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**Promotion and protection of human rights: human rights
questions, including alternative approaches for improving the
effective enjoyment of human rights and fundamental freedoms**

Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on minority issues, submitted pursuant to Human Rights Council resolution [34/6](#).

* [A/74/50](#).



Report of the Special Rapporteur on minority issues

Summary

The Special Rapporteur provides a summary of his activities since his previous report to the General Assembly, along with a thematic study on the concept of a minority in the United Nations system.

In the section on activities, the Special Rapporteur highlights continuing work on the thematic priorities of statelessness, and education and minority languages; initiatives on a more regional approach to minority issues; country visits; communications; and other activities. In the section on the concept of a minority, the Special Rapporteur reviews the history, approaches and jurisprudence on this concept within United Nations mechanisms and entities in order to provide greater clarity for his own mandate and all other stakeholders in upholding the human rights of minorities. He makes a number of recommendations in order to ensure greater clarity and consistency for United Nations entities, as well as for other stakeholders, and makes recommendations with regard to an emerging crisis involving minorities.

Contents

	<i>Page</i>
I. Introduction	4
II. Activities of the Special Rapporteur	4
A. Activities related to thematic priorities	4
B. Regional approaches to mandate	5
C. Country missions	5
D. Forum on Minority Issues	5
E. Communications	5
F. Awareness-raising and other activities	6
III. Study on the concept of a minority in the United Nations	8
A. Introduction	8
B. Historical contextualization	9
IV. Conclusions and recommendations	18

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on minority issues pursuant to his mandate under Commission on Human Rights resolution 2005/79, extended most recently by the Human Rights Council in its resolution [34/6](#).

2. In the report, the Special Rapporteur provides a summary of his activities since his previous report to the General Assembly ([A/73/205](#)), then introduces a study on the concept of a minority in international law. The Special Rapporteur intends to use this study to provide much needed clarity and greater certainty in the understanding and practice of who is a minority for the purposes of the mandate and in the recognition and promotion of their human rights by States, including through enhanced engagement with the international human rights mechanisms and the United Nations system in general.

II. Activities of the Special Rapporteur

3. As part of his mandate, the Special Rapporteur has engaged in a number of activities, with the aim being (a) to conduct thematic studies; (b) to conduct country visits; (c) to communicate with Governments and other actors regarding alleged violations of the rights of minorities; (d) to promote good practices; and (e) to increase awareness and understanding on the human rights of minorities that underpin his mandate on minority issues. Some of the focus areas addressed and activities carried out by the Special Rapporteur since his previous report are highlighted below.

A. Activities related to thematic priorities

4. The Special Rapporteur identified four thematic priorities in his first statement to the General Assembly in October 2017. In 2018, in his first year, the Special Rapporteur focused on the theme of statelessness as a minority issue, and he often raised this issue in presentations and through his participation in activities around the world, as highlighted in the present report. In addition, he convened a workshop in Galway, Ireland, with the participation of leading experts on statelessness for the purpose of elaborating a report and practical guidelines on how to effectively address policies, legislation and practices that lead to violations of the right to nationality for millions of people, who face the risk of statelessness. Most recently, on 3 July 2019, the Special Rapporteur, jointly with other special procedures mandate holders, publicly expressed his grave concerns over the current situation in the state of Assam in India, and the review of the National Register of Citizens, where judicial and other procedures could create an exceptionally unstable situation, with a potential of between 2 million and 4 million people, mainly members of Muslim or Bengali minorities, becoming stateless in 2019, thereby also preparing the ground for another future humanitarian crisis in a region where the Rohingya minority already number 1 million vulnerable individuals.

5. The Special Rapporteur also began activities in 2019 related to his second thematic priority on education, language and the human rights of minorities, an issue of great significance for the identity of linguistic and other minorities. Regional forums and consultations on this second thematic priority are planned for the Asia-Pacific and the Africa-Middle East regions. Education, language and the human rights of minorities will also be the focus of the next Forum, to be held in Geneva on 28 and 29 November 2019. It is also hoped that a practical guide on this issue will be developed in 2020.

6. The Special Rapporteur's thematic priority in 2020 will be how to address hate speech in social media. As in the case of statelessness, hate speech in social media tends to disproportionately target minorities.

B. Regional approaches to mandate

7. In his first report to the Human Rights Council, dated 16 January 2018, the Special Rapporteur indicated the possibility of a more regional approach to the Forum on Minority Issues, in order to make the Forum more accessible to minorities in different parts of the world and more receptive to regional concerns and contexts (see [A/HRC/37/66](#), para. 64). The first steps towards implementing such an approach were undertaken in 2019, with the organization of a European regional forum, which was held at the European Parliament in Brussels, on 6 and 7 May 2019. The success of this first regional forum has created favourable momentum for continuing this regional approach, with the view to organizing two other regional forums in Bangkok and Tunis during the second half of 2019. It is hoped that four regional forums might be possible in 2020 on the Special Rapporteur's third thematic priority of how to tackle hate speech and incitement to hatred against persons belonging to minorities through social media. For the organization and coordination of the three regional forums in 2019, the Special Rapporteur has received the support of civil society partners, such as the Tom Lantos Institute.

C. Country missions

8. The Special Rapporteur undertook a country visit to Spain from 14 to 25 January 2019. He will present his report on that mission to the Human Rights Council at its forty-third session, in March 2020.

