making powers to the relevant minority.²⁰ This episode proves that minority communities should generally be able to play a decisive role in the consultative bodies and should be in the majority. Similarly, the Advisory Committee recommended to the Slovak Republic to change its consultative arrangements with a view to ensuring that the majority of members of the Council of National Minorities and Ethnic Groups are composed of minority representatives.²¹ Subsequently, it was reported that 15 out of 18 members in the Council of National Minority and Ethnic Groups are persons belonging to national minorities. The Czech Republic has also taken measures to ensure that a majority of members in the consultative council are nominated by the national minority associations.

In addition, the question of the determination of which minorities are to be represented in such consultative bodies can cause disagreements. It is considered in general terms that all national minorities should be entitled to be represented in the consultative bodies. In this respect, a number of following problematic issues may arise:

- The legislative act or decree on the establishment consultative bodies enumerates exclusively the minorities which are to be represented. Such legislation can lead to the exclusion of other groups.

¹⁹ Advisory Committee, 1st Opinion, Germany, Para 65.

²⁰ Germany, 2nd State Report, para 805.

²¹ Advisory Committee, 1st Opinion, Slovak Republic.

- The relevant instrument draws on the wider definition by the State of which groups it considers to be national minorities. This can be a general definition of the term minority (for example, Serbia and Montenegro), or an enumeration of groups. 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.
- The relevant instrument links 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 (Romanian National Minorities Council). 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 practice, certain minority communities are not invited to participate.

The Advisory Committee has repeatedly urged States to ensure full and comprehensive representation of all national minorities, including non-autochthonous minorities, whether recognized by the respective State or not.

A *formulae* for representation has been established in some cases. For instance, the Lithuanian Council of National Communities is composed of members of individual minorities according to their number (3 seats for national minorities of more than 100.000 members, 2 for communities comprising from 10.000 to 100.000 members, and one for less numerous minorities). In the same way, Croatia reports arranging representation according to the relative numerical size of minorities.

There are also different models concerning the selection process of representatives in minority consultative councils. As already noted, a fully democratic process can be expected in minority self-governance. Minority associations should equally ensure that their candidates for national minority consultative councils have been selected democratically and according to a transparent process.

Where the membership in a minority consultative body depends on appointment by government, it is good practice to ensure that minority representative are automatically appointed if they are nominated by their respective communities. If there are grounds for the refusal of an appointment (e.g., a criminal record of the nominee), best practice would let the matter be addressed by the minority consultative council in question rather than the government.

In some cases, the government itself will select the representatives of such consultative bodies. This is not in accordance with good practice. The lack of consultation with minorities with respect to the designation of minority representatives was criticized by the Advisory Committee (see for example, the Opinion of the Advisory Committee on

Lithuania).²² However, such a procedure of designation appears to occur mainly with respect to coordination bodies rather than consultative mechanisms. Indeed, coordination bodies are usually composed of external members who are experts in the field rather than representatives of minorities.

In some cases the government concerned will establish criteria for the selection of minority representative groups to be represented in the respective consultative council. Such selection criteria may include, as is the case of the Finnish Advisory Board on Ethnic Relations:

- Their ability to represent the relevant communities;
- The size of the group they represent;
- Their expertise as it relates to the respective council's mandate;
- The risks of exclusion of the group represented by an association or NGO;
- The organisational capacity of the relevant association or NGO.

Such criteria may add to the transparency when decisions need to be made about the selection of just some representative groups in relation to the limited spaces available on a consultative council. However, overly restrictive criteria, or criteria that may have the effect of excluding a particular minority group from representation, are to be avoided.

As already mentioned above, where the organisation representing a national minority is concerned, it is up to the relevant communities to arrange for their own minority representative structures. Few difficulties will arise in cases where there is just one representative organisation that is accepted by the members of the minority as their umbrella organisation. However, in circumstances where there is no centralised or uncontested representation of minorities, the selection procedure becomes difficult (e.g. the Czech Republic). In such circumstances, the government may be well advised to encourage the relevant community to seek consensus on its representatives or to form an umbrella organisation for the purpose of its representation (e.g. Serbia and Montenegro reported that the proliferation of minority organisations requires that such a step be taken).

In circumstances where there is fewer but competing organisations representing a particular minority, the Advisory Committee stressed that governments should avoid selecting just some of these organisations to represent a 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 and the selection process transparent. An appeal procedure, perhaps administered through the relevant minority consultative council itself, should be made available. In this context, reference may be made once more to 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 councils can in turn constitute the core membership of the national minority consultative council at the State level. This method is in line with good practice in so far as it places the burden of selection on the minorities themselves.

