



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2004/75
24 February 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixtieth session
Item 14 (b) of the provisional agenda

SPECIFIC GROUPS AND INDIVIDUALS: MINORITIES

Rights of persons belonging to national or ethnic, religious and linguistic minorities

Report of the High Commissioner

* The present report is submitted after the deadline established by the Documents Management Section due to the need for additional consultations.

Summary

The Office of the High Commissioner for Human Rights submits the present report in response to Commission on Human Rights resolution 2003/50 in which the Commission requested the High Commissioner to examine existing mechanisms to promote and protect the rights of persons belonging to national, or ethnic, religious and linguistic minorities with a view to enhancing their cooperation and effectiveness and to identify possible gaps.

The debate in the Commission, the Sub-Commission on the Promotion and Protection of Human Rights and in its Working Group on Minorities, as well as opinions formulated by Governments and non-governmental organizations shed light on opportunities and gaps characterizing existing mechanisms for the protection of minorities. The report pays particular attention to the work of the Working Group on Minorities, human rights treaty bodies and special procedures established within the system of the Commission on Human Rights, as well as to the mandate of the High Commissioner for Human Rights.

The report also reviews the proposals made at the Working Group aimed at strengthening or creating mechanisms for the better protection of the rights of persons belonging to minorities. These proposals include the establishment of a special rapporteur or a special representative of the Secretary-General, the creation of a voluntary fund, and the proclamation of an international year.

Contents

	<u>Paragraphs</u>	<u>Pages</u>
Introduction	1-2	4
I. PROTECTION OF MINORITIES IN HUMAN RIGHTS NORMS ...	3-8	4
II. EXISTING MECHANISMS.....	9-24	5
III. STRUCTURAL AND FUNCTIONAL GAPS.....	25-27	10
IV. PROPOSALS FOR STRENGTHENING THE INTERNATIONAL PROTECTION OF THE RIGHTS OF PERSONS BELONGING TO MINORITIES	28-34	12
V. CONCLUSIONS	35-36	14

Introduction

1. The Commission on Human Rights, in its resolution 2003/50, requested the High Commissioner to submit at its sixtieth session a report examining existing mechanisms with a view to enhancing their cooperation and effectiveness and to identify possible gaps in the protection of the rights of persons belonging to national, or ethnic, religious and linguistic minorities. The present report reviews existing norms and mechanisms for the promotion and protection of persons belonging to minorities, attempts to identify structural and functional gaps, and considers how proposals made by legislative or advisory bodies might contribute to strengthening promotion and protection.

2. In paragraph 19 of the same resolution, the Commission also requested the Secretary-General to report on recent developments with regard to the promotion and protection of the persons belonging to minorities. In this connection, the Commission's attention is drawn to the Secretary General's report to the General Assembly (A/58/255) which provides relevant information.

I. PROTECTION OF MINORITIES IN HUMAN RIGHTS NORMS

3. Minorities number as many as 1 billion people, or 15 to 20 per cent of the world's population. The widely shared interpretation of international law is inclined to follow the self-identification principle whereby it is the will of the person concerned which is decisive for his or her identification with a given minority and, thus, for the existence of the minority itself. The Human Rights Committee in its general comment No.23 has highlighted the fact that "Some States parties who claim that they do not discriminate on the grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have no minorities". The Committee has also stated that the existence of a minority "does not depend on a decision" by a State but "requires to be established by objective criteria".¹ Non-discrimination and equal enjoyment of rights does not preclude the existence of minorities within a given country.

