

## APPENDIX C

# LUND RECOMMENDATIONS ON THE EFFECTIVE PARTICIPATION OF NATIONAL MINORITIES IN PUBLIC LIFE

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*See: <http://www.osce.org/hcnm/recommendations>*

## Introduction

In its Helsinki Decisions of July 1992, the Organisation for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities to be 'an instrument of conflict prevention at the earliest possible stage'. This mandate was created largely in reaction to the situation in the former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by the Heads of State and Government in November 1990.

On 1 January 1993 Mr. Max van der Stoel took up his duties as the first OSCE High Commissioner on National Minorities (HCNM). Drawing on his considerable personal experience as a former Member of Parliament, Foreign Minister of The Netherlands, Permanent Representative to the United Nations, and long-time human rights advocate, Mr. van der Stoel turned his attention to the many disputes between minorities and central authorities in Europe which had the potential, in his view, to escalate. Acting quietly through diplomatic means, the HCNM has become involved in over a dozen States, including Albania, Croatia, Estonia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, the Former Yugoslav Republic of Macedonia, Romania, Slovakia and Ukraine. His involvement has focused primarily on those situations involving persons belonging to national/ethnic groups who constitute the numerical majority in one State but the numerical minority in another State, thus engaging the interest of governmental authorities in each State and constituting a potential source of inter-State tension if not conflict. Indeed, such tensions have defined much of European history.

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and cooperative actor. While the HCNM is not a supervisory mechanism, he employs the international standards to which each State has agreed as his principal framework of analysis and the foundation of his specific recommendations. In this relation, it is important to recall the commitments undertaken by all OSCE participating States, in particular those of the 1990 Copenhagen Document of the Conference on the Human Dimension which, in Part IV, articulates detailed standards relating to national minorities. All OSCE States are also bound

by United Nations obligations relating to human rights, including minority rights, and the great majority of OSCE States are further bound by the standards of the Council of Europe.

Through the course of more than six years of intense activity, the HCNM has identified certain recurrent issues and themes which have become the subject of his attention in a number of States in which he is involved. Among these are issues of minority education and use of minority languages, in particular as matters of great importance for the maintenance and development of the identity of persons belonging to national minorities. With a view to achieving an appropriate and coherent application of relevant minority rights in the OSCE area, the HCNM requested the Foundation on Inter-Ethnic Relations—a nongovernmental organisation established in 1993 to carry out specialised activities in support of the HCNM—to bring together two groups of internationally recognised independent experts to elaborate two sets of recommendations: The Hague Recommendations regarding the Education Rights of National Minorities (1996) and the Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998). Both sets of recommendations have subsequently served as references for policy- and law-makers in a number of States. The recommendations are available (in several languages) from the Foundation on Inter-Ethnic Relations free of charge.

A third recurrent theme which has arisen in a number of situations in which the HCNM has been involved is that of forms of effective participation of national minorities in the governance of States. In order to gain a sense of the views and experiences of OSCE participating States on this issue and to allow States to share their experiences with each other, the HCNM and the OSCE's Office for Democratic Institutions and Human Rights convened a conference of all OSCE States and relevant international organisations entitled 'Governance and Participation: Integrating Diversity', which was hosted by the Swiss Confederation in Locarno from 18 to 20 October 1998. The Chairman's Statement issued at the end of the conference summarised the themes of the meeting and noted the desirability of 'concrete follow-up activities, including the further elaboration of the various concepts and mechanisms of good governance with the effective participation of minorities, leading to integration of diversity within the State'. To this end, the HCNM called upon the Foundation on Inter-Ethnic Relations, in co-operation with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, to bring together a group of internationally recognised independent experts to elaborate recommendations and outline alternatives, in line with the relevant international standards.