²² 1st Opinion, para 79.

VI. Working Methods and Resourcing

The Advisory Committee criticised the failure of consultative councils to meet on a regular basis and to ensure frequent consultations and continuous dialogue on the issues pertaining to national minorities.²³ It follows that there is an expectation of significant and substantive use of minority consultative processes.

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. In general, such documents will assign the chairmanship of the body to a senior governmental representative. As far as the State level consultative mechanisms are concerned, this will be a minister or a senior representative of the Prime Minister or the President. It is good practice to ensure that at least the deputy chair is assigned to a minority representative. It is unusual that a more detailed working practice, such as the setting up of working groups within a consultative council, is anticipated in a decree (e.g. Romania). It is expected that decisions of this kind will be made by the relevant body itself with the support of the majority of minority representatives.

Where working procedures are drawn up by governments and at the same time, there is strong governmental representation on the consultative council, it is also good practice to make sure that these procedures provides measures to ensure genuine minority consultation. It can be mentioned as an example that such procedures will ensure that individual members can propose items to be considered and that minority representatives have the possibility to ensure its inclusion on the agenda. In this respect, minority representative groups should also be able to propose information surveys to be carried out, experts who may be nominated, and any relevant sources of information to be taken into account by the councils.

There should be transparency in the work of the council: while it may be sometimes necessary to discuss a specific item *in camera*, good practice revealed in the questionnaires and other documents indicates that the outcome of all deliberations should be public. Provision should be made for regular press briefings and information on activities relating to the work of the council.

In general, a work programme will be drawn up by minority consultative bodies themselves. This programme should be the result of consultation and should be agreed by 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 provisions on a given area, suggestions for improvements in that area, needs assessments, programming, related programme evaluation as well as 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.

Many minority representative councils will set up working groups that function under the authority of the overall consultative council. Such working groups carry out the more

²³ See for example, 1st Opinion, Ukraine, para 72.

detailed work according to the work programme approved by the plenary. Good practice requires that steps are taken to ensure that the less numerous minorities having limited representation in the minority council can fully contribute to the work of such working groups.

As was already noted above, good practice revealed through the questionnaires would also indicate that the dominant position of governmental representatives in the decision-making process should be avoided. In addition, if minority representatives do not have the majority on the consultative council, they should have the possibility to challenge decisions which a significant number of their members objects to. It is a general practice to adopt special provisions 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 make decisions that are *ultra vires* of the functions or mandate granted to them in their constituent instruments.

An important element for the credibility of consultative councils is whether their advice or decisions are actually acted upon, or at least taken into consideration by the relevant State bodies. Where the decision does not follow the advice given, it is to be expected that this fact is at least explained by the relevant State body.²⁴

The effective functioning of these bodies will require that they have adequate resources.²⁵ Some may be weary of governmental funding granted to minority groups, fearing that this may reduce their independence from governments. It is a positive obligation of governments to provide financial means to minority organisations in order to support the effective participation of minorities in public life. Such funding must be granted unconditionally. It is up to the governments to ensure that decisions related to funding are not used in a way that might lead to stifle genuine minority representation. Good practice would propose that some decisions on the allocation of funds are put in the hands of the minority councils themselves.

Funding should be available in respect of three areas: (a) costs covering the technical support ensuring the functioning of the consultative councils itself, and (b) funds for projects and activities to be implemented by the consultative councils (c) funds for the minority representative groups and associations which should be channelled through the minority consultative councils. The lack of funding affects to a great extent the effective functioning of minority consultative councils. In some cases no minimum technical support was made available to the councils which hampered their effective functioning. There is a lack of funds available for various projects. It was also observed that some funding previously budgeted was not at the end made available which may have a negative effect on the credibility of the relevant consultative body.

In cases where decisions about the funding of minority representative organisations and associations are made by the relevant consultative council, good practice requires that particular attention is paid to ensuring transparency in the decision-making process.

²⁴ Advisory Committee, 1st Opinion, Romania, para 66.

²⁵ Lund Recommendations, Section D, para. 13.

There should be objective criteria for assessing applications for funding. A conflict of interests may arise in cases where some of the potential recipients of such funds are members of the council while others are not. Provision should be made to avoid situations of conflicts of interest and an appeal procedure should be made available.