4. Existing international human rights law provides a framework for the promotion and protection of the rights of persons belonging to minorities. Both International Covenants contain provisions of particular importance to minorities. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) recognizes that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language".² Some other provisions of the Covenants, although they do not refer directly to minorities, need to be mentioned in this context: article 18 of the ICCPR lays down the right to freedom of thought, conscience and religion;³ article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) on the right to education establishes that education shall promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups; article 15 of the same Covenant provides the right to the enjoyment of culture. The International Convention on the Elimination of All Forms of Racial Discrimination should also be mentioned in this context. Neither this treaty nor the general recommendations adopted by the Committee on the Elimination of Racial Discrimination (CERD) make direct references to the notion of minorities. The CERD general recommendations and concluding observations addressed to States parties clearly indicate that the Committee considers the

situation of minorities of great relevance to its work and, moreover, indicate that in the view of the Committee the Convention provides protection to them. In the case of religious minorities, it should be noted that, although non-discrimination on the grounds of religion is not enunciated in the Convention, CERD does acknowledge the intersectionality of racial and religious discrimination. Finally, the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) of 1948 defines genocide as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group and acts that are criminally punishable.

5. Non-discrimination, equality before the law and participation - essential for the protection of minorities - underpin all human rights treaties. However, not all differential treatment is prohibited. Steps to remedy structural inequalities are admissible and, under some conditions, necessary. Limitations exist as to the acceptability of such measures, namely that they should not be continued after their intended objectives are achieved. This has clearly been laid down in the International Convention on the Elimination of All Forms of Racial Discrimination (art.2) and the Convention on the Elimination of All Forms of Discrimination against Women.

6. On 18 December 1992, the General Assembly, by its resolution 47/135, adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereafter called the Minorities Declaration). This is the most comprehensive international document in this area, protecting not only the identity of minorities but also several rights of persons belonging to minorities. A commentary to the Declaration prepared by the Chairman-Rapporteur of the Working Group on Minorities and based on its experience (E/CN.4/Sub.2/AC.5/2001/2), is a useful tool helping in the application of the Declaration.

7. The application of the rights of persons belonging to minorities has highlighted the need not only to understand and redress inequality but also to accommodate difference and diversity. Thus, States' duties are to support and develop culture, traditions and customs, with the exception of specific practices that "are in violation of national law and contrary to international standards" (Declaration, art.4, para.2). Special measures to protect the existence and identity of minorities and the encouragement of favourable conditions for their protection should help the integration of minorities. Respect for their identity is vital to ensure that integration does not lead to forced assimilation into the dominant environment.

8. Regional instruments are also relevant to the promotion and protection of the rights of persons belonging to minorities. These have been developed within the African, American and European regions. The adoption of the European Framework Convention on the Protection of National Minorities under the auspices of the Council of Europe provides an example of a comprehensive standard.

II. EXISTING MECHANISMS

9. Although the notion "minority" did not find its way into the Universal Declaration of Human Rights, the Commission on Human Rights at its first session established the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. Resolution 217 (III) of 10 December 1948, by which the General Assembly proclaimed the Universal Declaration in section A, contained a section C entitled "Fate of minorities", in which the Assembly, considering that the United Nations could not remain indifferent to the fate of

minorities and that it was difficult to adopt a uniform solution of that complex and delicate question, requested the Economic and Social Council to ask the Commission and the Sub-Commission to make a thorough study of the problem. By Council resolution 1995/31 in 1995, the Working Group on Minorities of the Sub-Commission was established. In 2000, as part of the reforms of the Commission on Human Rights, the name of the Sub-Commission was changed and the reference to minorities disappeared. The issue of minorities has, however, remained on the agenda of both bodies.

10. In addition to the General Assembly and the Commission on Human Rights, which discuss the issue of minorities in policy terms at their sessions and adopt resolutions, the following procedures, organs and bodies play an essential role in the promotion and protection of the rights of persons belonging to minorities: (a) the Sub-Commission on the Promotion and Protection of Human Rights and its Working Group on Minorities; (b) treaty monitoring bodies; (c) special procedures of the Commission on Human Rights; (d) the High Commissioner for Human Rights; and (e) procedures under Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII). The brief presentation of the work of these bodies and procedures on minority issues that follows should be interpreted in the context of the Secretary-General's proposals for reform of the human rights mechanisms aiming at their increased effectiveness.⁴

Working Group on Minorities

11. The Working Group on Minorities is mandated (a) to review the promotion and realization of the Minorities Declaration; (b) to examine possible solutions to problems involving minorities; and (c) to recommend further measures for the promotion and protection of the rights of persons belonging to minorities. The Working Group is the only international forum dealing exclusively with persons belonging to minorities. It is open to all minority representatives. Participation has increased over the years and the last session of the Working Group was attended by 50 minority and non-governmental representatives. The one-week annual sessions of the Working Group are also attended by numerous representatives of States. More than 100 States have been represented at one or more of its sessions.

