

# Minority Rights: A guide to United Nations Procedures and Institutions

BY GUDMUNDUR ALFREDSSON AND ERIKA FERRER



**Minority Rights Group International**



**Raoul Wallenberg Institute**  
*of Human Rights and Humanitarian Law*

## MINORITY RIGHTS: A GUIDE TO UNITED NATIONS PROCEDURES AND INSTITUTIONS

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### MINORITY RIGHTS GROUP INTERNATIONAL (MRG)

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- Promotes minority rights through direct advocacy in international forums and in dialogue with governments.
- Builds on a global network of like-minded organizations and minority communities to cooperate on minority rights issues.

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# Minority Rights: A Guide to United Nations Procedures and Institutions

CHAPTER	CONTENTS	PAGE
	Abbreviations and Terms used in the Text . . . . .	2
1	Introduction . . . . .	4
2	Overview of the Applicable International Standards . . . . .	6
3	General Comments by the Treaty Monitoring Bodies . . . . .	8
4	Overview of the Applicable Monitoring Procedures . . . . .	11
5	State Reporting under International Human Rights Treaties . . . . .	14
6	Complaints under Treaties . . . . .	17
7	Complaints under the 1503 Procedure . . . . .	20
8	Special Procedures of the Commission on Human Rights . . . . .	21
9	International Criminal Courts . . . . .	27
10	Good Offices . . . . .	28
11	The Commission on Human Rights . . . . .	29
12	The Sub-Commission on Prevention of Discrimination and Protection of Minorities . . . . .	30
13	The Working Group on Minorities and Other Working Groups of the Sub-Commission . . . . .	31
14	Research and Studies . . . . .	33
15	Technical Cooperation . . . . .	35
16	The Role and Contributions of NGOs . . . . .	36
17	Concluding Observations . . . . .	37

BY GUDMUNDUR ALFREDSSON AND ERIKA FERRER

# Abbreviations and Terms used in the Text

**1503 procedure** – Named after the number of the resolution of the UN Economic and Social Council. This procedure allows the confidential consideration of complaints by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the UN Commission on Human Rights concerning alleged human rights violations.

**CAT** – The Committee against Torture is a treaty body, with expert members, set up to monitor compliance with the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment.

**CEDAW** – The Committee on the Elimination of Discrimination Against Women is a treaty body, with expert members, established under the International Convention on the Elimination of Discrimination Against Women.

**Centre** – The Centre for Human Rights in Geneva was the Secretariat unit servicing most UN human rights bodies. It has since been replaced by the Office of the High Commissioner for Human Rights.

**CERD** – The Committee on the Elimination of Racial Discrimination is a treaty body, with expert members, established under the International Convention on the Elimination of All Forms of Racial Discrimination. It monitors the implementation of the Convention by reviewing reports submitted by states that have ratified the Convention, and it may consider complaints by individuals or groups provided the state concerned has made the necessary declaration under article 14 of the Convention.

**CESCR** – The Committee on Economic, Social and Cultural Rights is a treaty body, with expert members, set up by the ECOSOC to monitor state compliance with the International Covenant on Economic, Social and Cultural Rights by examining state reports submitted by states that have ratified the Covenant.

**Commission** – The Commission on Human Rights is the highest placed forum of the UN devoted solely to human rights issues. It is a subsidiary, functional commission of the ECOSOC.

**CRC** – The Committee on the Rights of the Child is a treaty body, with expert members, established under the

Convention on the Rights of the Child with the purpose of monitoring compliance with the Convention, mainly by examining reports submitted by the states parties.

**ECOSOC** – The Economic and Social Council is a principal organ of the United Nations, responsible for the coordination of the economic and social work of the UN and its specialized agencies, including human rights and minority rights.

**Good offices** – Term used when the UN Secretary General or High Commissioner for Human Rights helps resolve a human rights problem.

**High Commissioner** – The High Commissioner for Human Rights is, next to the Secretary-General, the highest ranking UN official in the human rights field. The Office of High Commissioner is based in Geneva, with a liaison office in New York and field offices in a growing number of states, including Bosnia-Herzegovina, Burundi, Cambodia, Colombia, Croatia, Malawi, Palestine, Rwanda and Serbia.

**HRC** – The Human Rights Committee is a treaty body, with expert members, established under the International Covenant on Civil and Political Rights. It considers reports submitted by states that have ratified the Covenant, and it may receive individual complaints referring to alleged rights violations if the state concerned has ratified the first Optional Protocol to the Covenant.

**IGO** – An intergovernmental organization.

**ICCPR** – The International Covenant on Civil and Political Rights is a treaty which more than 140 states have ratified.

**ICERD** – The International Convention on the Elimination of All Forms of Racial Discrimination is a treaty which more than 150 states have ratified.

**ICESCR** – The International Covenant on Economic, Social and Cultural Rights is a treaty which more than 140 states have ratified.

**ILC** – The International Law Commission, with 34 international law experts, drafts treaties for consideration by the General Assembly.

**ILO** – The International Labour Organization, a specialized agency of the United Nations based in Geneva, adopts labour standards from which minorities stand to benefit. It has in place impressive monitoring and technical assistance programmes.

**OSCE** – The Organization for Security and Cooperation in Europe is a regional organization encompassing more than 50 states in Europe, Central Asia and North America.

**NGO** – A non-governmental organization.

**States parties** – States that have ratified an international convention or treaty.

**Sub-Commission** – The Sub-Commission on Prevention of Discrimination and Protection of Minorities is composed of 26 independent experts with think-tank and policy-formulating mandates. It reports to the UN Commission on Human Rights.

**UNDP** – The United Nations Development Programme carries out UN development projects which may incorporate minority concerns.

**UNESCO** – The United Nations Educational, Scientific and Cultural Organization is a specialized agency based in Paris which has adopted minority-specific standards relating to identity, culture and education.

**UNHCR** – The United Nations High Commissioner for Refugees has headquarters in Geneva and branch offices throughout the world.

**UNICEF** – The United Nations Children’s Fund carries out UN development programmes and projects related to child welfare and the rights of the child, including minority concerns.

**UNITAR** – United Nations Institute for Training and Research.

**UNRISD** – The United Nations Research Institute for Social Development is an autonomous research institution based in Geneva.

**UNU** – The United Nations University is an autonomous research institution based in Tokyo with specialized branches and associate institutions in many parts of the world.

**WGIP** – The Working Group on Indigenous Populations, which has five independent experts and was established in 1982, is a subsidiary organ of the Sub-Commission and meets annually in Geneva.

**WGM** – The Working Group on Minorities, which has five independent experts and was established in 1995, is a subsidiary organ of the Sub-Commission and meets annually in Geneva. This Guide devotes chapter 13 (pp. 31–2) to the mandate and activities of WGM.

# 1. Introduction

The aim of this Guide is to encourage people belonging to minorities and the groups themselves to use the procedures and forums of the United Nations (UN) increasingly and effectively in order to promote respect for their legitimate rights. The Guide also emphasizes the contributions of non-governmental organizations (NGOs), with and without the so-called consultative status they can obtain from the Economic and Social Council (ECOSOC).

This Guide gives a brief survey or overview of those instances in the UN human rights programme where violations of minority rights and other situations involving minorities have been and can be brought up, and where they can be further pursued. The focus is on relevant and available institutions and forums where state compliance with international human rights and minority rights standards can be subjected to monitoring and implementation procedures.

In this Guide we do not attempt to define the term 'minority'. In general though, one can say that:

- (a) self-identification with the group or the subjective element,
- (b) objective characteristics, that is national, racial, ethnic, linguistic and religious elements which distinguish the minority from other population groups in a country,
- (c) the numerical aspect, that is the requirement that the group comprises less than one-half of the state population, and
- (d) the establishment of a group on a territory over a considerable period of time,

are likely to constitute the main elements of a definition.<sup>1</sup>

The Guide concentrates on the UN. It does not deal with specialized agencies such as the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) or regional organizations like the Council of Europe and the Organization on Security and Cooperation in Europe (OSCE), although most of their standards and monitoring methods with regard to minority rights are similar in content and nature.

Likewise, the Guide does not aspire to be comprehensive in its coverage of UN institutions, procedures, case law, general comments, resolutions and other products and avenues. Instead, the contents are intended to demonstrate the art of the possible. It is

not a textbook, but rather points to available and feasible avenues for minorities and NGOs pursuing cases and lobbying for change, with the emphasis on institutions and monitoring mechanisms. There follows only a brief outline of the applicable international minority rights standards, which are, of course, the point of departure for any use of the procedures.

In describing the UN monitoring or implementation procedures, the Guide attempts to answer some practical questions.

- What are these procedures all about?
- How have they been used to the benefit of minorities in recent years?
- How can minorities gain access to them?
- What kind of information should minorities contribute and through which channels?
- In what other ways can the minorities themselves, or NGOs on their behalf, make use of the UN human rights procedures and forums?
- Will such efforts make a difference?
- Which procedures are most likely to bring positive results?

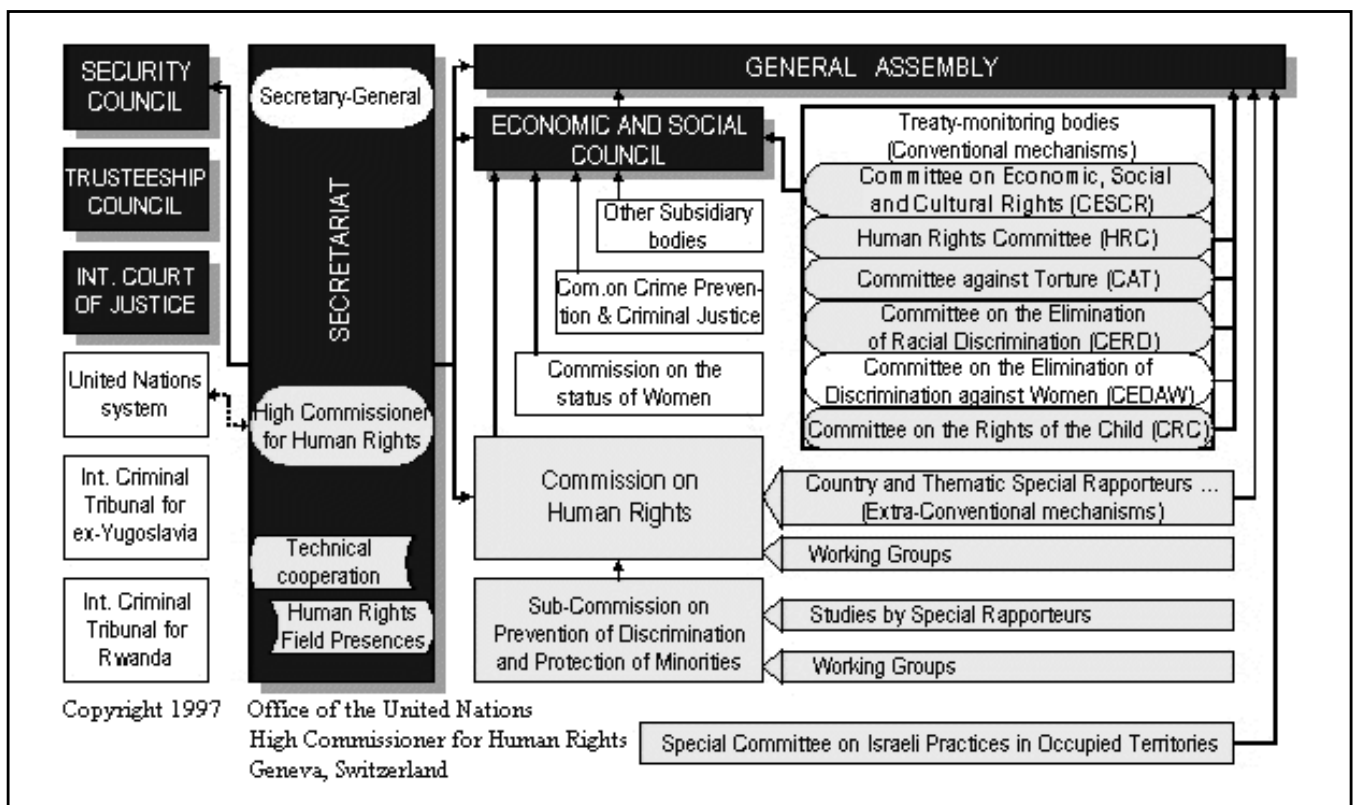
It is true for almost all the issues dealt with in this Guide that the minorities themselves, or their representatives, can influence the outcome of the proceedings. This will be pointed out from time to time. The UN is not unlike a national government with legislative and executive branches which must be lobbied for change. No results will issue from the judicial branch, or the quasi-judicial UN complaints procedures, unless and until cases are brought before them.