VII. Conclusion

The legal obligation to provide for effective participation of national minorities in public life is now entrenched in minority rights law. Besides many other aspects, including those relating to direct participation of minorities in decision-making processes, the principle of effective participation includes the establishment of minority consultative mechanisms. In cases where minorities have no access to decision-making in areas of special relevance to them in the legislative, governmental or administrative process, the requirement for effective consultation mechanisms is even more important.

Minority consultation can no longer be achieved through the establishment of a single mechanism. Instead, each State needs to consider, in cooperation with minority representative groups, a spectrum of measures needed to be taken to ensure effective participation through consultative mechanisms. This relates to vertical mechanisms covering all layers of governance within a particular State, including the national, regional and local ones. In addition to general mechanisms covering all aspects of minority interests, issue specific mechanisms are increasingly becoming a standard feature, in particular in the areas of education, languages and culture. Moreover, where particular minority groups are subject to structural exclusion, either generally or in relation to certain issue areas, it is appropriate also to establish consultative bodies focusing particularly on that group.

The Advisory Committee has identified a number of elements of good practice concerning minority consultative mechanisms in its Opinions. This guidance is already reflected in a number of examples of practice provided in the replies of governments to the DH-MIN questionnaire.

Firstly, good practice suggests entrenchment of the main minority consultative bodies (for example, those operating at national level) in the Constitution or in primary legislation. Principal regional mechanisms in areas where minorities reside can be similarly entrenched in the Constitution of the respective constituent republics in the case of federations or in regional statutes. Provisions for local consultative mechanisms can be best contained in the legislation related to local governance adopted at national level.

It is important not to confuse governmental coordination bodies and minority consultative bodies. Coordination bodies will mainly comprise governmental representatives and will operate according to the procedural rules established by the relevant governmental agencies and they, may be chaired by governmental officers. Minority representative groups will often be invited to participate in their meetings and related activities. However, their role appears subordinate to the aim of inter-ministerial coordination. Genuine minority consultative bodies have a wider mandate. Their membership will typically be dominated by representatives of minority groups, nominated by the

respective minority representative groups. Only this latter format fulfils the requirements of minority consultative mechanisms. Access to genuine minority consultative processes should be available to all relevant groups, whether or not these are recognized as national minorities by the State in question.

On the basis of the practice reported by governments, the guidance contained in the OSCE Lund Recommendations and the Explanatory Report to the Framework Convention, this study has identified a broad range of functions of minority consultation. Firstly, these functions relate to the organisation, mobilisation and governance of minority communities. Secondly, they concern participation in drafting the legislation at the national, regional and local levels. Thirdly, they concern participation in programming, programme monitoring and evaluation. Finally, they concern effective participation in the development of and reporting to international legal instruments and mechanisms of relevance to minority communities.

As far as the working methods are concerned, genuine minority consultative arrangements, including those comprising significant numbers of governmental representatives, will provide for the right of initiative on the part of minority representatives. It is important that minority consultative bodies are able to work in an atmosphere of consensus. If a decision needs to be made, good practice would suggest that the minority representative should have the possibility to adopt such a decision within the established mandate of the respective consultative body. Representatives of particular minority representative groups, as well as governmental representatives, should have the opportunity to dissociate themselves publicly from decisions which they do not endorse. The work and adopted decisions or recommendations of minority consultative bodies should be transparent and communicated to the general public.

Funding provided to minority consultative bodies needs to be established to ensure the effective functioning of the respective mechanism. This contains technical services, such as meeting costs, secretariat and dissemination as well as financial resources for capacity building of its member organisations, including funds related to programming, programme implementation as well as their monitoring and evaluation. Funds may need to be made available to consultative mechanisms in order to be able to acquire external expertise with respect to research, surveys and assessments. As far as the distribution and use of public funds devoted to minority communities are concerned, a budget should be prepared in advance in consultation with the relevant minority groups, ideally while the preparation of the national, regional or local budgets is underway.