12. The Working Group has (a) promoted the Minorities Declaration in its papers and those submitted by minority representatives and academics, including through the presentation of best practices; (b) promoted dialogue between States and minority representatives; (c) acted as a "think tank" contributing to the understanding of problems related to the promotion and protection of the rights of persons belonging to minorities; (d) advised minority groups on how better to advance their rights. In addition to the aforementioned commentary on the Minorities Declaration, the Working Group has elaborated thematic issues of global interest and concern, such as those relating to the Millennium Development Goals and sustainable human development. The Working Group has also addressed the issues of intercultural and multicultural education and measures facilitating the participation of persons belonging to minorities in public life. In the last nine years more than 50 expert papers or reports have been prepared for the Working Group. Since 2000, the Working Group, in cooperation with the Office of the High Commissioner for Human Rights has also organized a series of subregional workshops on minority questions. These are widely acknowledged as useful in providing the United Nations with the opportunity to receive information directly from minority representatives and other experts from different parts of the world; promoting dialogue

between and among minorities and the majority population; contributing to the better understanding of subregional approaches on minority issues by sharing experiences in the protection and promotion of minority rights; and offering an opportunity for strengthening networking among minorities and supporting them, including through raising their awareness of the United Nations work on human rights. In 2001, OHCHR, with the support of the Working Group, began a series of pilot activities to strengthen the human rights capacity of minority representatives. These activities included cooperation in a joint training programme with Minority Rights Group International and the publication of the *United Nations Guide for Minorities*, which provides basic materials for helping persons belonging to minorities on how to make better use of universal and regional human rights procedures for the promotion and protection of their rights. The *Guide* is available in all the official United Nations languages and is being translated into other languages, including Turkish, Hungarian and Serbian.

13. National human rights institutions are an important partner of the Working Group. They have a significant potential with regard to the prevention of minority-related conflicts and the protection of the rights of persons belonging to minorities. At the meetings of the Working Group, representatives of national institutions have referred to their role in alerting Governments to signs of conflict and have indicated their readiness to disseminate information about traditional mechanisms for resolving conflict and to teach about conflict resolution skills. Where national human rights institutions have a mandate to accept and consider complaints, members of minorities are being advised to use these mechanisms as a remedy supplementary to taking action through the courts. A pamphlet on the role of such institutions is being prepared for inclusion in the *United Nations Guide for Minorities*.

14. The Working Group has also considered ways in which it can improve implementation of its mandate. It was suggested that subregional guidelines or codes of conduct for implementing the Minorities Declaration should be developed. While recognizing the need for continuing attention to thematic issues, members of the Working Group discussed the possibility of greater focus on the protection of specific minorities, including formulation of country-specific recommendations. The Working Group also discussed the methods of closer cooperation with other parts of the United Nations system with a view to better integrating minority issues in the activities of agencies and programmes, in accordance with article 9 of the Minorities Declaration.⁵ The Working Group has yet to fully consider these proposals. Recently, the United Nations Development Group, the Executive Committee on Humanitarian Affairs and OHCHR have prepared an action plan with a view to strengthening the capacities of the United Nations, in particular the United Nations country teams, to assist Member States, at their request, in developing national systems of the promotion and protection of human rights.