International standards have been adopted over decades, but monitoring activities are more recent. One has to remember that as an international organization, the UN is composed of states, and it is the states that take all the major decisions. It is also states that commit themselves to comply with international standards. In so doing, one must expect them to have regard for their national interests and concerns, such as the preservation of sovereignty and territorial integrity. These concerns are reflected in the reluctance many states show towards the adoption of minority standards with effective monitoring procedures for the protection of minorities.

There is some truth to the observation that the UN and other intergovernmental organizations are slow or negligent in responding to minority concerns, but there is more to the story. This Guide will demonstrate that there are several UN monitoring procedures and forums to which violations of minority rights and other situations involving minorities can be submitted for serious review with reasonable expectations of positive results.

One recent development (1995) is the establishment of the Working Group on Minorities (WGM), authorized by the UN Commission on Human Rights and the ECOSOC, and reporting to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. This is a major innovation for the UN and a potential vehicle for change. It constitutes one more monitoring procedure, but it also introduces a forum to the UN where, for the first time, the UN can seek to facilitate dialogue between groups and governments. The WGM is the subject of chapter 13 (pp. 31–2) in this Guide.

The United Nations High Commissioner for Human Rights has also recently opened a website on the World Wide Web, which can be accessed on <http://www.unhchr.ch>. Details are given of the UN system in the field of human rights; ratification of treaties, etc.



## 2. Overview of the Applicable International Standards

When the General Assembly adopted the Universal Declaration of Human Rights in 1948, it was decided that the UN could not remain indifferent to the fate of minorities.<sup>2</sup> The goal has been kept inasmuch as today the international human rights instruments contain many provisions from which minorities stand to benefit. In describing the various monitoring procedures, the Guide relies on these standards which lay down rules concerning equal enjoyment of all human rights, non-discrimination in that enjoyment, and the so-called special rights and special measures (affirmative action) which have the aim of achieving equal enjoyment.<sup>3</sup>

The equal enjoyment of all human rights and the prohibition of discrimination in that enjoyment are prescribed in the UN Charter, in the Universal Declaration of Human Rights, in the two International Human Rights Covenants, and in a series of additional instruments with both general and specialized contents. The equal enjoyment and non-discrimination clauses apply to all aspects of human rights, that is civil, cultural, economic, political and social rights. Particularly important components are equal protection under the law and the equality of all persons before the courts and in public administration.

The grounds on which discrimination is prohibited differ from one instrument to another, but repeated references to race, colour, language, religion, national origin, social origin, birth and other status clearly cover traditional minority situations.

Discrimination has been defined as:

*‘Any distinction, exclusion, restriction or preference [related to these grounds] which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of [all rights and freedoms].’*

(International Convention on the Elimination of All Forms of Racial Discrimination, para. 1, article 1).

History and current events have shown that equal enjoyment of all rights and non-discrimination in that enjoyment are insufficient guarantees for the protection of minorities. Special rights and preferential treatment are needed to overcome widespread discrimination and to put the minority groups, as well as their members, on an equal footing compared with the majority population. In other

words, equality under the law must also translate into equality in fact.

Minority-specific provisions are set forth in a number of UN human rights instruments. These include:

- the International Covenant on Civil and Political Rights (ICCPR);
- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- the Convention on the Rights of the Child;
- the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

In the instruments, special rights and measures to the benefit of minorities are mainly established for the fields of education, culture, language and religion. The general rules on equal enjoyment and non-discrimination, often backed by special measures, must also be extended, as a matter of course, to political, economic and social rights.

Article 27 of the ICCPR is an important and frequently quoted provision for the specific protection of minorities. Other relevant articles in the Covenant are, in particular:

- article 2 on non-discrimination;
- article 4 on non-derogation;
- article 14 on equality before the courts and on language interpretation in criminal justice proceedings;
- article 20 on the limitation of the freedom of speech if it constitutes advocacy of ethnic hatred;
- article 25 on equal suffrage and equal access to public service; and
- article 26 on equality before the law.

Provisions in the ICESCR of particular relevance to minority rights are:

- article 2 on non-discrimination;
- article 7 on equality in the work place;

- article 13 on the right to education, including human rights education and the contribution of education to the promotion of understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups; and
- article 15 on cultural life and the protection of the moral and material interests resulting from artistic production.

The scope of racial discrimination prohibited under the ICERD is very wide, and covers racial, national and ethnic minorities in accordance with paragraph 1 of article 1 of the Convention. The Convention also places an obligation on states to adopt special measures for the benefit of individuals and groups when that is necessary to overcome discriminatory patterns in the cultural, economic, social and other fields. In article 4, the ICERD outlaws incitement to racial hatred and related practices, as does the ICCPR.

Special rights and measures do not constitute privileges for minorities or persons belonging to them; these rules are based on the principle of equal enjoyment just as is non-discrimination. Only the communal enjoyment of these rights, with minorities using native languages, running their own schools, benefiting from access to other services provided by the group for the group, and participating in the political and economic affairs of the state, will approximate circumstances which the majority takes for granted. If preferential treatment is denied, the achievement of equal enjoyment of all rights by members of minorities is seriously undermined.

Most of the UN human rights instruments stipulate rights for individuals. This is also the case for many standards on minority rights, but the texts often state that persons belonging to minorities can exercise their rights in community with other members of their group. In a few instances, the groups themselves are granted rights as well as access to international forums; it is important to keep the distinction between individual and group rights in mind when considering the monitoring procedures. To which rights are groups entitled? Which rights are best exercised in community with other members of the group? Who can approach which forum and use which procedure?

In 1992, the UN adopted the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. This is the first UN human rights instrument devoted solely to minority rights. It restates many of the existing rights and adds that organizations within the UN system have a role to play in the 'full realization of the rights and principles' set forth in the Declaration. It also ties minority rights to the 'development of society as a whole and within a democratic framework based on the rule of law'. The adoption of the Declaration led in 1995 to the establishment of the WGM.

# 3. General Comments by the Treaty Monitoring Bodies

The international instruments contain the human rights and minority rights standards, but one must also keep their interpretation and application by the official monitoring bodies in mind. Their practice is an important reference tool, to be read together with the standards, because precedents carry considerable weight in international organizations just as they do in national legal systems.

One aspect of this practice relates to the so-called general comments or recommendations. Some of the principal human rights treaties authorize the monitoring bodies set up under the same treaties to adopt general comments or recommendations which serve to interpret or elaborate further the various treaty provisions. The purpose of adopting these comments is to provide guidance to states when reporting to the expert committees (see below). The comments also serve to summarize the practice of the treaty bodies as it emerges from the examination of state reports and the handling of complaints, and to clarify terminology and definitions relating to the various rights and freedoms. It is also possible to lobby the treaty bodies as to the contents of the comments and recommendations when new ones are being drafted or old ones amended.

Some of the relevant general comments by the Human Rights Committee (HRC) on the ICCPR and general recommendations by the CERD on the ICERD are summarized below.<sup>4</sup>

## 3.1 General comments of the Human Rights Committee

The general comment no. 12 by the HRC on the right of self-determination in article 1 of the ICCPR gives limited guidance on questions related to minorities, except to say that this is a right to which peoples and not minorities are entitled. The HRC has made clear that a violation of the right of self-determination may not constitute the basis for an individual complaint under the Optional Protocol (see case no. 167/1984, *Chief Bernard Ominayak and the Lubicon Band v. Canada*, and case no. 205/1986, *Mikmaq Tribal Society v. Canada*, [pp. 18–19]).

The term ‘peoples’ in article 1 has been interpreted by HRC to mean the entire population of a state or of an entity entitled to statehood under international law.

The term peoples can therefore not be applied to a minority group living within a state. Ethnic, religious or linguistic minorities do not have the right to break away or secede from a state by reference to article 1, unless they can be classified as falling under the UN practice of decolonization, or unless the majority and minority agree to separate. Self-determination claims may also be justified in international law if groups are subject to systematic discrimination and exclusion from government, or if they live on territory which has been occupied by force since the entry into force of the UN Charter in 1945.<sup>5</sup>

In the general comment on article 1, the HRC requests state parties to include in their periodic reports details on measures undertaken to fulfil the right of ‘all peoples to freely determine their political status and freely pursue their economic, social and cultural development’. The HRC asks states to ‘describe the constitutional and political processes which in practice allow the exercise of this right’. This emphasis on democratic governance may be important for minorities living in areas where local self-administration or autonomy could be legitimately claimed as a special measure for achieving equal enjoyment in the fields of cultural, economic and political rights, for example.

Equal enjoyment and non-discrimination are set out in various articles of the ICCPR, most notably in articles 2, 14, 20 and 26. In general comment no. 18 on non-discrimination, the HRC has defined the term ‘discrimination’ as follows:

*‘Discrimination as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.’<sup>6</sup>*

It is important to note that equal enjoyment of rights and freedoms does not necessarily mean identical treatment in all cases and in every instance. In some instruments, differentiation is required or allowed as a means for creating equal opportunities for a disadvantaged group as compared with the rights

enjoyed by the majority of the population. Such special measures, also referred to as affirmative action or preferential treatment, are not to be regarded as privileges if they serve the purpose of redressing conditions of inequality.

The prohibition of discrimination applies to all individuals living in a state. According to the HRC, the scope of the discrimination clause in article 26 not only embraces the rights protected in this particular Covenant, but all rights which the state confers by law on all individuals living within its jurisdiction. Article 26 thus prohibits discrimination in any field, in law or in fact, in the civil, cultural, economic, political<sup>7</sup> and social sectors, which is subject to regulation and protection by state authorities. When a state enacts legislation, it must be in accordance with article 26; that is, the content of the law must not discriminate in any way between persons who come within the jurisdiction of that state.

According to the HRC, the scope of article 18 on the freedom of religion is very wide. It protects believers as well as non-believers. In **general comment no. 22**, the HRC emphasized that the article is not limited to so-called traditional religions, and the Committee is concerned with

*‘any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established or represent religious minorities that may be the subject of hostilities by a predominant religious community’.*<sup>8</sup>

Article 18, paragraph 3, of the ICCPR permits limitations on the right to freedom to exercise one’s religion or belief if such limitations are ‘prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others’. The HRC states clearly that this provision must be interpreted strictly. Any limitation must be in accordance with the rights guaranteed in the Covenant, such as equal opportunities and non-discrimination. Furthermore, limitations must be applied only for specific, legitimate purposes, and they must be proportional to the need on which they are based. The HRC acknowledges that there are difficulties related to the definition of morals which will vary with different social, religious and philosophical traditions, but the concept of morals must not be based exclusively on a single tradition.

The HRC lays stress on the prohibition of discrimination against religious minorities, including non-believers, whether in the form of economic or political privileges for followers of the majority religion, the imposition of restrictions on the practice of non-dominant faiths, or otherwise. The HRC urges states to include in their reports to the Committee information on measures undertaken to protect all religions or beliefs, and especially on the protection of religious minorities. The HRC also wants states to submit ‘infor-

mation relating to practices considered by their laws and jurisprudence to be punishable as blasphemous’.

Article 20, paragraph 2, of the ICCPR states that ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’. According to **general comment no. 11** of the HRC, this prohibition is fully compatible with the right to freedom of expression.<sup>9</sup> The Committee stresses the need for effective implementation of this article and urges states to adopt laws clearly prescribing that propaganda and advocacy of national, racial or religious hatred are ‘contrary to public policy’. State parties to the Covenant must also provide effective sanctions against perpetrators of such acts.

The HRC has adopted **general comment no. 23** on minority rights as set forth in article 27 of the ICCPR.<sup>10</sup> These are additional to all the other rights set out in the Covenant to which minorities are entitled as a matter of course. The rights in article 27 are extended to all individuals belonging to ethnic, religious and linguistic minorities within the jurisdiction of the state; they cannot be limited to citizens of that state. The existence of a minority is to be established on the basis of objective criteria and does not depend on state recognition of that minority.

Although article 27 is formulated in negative terms, a ratifying state is nevertheless obliged to ensure that the existence and the exercise of the rights specified in article 27 are protected against their denial or violation. This means that the negative wording has been reversed through the interpretative practice of the HRC: a state is obliged to undertake special measures or positive action to redress inequalities between members of minority groups and the majority. Special measures are required for the protection against denial or violations of the rights provided for in the article and against acts committed not only by state authorities but, in line with article 20 of the Covenant, also the acts of other individuals within the state, such as members of racist organizations.

Article 27 recognizes and establishes rights of individuals belonging to minorities; that is, not the group as such, but individuals are to enjoy the rights ‘in community with other members of their group’. The realization of the rights, therefore, relates to the ability of a group to maintain its identity, such as its culture, language and religion. Special measures may be required to protect this identity. Enjoyment of the right to culture may be associated with the ownership and use of land and resources, and activities such as fishing and hunting, if these activities are integral to the preservation and development of the group’s way of life and culture (see Communications submitted to the Human Rights Committee, pp. 17–18).

The HRC requests states to include in their reports information on any measures adopted for the full protection of the rights laid down in article 27.