ANNEX A: MATRIX CONCERNING MINORITY CONSULTATIVE MECHANISMS

Mechanism	Multiple and Dispersed Minorities	Minorities Residing in Compact Areas	Particular Minorities at High Risk of Exclusion	Special Problems Faced by Minorities
Co-decision Mechanisms	Parliamentary and executive representation commensurate with numbers	Enhanced local or regional self-governance	Enhanced involvement of that minority in legislative and executive decisions relating to itself	Involvement of minorities in programming decisions in that area
Minority Consultative Council at State Level	Expected	Expected	Expected	Expected
Minority Consultative Council at Regional and/or Local Level		Expected		
Specialist Minority Consultative Mechanisms at State Level			Expected, mechanisms in relation to the particular minority and its special problems	Expected in relation to particular areas of concern (education, economic development, etc)
Specialist Minority Consultative Mechanisms at Regional and/or Local Level		Expected, where a regional or local minority faces special problems	Expected, where a Minority at Special Risk is concentrated regionally or locally	Expected, where minorities facing special problems are concentrated regionally or locally
Particular Consultative Council at State Level			Expected	Special state-wide consultation mechanisms in relation to a minority particularly affected by that issue
Particular Consultative Mechanism at Regional or Local Level			Expected, in regions mainly inhabited by that particular minority	Expected, if the special problem arises in relation to that particular minority locally/regionally
Governmental Coordination Body with Minority Input	Expected	Expected	Expected	Expected
Minority Self-governance mechanisms	Expected	Expected	Expected	
Other				

ANNEX B: CHECKLIST OF ISSUES RELATING TO MINORITY CONSULTATIVE COUNCILS

TYPE	Inter-ministerial coordination	Governmental communication with minority representatives	Minority Consultation	Minority consultation and self-government	Minority co-decision, consultation and Self-government
ESTABLISHMENT	No formal basis	Decree	Ordinary Law	Status law	Constitutional
BALANCE OF GOVERNMENTAL AND MINORITY INVOLVEMENT	Minority representatives are only involved incidentally as sources of information	Governmentally dominated, minority representation is limited	Minority dominated, governmental representation is limited	<i>Ad hoc</i> governmental representation (called in at the request of the Council to assist it on points of information)	None
MINORITY MEMBERSHIP	Only constitutional ly or legally nominated minorities are admitted (constituent peoples)	Only minorities represented in parliament are admitted	Only groups satisfying certain criteria (numbers) are admitted	Certain nominated minorities are excluded	All are admitted
SELECTION	By the government	By the government, with some consultation with minority representative groups	By the government, after nomination by minority representative groups	By minority representative groups in accordance with criteria established by the government	By minority representative groups alone
FUNCTIONS	Occasional consultations by government on specific issues nominated by government	Legislative review	Legislative review, Reporting	Mobilization, Legislative, Review, Reporting	Mobilization, Legislative review, Programming, Reporting,
PROCESS	Chaired by governmental representative , process established by the government by decree, work plan established by the government, working groups	Chaired by governmental representative, process dominated by government, work-plan negotiated in the consultative council, decisions can be adopted against minority positions	Co-chaired (or chair and vice-chair shared by government and minority representatives), freedom to establish procedures and work plan, but the government can block decisions	Chaired by minority representatives, generates its own procedures and work-plan, minorities dominate decision-making, but government can veto decisions with	Minority representatives chair and control proceedings

	dependent on governmental consent			funding implications	
DECISION-MAKING	No decision-making, no public statements	Public recommendations in relation to selected areas	Public recommendations and internal, binding decisions	Some decisions relating to programming issues	Decisions relating to procedure, substance, and assignment of funds
FUNDING	None	Minimum Infrastructure	Infrastructure plus capacity building for minority representative organizations	Infrastructure, capacity building and limited project funding	Full funding, including significant project or programme funding

ANNEX C: POSSIBLE FUTURE STEPS

1. Refine Matrix and Checklist in the view of discussion with governmental representatives and minority representative groups
2. Invite governments and minority representative organizations to apply the Matrix and Checklist in relation to their respective state and to use it to propose enhancements of the present provision for minority consultative mechanisms
3. Organise, within a year, a tour de table in DH-MIN on step 2, and on action agreed and undertaken as a result
4. Share the Matrix and Checklist with the FCNM Advisory Committee and other relevant bodies that could find it useful in their own work
5. Generate a Handbook of Good Practice relating to minority consultative mechanisms, expanding upon the issues raised in report DH-MIN(2005)011 final.
6. Generate a Web-based resource with examples of relevant legislation and other useful tools
7. Offer advisory and support services to governments wishing to enhance their provision for minority consultative mechanisms
8. Seek project funding in support of such activities, and in support of certain governments/minority consultative mechanisms seeking to enhance their performance further
9. Schedule a meeting to review action taken in order to enhance minority consultative mechanisms after a period of two to three years and share experiences gained amongst governments and minority representative groups at this review meeting