The result of the above initiative is The Lund Recommendations on the Effective Participation of National Minorities in Public Life—named after the Swedish city in which the experts last met and completed the recommendations. Among the experts were jurists specialising in relevant international law, political scientists specialising in constitutional orders and election systems, and sociologists specialising in minority issues. Specifically, under the Chairmanship of the Director of the Raoul Wallenberg Institute, Professor Gudmundur Alfredsson, the experts were:

- Professor Gudmundur Alfredsson (Icelandic), Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund University;
- Professor Vernon Bogdanor (British), Professor of Government, Oxford University;
- Professor Vojin Dimitrijevic (Yugoslavian), Director of the Belgrade Centre for Human Rights;

- Dr. Asbjørn Eide (Norwegian), Senior Fellow at the Norwegian Institute of Human Rights;
- Professor Yash Ghai (Kenyan), Sir YK Pao Professor of Public Law, University of Hong Kong;
- Professor Hurst Hannum (American), Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University;
- Mr. Peter Harris (South African), Senior Executive to the International Institute for Democracy and Electoral Assistance;
- Dr. Hans-Joachim Heintze (German), Director of the Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht, Ruhr-Universität Bochum;
- Professor Ruth Lapidoth (Israeli), Professor of International Law and Chairman of the Academic Committee of the Institute for European Studies, The Hebrew University of Jerusalem;
- Professor Rein Müllerson (Estonian), Chair of International Law, King's College, University of London;
- Dr. Sarlotta Pufflerova (Slovak), Director, Foundation Citizen and Minority/Minority Rights Group;
- Professor Steven Ratner (American), Professor of International Law, University of Texas;
- Dr. Andrew Reynolds (British), Assistant Professor of Government, University of Notre Dame;
- Mr. Miquel Strubell (Spanish and British), Director of the Institute of Catalan Socio-Linguistics, Generalitat de Catalunya;
- Professor Markku Suksi (Finnish), Professor of Public Law, Åbo Akademi University;
- Professor Danilo Türk (Slovene), Professor of International Law, Ljubljana University;
- Dr. Fernand de Varennes (Canadian), Senior Lecturer in Law and Director of the Asia-Pacific Centre for Human Rights and the Prevention of Ethnic Conflict, Murdoch University;
- Professor Roman Wieruszewski (Polish), Director of the Poznan Human Rights Centre, Polish Academy of Sciences.

Insofar as existing standards of minority rights are part of human rights, the starting point of the consultations among the experts was to presume compliance by States with all other human rights obligations including, in particular, freedom from discrimination. It was also presumed that the ultimate object of all human rights is the full and free development of the individual human personality in conditions of equality. Consequently, it was presumed that civil society should be open and fluid and, therefore, integrate all persons, including those belonging to national minorities. Moreover, insofar as the objective of good and democratic governance is to serve the needs and interests of the whole population, it was presumed that all governments seek to ensure the maximum opportunities for contributions from those affected by public decision-making.

The purpose of the Lund Recommendations, like The Hague and Oslo Recommendations before them, is to encourage and facilitate the adoption by States of specific measures to alleviate tensions related to national minorities and thus to serve the ultimate conflict prevention goal of the HCNM. The Lund Recommendations on the Effective Participation of National Minorities in Public Life attempt to clarify in relatively straightforward language and build upon the content of minority rights and other standards generally applicable in the situations in which the HCNM is involved. The standards have been interpreted specifically to ensure the coherence of their application in open and democratic States. The Recommendations are divided into four subheadings which group the twenty-four recommendations into general principles, participation in decision-making, self-governance, and ways of guaranteeing such effective participation in public life. The basic concep-

tual division within the Lund Recommendations follows two prongs: participation in governance of the State as a whole, and self-governance over certain local or internal affairs. A wide variety of arrangements are possible and known. In several recommendations, alternatives are suggested. All recommendations are to be interpreted in accordance with the General Principles in Part I. A more detailed explanation of each recommendation is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is found.