D. Forum on Minority Issues

9. Information on the eleventh session of the Forum on Minority Issues, held on 29 and 30 November 2018 on the theme "Statelessness: a minority issue", can be found in the annual report of the Special Rapporteur to the Human Rights Council for 2019 (see [A/HRC/40/64](#), paras. 85–98). The Special Rapporteur wishes to highlight the extremely high level of interest and participation in 2018 (more than 600 participants), as well as the more than 200 declarations and 100 written statements made during the two-day Forum. The twelfth session of the Forum will focus on education and the language rights of minorities and be held in Geneva in November 2019.

E. Communications

10. In 2018, a total of 50 communications were sent to Governments and other stakeholders, compared with 45 in 2017. All of them were sent jointly with other special procedures mandate holders. Of those, 11 were urgent appeals, 26 were letters of allegation and 13 were letters commenting on and raising concerns over specific legislation, policies and practices.

11. With regard to geographic distribution, 20 of those communications were for the Asia-Pacific region, 21 for Europe and Central Asia, 5 for the Middle East and North Africa, 3 for sub-Saharan Africa and 1 for Latin America and the Caribbean.

12. The largest number of communications (27) dealt with cases pertaining to ethnic minorities, 20 communication concerned religious minorities and 4 communications addressed issues pertaining to the rights of linguistic minorities. They addressed human rights violations such as persecution and violence against persons belonging to minorities, as well as against minority human rights defenders, arbitrary detention and torture, restrictions and limitations on religious freedoms and the discriminatory application of blasphemy laws, excessive use of force by law enforcement, forced evictions, discrimination in the area of education and the impact of development projects and of business activities on the human rights of minorities.

F. Awareness-raising and other activities

13. On 27 February 2019, the Special Rapporteur gave a public seminar on the United Nations special procedures and his mandate at the invitation of the Centre for Comparative and Public Law of the University of Hong Kong.

14. On 2 March 2019, he addressed a conference on bilingual education as a minority issue, organized in Komotini, Greece, by the Western Thrace Minority University Graduates Association, the Culture and Education Foundation of the Western Thrace Minority, the Federation of Western Thrace Turks in Europe and the Federal Union of European Nationalities. The conference focused on bilingualism for the Muslim minority in Greece and drew comparisons with approaches and practices from other parts of the world. On 18 March 2019, he was invited by the High Commission of Canada in Cameroon to participate in a panel on the occasion of the “*Semaine de la Francophonie*” and the “*Journée internationale de la Francophonie*”, in Yaoundé. The Special Rapporteur’s presentation focused on the implementation of the human rights of linguistic minorities as a contributing factor in achieving peace and stability. On 21 March 2019, the Special Rapporteur gave the keynote address on the evolution and status of minorities in international human rights law at the international conference commemorating the centennial anniversary of the State of Lebanon entitled “The communities of the State of Lebanon (1920–2020): reflections and perspectives”, organized by the Holy Spirit University of Kaslik and hosted by the Research Centre on Minorities in the Middle East in Jounieh, Lebanon.

15. On 2 April 2019, he participated as a guest speaker in a conference on “Human and minority rights in the European Union’s neighbourhood”, held at the European Parliament in Brussels, at the invitation of the its Committee on Culture and Education. He addressed the importance of acknowledging that minority rights were human rights, particularly when many minorities around the world were increasingly vulnerable and confronted by populist nationalism that could take the form of mounting intolerance, exclusion and discrimination. On 8 and 9 April 2019, he participated in and addressed a two-day workshop on inclusive education and the rights of linguistic minorities, organized by the Alliance of Iraqi Minorities, the Norwegian Centre for Holocaust and Minority Studies and its Minority Rights Network in Erbil, Iraq. The Special Rapporteur made opening remarks on the importance of recognizing the link between the human rights of minorities and the use of their languages in education. He also made a presentation on his mandate and on United Nations special procedures in general.

16. On 3 May 2019, he was a guest, along with the Coimisinéir Teanga (Language Commissioner) of Ireland, Rónán Ó Domhnaill, at a public seminar on “Education, the rights of linguistic minorities and the Irish Language: an international human rights perspective”, held at the National University of Ireland-Galway’s Irish Centre for Human Rights. On 6 and 7 May 2019, the Special Rapporteur convened the European Regional Forum on Education, Language and the Human Rights of Minorities at the European Parliament in Brussels. Some 170 participants from States,

regional and international organizations, including the Office the United Nations High Commissioner for Human for Human Rights (OHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR), the Organization for Security and Cooperation in Europe, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Council of Europe, and civil society, as well as leading experts on education and language, contributed to the thematic discussions. On 9 May 2019, he was a keynote speaker at the World Council of Churches ecumenical strategic forum on racism, xenophobia and racial discrimination, held at the Ecumenical Institute at Bossey near Geneva. On 27 May 2019, the Special Rapporteur was a panellist at Deutsche Welle's Global Media Forum in Bonn, Germany. The panel was organized by former fellows of the OHCHR Minorities Fellowship Programme and was entitled "Shifting powers: giving microphones to minorities". The Special Rapporteur addressed the need to deconstruct how minorities are portrayed in social media, and particularly the danger of their voices being overwhelmed and threatened by the rising tides of hate speech and false information.