Treaty bodies

15. Treaty monitoring bodies are an important component of the mechanisms relevant to the promotion and protection of the rights of persons belonging to minorities. By reviewing compliance of State parties with their obligations under a given treaty, the treaty bodies can receive information regarding minorities and make specific recommendations for measures for their protection. The committees advise on the interpretation of treaties through their general comments and develop human rights jurisprudence through the consideration of complaints. CERD, for example, has adopted several general recommendations relating to

particular groups vulnerable to racial or ethnic discrimination, including indigenous populations and Roma communities, and with respect to discrimination on the basis of descent. Four of the treaty monitoring bodies can consider communications. However, individual complaints by or concerning persons belonging to minorities under the optional complaints procedures are still rather rare. Finally, the committees can stimulate public debate on crucial human rights issues - days of general discussion. For example, CERD has held days of general discussion on the situation of the Roma and with respect to discrimination on the basis of descent.

16. Some treaty bodies have established modalities of action that could also gain importance in the context of minorities. On several occasions, the CERD has offered its good offices and undertaken missions to provide assistance or assess the situation in a particular country and promote dialogue for a peaceful solution of human rights issues. The Committee on Economic Social and Cultural Rights has also undertaken country missions.

Special procedures and mechanisms

17. Special procedures established by the Commission on Human Rights are another important part of the mechanisms pertinent to minority protection. Special Rapporteurs and Representatives are in direct and frequent contact with Governments and civil society through their country missions and can consider communications concerning alleged human rights violations that fall within their mandates. Their reports and analyses are an important source of information on human rights for the United Nations system and other actors. Commission on Human Rights resolutions invite special procedures and other mandate holders to give attention, within their respective mandates, to the situations and rights of persons belonging to national or ethnic, religious and linguistic minorities (see, inter alia, Commission resolution 2003/50, para.11). Both thematic and country-specific special procedures mandate-holders have signalled the need for strengthening the protection of the rights of persons belonging to minorities through, inter alia, the handling of complaints, the identification of root causes of violations, and action for the prevention of human rights violations and conflicts.

18. The following information should help to illustrate the present engagement of special procedures in the protection of minorities. Issues relating to minorities are dealt with in fewer than 15 percent of the communications considered by special procedures, which several reports refer to minority situations. For instance, the Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed the view that most armed conflicts and internal strife and unrest occur as a result of ethnic and religious tensions that are not addressed, or are suppressed until they erupt in violence (see, inter alia, E/CN.4/2001/9, para.103). She has also stated that "States in which acts of communal violence occur and inter-ethnic tensions persist should do their utmost to curb such conflicts and defuse tensions at an early stage. Governments should also work towards reconciliation and peaceful coexistence of all segments or groups of the population, regardless of ethnicity, religion, language or any other distinction. If and when required, the international community should be ready to assist these countries in preventing and defusing such conflicts. Governments should at all times prevent, prosecute and punish propaganda or incitement to hatred and intolerance that might instigate acts of communal violence" (E/CN.4/2000/3, para.107).

19. Likewise, the Special Rapporteur on freedom of religion or belief, in his analysis of the patterns revealed through the communications he has received, has concluded that there has

been an overall rise in intolerance and discrimination against religious minorities and women in situations of extreme risk, as well as an increase in religious extremism affecting all religions. He has stated that religious minorities are affected primarily by threats to their very existence as special communities, that they are also subject to direct and indirect limitations on the manifestation of their religious identity or belief, and that intolerance of religious minorities is often practised by non-State entities, mainly religious communities and extremist political and religious organizations. The Special Rapporteur has emphasized that education and inter-religious dialogue are vital pillars of the strategy to prevent “the violations now occurring as a result of religious extremism; the policies, legislation and practices that target religious minorities; and the pseudo-religious discrimination directed against women” (E/CN.4/2003/66, para.141). He has invited the international community, States and all interested parties to consider ways and means of using schools to reinforce the prevention of intolerance and discrimination on the basis of religion or conviction.