## I. General Principles

1. Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities. These Recommendations aim to facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.
2. These Recommendations build upon fundamental principles and rules of international law, such as respect for human dignity, equal rights, and nondiscrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights. States have a duty to respect internationally recognised human rights and the rule of law, which allow for the full development of civil society in conditions of tolerance, peace and prosperity.
3. When specific institutions are established to ensure the effective participation of minorities in public life, which can include the exercise of authority or responsibility by such institutions, they must respect the human rights of all those affected.
4. Individuals identify themselves in numerous ways in addition to their identity as members of a national minority. The decision as to whether an individual is a member of a minority, the majority or neither rests with that individual and shall not be imposed upon her or him. Moreover, no person shall suffer any disadvantage as a result of such a choice or refusal to choose.
5. When creating institutions and procedures in accordance with these Recommendations, both substance and process are important. Governmental authorities and minorities should pursue an inclusive, transparent and accountable process of consultation in order to maintain a climate of confidence. The State should encourage the public media to foster intercultural understanding and address the concerns of minorities.

## II. Participation in Decision-Making

### *A. Arrangements at the Level of the Central Government*

6. States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary. These may include, depending upon the circumstances:
  - special representation of national minorities, for example, through a reserved number of seats in one or both chambers of parliament or in parliamentary committees; and other forms of guaranteed participation in the legislative process;
  - formal or informal understandings for allocating to members of national minorities cabinet positions, seats on the supreme or constitutional court or lower courts, and positions on nominated advisory bodies or other high-level organs;

- mechanisms to ensure that minority interests are considered within relevant ministries, through, e.g., personnel addressing minority concerns or issuance of standing directives; and
- special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority.

#### *B. Elections*

7. Experience in Europe and elsewhere demonstrates the importance of the electoral process for facilitating the participation of minorities in the political sphere. States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination.
8. The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes the freedom to establish political parties based on communal identities as well as those not identified exclusively with the interests of a specific community.
9. The electoral system should facilitate minority representation and influence.
  - Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation.
  - Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities.
  - Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal cooperation.
  - Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.
10. The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.

#### *C. Arrangements at the Regional and Local Levels*

11. States should adopt measures to promote participation of national minorities at the regional and local levels such as those mentioned above regarding the level of the central government (paragraphs 6-10). The structures and decision-making processes of regional and local authorities should be made transparent and accessible in order to encourage the participation of minorities.

#### *D. Advisory and Consultative Bodies*

12. States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities. Such bodies might also include special purpose committees for addressing such issues as housing, land, education, language and culture. The composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.
13. These bodies should be able to raise issues with decisionmakers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to

the building of confidence. The effective functioning of these bodies will require that they have adequate resources.

### III. Self-Governance

14. Effective participation of minorities in public life may call for non-territorial or territorial arrangements of self-governance or a combination thereof. States should devote adequate resources to such arrangements.
15. It is essential to the success of such arrangements that governmental authorities and minorities recognize the need for central and uniform decisions in some areas of governance together with the advantages of diversity in others.
  - Functions that are generally exercised by the central authorities include defense, foreign affairs, immigration and customs, macroeconomic policy and monetary affairs.
  - Other functions, such as those identified below, may be managed by minorities or territorial administrations or shared with the central authorities.
  - Functions may be allocated asymmetrically to respond to different minority situations within the same State.
16. Institutions of self-governance, whether non-territorial or territorial, must be based on democratic principles to ensure that they genuinely reflect the views of the affected population.

#### *A. Non-Territorial Arrangements*

17. This section addresses non-territorial autonomy—often referred to as ‘personal’ or ‘cultural autonomy’—which is most likely to be useful when a group is geographically dispersed. Such divisions of authority, including control over specific subject-matter, may take place at the level of the State or within territorial arrangements. In all cases, respect for the human rights of others must be assured. Moreover, such arrangements should be assured adequate financial resources to enable performance of their public functions and should result from inclusive processes (see Recommendation 5).
18. This is not an exhaustive list of possible functions. Much will depend upon the situation, including especially the needs and expressed desires of the minority. In different situations, different subjects will be of greater or lesser interest to minorities and decisions in these fields will affect them to varying degrees. Some fields may be shared. One area of special concern for minorities is control over their own names, both for representative institutions and individual members, as provided in Article 11.1 of the Framework Convention. With regard to religion, the Recommendation does not advocate governmental interference in religious matters other than in relation to those powers (e.g. concerning personal civil status) delegated to religious authorities.