17. From 8 to 10 June 2019, the Special Rapporteur organized an expert workshop in Galway, Ireland, which brought together a group of leading experts on statelessness. The workshop addressed the root causes of statelessness around the world and its disproportionate impact on persons belonging to minorities, and discussed practical recommendations to effectively respond to the issue of deprivation or denial of citizenship. Following this workshop, and on the basis of his reports to the Human Rights Council and the General Assembly, and on the recommendations of the Forum on Minority Issues at its eleventh session, the Special Rapporteur will develop a practical guide on how to address the growing challenge of the statelessness of minorities. On 18 June 2019, the Special Rapporteur addressed the high-level meeting on the theme "A perspective to a future strategy to prevent and fight anti-Semitism, racism, xenophobia, radicalization and hate speech", held in Bucharest under the auspices of the Prime Minister of Romania and co-organized with the World Jewish Congress. In his address, the Special Rapporteur explained why minorities were the main targets of hate speech around the world and emphasized that preventing and combating hate speech, and especially anti-Semitism, required finding a difficult but necessary balance between freedom of expression and prohibition of hate speech and incitement to violence. He echoed the message of the Secretary-General that hate speech was spreading like wildfire through social media and constituted a menace to democratic values, social stability and peace. On 24 June, he gave a series of lectures at the Aix-Marseille Université summer school on the practice of human rights, in Aix-en-Provence, France, with a particular focus on current human rights challenges, including the issue of hate speech and incitement to hatred against minorities through social media. On 25 June 2019, he gave the closing speech of the first day of the sixth annual conference of the International Association of Language Commissioners in Toronto, Canada. The theme of the conference was "Protecting linguistic minorities, building stronger societies", and the Special Rapporteur spoke on how inclusive societies needed to reflect and accommodate language diversity, in line with relevant human rights principles for linguistic minorities, such as the prohibition of discrimination on the ground of language, and the important role that language commissioners could play in that regard. On 27 June 2019, the Special Rapporteur was invited to participate in the World Conference on Statelessness, organized by the Institute on Statelessness and Inclusion, in The Hague, the Netherlands. In his presentation, the Special Rapporteur framed statelessness as a minority issue and referred to the risk of an explosive increase in the number of stateless people globally owing to policy and legislative developments, such as those in Assam, India, where millions faced the threat of being deemed "foreigners" and treated as non-citizens, and could therefore become stateless if unable to demonstrate any form of citizenship. He warned of a grave situation which could eventually create the conditions not only

for an eventual new massive humanitarian crisis but also a huge destabilization of the whole region, dwarfing the horrific conditions endured by the Rohingya minority of Myanmar.

18. On 3 July 2019, the Special Rapporteur presented the main characteristics of the mandate on minority issues, as well as the way the special procedures of the United Nations functioned, at Murdoch University's human rights law programme in Geneva. On 8 July 2019, he participated in two sessions with participants from around the world in the 2019 global minority rights summer school organized by the Tom Lantos Institute in Budapest. The Special Rapporteur explained the role and activities of the mandate on minority issues and participated in a question and answer session with participants. On the same day, he met with the staff at the European Roma Rights Centre in Budapest to discuss their activities and priorities for the coming year.

19. On 3 July 2019, the Special Rapporteur, along with his colleagues Ahmed Shaheed, Special Rapporteur on freedom of religion or belief, and E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, issued a press release expressing their alarm and grave concerns in relation to a process involving the registration of citizens in Assam, India (the National Registry of Citizens), and its potential to harm up to 4 million people, most of whom belonged to Muslim and Bengali-speaking minorities, who risked statelessness, deportation or prolonged detention. They also issued warnings on the rise of hate speech directed against those minorities in social media and the potential destabilizing effects of the marginalization and uncertainties facing millions in that and other parts of the country. The Special Rapporteur, along with his colleagues, indicated that the process could exacerbate the xenophobic climate while fuelling religious intolerance and discrimination in India, and could lead to other states in India using similar approaches to deny or remove citizenship for Muslim and other minorities. They also decried having not received any response from the Government of India regarding their concerns, repeated their call for clarification regarding the Registry process and called on the Indian authorities to take resolute action to review the implementation of the Registry and other similar processes in Assam and in other States, and to ensure that such processes did not result in statelessness, discriminatory or arbitrary deprivation or denial of nationality, mass expulsion or arbitrary detention.

III. Study on the concept of a minority in the United Nations

A. Introduction

20. The present study addresses the need for a working definition of a minority in order:

- (a) To comply with the Special Rapporteur's mandate;
- (b) To clarify the meaning of the concept in order to avoid controversies and contradictions, in and outside the United Nations, which weaken the full and effective realization of the rights of minorities;
- (c) To clarify the concept according to international law, including the jurisprudence of the Human Rights Committee and the applicable principles under the Vienna Convention on the Law of Treaties.

21. As part of his Human Rights Council mandate, the Special Rapporteur must raise awareness and work for the full and effective realization of the rights of persons belonging to minorities. This includes clarifying key concepts which are the very essence of minority issues, such as who can claim to be a minority under the United

Nations system. There is, however, a further key element that requires clarity with regard to who is a minority. The absence of consistency in understanding who is a minority is a recurring stumbling block to the full and effective realization of the rights of minorities. Different United Nations entities may contradict one another because they consider different groups of persons as constituting a minority, and diverge from the practices of colleagues in other entities. States Members of the United Nations hesitate to engage on matters relating to minorities since they do not know who is a minority and what that entails. In some countries, there may be even the assumption that the absence of a “definition” means it is left to each State to determine freely who is or is not a minority. In most of these situations, the uncertainty leads to restrictive approaches: in many situations, persons are deemed to be “undeserving” because they are not “traditional” minorities, not citizens or not sufficiently “dominated”. The end result is that some minorities are excluded because they are not the “right kind” of minority according to different parties.

