

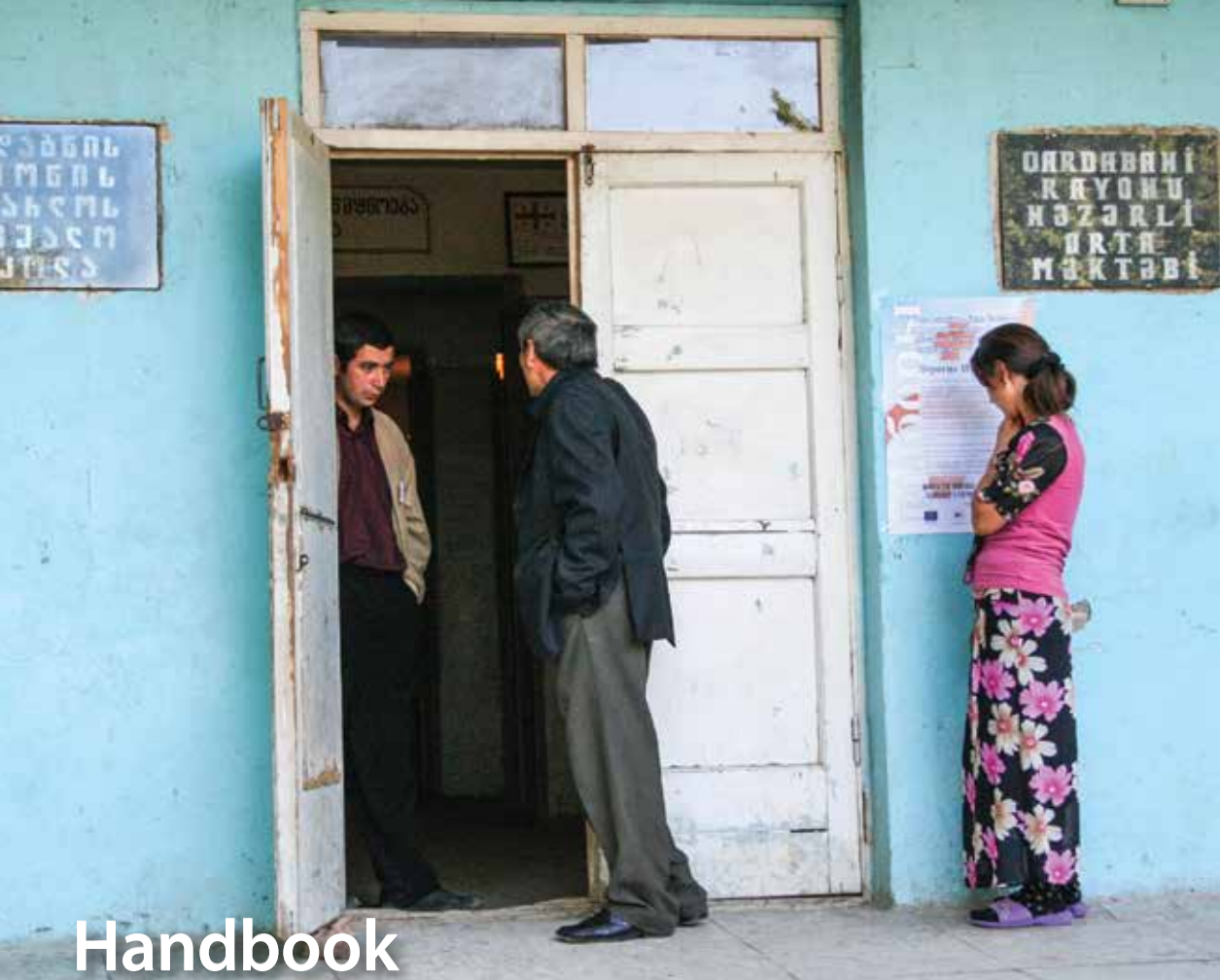
Globethics Repository

The logo for Globethics, featuring the word "Globethics" in white sans-serif font on a blue rectangular background.

Handbook On Observing and Promoting the Participation of National Minorities in Electoral Processes

This page was generated automatically upon download from the Globethics Repository.
More information on Globethics see <https://www.globethics.net>. Data and content policy
of Globethics Repository see <https://repository.globethics.net/pages/policy>.