The Committee specifically asks for information on measures as far as the guarantee of the survival and continued development of the cultural, religious and social identities of minorities is concerned.

It is important to remember that, according to the HRC, the enjoyment of the rights set out in article 27 does not prejudice the sovereignty and territorial integrity of states. This understanding is repeated in many international instruments.

### 3.2 General recommendations of the Committee on the Elimination of Racial Discrimination

General recommendation no. XIV on non-discrimination as set out in article 1 of the ICERD illustrates the scope and understanding of the meaning of discrimination.<sup>11</sup> Special measures resulting in differential treatment will not constitute discrimination if they are temporary and only serve the purpose of placing a disadvantaged group and its members on an equal footing with the majority population as far as the enjoyment of all human rights is concerned.

The CERD has adopted **general recommendation no. XI on non-citizens** as referred to in article 1, paragraph 2, of the ICERD, which grants a state limited rights to differentiate between citizens and non-citizens.<sup>12</sup> Such differentiation is not regarded as discriminatory. The CERD declares, however, that a state is not allowed to discriminate against a particular nationality of non-citizens living within the state and under no circumstances to deny non-citizens the rights and freedoms provided for in other international human rights instruments.

In a **general recommendation on article 4 of the ICERD**, the CERD has demanded strengthened national implementation due to instances of organized violence based on ethnic origin, and the political exploitation of ethnic difference. The mandatory character of article 4 obliges states to adopt appropriate legislation and to secure effective enforcement. According to the CERD, the prohibition on disseminating racist propaganda is compatible with the right to freedom of expression. In international law, that freedom carries certain limitations and responsibilities, including respect for the rights and reputations of others.

Article 4 also proscribes organizations that promote racist propaganda and ideas, and incite racial discrimination. The CERD stresses that states must monitor organizations or organized activities that are based on racist ideas and undertake appropriate measures to declare their activities illegal.

In **general recommendation no. XIII on the training of law enforcement officials** in the protection of

human rights, the CERD emphasizes the duty of states to include information about the ICERD and the obligations therein in the training of these officials.<sup>13</sup> They should be trained to enhance respect for the protection of human dignity and all human rights without any discrimination.

# 4. Overview of the Applicable Monitoring Procedures

This chapter contains an overview of the monitoring procedures available at the UN. (This is expanded in subsequent chapters). The UN has in place many types of treaty-based and/or resolution-based procedures and institutions<sup>14</sup> which minorities can access either directly or indirectly, officially or unofficially.

- In examining **state reports** required by the conventions which come under their respective jurisdictions, the HRC, the CERD, the Committee on the Rights of the Child (CRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Discrimination against Women (CEDAW), and the Committee against Torture (CAT) do or can question government representatives about the treatment of minorities and minority rights. The questioning will be more effective if minorities and NGOs supply relevant information to the members of the Committees.
- Three monitoring bodies operating under UN auspices – the Human Rights Committee, the CERD and the CAT – can receive **complaints or petitions** concerning alleged violations of the standards contained in the respective conventions, provided the state against which such a treaty-based complaint is directed has both ratified the treaty concerned and accepted the particular procedure. Members of minority groups and, in the case of the CERD, also the groups themselves, can submit complaints for consideration and decision-making by these treaty bodies.
- **Petitions** about the alleged violations of minority rights can also be considered under **confidential, resolution-based complaints procedures** aimed at demonstrating gross and consistent patterns of violations. The best known of these instances, the 1503 procedure, is available to all individuals, groups and NGOs irrespective of treaty ratifications.
- Fact-finding and investigative functions are carried out by **Special Rapporteurs**, who are appointed by the Commission on Human Rights. Many of them have addressed minority concerns in their reports to the Commission, including Rapporteurs with thematic mandates on religious intolerance, racism and racial discrimination and those with country-oriented mandates on Burundi, Iraq, Burma, Romania, Rwanda, the Sudan, the former Yugoslavia and other states. In addition to their regular reports, the Rapporteurs are able to take urgent or rapid action under their reporting mandates. In order to function properly and react to violations of minority rights, they need, of course, all the relevant information from minorities and NGOs.
- Minority rights issues are frequently brought up in the **Commission on Human Rights**, as well as in its parent bodies and subsidiary organs. The public debates under various agenda items, not least those dealing with violations of human rights, serve to draw attention to problems facing minorities around the world and to put pressure on the governments concerned. Violations of the rights of persons belonging to national, ethnic, religious or linguistic minorities account for a substantial part of the human rights situations considered. As a rule, it is NGOs that bring these violations to the attention of the UN human rights meetings.
- Expert members of the **Sub-Commission on Prevention of Discrimination and Protection of Minorities and its working groups** in their research and policy-making activities, for example by the appointment of research rapporteurs,<sup>15</sup> have frequently brought up and made recommendations relating to situations and human rights violations affecting minorities. Again, it is NGOs that most often bring these issues to the attention of the Sub-Commission. The UN working groups on minorities, on indigenous peoples and on contemporary forms of slavery are subsidiary organs of the Sub-Commission.
- The UN Secretary-General, the High Commissioner for Human Rights and heads

of specialized agencies and other UN organs can and occasionally have undertaken good office actions for the sake of minorities and indigenous peoples. Groups, individuals and NGOs can request such action.

- Minority considerations are increasingly, albeit slowly, entering the technical cooperation (also called advisory services and technical assistance) programmes carried out by various departments in the UN Secretariat and by other UN agencies. In chapter 15, p. 35, suggestions are made as to how minorities can try to influence and become involved in the technical assistance activities.
- The facilitation of dialogues between groups and governments, intended to enhance understanding and build confidence and channels of communication between the parties, is a growing factor in UN monitoring activities. In this respect, the UN has been learning from the OSCE about the prevention and resolution of conflicts. Here a direct link is made between respect for human rights and maintaining internal and international peace. Such dialogue mandates have been given to the UN Working Group on Minorities and the UN High Commissioner for Human Rights.
- Other organs and specialized agencies in the UN system, such as UNICEF, UNDP, UNHCR, ILO, UNESCO and the World Bank, also offer human rights assistance and/or monitoring procedures which can and should be employed in monitoring and implementation activities relevant to minority rights.
- Finally, the important role of NGOs in the field of minority rights must be stressed. This is especially true for NGOs which have acquired so-called consultative status with ECOSOC. Contributions by NGOs take many forms, and they are crucial to the proper and effective functioning of the UN human rights programme, as emphasized throughout this Guide. Indigenous peoples' organizations have used this avenue with considerable success, much more so than minorities. Minorities could benefit from taking a more active part in NGO work.

The momentum for UN efforts in pursuing minority protection was enhanced by former Secretary-General Boutros Boutros-Ghali who made the following observation, in dealing with conflicts caused by ethnic,

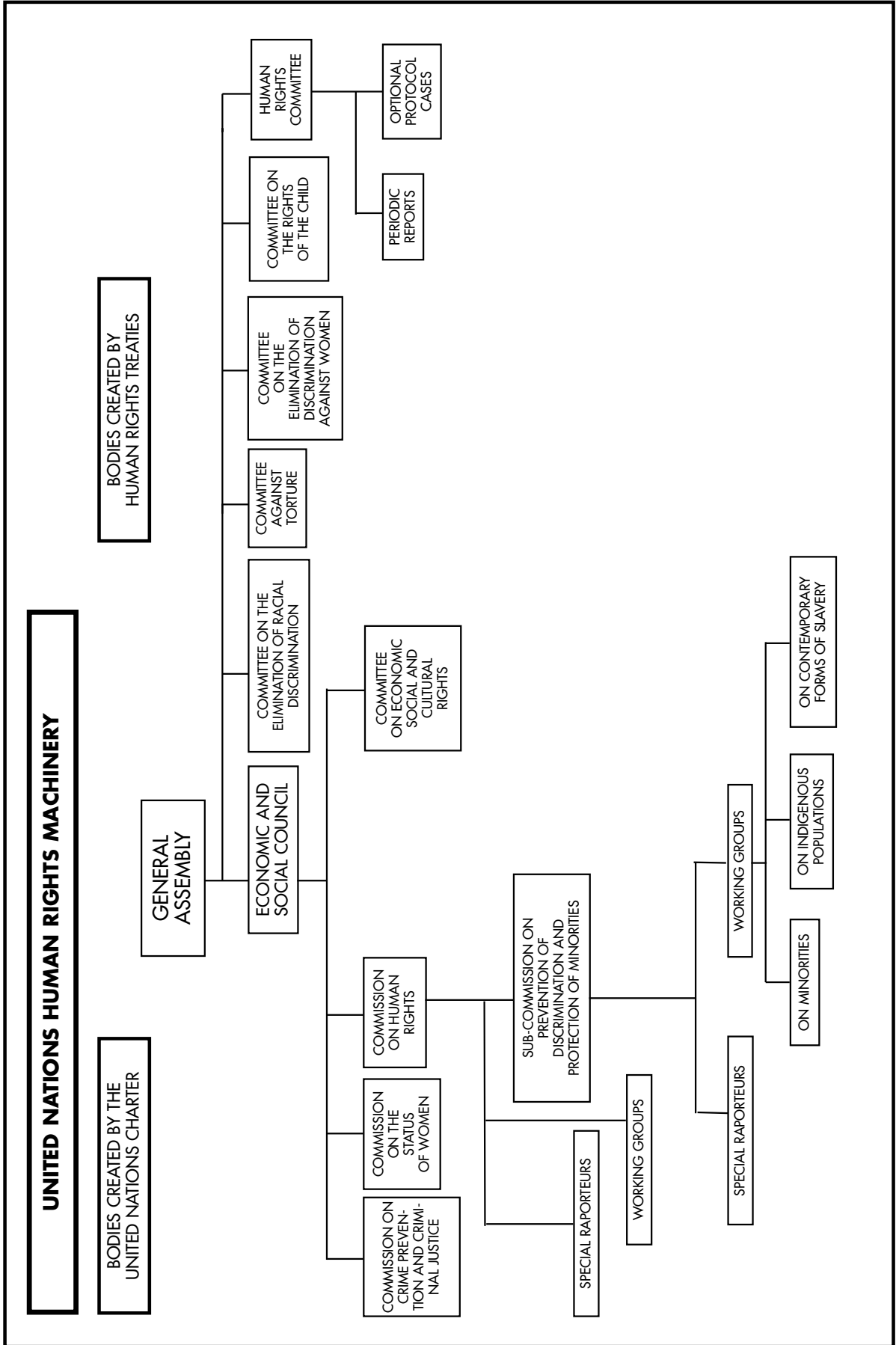
religious or linguistic groups which claim statehood in a 1992 report on an *Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-Keeping*:

*'One requirement for solutions to these problems lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic. The League of Nations provided a machinery for the international protection of minorities. The General Assembly will soon have before it a declaration on the rights of minorities. That instrument, together with the increasingly effective machinery of the United Nations dealing with human rights, should enhance the situation of minorities as well as the stability of States.'*<sup>16</sup>

Whether it is about respect for minority rights or the maintenance of peace, the primary concern of governments tends to be the potential disruption which they expect and fear as a result of minorities asserting their rights. They often assume that preferential treatment – in particular any arrangements delegating political and economic functions to groups – will fuel secessionist claims that would threaten national unity, political independence and territorial integrity. In cases affecting what some states call 'their own nationals', unilateral state action across international boundaries leads to an unfortunate politicization of minority issues and increases rather than reduces tension. Ignorance and lack of understanding, as well as doctrines of superiority and racism, constitute further stumbling blocks.

One must expect the minority groups and their representatives to approach the monitoring procedures, not least the UN WGM with constant reference to the international standards and with moderation and political realities in mind. These are not forums for dealing with the right of self-determination or claims for secession – rights which minorities do not enjoy under the international instruments – and other issues which go beyond the jurisdiction and power of the monitoring bodies. For effective responses, for both protection and prevention purposes, it is important to play by the rules, even if some may consider them limited and restricted in scope.

It is important to keep in mind that respect for minority rights is in the interest of both minority groups and governments. Much depends on the political wisdom and good faith of governments and minority groups when making use of the monitoring and assistance procedures.



# 5. State Reporting under International Human Rights Treaties

Several of the human rights treaties require state parties to submit reports to the respective treaty monitoring bodies on measures carried out for the fulfilment of their treaty obligations. In the state reports, governments are expected to list all legislative, administrative, judicial and other actual measures which they have undertaken for the promotion and protection of the rights provided for in the respective treaty, including minority rights.

State reports are to be submitted on a periodic basis, and are examined by the respective treaty bodies in open sessions. Representatives of the reporting state are generally present to make additional comments and answer questions from committee members. NGOs and the public may attend these meetings, and NGOs are allowed to address some committees. The treaty bodies, which are composed of independent experts, evaluate the information presented in the reports and make recommendations to the states concerned if they have failed to comply with the treaty obligations. The concluding observations on state reports are published in the annual reports of the treaty bodies to the General Assembly, except for the CESCR which submits its annual report to the ECOSOC.