22. These inconsistencies, controversies and contradictions regarding the concept at the United Nations and within or between different agencies or sections have been occurring for decades. The absence of any agreed upon approach to who is a minority under article 27 of the International Covenant on Civil and Political Rights has also led to Member States being uncertain at best in their responses or engagements, including in accepting country missions. Some have at times been ambivalent, hesitant or even hostile, given the uncertainties as to who ought to be considered a minority and to claim the rights identified under this provision and the commitments contained in the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. Instead of providing flexibility, openness and the possibility of progress, the absence of common points of reference as to what constitutes a minority has led to a curtailment of who can lay claim to minority protection. The only way to rectify this is to provide greater clarity, as indicated by the Special Rapporteur in his 2017 statement to the General Assembly. In preparation for the present study, the Special Rapporteur invited United Nations mechanisms and entities to provide submissions.¹

B. Historical contextualization

23. Among the most common misconceptions regarding the concept of who is a minority within the United Nations and its entities is the often repeated implication that there was “one” attempt in the 1970s by a United Nations independent expert to provide a definition of what constitutes a minority and that, while the definition was not accepted at the time, it can still provide a useful reference point today.² This is incorrect, not least because it was neither the first nor even the last such attempt. Furthermore, many core aspects of this approach have been dismissed, particularly in the jurisprudence and clarifications by the Human Rights Committee.

1. A long-standing hesitancy

24. The absence of an agreed definition of a minority, and the inconsistencies, controversies and contradictions mentioned earlier, result from a long-standing hesitancy that continues to afflict the international community today. Events leading

¹ The supplementary information regarding the survey disseminated during the preparation of the present report is available at: https://www.ohchr.org/Documents/Issues/Minorities/SR/A74160_Survey.docx.

² Various documents of the United Nations refer approvingly to the definition proposed by Rapporteur Francesco Capotorti in 1976. See for example OHCHR, “Minorities under international law”, available at <https://www.ohchr.org/EN/Issues/Minorities/Pages/internationalallaw.aspx>.

up to World War II implicated minorities in at least two significant ways. Firstly, and perhaps more commonly appreciated, the atrocities committed against the Jewish minority, as well as against others such as the Roma, were very much in the minds of the framers of the two most significant United Nations human rights documents, the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948; and the Convention on the Prevention and Punishment of the Crime of Genocide, which even preceded the Universal Declaration, since it was adopted by the Assembly one day earlier, on 9 December 1948. Secondly, however, there was a strong undercurrent of concern over the instrumentalization of the concept of “national minority”, as some felt had occurred when Nazi Germany used claimed mistreatments of German minorities in neighbouring countries as at least a partial pretext to justify its expansion. There were also undeniably often strong feelings after the 1940s, particularly though not exclusively in Western States, that the assimilation of minorities was a desirable strategy. The view that ultimately prevailed at the United Nations was that there should not be any specific mechanism for dealing with minorities, in order to make a dramatic break from what are known as the so-called “minorities treaties” of the League of Nations.

25. These treaties are often misrepresented as enshrining collective rights that contributed to the inherently unstable interwar period, and hence were factors in preparing the conditions for the onset of war, if not a direct cause of it. Ironically, as other observers have noted, many of these minority treaties were not limited to protecting minorities, but rather were actually the first international human rights treaties, since they extended the prohibition of discrimination or freedom of expression and religion to all inhabitants of the States involved, not only to minorities.³ Most of the provisions in these treaties were in fact individualistic, again contrary to the way they are usually portrayed.

26. As noted by a former Chief of the Indigenous Peoples and Minorities Section at the Office of the United Nations High Commissioner for Human Rights, “These arguments, echoes of which can still at times be heard in today’s minority rights discourse, largely prevailed in 1948, and the drafting proposal made by the United Nations Secretariat’s Division on Human Rights and others for minority rights provisions in the Universal Declaration of Human Rights were all eventually rejected”.⁴

2. The many proposals for a definition

27. The definition of a minority by Francesco Capotorti is sometimes presented as the only one on hand at the United Nations (see [E/CN.4/Sub.2/384/Rev.1](#)) which explains why it is still referred to even though it was rejected by the Commission on Human Rights. To be perfectly accurate, Mr. Capotorti’s work was a more general study on the rights of minorities under article 27 of the International Covenant on Civil and Political Rights. The first dedicated attempt to define the concept of a minority for the purposes of that treaty after its entry into force was conducted at the request of the Commission on Human Rights almost 10 years after the Capotorti report by Canadian judge Jules Deschênes (see [E/CN.4/Sub.2/1985/31](#)), but there were many other attempts before and after Mr. Deschênes’ attempt.

³ Fernand de Varennes and Elżbieta Kuzborska, “Minority language rights and standards: definitions and applications at the supranational level” in *The Palgrave Handbook on Minority Languages and Communities* (London, Palgrave Macmillan, 2019).

⁴ Antti Korkeakivi, “Beyond adhocism: advancing minority rights through the United Nations” in *The Framework Convention for the Protection of National Minorities: A Commentary*, Rainer Hofmann and others, eds. (Brill Nijhoff, 2018).

28. Depending on how one views what constitutes a definition, there were a significant number of definitions, formulations and descriptions put forth by various United Nations entities, designated experts, committees, commissions or subcommissions between 1947 and 2010.⁵ (The most relevant extracts are contained in the supplementary information to this report relating to definitions and descriptions of the term “minority” in United Nations system entities.)⁶

29. There were also at various times other proposed definitions, for example those which were submitted at the request of the Secretary-General by a number of Member States in pursuance of Commission on Human Rights resolution 14 A (XXXIV) of 6 March 1978 after the rejection of the Capotorti definition, including, for example, proposals from Greece, Germany and Canada (see [E/CN.4/1987/WG.5/WP.1](#), paras. 12–16).