20. The representative of the Secretary-General on internally displaced persons (IDPs) in reports submitted on the occasion of the tenth anniversary of the mandate, has stated that he has found “that a common thread linking most situations of large-scale displacement is that they are precipitated by a crisis of national identity and of the related cohesiveness that binds a Government to its people. The breakdowns associated with this crisis are usually occasioned by structural problems, including gross disparities of wealth and opportunity among different groups of people and geographic areas, marginalization and discrimination on the basis of race, ethnicity, religion, culture and gender, failures of democratic governance, and a lack of respect for human rights and the rule of law” (see E/CN.4/2003/86, para.79). The Special Rapporteur on the human rights of migrants has also identified some of the causes of migration, stating that “people are unable to remain in their own countries mainly because of poverty and because they cannot earn a living for themselves or their family, and because of civil conflicts and insecurity or persecution for reasons of race, ethnic origin, religion, language or political views” (E/CN.4/2000/82, para.14). The holders of economic, social and cultural rights mandates and those mandate-holders dealing with extreme poverty and the right to development also consider issues pertaining to minorities. Persons belonging to minorities are often disproportionately affected by failures to respect, protect and fulfil the rights to housing, health and education. The unequal access of groups to social services and economic, social and cultural rights has also been identified as a root cause of conflicts. In the most recent report of the independent expert on the situation of human rights in Somalia, he quoted information from reports of the Office for the Coordination of Humanitarian Affairs on the situation of minorities and stated that most IDPs come from minority groups (E/CN.4/2004/103, paras. 25 and 49).

21. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance places considerable emphasis on the need to address discrimination and intolerance through such promotional measures as intercultural education. He has recommended the urgent promotion of a dialogue between cultures, civilizations and religions, the three main objectives of which were “to promote both mutual awareness of cultures, civilizations and religions and recognition of the interaction and cross-fertilization between them; to encourage cultural, religious and ethnic pluralism in the sense of recognizing, protecting, respecting and promoting diversity; and to create conditions that will lead the followers of religions and spiritual traditions to reflect on their shared values and also to act together to promote peace, development, human rights, social justice and democracy” (E/CN.4/2003/23, para.57).

22. The work of the Special Rapporteur on the right to education also illustrates the integration of the concerns of minorities into special procedures mandates. In her reports, she has expressed concern about the portrayal of racial, ethnic, religious and linguistic diversities in textbooks and the absence of information in textbooks on the history of indigenous and minorities communities (see, for example, E/CN.4/2000/6 /Add.1, paras. 81 and 95).

The High Commissioner for Human Rights

23. The mandate of the High Commissioner for Human Rights was established in 1993 by the General Assembly in resolution 48/141 to promote universal respect for and observance of all human rights, including the right to development. The functions of the High Commissioner are promotional, protective and preventive. They require the mandate-holder to engage in dialogue with Governments; play a lead role in the coordination of human rights activities; and make recommendations with a view to improving the promotion and protection of all human rights, including as regards the efficiency and effectiveness of United Nations human rights machinery. Minority issues are an important part of the work of the High Commissioner, and greater attention could be placed, *inter alia*, on promotional and protective activities, including assistance to Governments in managing diversity and promoting intra- and inter-ethnic and religious dialogues, facilitating the resolution of minority-related problems, providing Governments with technical cooperation and expertise on minority issues, including on the prevention and resolution of conflicts, as well as strengthening the capacities of the United Nations country teams in dealing with minority issues. It is to be noted, however, that while the mandate of the High Commissioner allows for constructive engagement in these areas, the relevant capacities of the Office of the High Commissioner are very modest.

Procedures under Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII)

24. The Commission on Human Rights can deal with alleged violations of the rights of persons belonging to minorities under Council resolutions 1235 (XLII) (public procedure for examining gross violations of human rights and fundamental freedoms and 1503 (XLVIII) (confidential procedure for dealing with gross violations of human rights and fundamental freedoms). In the first case, problems of minority protection have been raised, in the context of the consideration of specific country situations. The confidential nature of the “1503 procedure,” which allows only for publication of the names of the countries involved, makes it impossible to provide data concerning its applicability to minority issues. It is, however, a fact that this procedure, although revised in 2000 with a view to improving its effectiveness, is still perceived as having the disadvantage of being entirely confidential and not suitable for cases requiring urgent action.