Governments often submit idealized descriptions of the human rights situation in their countries and they tend to avoid disclosing problems and shortcomings. In order to consider the value and accuracy of the contents of state reports, the committee members will take into account all possible sources of information which are available to them through official and unofficial channels, such as documentation from other UN agencies and NGO reports. Under the Convention on the Rights of the Child, the CRC is encouraged to use additional sources of information, such as reports of specialized agencies.

In examining state reports, the treaty bodies undertake an important role in terms of advising states on how to improve compliance with the international standards to which they have subscribed. The treaty bodies are not tribunals, and the concluding observations are not legally binding and cannot be enforced, but states often accept the advice as they stand to gain credibility with the international community by engaging in dialogue with the committees, by showing good faith and by acknowledging problem areas where they have not fully succeeded in fulfilling their obligations.

There are several treaty-based monitoring bodies which are mandated to supervise state compliance with the conventions concerned. One should not forget that minorities may also want to raise their concerns in other treaty bodies, such as the CEDAW and CAT, but the emphasis in this Guide is on treaties that contain minority-specific standards. These include:

- the HRC under the ICCPR;
- the CESCR under the ICESCR;
- the CERD under the ICERD; and
- the CRC under the Convention on the Rights of the Child.

## 5.1 The International Covenant on Civil and Political Rights

States undertake to submit an initial (or first) report to the HRC within one year of the entry into force, for that state, of the ICCPR. Thereafter, periodic reports are due every five years. Additionally, during an emergency human rights situation, the HRC may request states to submit, at short notice, a special report.

When examining state reports, the HRC seriously considers the issue of minority rights, as evidenced by its repeated demands for statistical data on minorities and by questions to state representatives. The HRC wants to know the number of groups within the state, their ethnic, religious and linguistic characteristics, geographical distribution, etc. Statistical data may serve as the basis for establishing what kind of special measures are necessary to create the conditions necessary to establish equality between the majority population and the minority or minorities. Such data, for example on distribution of income, may reveal tendencies or patterns which confirm or indicate discrimination or other disrespect for minority rights.

The growth of xenophobia and ethnic hatred is of increased concern to the international community. The HRC emphasizes the importance of states introducing legislative as well as practical measures to comply with the prohibition, in paragraph 2 of article 20 of the ICCPR, of ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’.

Minorities can play an active role in providing relevant information to HRC members when they consider the state reports. This can be accomplished informally in the corridors or coffee shops of the conference buildings<sup>17</sup> or in writing.<sup>18</sup> At the national level, minorities stand to benefit by contributing their own points of view during the preparation of the reports. While the HRC has made positive contributions to minority rights (also by way of case law under the complaints procedure of the Covenant and its Optional Protocol; see chapter 6, pp. 17–19), it might be persuaded to come forward with more substantial recommendations on special rights and special measures under the ICCPR. Minorities therefore have an important role to play in providing information to and lobbying HCR members.

## 5.2 The International Covenant on Economic, Social and Cultural Rights

The initial report is due two years after the entry into force for each ratifying state of the ICESCR. Thereafter, states must submit periodic reports to the CESCR every five years. It is to be noted that the CESCR, as a subsidiary organ of the ECOSOC, allows NGOs with consultative status granted by the ECOSOC to participate in its work.

The impression prevails that the CESCR has been somewhat reluctant to deal with minority rights issues, and the relevant observations by the Committee tend to be formulated in vague terms. Nevertheless, there should be some opportunities for an enhanced role of the Committee, such as the access of NGOs; article 13 of the Covenant on the right to education, and human rights education in particular; and more attention to the Covenant's rules on equal enjoyment and non-discrimination, for interpreting and applying an instrument whose aim is the progressive achievement of many standards of great interest to minorities.

The CESCR has shown concern for the right to education as provided for in article 13. The right to education, particularly in the native tongue, is a crucial right for minorities since it is one of the cornerstones of the preservation of group identity. This is also true for higher education. The Covenant's provisions on the right to work and the workplace are also relevant since people belonging to minorities are often economically disadvantaged and discriminated against in the labour market. Minorities, in collaboration with NGOs, can benefit from using every opportunity to inform and lobby Committee members about minority rights in general and the right to education in particular in order to enhance Committee members' awareness and involvement.<sup>19</sup>

## 5.3 The International Convention on the Elimination of All Forms of Racial Discrimination

Under this Convention, the initial state report shall be submitted within one year of its entry into force in the state concerned for examination by the CERD. Thereafter, a comprehensive report is due every four years and a brief updating report at the intervening two-year periods.

The issue of minority rights comes up frequently in the considerations and recommendations of the CERD. The Committee has been forthcoming in giving specific suggestions on what legal and practical measures states should take to fulfil their treaty obligations. The CERD also urges states to ask for technical assistance to overcome racial discrimination. As with the other treaty bodies, minorities can benefit from lobbying the CERD to formulate concrete recommendations while reporting on shortcomings and putting forward their demands. Minorities as well as states would benefit from such cooperation.

As already mentioned with regard to the ICCPR, the problem of incitement to racial hatred and related practices or violence is of growing concern to the UN. The CERD is frequently occupied with these problems and states are repeatedly urged to take all measures possible to combat and to punish those responsible for such incitement, and to fulfil the treaty obligations set forth in article 4 of the ICERD:

*'States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempts to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention.'*

The CERD emphasizes the relevance of statistical data on minorities and their situations as compared with those of the majority populations, and in its reporting guidelines the Committee urges states to supply information on the number of persons belonging to minorities. Statistical data may reveal patterns and roots of discrimination which in turn are likely to generate tensions. If sources of hatred and intolerance can be traced, such information may serve as the basis for formulating programmes and activities that will enhance minority rights and promote harmony and understanding between different population groups.

The prohibition of discrimination in the ICERD does not extend to discrimination based on religion. Prohibition of religious discrimination is provided for in many instruments, notably in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Ethnic and religious characteristics, however, are often closely linked, and it can be difficult to separate expressions of discrimination on ethnic grounds from discrimination based on religious grounds. These circumstances are clearly reflected by the CERD in its response to situations with elements of discrimination based on religion and belief as well as elements of discrimination based on race and ethnicity.

## 5.4 The Convention on the Rights of the Child

This Convention entered into force in September 1990. By 1998, it had, by some 190 ratifications and accessions, come close to universal acceptance. Initial reports are to be submitted to the CRC within two years after the entry into force of the Convention for the state concerned; thereafter, reports are due every five years.

In its early stages, the CRC concentrated on general issues in its observations on state reports, such as the principles of non-discrimination, equality between the sexes, and the best interest of the child. There is, however, every reason to believe, in light of the minority-specific articles of the Convention, that the rights of and measures for children belonging to minorities will move higher up the CRC agenda.

According to article 45 of the Convention, in examining state reports, the CRC is expressly expected to take into account additional sources of information, such as reports from the specialized agencies and other expert advice. In reality, the CRC cooperates extensively with other branches of the UN, such as UNICEF, UNESCO and ILO. This cooperation also embraces operational projects relating to the rights of the child, and these can and should be specifically directed to the rights of minority group children.

NGOs took an active part in the drafting of the Convention, and they have assumed an even more significant role in the international monitoring efforts. They have appointed an NGO coordinator whose task is to encourage national NGOs to submit relevant and reliable information to the CRC, and to inform NGOs of the on-going work of the Committee. NGOs are not allowed to address CRC sessions when state reports are considered, but the CRC organizes pre-session working groups when NGOs are able to provide information. This openness towards NGO participation may benefit minorities wishing to approach the CRC with information about the rights of minority children and to lobby for specific action and recommendations.

# 6. Complaints under Treaties

The First Optional Protocol to the ICCPR and article 14 of the ICERD enable the submission of complaints or petitions, referred to in the treaties as communications, from victims of violations. Complaints submitted under the Optional Protocol are considered by the HRC, and complaints submitted under article 14 are considered by the CERD. A similar treaty-based procedure is available at the CAT under the Convention against Torture.

Both communication procedures are optional; that is, states must expressly recognize the competence of the respective treaty monitoring bodies to receive and consider complaints. In 1998, 90 of the 140 state parties to the ICCPR had ratified the Optional Protocol, while less than 30 of the 150 state parties to the ICERD had recognized the competence of the CERD under article 14.

Under article 14 of the ICERD both individuals and groups can file complaints about alleged violations, whereas under the Optional Protocol to the ICCPR only individuals can submit complaints. It seems nevertheless that the HRC is willing to hear cases submitted by leaders or chiefs who are speaking on behalf of a group.

Both of these procedures are quasi-judicial in nature and require thorough preparation of the complaints as well as detailed presentation. This work requires technical know-how and may be very time-consuming. On the other hand, the effectiveness and value of these procedures and the findings of the committees are of high value as states that have accepted the treaties and procedures are likely to accept the conclusions of the treaty bodies.

Before deciding whether to declare a case admissible and consequently consider the communication, the HRC and the CERD will consider the following criteria:

- the communication must be submitted by a person, or a group of persons under the article 14 procedure, alleging to be a victim of a violation;
- the author must not be anonymous;
- the alleged victim must live within the jurisdiction of a state that has ratified the respective treaties and recognized the competence of the treaty body to deal with complaints;
- the communication must not be incompatible with any provisions of the respective treaty or the UN Charter;

- the same case must not be under consideration in another international procedure; and
- all available and effective domestic remedies must have been exhausted.

Complaints should include all the relevant facts and a reference to the treaty provisions, in the ICCPR and the ICERD respectively, that have allegedly been violated and therefore constitute the basis for the communication and the arguments attached thereto. The alleged victim and the government in question may be asked to submit additional information and give observations on comments submitted by the counterpart. The alleged victim will always be informed about the content of replies and comments made by the government.

A communication should be sent to the respective treaty body, the HRC or the CERD, c/o the UN Secretariat, at:

Office of the UN High Commissioner for  
Human Rights,  
Palais des Nations,  
CH-1211 Geneva 10,  
Switzerland.

Fax 41 22 917 9711

Email: [webadmin.hchr@unog.ch](mailto:webadmin.hchr@unog.ch)

## 6.1 Communications submitted to the Human Rights Committee

If a complaint has been found admissible, and after the Committee members have considered facts and arguments submitted by the state and the alleged victim, the Committee will deliver its views. The HRC is not a court, and its views are not legally binding. All proceedings before the HRC are confidential and the procedure takes place in writing, but the views of the Committee are made public and published in the annual report of the HRC to the General Assembly.<sup>20</sup>

Even though the views are not judgments in a formal sense, their political and moral value is considerable, as ratifying and accepting states wishing to maintain a good reputation globally are likely to comply with the findings. Furthermore, since 1990,

the HRC has developed the practice of asking states for information in their periodic reports on the measures that have been undertaken to redress unsatisfactory situations which have given rise to individual complaints in certain cases. The HRC has also been quite outspoken in its annual reports – so increasing the element of embarrassment – in referring directly to states that have failed to reply to a request for information on corrections, and fulfilment of treaty obligations.

Relatively few cases concerning minority rights have been dealt with by the HRC. Most cases dealing with minority questions under the communication procedure of the Optional Protocol have been submitted by indigenous peoples claiming minority rights. Case law, however, as demonstrated by the examples below, is important and of interest from a minority point of view, not least with regard to a broad and expansive interpretation of article 27 of the ICCPR.

*Sandra Lovelace v. Canada* (Communication no. 24/1977) concerned an indigenous woman who had been brought up on an Indian reservation. Following her marriage to a non-Indian she left the reservation. Later she divorced and wanted to return to her native community and the reservation. According to Canadian national law, Ms Lovelace lost her status as an Indian on marrying a non-Indian and she consequently lost her right to reside on the reservation.

The HRC found that, being a native Indian and being brought up with her community, Ms Lovelace was, regardless of her marriage, to be regarded as a person belonging to a minority falling under the protection of article 27 of the ICCPR. Article 27 does not explicitly guarantee the right to residence, but the right to residence was considered essential for access to culture and language ‘in community with other members of the group’. The rights to culture and language are well protected under article 27, and they constitute important components of the right to identity. According to the HRC, denying Ms Lovelace the right to reside on the reservation amounted to a violation of her right to identity. Following the HRC decision in this case, Canada amended the Indian Act and the discriminatory provisions were removed.

In the case *Chief Bernard Ominayak and the Lubicon Band v. Canada* (Communication no. 167/1984) the applicant was the chief of an Indian band who lived to a large extent by fishing and

hunting. Due to large-scale expropriation of land and degradation of the environment, he claimed that members of the band were denied their right to self-determination and to dispose freely of their natural resources. The HRC decided, however, that the applicant as an individual could not claim to be the victim of a violation of the right to self-determination because the procedure under the Optional Protocol provides exclusively for individuals to claim that their rights have been violated.