30. The plethora of proposals is testimony to strongly held diverging views and disagreements, both in terms of who minorities are as rights-holders and the nature and extent of their rights. This can be simplified and summarized by indicating that there were significant divergences, including:

(a) Between States with a purely individualistic view of human rights that were uncomfortable with any rights linked to any group and sought a complete break from the League of Nations minorities treaties approach, and States that felt it necessary to have specific measures which acknowledged the inherent inequality experienced by many minorities;⁷

(b) States that saw the United Nations debates over the rights of minorities as part of the “Cold War” confrontation, with many Western democracies automatically concerned that the Union of Soviet Socialist Republics and its allies would try to cast themselves as champions of “oppressed” minorities and thus instrumentalize the minority rights debates;

(c) States that ideologically were firmly convinced of the value of assimilation, and that the unity and stability of a country also required the unity of one national language and culture, against those States which, on the contrary, held the firm ideological conviction, based on their own national experiences, that peace and stability were often best served when a State took into account and reflected the composition of its population.

31. Finally, at the risk of simplification, there was also a divide between those States which preferred a minimalist approach to a minority provision, in the sense that it would not involve collective claims or place extensive obligations on States, and those which believed that at least certain minorities were entitled to more wide-ranging protections, as had been the case under the minorities treaties before the Second World War.

32. The absence of consensus resulted in the absence of any reference to minorities in the first United Nations non-binding human rights instrument, but there remained strongly held views that this would be tackled eventually in a human rights treaty.

⁵ For a partial list of proposals, see [E/CN.4/1987/WG.5/WP.1](#).

⁶ Available at: https://www.ohchr.org/Documents/Issues/Minorities/SR/A74160_Definitions_Descriptions.docx.

⁷ It may be useful to point out that the former’s position was weakened by the early recognition that certain groups, including women, children and indigenous peoples, should be considered as requiring specific attention.

3. Towards a treaty provision for minorities and the absence of a “formal” definition

33. It is striking how hardly any reference to minorities was included in the earlier United Nations declarations and treaties: the word is never used in the United Nations Charter, the Universal Declaration of Human Rights or even the Convention on the Prevention and Punishment of the Crime of Genocide, or in any other treaty until the International Covenant on Civil and Political Rights in the late 1960s.⁸ Conceptually, there appeared to be two main stumbling blocks: who were the minorities for any future minority provision; and what was the object, or more precisely the substance of the rights that they could claim? After 1947, there was always a process, however, which would eventually see a minority provision included in a treaty even if it was initially omitted from the Universal Declaration in 1948.⁹

34. The drafting committee of the Universal Declaration of Human Rights made a first proposal for a minority provision that was broadly influenced by the approaches contained in the League of Nations minority treaties (see [E/CN.4/21](#), annex F, art. 36):

In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right as far as compatible with public order to establish and maintain their schools and cultural or religious institutions, and to use their own language in the press, in public assembly and before the courts and other authorities of the State.

35. The drafting committee felt, however, that the “supreme importance” of the provision meant that it had to be more closely examined and decided on by the Commission on Human Rights, and that certain matters needed to be referred to the Sub-Commission on Prevention of Discrimination and Protection of Minorities itself (*Ibid.*). The Sub-Commission eventually nominated four of its members to bring together the debates and proposals of the Sub-Commission, and it arrived at another proposition (see [E/CN.4/52](#) and [E/CN.4/52/Corr.1](#), sect. I, art. 36):

In States inhabited by well-defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population and which want to be accorded differential treatment, persons belonging to such groups shall have the right as far as is compatible with public order and security to establish and maintain their schools and cultural or religious institutions, and to use their own language and script in the press, in public assembly and before the courts and other authorities of the State, if they so choose.

⁸ Contrary to frequent misconceptions, article 27 of the International Covenant on Civil and Political Rights is not the only United Nations treaty provision that refers to minorities. Articles 17 (d) and 30 of the Convention on the Rights of the Child also refer to minority children having distinct rights, as does the 1960 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education in its section 5 (c). It is noteworthy that the early UNESCO treaty refers only to “national minorities”, a term more commonly used in European contexts, whereas article 27 of the International Covenant on Civil and Political Rights does not refer to national minorities, but rather to linguistic, religious or ethnic minorities. The Convention on the Rights of the Child also does not refer to national minorities and is more closely aligned with article 27 of the Covenant, mentioning “ethnic, religious or linguistic minorities or persons of indigenous origin”.

⁹ There was, however, such a degree of insistence from some States (in particular the Soviet Union, Yugoslavia and Denmark) that the situation of minorities had to be specifically included in an eventual human rights treaty that the resolution on the International Bill of Human Rights for the adoption of the Universal Declaration of Human Rights included, in its part C, a commitment for a thorough study on minorities to be conducted by the Sub-Commission in order that the United Nations could take effective measures for the protection “of racial, national, religious or linguistic minorities” (General Assembly resolution 217 (III) C).

36. There are clearly notable tensions between the two early versions, in terms of both who is to be considered a minority and the nature and extent of their rights.¹⁰ The later proposal is notably more restrictive than the initial proposal: the word “minority” has completely disappeared, to be replaced by groups made up of citizens, and a number of subjective considerations and other requirements not contained in the initial draft make any rights claims more difficult and qualified: minorities must now “want to be accorded differential treatment” and must be “clearly different from the majority”, and their rights are subject to demonstrations such as “if they so choose” and being “compatible with public order and security”. Any reference to religious institutions has also disappeared in the second version, and minorities must also be clearly distinguished from the rest of the population.