III. STRUCTURAL AND FUNCTIONAL GAPS

25. The Secretary-General, in a recent public statement, urged that “We must protect especially the rights of minorities, since they are genocide’s most frequent targets.” He indicated that significant gaps remained in the capacity of the United Nations to give early warning of genocide and other crimes, to analyse and manage that information and to take action when such warnings were received. He proposed that consideration be given to

establishing both a procedure for the examination of reports by States parties to the Genocide Convention and a special rapporteur on the prevention of genocide, to be supported by the High Commissioner for Human Rights with a mandate to report directly to the Security Council.⁶ On 3 February 2004, the Acting High Commissioner for Human Rights, referring to the remarks of the Secretary-General, proposed various standard-setting activities to cover, inter alia, gaps in the prevention of ethnic cleansing, genocide and gross violations of human rights.

26. Comments made by some government delegations and by several non-governmental organizations at the fifty-ninth session of the Commission on Human Rights drew the attention of the Commission to shortcomings in the United Nations infrastructure supporting the promotion and protection of the rights of persons belonging to minorities. A number of other governmental representatives spoke of the importance of the work of the Working Group on Minorities and of actions being taken at the national level to improve the promotion and protection of the rights of persons belonging to minorities. Among those stressing the need for the adoption of new solutions, particular emphasis was placed on establishing an international protection mechanism to deal with minority issues that could undertake fact-finding missions and accept and handle complaints about violations of the rights of persons belonging to minorities. A special complaint mechanism would potentially be able to intervene in particular cases through urgent appeals, letters of allegation and fact-finding missions, and would permit a better understanding of the root causes of minority problems, leading to more effective ways of addressing them. Additional suggestions related to the establishment of an international mechanism aimed at promoting effective responses at the international level to the protection of the rights of minorities, especially through supporting dialogue and cooperation between the different institutions or entities dealing with human rights and those handling political, peace and security issues. It was stressed that the promotion and protection of the rights of persons belonging to minorities makes an important contribution to conflict prevention by strengthening the political and social stability of States.

27. Experts and governmental and non-governmental representatives at the ninth session of the Working Group on Minorities examined existing mechanisms relevant to minorities in the context of Commission resolution 2003/50. There was general agreement that the international and national protection systems were often inadequate, or failed to promote and protect the rights of persons belonging to minorities. In analysing protection gaps, the Working Group focused on the absence of mechanisms to deal with cases where minority identity was not recognized by a State, where citizenship was denied to persons belonging to minorities, and where a focus on minority-related conflict prevention measures and an effective response to urgent situations affecting minorities were lacking. Emphasis was placed on the need for practical action to be taken to protect minorities and to stop the occurrence of gross violations of the rights of persons belonging to minorities. Finally, the Working Group also pointed out that its mandate did not permit it to address crisis situations that might arise in the course of the year, nor could it act as an early-warning mechanism. Although the Working Group might be informed about specific cases of human rights violations, it was not a monitoring body, nor could it take up individual complaints. Unlike the special rapporteurs, the Working Group was not able to make an official visit to a country on behalf of a legislative body. Participants at the Working Group considered the issue of further standard-setting in relation to the protection of the rights of persons belonging to minorities, and proposed several recommendations that might be made to the Commission on Human Rights, in particular with regard to the establishment of a special rapporteur or special representative

of the Secretary-General on minorities (see E/CN.4/Sub.2/2003/19); additional information on this matter is contained in the files of the secretariat.

IV. PROPOSALS FOR STRENGTHENING THE INTERNATIONAL PROTECTION OF THE RIGHTS OF PERSONS BELONGING TO MINORITIES

28. This section presents ideas that have been advanced by different actors concerning international mechanisms relevant to minorities. Most active in this regard has been the Sub-Commission (see in particular its resolutions 2002/16 and 2003/23) and its Working Group. These proposals include the recommendation to establish the mandate of a special rapporteur of the Commission, a special representative of the Secretary-General, and a voluntary fund for minorities and to proclaim an international year for the world's minorities.