Nevertheless, the HRC declared the case admissible based on article 27, as the rights protected therein include the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong. The HRC recognized that economic activities, including fishing and hunting, were part of the way of life and the cultural tradition of the Lubicon Band. The HRC stated that the right to culture of the Lubicon Band was threatened and that the rights of the Band members under article 27 had been violated by expropriation and the pollution.

The applicant of the complaint in another case, *Ivan Kitok v. Sweden* (Communication no. 197/1985), was a member of an indigenous people, the Sami of Sweden, who make their living by reindeer breeding. With the aim of protecting the environment and preserving the Sami minority, the Swedish Parliament had restricted the number of reindeer breeders; if a member of the Sami community lost membership in a Sami village, he or she accordingly lost their reindeer breeding rights under national law.

Ivan Kitok lost his official membership in a Sami village due to his other economic activities outside the village. He claimed to be a victim of violations of both his right to self-determination and the right under article 27 to enjoy his culture in community with others. As in the Lubicon Band case, the HRC found that Mr Kitok had no right under this complaints procedure as an individual to claim to be victim of a violation of the right to self-determination.

While finding article 27 applicable to the case, the HRC found no violation of the article. The case is nevertheless important for minority rights because it clarifies the scope of article 27 by stating that traditional economic activities and ways of living – in this case reindeer breeding – may fall under its protection when the conduct in question is closely related to the culture of a group and the activity is an essential element of its cultural traditions.

The case the *Mikmaq Tribal Society v. Canada* (Communication no. 205/1986) concerned an indigenous people. The Canadian Government had not invited their representatives to constitutional conferences on aboriginal matters, and the applicant therefore claimed a violation of the right to take an active part in the conduct of public affairs provided for in article 25 of the ICCPR. Even though this right should be enjoyed by every citizen without discrimination of any kind, the HRC found no violation of article 25 because participation and representation at these conferences had not been subject to unreasonable restrictions. This narrow interpretation of article 25 and possible disregard of the non-discrimination clause have been criticized by NGOs and scholars.

The cases *J. Ballantyne and E. Davidsson and G. McIntyre v. Canada* (Communications nos. 359 and 358/1989) dealt with English-speaking citizens living in the French-speaking province of Canada. The applicants regarded themselves as persons belonging to a linguistic minority, and they claimed that their rights under article 27 had been violated when they were prohibited from using a language other than the official one (French) in advertisements.

The HRC did not regard the applicants as persons belonging to a linguistic minority. According to the HRC, the reference to a state in article 27 refers to the ratifying state as a whole; in the case of a federal state that means all parts of the federation. According to the HRC, minorities as referred to in article 27 are minorities within such a state and not minorities within a province of that state. A group may constitute a majority in a province, but still be a minority in the state and thus be entitled to the benefits of article 27. This view has been criticized because it would limit the scope of article 27 and raise questions regarding the human rights duties of an autonomous regime within a state.

## 6.2 Communications submitted to the Committee on the Elimination of Racial Discrimination

In accordance with article 14 of the ICERD, an individual or a group may submit a communication to the CERD claiming to be a victim or victims of a violation of any of the rights provided for in the Convention. The procedure before the CERD is written and confidential. The opinions of the Committee in response to communications are published in the annual report of the CERD to the General Assembly. Like the HRC, the CERD is not a court and has

no power to deliver judgments; its opinions amount to recommendations to the state party concerned.

The obligations undertaken by state parties in articles 1–7 of the ICERD may successfully be invoked by minorities under the complaints procedure of article 14, provided the state concerned has ratified the Convention and expressly accepted the article 14 procedure. The following CERD cases are interesting and important from a minority rights perspective.

In *A. Yilmaz-Dogan v. the Netherlands* (Communication no. 1/1984), a Turkish citizen claimed to have been subject to racial discrimination when her employment was terminated. Even though the reasons given for the termination were not discriminatory as such, the CERD found that the employer had taken racial considerations into account when dismissing the applicant. Therefore it was found that the government of the Netherlands had not taken adequate means to enforce the Convention on its territory.

In the case, *Demba Talibe Diop v. France* (Communication no. 2/1989), the applicant was a Senegalese citizen living in France. He claimed that France had violated his rights under article 5 of the ICERD when he was denied a licence to practise law, but the CERD did not find that the provision had been violated, because the refusal was based on Mr Diop's not having French nationality. According to article 1, paragraph 2 of the ICERD, distinctions between citizens and non-citizens do not fall under the scope of racial discrimination as defined in article 1, paragraph 1.

In the case *L.K. v. the Netherlands* (Communication no. 4/1991), the author was a Moroccan citizen living in the Netherlands who had been subjected to harassment and insults by a xenophobic mob. He claimed that his rights in article 4 had been violated and that the authorities had not acted properly according to their obligations under this article. The CERD found that the threats and actions against the author constituted violations of article 4 and that the authorities had not satisfactorily investigated the incidents and had not instituted appropriate legal proceedings against the perpetrators. The CERD recommended that the state review its policies and procedures concerning the prosecution of alleged racial discrimination, in light of article 4 of the Convention. This conclusion by the CERD is significant for minority use of article 4 as it may help overcome discrimination.

# 7. Complaints under the 1503 Procedure

This is a confidential procedure which enables individuals, groups and NGOs to bring to the attention of the UN any human rights situation which may reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. This is not a procedure for dealing with individual complaints, and complaints do not have to be submitted by the victims themselves. This procedure has universal applicability, irrespective of ratifications of human rights treaties by the state concerned. The 1503 procedure (named after the ECOSOC resolution by which it was established in 1970) refers to rights and freedoms that are considered as common standards for all states, most importantly the provisions of the Universal Declaration of Human Rights.

The complaints are scrutinized by working groups and in plenary meetings of the Sub-Commission and the Commission on Human Rights which may recommend further monitoring actions, including the following:

- to keep the situation under review in light of information submitted by the government concerned and from any other source;
- to appoint an independent expert or ask the Secretary-General to appoint a special representative for collecting more information from the government and the people and report back to the Commission; or
- to decide to discontinue the case and place it under a public procedure.

All matters of this 1503 procedure are dealt with in closed meetings. The Chair of the Commission, however, makes a public statement indicating which states are under consideration and which states are no longer subject to scrutiny.

Tens of thousands of 1503 communications are received each year. Due to the confidentiality of the proceedings, it is not possible to determine the number of complaints concerned with violations of minority rights, but it may be safely assumed that they constitute a large proportion of the communications submitted. Again, minorities can benefit from using this avenue, in particular when neither treaty-based complaints procedures nor applicable thematic or country-specific special procedures are available.

Individuals, groups or NGOs who claim to be the victim or victims of, or who have direct and reliable knowledge about, human rights violations may submit a communication under the 1503 procedure. The information must be reliable and the communication must be submitted in good faith. The contents of the communication must not be inconsistent with the principles of the UN Charter, the Universal Declaration on Human Rights or other human rights instruments. A communication must not be anonymous and will be found inadmissible if it shows political motivations or if the language is abusive or contains insults directed towards the state in question.

The communication should outline the facts and refer to the human rights and minority rights standards which have allegedly been violated. The complaint is successful if it leads to the conclusion by the monitoring bodies that there is a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms in a state. In evaluating the evidence, replies from the government concerned will be taken into consideration.

A communication under the 1503 procedure should be sent to the Office of the UN High Commissioner for Human Rights (see p. 17 for contact details).

# 8. Special Procedures of the Commission on Human Rights

The so-called special procedures set up by the UN Commission on Human Rights constitute public monitoring of specific human rights situations. Every special procedure has a specific mandate, established in a resolution of the Commission, which may be entrusted to either a working group or an individual expert. The latter are known as Special Rapporteurs. The working groups and Special Rapporteurs report annually to the Commission; their reports are public and easily accessible documents.

Some of the working groups and Special Rapporteurs deal with thematic mandates, that is specific human rights problems such as disappearances or summary executions, while other working groups and Rapporteurs address country-specific situations focusing on a state where there are serious human rights violations. Some states that have been examined under the 1503 procedure have later become the subject of scrutiny by Special Rapporteurs with country-specific mandates.

The purpose of special procedures is to monitor human rights problems and report on them to the Commission on Human Rights. The effectiveness of the special procedures is to a large extent dependent on the individual experts assigned, and their integrity. Their reports with findings on human rights violations tend to embarrass governments, which dislike this type of scrutiny, and the procedures are generally considered useful. In several instances, sometimes after changes in governments, states have sought to improve their performance by making the necessary legislative and practical changes. There is no doubt that minorities and their representatives can benefit by actively making use of these procedures.

There follow brief descriptions of some of the special procedures where minority rights issues have been or can be brought up, beginning with the thematic mandates. As with other UN procedures described in this Guide, information should be sent to the respective body at the Office of the UN High Commissioner for Human Rights. (See p. 17 for contact details).

## 8.1 The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance

The Special Rapporteur on Contemporary Forms of

Racism, Racial Discrimination, Xenophobia and Related Intolerance has a very broad mandate, closely linked to minorities and to human rights problems facing persons belonging to minorities. Therefore, this procedure is very important for minority rights, and minority groups should be encouraged to use it to their benefit.

The Special Rapporteur has made a distinction between two forms of racial discrimination: institutionalized racism based on doctrines of racial superiority, and indirect racism relating to disguised and covert discrimination at certain levels in states otherwise claiming to respect the equality rule. The Special Rapporteur considers the second category even more difficult to combat since it is harder to prove that a state supports or disregards such practices. The special Rapporteur has emphasized the importance of social, educational and informative measures for fighting racism and racial discrimination. The Rapporteur supports a linkage between economic, social and educational responses and measures of legislative, administrative and penal character.

The Special Rapporteur has expressed special concern about certain forms of racism, such as skinhead movements and religious fundamentalism, and has warned against the growth of intolerance against those who are considered to be 'ethnically different'. These forms of racism may be at the root of some ethnic or religious tensions and conflicts, and preventive measures by way of education and dialogue may help in reducing if not eliminating the problem. The measures introduced for combating racism should correspond to an analysis of the nature of racism and patterns of racial discrimination.

The Special Rapporteur has underlined the importance of several different sources of information and cooperation between all parties involved, such as NGOs. Minorities can also submit accurate and reliable information concerning any and all forms of racism and racial discrimination.

## 8.2 The Special Rapporteur on the Implementation of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief

The Special Rapporteur on the Implementation of the

Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief focuses on that declaration which is the only instrument solely dedicated to the freedom of religion. It is a declaration and not a legally binding instrument, as states have, so far, not been willing to consent to a convention on the freedom of religion. This freedom is nevertheless protected in many international human rights instruments: article 18 of the Universal Declaration on Human Rights, article 18 of the ICCPR and article 14 of the Convention on the Rights of the Child. Furthermore, discrimination on grounds of religion is clearly forbidden. Minority-specific standards also extend protection to the practice and institutions of minority religions.

This Special Rapporteur is important as many cases of religious discrimination and intolerance are directed towards individuals belonging to religious minorities. The Special Rapporteur has called for non-confrontational measures of confidence-building and dialogue between groups and governments for enhancing the respect for the freedom of religion and belief. The Special Rapporteur has emphasized the need for democracy and the rule of law as the framework for tolerance and respect. The Special Rapporteur has urged states to ask for technical assistance, which should include the dissemination of the Declaration and training courses focusing on the relevant human rights standards. As with other rights and freedoms, knowledge of the standards and of the corresponding international procedures is likely to counter harassment and persecutions.

Minorities may contribute to the work of the Special Rapporteur by submitting information and evidence on breaches of the Declaration and other relevant human rights standards on the freedom of religion and non-discrimination. Minorities have much to gain from approaching the Special Rapporteur with their demands as all reliable sources of information are taken into consideration, and minorities can take an active part in the implementation of the Declaration. Religious groups and communities also have an important task in promoting religious tolerance and understanding, and they must demonstrate tolerance towards other groups.

### 8.3 The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions covers most violations of the right to life as provided in a number of human rights instruments. The list of states where such executions occur is a long one. Armed conflicts increase the prac-

tice, but it is also widespread in states without current conflicts. The Special Rapporteur has highlighted the fact that persons belonging to minorities are especially vulnerable to extrajudicial, summary or arbitrary executions. In many cases, the main reason for such violations is their membership of a minority. The growth of genocide and of genocide-like practices is of concern to the Special Rapporteur, who has underlined the need to fight against 'ethnic cleansing' and acts of communal violence which constitute violations of the right to life.

It is imperative that states comply with their international obligations to respect the right to life. Implementation would be strengthened if information concerning extrajudicial, summary or arbitrary executions were regularly brought to the attention of the UN and its monitoring bodies, in particular the Special Rapporteur, who has urged the international community to undertake preventive measures to combat these violations. The preventive measures should aim at supporting tolerance and peaceful coexistence of all groups in a state and at facilitating confidence-building and reconciliation. Both states and minorities must refrain from all activities which incite to ethnic or religious hatred.