37. The differences highlighted above illustrate the ongoing difficulties of achieving any sort of agreement during the drafting of the Universal Declaration, which continued until, and after, the adoption of article 27 of the International Covenant on Civil and Political Rights, both as to who can claim to be a minority and what this entails in terms of rights. It is first and foremost this back and forth on how wide a minority provision should be, in terms of those who can be considered a minority, and how deep, in the sense of the extent of the measures provided for their protection, which has made reaching a consensus on a definition so elusive.

38. A clearer and more focused definition eventually followed in 1951 when the Sub-Commission submitted to the Commission a draft resolution that included the below wording (see [E/CN.4/641-E/CN.4/Sub.2/140](#), annex I, resolution II), warning that many complexities had to be taken into account in each case:

- i. The term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;
- ii. Such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; and
- iii. Such minorities must be loyal to the State of which they are nationals.

39. Among other concerns, this definition was deemed by some members of the Commission to be too narrow (limited to nationals who needed to demonstrate their “loyalty” to the State), which meant this definition was also not retained, nor were any of the others in the ensuing decades.

4. The absence of a consensus over minorities and their rights

40. In addition to the hesitancy already mentioned, there has always been an underlying debate, if not always expressed as such, between two competing concepts regarding the protection of minorities: a broader one capable of encompassing a wider range of individuals (non-citizens, migrants, residents) but with a thinner layer of rights in relation to their language, religion or culture; and a narrower range of rights

¹⁰ There were also political dimensions to these tensions which are beyond the scope of the present report. The discussions on a minority provision for the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights occurred during a period in history during which minority proposals were criticized in a debate with a strong “Cold War” flavour, and when the concerns over the “balkanization” of a country by granting rights to ethnic groups was combined with a fear of “Sovietization”. Some States, such as France and the United States of America, thus tended to oppose individualistic human rights without any concession to vulnerable groups such as minorities as a response to what was considered the instrumentalization of minority rights debates by the Soviet Union. See Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford, Clarendon Press, 1991), p. 135.

holders, often associated with the concept of traditional or national minorities, but entitled to more extensive, deeper protective rights. To this of course must be added the not inconsiderable number of States that are not particularly sympathetic to any recognition of rights for minorities beyond general individualistic human rights standards, or that even deny the existence of any linguistic, religious or ethnic minority within their borders. These competing perceptions and concerns still exist to some degree today, though in a sense the jurisprudential clarifications in the interpretation of article 27 of the International Covenant on Civil and Political Rights by the Human Rights Committee and an interpretation of the wording of this provision in conformity with international law under the Vienna Convention on the Law of Treaties converge on a fairly clear and unambiguous result.

5. The contours of who is a minority: the choices made in the drafting of article 27 of the International Covenant

41. As a general rule of interpretation, the word “minority” must be given its ordinary meaning in its “context and in the light of its object and purpose” and a “special meaning shall be given to a term if it is established that the parties so intended”.¹¹ The extensive debates and absence of agreement demonstrate that there is no “special meaning” of the term that can be extrapolated from the numerous proposed definitions and descriptions, or in the extensive debates and draft proposals in the travaux préparatoires to what would eventually become article 27 of the International Covenant on Civil and Political Rights.¹²

42. The wording of article 27 is very significant, however, in that it represents a departure from some of the restrictions and limitations of many of the earlier definitions and descriptions of who is to be considered a minority, and also changes significantly the nature and extent of the rights they can claim. As for the former, the provision itself discards the concept of “national minority” so frequently evoked in European contexts and history.

43. From the onset, it may be useful to emphasize that the term “minority” has no meaning unless associated with some marker: individuals of a different gender, or with different political ideologies or different sexual orientations, can be a minority. Even individuals with blue eyes could claim to be a “minority” where a majority of people have brown eyes. The ordinary meaning of the term “minority” is usually a numerical one – in most languages at least, unless otherwise indicated.¹³

44. It is therefore misleading and unhelpful, in trying to define who is a minority, to refer to the term in isolation. Setting aside all the debates, disagreements and dissent at the time of the drafting of this provision, the starting point in identifying the meaning of a minority under this human rights treaty is to consider the plain meaning of the terms used. This initial step provides a first indication of the “choices made”, in that the wording of article 27 of the Covenant moves significantly away

¹¹ Vienna Convention on the Law of Treaties, art. 31.

¹² Though focused on linguistic minorities, a detailed and informative outline of the various proposals and discussions on the issue of how to define a minority can be found in Alexandre Duchêne, *Ideologies across Nations: The Construction of Linguistic Minorities at the United Nations (Language, Power and Social Progress)* (Berlin and New York, Mouton de Gruyter, 2008), in particular pp. 171–180 and 218–229.

¹³ See, for example, the definition of “minority” in the Oxford Advanced American Dictionary:

1. The smaller part of a group; less than half of the people or things in a large group;
2. A small group within a community or country that is different because of race, religion, language, etc.

The rights of ethnic/racial minorities
Minority languages
A large German-speaking minority in the east of the country.

from many of the requirements, restrictions and subjective elements contained in earlier documents:

(a) Firstly, the very beginning of the provision outlines the context in which a minority is to be defined by indicating “in those States in which ... minorities exist ...”;

(b) Secondly, it clarifies that not “all” minorities are envisaged by this provision, only linguistic, religious or ethnic minorities. It therefore moves away from earlier language which at times referred to racial or national minorities, among others;

(c) Thirdly, it discards entirely more subjective requirements which appeared in earlier proposals, including the need to be deserving of minority rights, such as by being “loyal”, “non-dominant”, “non-indigenous” or “desiring of maintaining” their identities. None of these are retained in the wording of this legally binding provision;

(d) Fourthly, it refers to individuals (“persons”) rather than to groups;

(e) Finally, it also seems to intentionally omit other restrictive suggestions, including the need to be either a national or a permanent resident of the country involved, a traditional minority or someone with some kind of long presence within the State. This last aspect is, as many have pointed out, fairly obvious, since the wording of the provision, in its plain meaning, is as should occur under article 31 of the Vienna Convention on the Law of Treaties with the use of the words “all persons ... with the other members of their group”, rather than the terms “citizens” or “nationals”, which appear in treaties intended to restrict the rights involved to these latter categories of individuals.