Special rapporteur on minorities

29. In its resolution 2002/16, the Sub-Commission recommended that the Commission consider the establishment of a special mechanism on minority issues (para.11) and in resolution 2003/23 it urged OHCHR to reflect in its report to the Commission the discussion that had taken place during the ninth session of the Working Group with regard to the possible establishment of a special procedure on minority issues (para.16). Although thematic and country-specific special procedures cover the situation of minorities under their specific mandates, a number of substantive areas fall outside the consideration of these mechanisms. In that connection, it may be noted that no mechanism has dealt consistently and comprehensively with questions relating to the recognition of the identity of minorities (except in relation to religious minorities), of their participation in public and cultural life, of access to public service for persons belonging to minorities, and of maintaining minorities' own cultures and languages. The establishment of a special mechanism that could undertake monitoring of the implementation of the Minorities Declaration through country missions and deal with complaints and communications has been proposed to complement the Working Group on Minorities. The special rapporteur in his or her work could also address cross-sectoral problems relating to minorities, in particular regarding children and women belonging to minorities.

30. The proposal to establish a special rapporteur has also been discussed in the context of the role that special procedures play in the prevention of conflicts. They have been widely recognized, including by the Commission on Human Rights, as a vital component of the United Nations early warning system. Through their country visits and analysis of information received from victims of human rights violations, non-governmental organizations, and other actors, these mechanisms often arrive at a unique assessment of situations that may give rise to serious conflicts.

Special representative

31. The Working Group also discussed the concept of another special procedure, namely a special representative of the Secretary-General focusing on conflict prevention in the context of minorities. The link between the promotion and protection of the rights of persons belonging to minorities and conflict prevention was spelt out in the Minorities Declaration

and has been most recently reaffirmed by the General Assembly in its resolution 57/337 on prevention of armed conflict, which states “that the ethnic, cultural and religious identity of minorities, where they exist, must be protected, and that persons belonging to such minorities should be treated equally and enjoy their human rights and fundamental freedoms without discrimination of any kind”.

32. In considering the establishment of a special representative of the Secretary-General on conflict prevention, with a particular focus on minority issues, the Working Group on Minorities made particular reference to the experience of the Organization for Security and Cooperation in Europe (OSCE) and its High Commissioner for National Minorities. The OSCE High Commissioner has a mandate to act at the earliest possible stage of emerging tensions involving minority issues which have the potential to develop into a conflict, but he is not empowered to investigate individual human rights violations. He can conduct on-site missions and engage in preventive diplomacy, and promote dialogue, confidence and cooperation. This has involved regular contacts with both minority and government representatives. A feature of this approach has been quiet diplomacy, with an emphasis on confidentiality. In the course of the discussions at the Working Group, an expert observer suggested that consideration might even be given to the possible establishment of several regional special representatives on minority issues to act as conflict-prevention mechanisms.

Voluntary fund

33. Following the debate in the Working Group, the Sub-Commission decided to adopt a draft decision to the Commission⁷ for the establishment of a voluntary fund for minorities. The purpose of the fund would be to facilitate the participation of minority representatives and experts from developing countries in the Working Group and its related activities and to contribute to the organization of other activities relating to the implementation of the rights of persons belonging to minorities. The Secretary-General’s reform proposals, with particular reference to action 19, have advocated improving meaningful interaction between the United Nations and civil society, and this voluntary fund⁸ could be considered as contributing to this objective.⁸

International year on minorities

34. The Sub-Commission, following the debate in the Working Group, has also recommended that the General Assembly proclaim an international year for the world’s minorities, to be followed by a decade, with a view to advancing the implementation of article 9 of the Minorities Declaration calling for United Nations agencies and programmes’ contribution and cooperation. (Sub-Commission resolution 2003/23, para. 14). An international year could, in the view of some members of the Sub-Commission, also be used by Member States, United Nations agencies and programmes, non-governmental organizations and others to promote minority cultures and identities, raise awareness of the general public of minority issues, and undertake public information activities such as publications, promotional materials, workshops and human rights education. The media could also be invited to play a role in promoting respect for minorities. The year could bring the positive contribution of minorities to cultural diversity to the attention of the general public and provide a framework for the consolidation of networking amongst various actors working for and on minority issues.