### 8.4 The Special Representative for Internally Displaced Persons

The Special Representative for Internally Displaced Persons deals with persons who have been forced to flee their homes suddenly or unexpectedly, often in large numbers, as a result of armed conflict, civil war, internal strife, serious violations of human rights or other disasters. Internally displaced persons have remained within the territory of their own state, that is, they have not crossed an international border so they do not qualify as refugees under international law.

The international community is increasingly concerned about the huge problem of internal displacement, which affects millions of people, and attempts have been made to identify and formulate international standards for the protection of such people. A major reason for the international involvement is based on humanitarian and human rights grounds, but the escalating problem can also threaten international peace and stability. Armed conflicts resulting in serious violations of human rights are a common cause of internal displacement. Since many international and internal conflicts stem from ethnic, racial or religious tensions, persons belonging to minorities are particularly vulnerable to displacement.

When reporting to the Commission, the Special Representative is concerned with the so-called generic problems and early signs of internal displacement. The Special Representative has emphasized the need for

peaceful means to defuse tensions and prevent persecutions that may result in internal displacement. Again, minorities should not hesitate in using the services of the Special Representative. Minorities and their representatives should submit information on patterns of persecutions, discrimination or tensions that may be early signs or factors leading to displacement.

## 8.5 The Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression

Backing up the mandate of the Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion and Expression are numerous international standards, such as article 19 of the Universal Declaration, articles 19 and 20, paragraph 2 of the ICCPR, and article 4, paragraph 2 of the ICERD. There are numerous cases where minorities, in particular religious minorities, suffer from violations of the right to the freedoms of opinion and expression. The Special Rapporteur and the Working Group on Arbitrary Detention have common concerns since many cases of detention based on violations of the freedom of expression are arbitrary in nature.

## 8.6 The Working Group on Arbitrary Detention

In dealing with individual cases of arbitrary detention and specific country situations where such practice is widespread, the Working Group on Arbitrary Detention has acknowledged that persons belonging to ethnic, racial or religious minorities are more frequently than others subject to, and among the first victims of, arbitrary detention. If and when minorities are vulnerable to arbitrary detention, evidence of any such practices should be presented to the Working Group.

## 8.7 The UN Working Group on Enforced or Involuntary Disappearances

In addition to reporting on disappearances, the UN Working Group on Enforced or Involuntary Disappearances acts as a channel of communication between families of disappeared persons and the governments concerned. Enforced or involuntary disappearances are widespread, notably in states with ethnic or religious conflicts or tensions which render minorities especially vulnerable to this kind of human

rights violation. The Working Group concentrates on solving individual cases, rather than on dealing with the question of why certain groups are often subject to this practice. The Working Group also undertakes studies on the issues involved and makes recommendations to the Commission on Human Rights.

Enforced or involuntary disappearances are often a part of discrimination against minority groups. Such practices can be brought to the attention of the Working Group which relies predominantly on information from external sources, such as NGOs. Minorities are well placed to influence the proceedings and to cause the Working Group to focus in its reports on cases, as well as patterns of abuse, where minority membership may be a cause for the disappearance.

## 8.8 The Special Rapporteur on the Situation of Human Rights in Afghanistan

As stated above, many special procedures mandates are country-specific. One such instance is the Special Rapporteur on the Situation of Human Rights in Afghanistan where the human rights situation is under international scrutiny owing to an internal conflict stemming in part from ethnic and religious tensions. As a result, many human rights standards have been violated. The conflict has also created a large number of refugees and internally displaced persons who live under severe conditions, suffer from starvation, and disease, and who consequently place a heavy burden on the state and its neighbours. The Special Rapporteur has declared that all Afghans, regardless of ethnic background, have been targets of, and subject to, atrocities during the fighting, but has also acknowledged that minorities are especially vulnerable to persecution, discriminatory practices and other rights violations frequently based on membership of ethnic or religious minorities.

The Special Rapporteur has recommended that the state ask the UN for technical assistance in the field of human rights. Programmes of assistance should, among other things, concentrate on the drafting of a new constitution guaranteeing the protection of minorities. However, as long as violence persists, it is difficult for the UN to provide such services. Fighting must stop before real improvement in the human rights and minority rights situation can be accomplished.

## 8.9 The Special Representative on the Situation of Human Rights in Cambodia

A violent and lengthy conflict prompted the appointment of a Special Representative on the Situation of

Human Rights in Cambodia. The conflict rests on various factors, with ethnic and religious antagonisms constituting important elements. In the country's Constitution, it is stated that the state shall recognize human rights and fundamental freedoms according to international standards. However, the ethnic majority, that is Khmer citizens, enjoy greater protection than minorities and non-citizens. Difficulties in obtaining citizenship have also resulted in many permanent residents with uncertain legal status and limited protection under domestic law. This is particularly true for the largest ethnic minority, of Vietnamese origin, whose members have suffered from discriminatory practices.

The Special Representative for Cambodia has recommended to the government that it solve the issue of citizenship, add an anti-discrimination clause to the Constitution, forbid all advocacy and dissemination of racial hatred, and establish a procedure for punishment of those responsible for such practices. The Special Representative, together with an in-country UN human rights office, provides technical assistance, such as human rights education and support for national NGOs, with one aim being a framework for reconciliation and peaceful coexistence between non-dominant groups and the majority population. All groups must be included in such activities if results are to be achieved. Minority groups in Cambodia can influence the Special Representative by presenting their problems and demands based on the international human rights standards.

## 8.10 The Special Rapporteur on the Situation of Human Rights in Iraq

The Special Rapporteur on the Situation of Human Rights in Iraq has addressed the situation of numerous ethnic and religious groups that have lived, for generations, side by side in a multicultural society. This multicultural structure is now being destroyed by a repressive government policy towards non-dominant groups. The Special Rapporteur has devoted much attention to the human rights situation of a number of minorities, including the Assyrians, Kurds, Marsh Arabs, Turkomans and religious communities. While persecution and discrimination are primarily based on political considerations, the Special Rapporteur believes that ethnic and religious considerations constitute major elements in the oppressive practice of the state, with membership of a minority a major reason for a series of human rights violations.

Persecution and harassment is carried out against a group as a whole when its members are by definition suspected of anti-government activities or preferences. As to the religious/ethnic minority in the south-

ern marsh area, the Special Rapporteur has emphasized their dependence on the environment, the protection of which may constitute an important part of the protection of minority rights to identity and culture. Violence against the Kurds in Iraq and massive violations of their rights manifest genocidal characteristics, and parts of the Kurdish region have been rendered uninhabitable following the laying of land mines and the use of chemical weapons.

The Special Rapporteur has demanded that Iraq ceases all violations against ethnic and religious minorities and that it ensures the recognition and enjoyment of minority-specific rights set forth in international instruments, such as article 27 of the ICCPR. The Special Rapporteur has only once been allowed to visit the country, but has received information from multiple sources concerning the human rights and minority rights situation in Iraq.

## 8.11 The Special Representative on the Situation of Human Rights in the Islamic Republic of Iran

The Special Representative on the Situation of Human Rights in the Islamic Republic of Iran has brought up serious problems of discrimination against religious minorities, in particular non-Islamic groups such as the Baha'i community. Baha'ism is not recognized as a religion by the state, and members of the Baha'i community have endured harassment, arbitrary detention and executions on grounds of their religion. Due to lack of legal status, they have suffered from violations of the rights to property, higher education, work, etc. The Special Representative has also reported on the unsatisfactory situation of Kurds and the Naraoui people, who have been targets of armed violence and arbitrary arrests and detention.

According to the Special Representative, international monitoring and scrutiny have contributed to some improvements of respect for human rights in Iran. The Special Representative has emphasized the importance of victims of human rights abuses and other violations coming forward, without intimidation, and submitting relevant information and evidence and thus promoting further progress.

## 8.12 The Special Rapporteur on the Situation of Human Rights in Myanmar (Burma)

The issue of minorities has been dealt with by the Special Rapporteur on the Situation of Human Rights in Myanmar (Burma) where religious and

ethnic discrimination and other human rights violations are a common occurrence. Religious intolerance is growing, and members of ethnic and religious minorities have encountered serious difficulties in obtaining citizenship. Burmese minorities and NGOs have been efficient in submitting information to the Special Rapporteur.

### 8.13 The Special Rapporteur on the Situation of Human Rights in Rwanda

The post of Special Rapporteur on the Situation of Human Rights in Rwanda was established after the genocide that took place in spring 1994. In addition to reporting on the human rights performance of the government, the Special Rapporteur looks into the continued ethnic tensions and the difficulties of millions of refugees and internally displaced people. The Special Rapporteur has warned against reprisals against people accused of, or charged with, serious crimes by those taking the law into their own hands, and summary executions. Parallel to human rights monitoring, technical assistance is high on the UN agenda for the purpose of restoring peace and preventing further outbreaks – in Rwanda and neighbouring countries.

### 8.14 The Special Rapporteur on the Situation of Human Rights in the Sudan

The Special Rapporteur on the Situation of Human Rights in the Sudan deals with another country under international scrutiny. The Special Rapporteur has brought up the issue of discrimination and violence against ethnic and religious minorities in all parts of the country, not least the south and the Nuba Mountains. According to the Special Rapporteur, it is evident that the combination of membership of a minority and suspicion of political activities is frequently the reason for harassment, persecution and systematic human rights violations. The Special Rapporteur has devoted much attention to the situation of children, in particular street children, who often belong to non-dominant groups.

### 8.15 The Special Rapporteur on the Situation of Human Rights in the former Yugoslavia

The Special Rapporteur on the Situation of Human Rights in the former Yugoslavia has examined the sit-

uation of human rights in Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia. Issues relating to ethnic and religious minorities constitute a prevailing theme in the reports of the Special Rapporteur. Field offices of the UN High Commissioner for Human Rights, with outposts in Banja Luka, Belgrade, Mostar, Sarajevo, Skopje, Tuzla and Zagreb, have been instrumental in collecting information from eyewitnesses, IGOs, NGOs and other sources, including persons belonging to minorities.

The armed conflict in Bosnia and Herzegovina has been of major concern to the Special Rapporteur. The conflict has resulted in massive and systematic violations of human rights and humanitarian law, with many of the violations due to a continuing 'ethnic-cleansing' process, which includes killings, rape, harassment, deprivation and destruction of property, etc. Large numbers of refugees and displaced people suffer from discrimination. The Special Rapporteur has expressed concern at the role and influence of religious leaders on the side of majorities and minorities; their role could be vital for a future reconciliation based on tolerance, but it could also be devastating if they support intolerance and religious antagonisms. According to the Special Rapporteur's reports, peace in law and fact is necessary to ensure respect for human rights and for minority rights to prevail both on paper and in practice.

In Croatia, the Special Rapporteur has reported on harassment of and discrimination against non-Croats, most often people of Serbian origin. The focus has been on the practice of illegal and forced evictions, which often are part and parcel of 'ethnic cleansing'. Other violations concern the right to work, the right to property, etc.

In Serbia and Montenegro, the Special Rapporteur has observed that violations and harassment are often directed against persons belonging to ethnic or religious groups. Violations concern, amongst others, forced evictions, the right to education, and the right to work. Discrimination against non-Serbs is evident in legislation, and the Special Rapporteur is concerned about unclear and discriminatory practices concerning the granting of citizenship.

An economic crisis in Macedonia has resulted in difficulties for all people living in the country, but persons belonging to minorities have been more exposed than others. Discrimination in the labour market and in the education system has negatively affected members of the Albanian community and those belonging to the Serbian Orthodox Church. Religious freedom is guaranteed by law, but harassment and difficulties, for example in obtaining permission to build centres of worship, occur in practice.

The Special Rapporteur has urged all the governments of the former Yugoslavia to seek technical assistance for strengthening the independence of the

judiciary, for combating intolerance, for setting up procedures to treat refugees in accordance with international law, etc. The governments have been called upon to undertake human rights education in general and the training of law enforcement officials in particular, as they are often responsible for violations of minority rights. On all counts listed above, it is important that minorities and their representatives inform and give testimonies that may facilitate and give credibility to the work of the Special Rapporteur.

This list of investigative mandates for Special Rapporteurs and working groups of the Commission on Human Rights, with special relevance to minority rights, is not exhaustive. Furthermore, from time to time, the Commission sets up new mandates. It is likely that some of these will be in the field of economic, social and cultural rights. Minorities and their representatives should be alert to all such developments and make use of them as soon as possible. It is also possible for minorities and their representatives to lobby for the creation of new mandates on issues which they see as pressing.

# 9. International Criminal Courts

In 1948, the Convention on the Prevention and Punishment of the Crime of Genocide anticipated the existence of an international penal tribunal (article VI) as well as jurisdiction for the International Court of Justice in disputes between states parties (article IX). In July 1998, in Rome, the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court adopted an international criminal code and a statute for an international criminal court which will further enhance the international community's role.