45. The central point to retain from the above is that, when considered in its historical context, the term minority, as defined by the final wording adopted in article 27, is expansive, in the sense that it discards all other previously proposed restrictions on those who could exercise the rights, except for omitting the category of “national minority”. The above is a textual reading of the legal provision, so it may be useful to point out that the meaning described above is neither ambiguous nor obscure, nor does it lead to a result which is manifestly absurd or unreasonable.¹⁴ It is at the same time clear and expansive: the provision guarantees certain rights to all those in a State who are members of a linguistic, religious or ethnic minority, with no other requirement or precondition, in international law based on “the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. It is noteworthy how the normal meaning of the terms involved diverge from what was suggested in the proposals of both Mr. Capotorti and Mr. Deschênes when in 1976 and 1985 they were mandated to clarify the content of article 27 of the Covenant or the definition of a minority. Later developments, and in particular the interpretation of the concept of a minority by the Human Rights Committee itself, as the expert treaty body mandated by the Human Rights Council with the application of article 27, appear to confirm this understanding as to who is a minority.

6. Jurisprudence of the Human Rights Council and its approach to article 27 and the concept of a minority

46. One important development since the attempts from the 1970s to clarify who is a minority has been the jurisprudence of the Human Rights Committee itself, since in a sense it should be the body with ultimate responsibility for clarifying the content and concepts in article 27. Almost 40 years after its first adoption of views on article 27 in 1981,¹⁵ and with its adoption of a general comment on the provision and its

¹⁴ See Vienna Convention on the Law of Treaties, art. 32.

¹⁵ Communication No. 24/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981.

jurisprudence, the Committee has in more recent years further confirmed that the textual reading of this section of the treaty, consistent with the ordinary meaning of the terms as provided for as a starting point in international law, would seem to encapsulate fairly clearly what could be described as a working understanding or definition of the concept of a minority.

47. It was, however, mainly from the 1990s on that the Committee began to adopt views on an increasing number of communications involving article 27. This permitted the Committee to produce by 1994 the following description in its general comment of who it considered to be a member of a linguistic, religious or ethnic minority:

5.1. The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2 (1) are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25. A State party may not, therefore, restrict the rights under article 27 to its citizens alone.

5.2. Article 27 confers rights on persons belonging to minorities which “exist” in a State party. Given the nature and scope of the rights envisaged under that article, it is not relevant to determine the degree of permanence that the term “exist” connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights. As any other individual in the territory of the State party, they would, also for this purpose, have the general rights, for example, to freedom of association, of assembly, and of expression. The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but rather must be established by objective criteria.¹⁶

48. The above description of who is a minority can be summarized as involving the following:

- (a) The criteria are objective, factually based and not dependent on State recognition;
- (b) There is no subjective restriction, either in terms of desire to maintain one’s identity or of being non-dominant in any particular area;
- (c) All persons belonging to an ethnic, religious or linguistic minority in a given State are included, regardless of their legal status or length of association with a State. Citizenship or temporal association with the state need not be demonstrated;
- (d) Individuals are the holders of rights under article 27, even if the interests that are involved may be collective;
- (e) The existence of an ethnic, religious or linguistic minority is not determined by a State or dependent on some form of recognition. It is established by objective criteria.

¹⁶ Human Rights Committee general comment No. 23 (1994) on the rights of minorities.

49. What is also informative in this general comment is what is missing: it did not include the requirements that appeared in some of the previous proposed definitions or descriptions, which would have restricted the rights under article 27 to more limited groups of individuals who share in common a culture, a religion and/or language; and there is no need to demonstrate loyalty to the State or non-dominance, nor is there a requirement to demonstrate some kind of subjective attachment to one's culture, religion or language. The approach put forward in the general comment is what could be described as perhaps the one of the widest, most inclusive possible: all individuals who are members of one of the three listed categories of minorities are entitled to claim the rights under article 27, "even" migrant workers or visitors. It is not restrictive with regard to requiring some link with the State or any other type of subjective or other requirement.

50. The jurisprudence of the Human Rights Committee is for its part logically coherent with the overall understanding of this concept of a minority. As has always been the case since 1947, there have been conflicting opinions expressed by various parties both within and outside the United Nations, including in some of the Human Rights Committee's own communications.

51. It should also be pointed out that the number of communications that have resulted in the adoption of views on article 27 is not particularly large. One of the main reasons for this state of affairs is that many communications involving minorities are never dealt with substantively under article 27, since they are disposed of under other human rights standards. For example, matters involving religious minorities are often considered and finalized only by reference to rights such as freedom of religion or belief, or the prohibition of discrimination on the ground of religion, and never reach the stage of being examined under article 27.¹⁷

52. Nevertheless, all of the communications appear consistent with the description of a minority in the general comment. They furthermore add additional elements as to who is a member of a minority under article 27 which were implicit if not explicitly expressed in the general comment. These can be summarized as follows:

(a) Indigenous peoples may constitute linguistic, religious or ethnic minorities in the States in which they find themselves. Most of the Committee's jurisprudence on article 27 involves indigenous peoples. This means that individuals who are members of indigenous groups may also in some countries find themselves numerically to be members of a cultural, religious and/or linguistic minority;¹⁸

(b) The "territory" to consider in determining whether or not a group is a linguistic, religious or ethnic minority is the entire State, and not one of its subunits;¹⁹

(c) One of the objective criteria, if not the main one, for determining whether a group is a minority in a State is a numerical one. A minority in the territory of a

¹⁷ For example, communication No. 694/1996, *Waldman v. Canada*, Views adopted on 3 November 1999, in relation to the funding of Jewish minority schools, and communication No. 1621/2007, *Raihman v. Latvia*, Views adopted on 28 October 2010, involving a member of the Russian minority.