This Recommendation also does not intend that minority institutions should control the media—although persons belonging to minorities should have the possibility to create and use their own media, as guaranteed by Article 9.3 of the Framework Convention. Of course, culture has many aspects extending to fields such as welfare, housing and child care; the State should take into account minority interests in governance in these fields.

#### *B. Territorial Arrangements*

19. There is a general trend in European States towards devolution of authority and implementation of the principle of subsidiarity, such that decisions are taken as close as possible to, and by, those most directly concerned and affected. Article 4.3 of the European Charter of Local

Self-Government expresses this objective as follows:

‘Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy’.

Territorial self-government can help preserve the unity of States while increasing the level of participation and involvement of minorities by giving them a greater role in a level of government that reflects their population concentration. Federations may also accomplish this objective, as may particular autonomy arrangements within unitary States or federations. It is also possible to have mixed administrations. As noted in recommendation 15, arrangements need not be uniform across the State, but may vary according to needs and expressed desires.

20. Autonomous authorities must possess real power to make decisions at the legislative, executive or judicial levels. Authority within the State may be divided among central, regional and local authorities and also among functions. Paragraph 35 of the Copenhagen Document notes the alternatives of ‘appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances’.

This makes clear that there need not be uniformity within the State. Experience shows that powers can be divided even with respect to fields of public authority traditionally exercised by central government, including devolved powers of justice (both substantive and procedural) and powers over traditional economies. At a minimum, affected populations should be systematically involved in the exercise of such authority. At the same time, the central government must retain powers to ensure justice and equality of opportunities across the State.

21. Where powers may be devolved on a territorial basis to improve the effective participation of minorities, these powers must be exercised with due account for the minorities within these jurisdictions. Administrative and executive authorities must be accountable to the whole population of the territory. This follows from paragraph 5.2 of the Copenhagen Document which commits OSCE participating States to assure at all levels and for all persons ‘a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate’.

#### IV. Guarantees

##### A. *Constitutional and Legal Safeguards*

22. This section addresses the issue of ‘entrenchment’, that is, solidifying arrangements in law. Very detailed legal arrangements may be useful in some cases, while frameworks may be sufficient in other cases. In all cases, as noted in recommendation 5, arrangements should result from open processes. However, once concluded, stability is required in order to assure some security for those affected, especially persons belonging to national minorities. Articles 2 and 4 of the European Charter of Local Self-Government express a preference for constitutional arrangements. To achieve the desired balance between stability and flexibility, it may be useful to specify some reconsideration at fixed intervals, thereby depoliticizing the process of change in advance and making the review process less adversarial.
23. This Recommendation differs from Recommendation 22 insofar as it encourages the testing of new and innovative regimes, rather than specifying terms for alteration of existing arrangements. Responsible authorities may wish to follow different approaches in different situations among central authorities and minority representatives. Without compromising final positions, such an approach may yield good experiences, not least through the processes of innovation

and implementation.

*B. Remedies*

24. In paragraph 30 of the Copenhagen Document, OSCE participating States 'recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary'. The idea of effective remedies is also provided in Article 2.3 of the International Covenant on Civil and Political Rights, while 'a judicial remedy' is specified in Article 11 of the European Charter of Local Self-Government.

Judicial review can be performed by constitutional courts and, in effect, by relevant international human rights bodies. Non-judicial mechanisms and institutions, such as national commissions, ombudspersons, inter-ethnic or 'race' relations boards, etc., may also play critical roles, as envisaged by paragraph 27 of the Copenhagen Document, Article 14.2 of the International Convention on the Elimination of All Forms of Racial Discrimination, and paragraph 36 of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993.