National laws are expected to follow suit when the international community has criminalized certain behaviour. When the national response to such crimes is totally inadequate, as in Rwanda and the former Yugoslavia, the international community has established its own criminal tribunals (based in Arusha and The Hague, respectively). The Special Rapporteurs with mandates for Rwanda and for the former Yugoslavia have strongly supported the two criminal tribunals and have collaborated in the collection of evidence, testimonies and other relevant information.

Genocide as an international crime comes under the jurisdiction of the two above-mentioned tribunals and it will come under the jurisdiction of the new international criminal court when it is established at some point in the next few years. As genocide relates to the physical protection of minorities, the entry into force of the court's statute as well as the actual establishment of the court should be a priority in the drive for increased respect for minority rights.

# 10. Good Offices

The UN Secretary-General, the UN High Commissioner for Human Rights and Directors-General of UN specialized agencies can undertake good offices for the sake of minority groups in distress. Good office actions are undertaken confidentially, that is by way of quiet diplomacy, and the UN will not publish the results, although the parties may choose to do so. All it takes is a letter to one of the officials with a detailed and well-prepared factual account, identification of the human rights standards being violated, elaboration of the urgency involved, and an explanation of the unavailability or unsuitability of existing international monitoring procedures.

Good offices are advantageous in terms of speed, inasmuch as action takes place within days or weeks, and in terms of their effect, because many countries are likely to respond positively to quiet diplomacy rather than suffer the public embarrassment associated with other monitoring procedures. One UN contribution in this context is bringing the parties together, that is government and group. This role may or may not involve active UN participation in the contacts between the parties. It may be assumed that good office actions related to minority rights take place from time to time.

# 11. The Commission on Human Rights

The Commission on Human Rights is the highest ranking forum for human rights within the hierarchy of UN political organs. It is a subsidiary body of the ECOSOC which is one of the six principal organs of the UN.<sup>21</sup> The Commission consists of 53 states elected by the ECOSOC, and these states are represented by diplomats. The Commission undertakes studies, prepares new instruments, makes recommendations on a wide range of human rights issues, and supervises its own subsidiary organs as well as the resolution-based monitoring procedures (the special procedures, complaints under the 1503 procedure, etc.).

The Commission meets at the Palais des Nations in Geneva for six weeks every year. It may also be convened for emergency sessions. This happened with regard to the situation in Rwanda and the former Yugoslavia. Most of the meetings are public and are also open to the press. States which are not members of the Commission can attend the meetings as observers; they can address meetings but do not have the right to vote. This is also the case for NGOs in consultative status with ECOSOC, specialized agencies, other UN bodies, and other international organizations.

Minority rights have in recent years been moving up the agendas of both the Commission and its main subsidiary organ, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (see below). Minority rights issues and human rights situations involving minorities come up, directly or indirectly, under many agenda items. These trends are to some extent reflected in the resolutions adopted. Bringing up minority issues before the Commission and the Sub-Commission, together with the discussions and possible resolutions which flow therefrom, carries political, diplomatic and legal value which can be informed by minorities. Written and oral statements made by NGOs at these meetings play a pivotal role in bringing minority problems to the attention of the international community and alerting that community to potential conflict situations.

Resolutions adopted by the Commission that contain references to minorities may be placed in one of three categories:

- resolutions which directly address minority rights;
- resolutions about human rights violations that affect minorities, even when they are not so called; and
- resolutions about country situations in which violations of minority rights are being scrutinized.

This type of classification may be helpful to NGOs, minorities and their representatives in obtaining a clear picture of ways in which to bring up their problems at the Commission. Much the same picture emerges at the Sub-Commission.

In the first category come resolutions dealing with the rights of persons belonging to minorities and their protection, mostly in terms of follow-up to the 1992 Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities.

In the second category one can place:

- agenda items and resolutions on the Third Decade to Combat Racism and Racial Discrimination and the implementation of its Programme of Action;
- measures to combat contemporary forms of racism, xenophobia and related intolerance;
- the implementation of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief;
- human rights and extreme poverty;
- the right to freedom of opinion and expression;
- the right to education and the Decade for Human Rights Education;
- extrajudicial, summary or arbitrary executions;
- human rights and mass exodus; and
- forced evictions.

Under the third category would fall resolutions addressing the situations of human rights in a number of specific countries, not least those under examination by Special Rapporteurs of the Commission.

# 12. The Sub-Commission on Prevention of Discrimination and Protection of Minorities

The Sub-Commission is a subsidiary body of the Commission. It consists of 26 independent experts who serve in their individual capacities. They are nominated by states and elected by the Commission. The Sub-Commission meets every year for four weeks at the Palais des Nations in Geneva. The sessions are public, that is to say observers for states, NGOs in consultative status, UN bodies, etc., may be present and make statements, but only the expert members have the right to vote.

The name of the Sub-Commission is misleading inasmuch as its work is geared towards human rights in general and is not limited to minority issues. The Sub-Commission is a human rights think-tank that recommends further steps to the Commission with regard to future developments, forward-looking studies, standard-setting, monitoring activities and technical assistance. In so doing, it addresses both thematic and country-related human rights issues. The Sub-Commission may suggest the establishment of working groups, and the expert members regularly undertake many studies, on a wide variety of human rights issues. These often lead to recommendations for further action by the parent bodies.

Resolutions adopted by the Sub-Commission can be classified in a similar manner to that stated on the agenda and resolutions of the Commission on page 29.

In the first category would be resolutions dealing with the rights of persons belonging to minorities, with a focus on the protection of minorities and the reports of the WGM.

In the second category would be resolutions on

- means for preventing and punishing the crime of genocide;
- measures to prevent and combat racism and racial discrimination;
- the elimination of all forms of intolerance and discrimination based on religion or belief;
- freedom of movement for, and the situation of, migrant workers and their families;
- the right to adequate housing; and
- forced evictions.

In the third category are resolutions addressing a number of country situations.

# 13. The Working Group on Minorities and Other Working Groups of the Sub-Commission

## 13.1 The Working Group on Minorities

The WGM is a subsidiary organ of the Sub-Commission on Prevention of Discrimination and Protection of Minorities from which it draws its five expert members, one from each geographical region of the world. Asbjørn Eide is the Chair-Rapporteur.

The agenda of the WGM follows the mandate set out by the Sub-Commission and the Commission in their authorizing resolutions. Specifically, it is entrusted with reviewing the promotion and practical realization of the 1992 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, looking for constructive solutions to human rights and minority rights problems affecting minorities, including the promotion of mutual understanding between governments and groups, and recommending additional measures for the promotion and protection of minority rights.

At meetings of the WGM, governments tend to make statements about their efforts in terms of constitutional arrangements, national legislation and other measures for protecting and accommodating minorities. Representatives of minorities and NGOs highlight actual troublespots as well as positive experiences, but the overall approach in the WGM has so far been thematic rather than country-oriented. However, the possibility of country visits is currently being explored. Many themes have been brought up with reference to the provisions of the 1992 Declaration and other existing standards in international and regional instruments.

As to particular issues for consideration, identity, culture, language, the arts, the media and the freedom of association have been discussed, along with human rights education and multicultural education, fostering reciprocal understanding and tolerance, building on the newly proclaimed Decade for Human Rights Education. Effective participation by members of minorities in the cultural, religious, social, economic and public life of a country, in economic progress and development, and in decisions affecting their own group at both national and regional levels has also been debated at some length.

While the WGM cannot hear complaints, there are monitoring procedures in place for many of the human rights instruments which are of possible use for minorities, as this Guide seeks to demonstrate. The WGM has discussed how best to employ the multiple international mechanisms for furthering respect for minority rights, such as:

- petitions or complaints procedures (including the HRC, the CERD, and the 1503 procedure);
- state reports (to the HRC, the CERD, the CRC, the CESCR, the CEDAW; and
- fact-finding and investigative special procedures (including thematic and country-oriented Special Rapporteurs and working groups of the Commission).

In giving attention to the promotion of minority rights, the WGM has made references to the activities of the UN High Commissioner for Human Rights and technical assistance projects undertaken by the latter's Office, the specialized agencies, other UN bodies and NGOs. These actors have multiple roles which include: dissemination of information; facilitation of national recourse and conciliation machineries; the establishment of dialogues, and the search for solutions of problems between minorities and governments; early warning and prevention of conflicts; confidence-building; good offices; and the responsibility to sensibly coordinate all these undertakings.

Members of the WGM have played an active role in the deliberations by seeking clarifications and concrete proposals and responses from speakers. In this way – rather unusual for a UN meeting – they have sought to promote fruitful exchanges and actual dialogues between the participants in accordance with the mandate. Given the long list of issues which are currently before, or will come up before, the WGM, there will be continued need for strong guidance of this kind as well as for the establishment of topics for priority treatment.

Minority groups, their representatives, NGOs and scholars can participate in WGM meetings without the consultative status granted by the ECOSOC. Relatively

few minority members attended the first sessions, but the numbers are rising as information spreads about the availability and usefulness of the forum. It is the first time that such an opportunity has existed at the UN; in this respect the WGM is following the successful example set by the Working Group on Indigenous Populations.

The WGM began its work during the 50th anniversary year of the UN. It is just possible that the establishment of the WGM will be remembered as the one thing that went right that year. For this prediction to come true, however, the WGM must continue to make full but balanced use of its uniqueness in the system, by listening carefully and responding responsibly to the minorities themselves now that they have a forum to express their human rights needs, wishes and demands.

## 13.2 The Working Group on Indigenous Populations

Like the WGM, the Working Group on Indigenous Populations (WGIP) is a subsidiary organ of the Sub-Commission. Parallel to the WGM, the WGIP studies the overall picture of the rights of indigenous peoples, hears accounts from indigenous organizations and other NGOs about the human rights situations in many countries as these affect indigenous rights, and seeks peaceful and constructive solutions to the many human rights problems facing indigenous peoples. The WGIP is currently chaired by Erica-Irene A. Daes, and the draft declaration on the rights of indigenous peoples, as adopted by the WGIP and now pending before the Commission on Human Rights, is often referred to as the 'Daes Declaration'.

## 13.3 The Working Group on Contemporary Forms of Slavery

The Working Group on Contemporary Forms of Slavery (WGS) is another subsidiary organ of the Sub-Commission. Its reports embrace slavery and various slavery-like practices, such as forced and bonded labour, debt labour, child labour, and sexual exploitation. Minority rights have not been a focus of the WGS, but it acknowledges that persons belonging to minorities are vulnerable to various forms of slavery. Minority representatives have attended sessions of the WGS as minorities have much to gain from an active presence there, and, in turn, may generate recommendations of the Sub-Commission and the Commission.

# 14. Research and Studies

Within the UN, various bodies in the field of human rights work prepare research reports which frequently contribute to policy-making activities. Foremost among these are the research rapporteurs and working groups established by the Sub-Commission (not to be confused with the Special Rapporteurs and working groups of the Commission and their investigative functions). The research rapporteurs and the working groups are made up of independent experts drawn from the membership of the Sub-Commission. Similar think-tank services are provided by the UN Secretariat, which may on its own initiative or at the request of other UN bodies present reports or surveys on a variety of human rights issues.

Other UN institutions are or have been engaged in related research, including the UNU, UNICEF (on children belonging to minorities), UNRISD (on the relationship between economic and social development, and ethnic conflict) and the UN Institute for Training and Research (UNITAR) (on human rights training and course materials on human rights reporting).

The studies and research reports serve as sources of information and inspiration, and often but not always lead to policy- and decision-making in various UN forums for both the setting of new standards and the enhancement of monitoring methods. Minority issues appear in many human rights studies of the Sub-Commission. These are either devoted exclusively to minority rights or to some general human rights issues with minority rights components. Research rapporteurs Francesco Capotorti and Asbjørn Eide are foremost among the authors of minority-specific reports.

In a study entitled *Possible Ways and Means of Facilitating the Peaceful and Constructive Solutions to Problems Involving Minorities*,<sup>22</sup> Eide laid the foundation for the establishment in 1995 of the WGM. The author's emphasis on the importance of majorities and minorities finding ways to live together within the boundaries of sovereign states explains the WGM mandate concerning constructive solutions and the conduct of dialogues between governments and groups for the purpose of avoiding human rights violations and preventing conflicts.

The study includes a survey of national practices and legislation as far as minority rights and treatment of minorities are concerned. The study points out that many states do not make adequate provision for minority rights in law and/or in fact, and that discrimination and persecution are common. In addition to

guiding future implementation efforts of the 1992 Declaration, the survey identifies situations which can be expected to lead to tensions and violence: hence the dialogue functions of the WGM, together with an emphasis on the urgent need for early-warning mechanisms and preventive measures.

The point of departure, for Eide's report and indeed for the UN approach to minority rights, is a world order, consisting of sovereign and democratic states, which are entitled under international law to territorial integrity and respect for their boundaries. The same sovereign states must respect equal enjoyment of all human rights and non-discrimination, with special measures when necessary; the rights to physical existence, identity, and participation in public and political affairs; economic and social rights; and pluralism by territorial subdivision, or autonomy when applicable. A non-dominant minority is only able to claim the right of self-determination when a government fails massively in representing all parts of the population.