¹⁸ See, among others, Communication No. 511/1992, *Lansman et al. v. Finland*, Views adopted on 26 November 1994, and 167/1984, *Ominayak and Lubicon Lake Band v. Canada*, Views adopted on 26 March 1990.

¹⁹ Communication Nos. 359/1989 and 385/1989, *Ballantyne, Davidson and McIntyre v. Canada*, Views adopted 31 March 1993 (CCPR/C/47/D/359/1989 and 385/1989/Rev.1), para. 11.2:
[T]his provision refers to minorities in States; this refers, as do all references to the "State" or to "States" in the provisions of the Covenant, to ratifying States. Further, article 50 of the Covenant provides that its provisions extend to all parts of Federal States without any limitations or exceptions. Accordingly, the minorities referred to in article 27 are minorities within such a State, and not minorities within any province. A group may constitute a majority in a province but still be a minority in a State and thus be entitled to the benefits of article 27.

State means it is not the majority. Objectively, that means that an ethnic, religious or linguistic group makes up less than half the population of a country.²⁰

53. These jurisprudential views, the Committee's own general comment and the wording of article 27, interpreted according to the rules of the Vienna Convention on the Law of Treaties, in line with the history of the discussions, descriptions and definitions over decades, do provide the necessary support for arriving at a clear working definition. Based on all of the above, the Special Rapporteur will, as part of this mandate in promoting the full and effective realization of the human rights of minorities, also use and promote the following concept of a minority, both within the United Nations and in carrying out his activities:

An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status.

IV. Conclusions and recommendations

54. In the present report, the Special Rapporteur highlighted some developments connected to his thematic priorities, as well as some of the challenges that need to be addressed in relation to those priorities, including the disturbing emergence of a potential humanitarian crisis and destabilizing situation, with the risk of millions of individuals in India being deemed to be "foreigners" and therefore non-citizens who may as a result become stateless.

55. He has also pointed out some important initiatives, such as a regional forum approach to thematic priorities as part of his mandate to promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as to examine ways and means of overcoming existing obstacles to the full and effective realization of the rights of persons belonging to minorities.

56. The Special Rapporteur has proposed a conceptual framing to clarify what constitutes a minority based on the history and formulation of the main provisions of the United Nations on minorities in order to avoid the inconsistencies, uncertainties and even contradictions that currently exist within and between United Nations entities, as well as with many States Members of the United Nations. Leaving in place a situation where there is no common understanding as to who is a minority is not an option, since it is potentially harmful to minorities by contributing to doubts as to who can claim protective rights in relation to their culture, religion or language. This has led to a rather anarchic situation, as one can see from some of the responses by United Nations entities, which have adopted widely diverging, inconsistent and at times even contradictory and restrictive stances as to who is considered to be a minority.²¹

²⁰ Ibid.: "A group may constitute a majority in a province but still be a minority in a State and thus be entitled to the benefits of article 27. English speaking citizens of Canada cannot be considered a linguistic minority."

²¹ Supplementary information to the present report contains a selection of examples of such divergence, even within United Nations system entities, as to the concept of a minority within the institutions, and is available at: https://www.ohchr.org/Documents/Issues/Minorities/SR/A74160_UN_Responses.docx.

Recommendations

57. The Special Rapporteur invites OHCHR, United Nations entities and Member States to support and collaborate in the organization of regional forums on minority issues in order to complement and enrich the work and recommendations of the Forum on Minority Issues by providing contributions and insights which are more contextualized and more accessible for stakeholders in other regions.

58. The Special Rapporteur calls upon UNHCR, the Secretary-General, the General Assembly and the Human Rights Council, as a matter of urgency in view of the risk and scale of the crisis emerging in Assam, India, with millions of members of minorities soon being deemed foreigners, treated as non-citizens and possibly finding themselves stateless, to consider immediate discussions and actions on this issue with the Government of India in order to protect the human rights of those involved and avoid what could easily become a threat to regional peace and security.

59. The Special Rapporteur invites United Nations entities to take note of the following working definition on the concept of a minority under article 27 of the International Covenant on Civil and Political Rights and of the Human Rights Committee's jurisprudence and comment on who is a member of a minority in order to adopt and apply more consistently a common approach and understanding and therefore more effectively ensure the full and effective realization of the rights of persons belonging to minorities:

An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status.

60. In this regard, he recommends in particular that OHCHR, other United Nations entities and the treaty bodies and special procedures review how they publicly describe who is considered a minority and replace their approaches with the Special Rapporteur's and Human Rights Committee's approach so as to avoid confusion and contradiction within the United Nations. In particular, he urges avoidance of the use of definitions that have previously been rejected by the United Nations Commission on Human Rights.

61. He invites in particular the United Nations network on racial discrimination and protection of minorities to take note of the views of the Special Rapporteur and Human Rights Committee on the concept of a minority and integrate their understanding, and the Special Rapporteur's working definition, into their activities and publications where appropriate.