V. CONCLUSIONS

35. It is a widely shared opinion that the protection of the rights of persons belonging to minorities is essential for the respect for human dignity, the underlying value of human rights and the stability and prosperity of States, and, thus, the prevention of conflicts. The existing human rights machinery, including the Working Group on Minorities, has important potential in addressing several minority-related problems. While recognizing this potential, and noting that it has not yet been fully exploited, numerous observers representing Governments, non-governmental organizations of minorities and wider civil society, including independent experts, are of the opinion that some important challenges facing minorities have not been appropriately covered by existing mandates, for structural or functional reasons. As minority issues do not constitute the main focus of the existing mandates, inevitably the mandates are unable to reflect the full range of concerns relevant to minorities. In this context, reference is made to the protection of the identity of minorities (except in relation to religious minorities), of their participation in public and cultural life, of access to public service for persons belonging to minorities, as well as maintaining minorities' own cultures and languages. It has been stressed that there are no procedures for dealing swiftly with the violations of the rights of persons belonging to minorities and with individual or group communications. It has also been pointed out that there is no mandate to follow up minority issues in a systematic and specialized way through contacts with Governments and societies during country missions, and thus to contribute effectively to the prevention of minority-related conflicts.

36. In view of the complexity and relevance of minority issues, several proposals have been made with regard to both better exploiting the potential of the existing mechanisms and the creation of new mechanisms and other arrangements. The Working Group on Minorities, following an in-depth debate on this issue, has called for or considered, inter alia, proposals for the establishment of a special rapporteur of the Commission on Human Rights on minorities, a special representative of the Secretary-General on minority-related conflict prevention, a voluntary fund for minorities, and the proclamation of an international year for the world's minorities. It is important that the debate on new arrangements be put in the context of the reform of the human rights mechanisms. Drawing on the existing mechanisms, enhancing their impact through their greater involvement in minority issues and making any new ones fully complementary can enhance the ability of the United Nations human rights machinery to effectively address problems faced by minorities and persons belonging to them. The proclamation of an international year for the world's minorities would provide a framework for taking forward concrete measures for the better protection of minorities.

Notes

¹ See also *Lovelace v. Canada*, a case before the Human Rights Committee, Selected Decisions of the Human Rights Committee under the Optional Protocol, Vol.I, pp.83-87.

² The Human Rights Committee in its general comment No.23 on article 27 has stated that "this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant" (para.1).

³ The meaning of article 18 of the Covenant was further elaborated upon in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief adopted by the General Assembly

in November 1981. In particular its article 6 is of considerable relevance to the rights of persons belonging to religious minorities.

⁴ See actions 2, 3 and 4 of the Secretary-General's report, "Strengthening of the United Nations: an agenda for further change" (A/57/387 and Corr.1) and General Assembly resolution 57/300.

⁵ Article 9 calls on the members of the United Nations to contribute to the realization of the principles and rights set forth in the Minorities Declaration.

⁶ Press Release SG/SM/9126/Rev.1 of 11 February 2004.

⁷ E/CN.4/2004/2-E/CN.4/Sub.2/2003/43, chap.I, sect.B, draft decision 12 and chap.II, sect. B, decision 2003/111.

⁸ It is to be recalled that Millennium Declaration calls for greater opportunities to be given to "non-governmental organizations and civil society, in general, to contribute to the realization of the Organization's goals and programmes" (General Assembly resolution 55/2, para.30).