Extensive recommendations in the Eide study for conflict prevention and the strengthening of minority rights encompass:

- enhanced education, including human rights education;
- legislative and factual implementation of human rights and minority rights standards;
- the continued fight against xenophobia and racial discrimination;
- effective monitoring, reconciliation and confidence-building mechanisms at the international level; and
- increased participation of minorities in UN bodies, other international organizations and NGOs.

The relevance of minority rights in a number of contexts can be seen in the fact that they come up in many human rights reports submitted to the Sub-Commission. These cover civil, cultural, economic, political, social and solidarity rights. Reports on the right to adequate housing by a research rapporteur, among others, have identified the vulnerability of groups when it comes to respect for, and violations of, the right to housing. Persons belonging to economically disadvantaged minorities frequently suffer from the growing practice of forced eviction, as a result of discriminatory practices. A draft international convention on housing rights thus contains references to minorities, not only in

the general non-discrimination clause but also in the context of ‘chronically ill-housed groups’.

Bearing in mind the unfavourable economic situation of minorities in most states, minority rights are under consideration in connection with human rights and extreme poverty. This subject has been examined by a research rapporteur who has emphasized the exposed and vulnerable position of minorities. The human dimension of population transfers has been studied by a research rapporteur who points out that minorities are often the principal targets of forcible transfers. Such large-scale population movements are sometimes provoked by repressive states, and they may amount to genocide, ‘ethnic cleansing’ or systematic racial discrimination.

A study on compensation and a working group of the Sub-Commission dealing with the administration of justice have shown concern for the position of minorities. Issues concerning genocide, ethnic tension and systematic discrimination have been frequently addressed by the Sub-Commission, in connection with reports on humanitarian intervention, on the designation of gross and large-scale violations of human rights as international crimes, and on the interrelationship between human rights and international peace. A rise in religious, ethnic or racial intolerance, and conflicts, led to the call for preventive measures, such as human rights education and other technical assistance activities.

The elimination of racism and racial discrimination has been the subject of many UN reports. The programme of action for the Third Decade to Combat Racism and Racial Discrimination is written in a forthright and committed style and is in many aspects relevant to minorities. The goals of the Decade are thus:

- to promote human rights and fundamental freedoms for all without distinction of any kind on grounds of race, colour, descent or national or ethnic origin;
- to eradicate racial prejudice, racism and racial discrimination;
- to counteract the emergence of alliances based on racism and racial discrimination;
- to resist any practices which lead to the strengthening of racist regimes and contribute to the sustainment of racism and racial discrimination; and
- to isolate and dispel fallacious and mythical beliefs and practices that contribute to racism and racial discrimination.

The programme includes activities where minorities can contribute to the implementation of the aims of the Decade, for example by:

- persuading states to ratify the ICERD and make the declaration under article 14 about the competence of the CERD to receive and consider complaints from individuals and groups;
- lobbying governments to implement the ICERD;
- strengthening cooperation and coordination between UN bodies, specialized agencies and NGOs (this role may now be partly assumed by the WGM);
- expanding human rights education, with an emphasis on the implementation of the Decade for Human Rights Education and its programme of action as proclaimed by the General Assembly. The Decade contains significant elements of minority concerns; and
- proposing that national legislation incorporates international standards.

As to conflict prevention, early warning and urgent reaction, it is important to identify situations that involve systematic racial discrimination, hatred or propaganda, patterns of discrimination evidenced in social and economic indicators, and other massive rights violations involving groups. Members of the CERD and the Sub-Commission, Special Rapporteurs of the Commission and the High Commissioner on Human Rights are in a position to issue warnings and react to such situations. Minorities have much to gain from the activation of mechanisms of this kind.

# 15. Technical Cooperation

The UN offers technical cooperation (also known as technical assistance or advisory services) to governments. This is intended to complement the various monitoring and investigative procedures. A variety of services is available from the Office of the High Commissioner for Human Rights, the Crime Prevention Branch, the UNDP, UNICEF and other Secretariat units. The purpose is to provide practical assistance for implementation of human rights at the national level, taking into account the international human rights standards. The expert assistance can include the drafting of legislation, review of existing legislation, the setting up of independent national human rights institutions, providing models for human rights education and teaching materials, and the training of all actors involved in the national implementation of human rights.

The UN Decade for Human Rights Education was proclaimed in 1994. A number of international instruments make it clear that states are under an obligation to provide human rights education at all school stages. It is agreed that human rights education is an effective avenue for enhancing tolerance, understanding and harmony between population groups and is a useful tool for combating racism, racial discrimination and xenophobia. It is important that states, in cooperation with minorities and NGOs, inform and educate people about their rights and duties under international human rights law. When such education is lacking or insufficient, technical assistance by international organizations should be made available.

The rights of minorities must be part of these activities. A few technical cooperation projects have addressed situations involving minorities by adding a minority rights component to human rights education, offering suitable training courses for law enforcement officials, designing action to combat ethnic, linguistic or religious discrimination, and strengthening the means for national implementation of the international standards.

As far as the UN Secretariat is concerned, technical cooperation is rendered only at the request of a specific government. Notwithstanding needs assessment projects undertaken by the Office of the High Commissioner for Human Rights which have often identified minority rights as an area in need of attention, minority issues have been addressed only on an *ad hoc* basis. This restrictive approach is largely a result of state reluctance towards minorities and minority rights. In this respect, there is definitely room and opportunity for improvement. Minorities

have much to gain from approaching and bringing their legitimate demands to the attention of the respective UN departments with the aim of putting pressure on governments. The respective UN policy- and decision-making bodies should be lobbied so that the Secretariat can respond to requests from minorities and NGOs, if necessary in collaboration with the governments concerned. It is also important that the technical assistance activities of UN bodies, other international organizations and NGOs be coordinated in order to enhance their effectiveness.

# 16. The Role and Contributions of NGOs

NGOs may participate and contribute to the work of the UN if they have received so-called consultative status with ECOSOC. Several hundred NGOs have obtained this status, with 200–300 organizations participating regularly in UN human rights meetings. The acquisition of consultative status is regulated by ECOSOC resolution 1296, with subsequent amendments. There are three categories of NGOs:

- category I for organizations concerned with most of ECOSOC activities;
- category II for organizations with special competence in a specific field of ECOSOC activities; and
- organizations on the roster for less extensive contributions.

In practice, there is not much difference between the three categories as far as access granted to human rights meetings are concerned.

All three categories of NGOs with consultative status may send observers to public meetings of ECOSOC and its subsidiary organs, such as the Commission on Human Rights, the Sub-Commission and their working groups. They can submit written statements for distribution as UN documents with an NGO number and they can speak in the meetings.

Many NGOs are active in the field of protection of minorities and minority rights. They include MRG, the International Helsinki Federation, the International Service for Human Rights, Amnesty International, Human Rights Watch, the International Federation of Human Rights, and the International Human Rights Law Group.

NGOs play a crucial role in all aspects of the UN human rights programme. They promote both standard-setting and monitoring activities. They:

- contribute to policy-making and legislative debates at the international, regional and national levels;
- speak up and speak out on issues concerning violations and abuses when governments and international organizations tend to be ineffective or even silent;
- bring such issues to the attention of monitoring bodies operating under the

auspices of international and regional organizations;

- provide the bulk of the information available to the various monitoring bodies and procedures, such as the Special Rapporteurs of the Commission for their fact-finding and investigative activities and the treaty-based bodies for the examination of state reports;
- identify needs for technical assistance projects and contribute to their implementation; and
- put political and public pressure on governments to live up to their obligations under the human rights instruments.

In addition, NGOs are engaged in independent research and monitoring efforts of their own in terms of lobbying governments, shaping public opinion and promoting public support by convening meetings, publishing information materials and leading letter campaigns. To improve and strengthen their position, minorities should lobby NGOs and get involved in their work.

# 17. Concluding Observations

The UN cannot be successfully lobbied or used without knowing which standards to apply and which forums to approach. This Guide has focused on a selection of the UN monitoring procedures and institutions in the field of human rights, with only brief references to the international standards. This Guide shows that well-prepared and well-informed use of the UN human rights procedures and forums is worth the effort. If anything, the Guide ought to demonstrate how important sound knowledge and thorough preparation are for minorities and others engaged in human rights and minority rights work if they want to see results from their efforts at the international level.

The picture gets even more complex when the human rights standards, institutions and monitoring procedures of the specialized agencies and the regional organizations are added. Many other fields in which international organizations are engaged are also relevant to minorities. These include the environment, development, the financial institutions, social affairs, education and science. This Guide barely scratches the surface.

- 1 There are no internationally agreed definitions of what constitutes a minority. For example, MRG's work focuses on non-dominant, ethnic, linguistic or religious communities which are not necessarily a numerical minority. MRG also recognizes that minority groups are far from homogenous, and that minorities are often among the poorest and most marginalized groups in society. MRG may also work with indigenous and tribal communities as well as migrant communities and refugees (although these communities may not wish to be classified primarily as minorities). The Guide does not specifically address the rights of indigenous peoples who benefit from minority rights, both standards and monitoring procedures. For additional protection of indigenous peoples' rights, see the Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169 from 1989). A draft declaration on the rights of indigenous peoples under preparation at the UN is being discussed.
- 2 Resolution 217 C (III) of 10 December 1948.
- 3 The Guide refers to but does not reproduce the international standards relevant to minority rights. The UN, the Council of Europe and other international organizations have published collections of instruments where most of the texts appear. See also Gudmundur Alfredsson and Göran Melander, *A Compilation of Minority Rights Standards. A Selection of International and Regional Human Rights Instruments and Other Documents*, Lund: RWI, Report No. 24, 1997; Patrick Thornberry, 'Basic Documents on Minorities and Indigenous Peoples' in *World Directory of Minorities*, London: Minority Rights Group, 1997, pp. 706–801; and Hurst Hannum (ed.), *Documents on Autonomy and Minority Rights*, Martinus Nijhoff Publishers, 1993.
- 4 For texts, see Compilation of General Comments and General Recommendations adopted by human rights treaty bodies, in UN document HRI/GEN/1/Rev. 3.
- 5 Gudmundur Alfredsson, 'Different Forms of and Claims to the Right of Self-Determination' in *Self-Determination. International Perspectives*, edited by Donald Clark and Robert Williamson, Macmillan Press and St Martin's Press, 1996, pp. 58–86.
- 6 UN document HRI/GEN/1/Rev. 3, p. 26.
- 7 Article 25 of the ICCPR provides an exception inasmuch as only citizens are entitled to vote and run for office in elections.
- 8 UN document HRI/GEN/1/Rev. 3, p. 36.
- 9 *Ibid.*, p. 12.
- 10 *Ibid.*, p. 39.
- 11 *Ibid.*, p. 108.
- 12 *Ibid.*, p. 106.
- 13 *Ibid.*, p. 107.
- 14 A list of abbreviations often used to identify the monitoring bodies can be found on p. 2–3 together with brief references to the structural placement and mandate of each institution, body or instrument.
- 15 See p. 32 on the Capotorti and Eide reports, and note 22.
- 16 See UN document A/47/277 – S/24111 of 17 June 1992, paragraph 18.
- 17 HRC meets three times a year: in March at UN Headquarters in New York and in July and October at the Palais des Nations in Geneva.
- 18 Correspondence can be addressed to individual Committee members or the Secretariat of the Committee at the Office of the High Commissioner for Human Rights, Palais des Nations.
- 19 Minority representatives can address the Committee under the umbrella of NGOs with consultative status, talk to Committee members at the conference facility and the coffee shops, or use the mail. The Committee meets twice a year at the Palais des Nations in Geneva. The postal address is the same as that of the Human Rights Committee.
- 20 In addition, the Office of the UN High Commissioner for Human Rights (previously the Centre for Human Rights) periodically publishes volumes entitled 'Selected Decisions of the Human Rights Committee' which will reproduce most of the cases quoted below.
- 21 The others are the General Assembly, the Security Council, the International Court of Justice, the Trusteeship Council, and the Secretary-General.
- 22 UN documents E/CN.4/Sub.2/1993/34 and Addenda 1–4. A summary of the report and its recommendations were published by MRG in 1993.

# Minority Rights: A guide to United Nations Procedures and Institutions

This Guide outlines the procedures currently available for the promotion and protection of the rights of minorities within the human rights mechanisms of the United Nations.

The Guide was prepared as a tool for training courses on minority rights. It has been piloted on two courses in Geneva and Budapest organized for representatives from minority communities and those working with minorities. One of the authors participated in both courses. The Guide will be used on future training courses for minorities and for government officials by Minority Rights Group International and the Raoul Wallenberg Institute for Human Rights and Humanitarian Law.

In addition to its role as course material, the guide also provides a work of reference which will be of interest to all those concerned about minority rights.



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