Item Type	Book
Authors	OSCE' s Office for Democratic Institutions and Human Rights (ODIHR)
Publisher	OSCE' s Office for Democratic Institutions and Human Rights (ODIHR)
Rights	With permission of the license/copyright holder
Download date	2026-09-24 09:21:23
Link to Item	http://hdl.handle.net/20.500.12424/227296



Handbook

On Observing and Promoting the Participation of National Minorities in Electoral Processes

Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR)
Ul. Miodowa 10
00-251 Warsaw
Poland

www.osce.org/odihr

© OSCE/ODIHR 2014

All rights reserved. The contents of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of the OSCE/ODIHR as the source.

ISBN 978-92-9234-892-2

Cover photograph by OSCE/ODIHR

Designed by Nona Reuter

Printed in Poland by Poligrafus Jacek Adamiak

Handbook

on Observing and Promoting the
Participation of National Minorities
in Electoral Processes

Table of Contents

Abbreviations and Acronyms	7
Introduction	9
I. OSCE Commitments and Other Applicable International and Regional Standards on the Participation of National Minorities in Electoral Processes	13
A. Introduction	13
B. Organization for Security and Co-operation in Europe	15
C. United Nations	18
D. Council of Europe	20
II. Fundamental Civil and Political Rights Relevant to the Participation of National Minorities in Electoral Processes	25
A. Introduction	25
B. Political and Civil Rights	26
1. <i>Right to Vote</i>	26
2. <i>Right to Stand for Office</i>	27
3. <i>Freedom of Association</i>	29
4. <i>Freedom of Expression</i>	32
5. <i>Freedom of Peaceful Assembly</i>	33
C. Prohibition against Discrimination	34
III. Electoral Systems and National Minorities	37
A. Introduction	37
B. Types of Electoral Systems	38
1. <i>Majoritarian Systems</i>	39
2. <i>Proportional Representation Systems</i>	40
3. <i>Parallel Systems and Mixed-Member Proportional Systems</i>	42
C. Specific Elements of Electoral Systems that Facilitate Minority Representation	43
1. <i>Low Thresholds</i>	43
2. <i>Preferential Voting</i>	44
3. <i>Boundaries of Electoral Districts and Equitable Representation of National Minorities</i>	44

D. Special Measures	46
1. <i>Special Threshold Requirements for National Minorities</i>	46
2. <i>Dual Voting</i>	47
3. <i>Reserved Seats</i>	47
IV. ODIHR Election Observation and National Minorities	49
A. Introduction	49
B. Role of the Needs Assessment Mission	50
C. Guidance for the Core Team	53
1. <i>Provide an Overview of the Situation</i>	54
2. <i>Collect Basic Statistical Data</i>	54
3. <i>Identify and Meet Key Stakeholders</i>	55
4. <i>Analyse Voter Registration</i>	55
5. <i>Assess Civic and Voter Education</i>	56
6. <i>Follow Candidate- and Party-Nomination Processes</i>	57
7. <i>Monitor Media Coverage</i>	57
8. <i>Observe the Campaign</i>	58
9. <i>Consider the Impact of the Electoral System</i>	59
D. Guidance for Long-Term Observers	60
E. Guidance for Short-Term Observers	61
ANNEX Extracts from OSCE Commitments and other Relevant International Standards and Instruments Related to National-Minority Participation in Electoral Processes	63
1. Organization for Security and Co-operation in Europe	63
<i>CSCE, Copenhagen Document, 1990</i>	63
<i>HCNM, The Ljubljana Guidelines on Integration of Diverse Societies, 2012</i>	71
2. United Nations	72
3. Council of Europe	73
<i>Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory report, 1993</i>	73

Abbreviations and Acronyms

ACFC	Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities
AV	Alternative-vote electoral system
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EAM	Election assessment mission
EOM	Election observation mission
FCNM	Framework Convention for the Protection of National Minorities
FPTP	First-past-the-post electoral system
HCNM	OSCE High Commissioner on National Minorities
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
LEOM	Limited election observation mission
LTO	Long-term observer
MMP	Mixed member proportional electoral system
NAM	Needs assessment mission
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PR	Proportional representation electoral system
STO	Short-term observer
STV	Single transferable vote electoral system
UDHR	Universal Declaration of Human Rights
UN	United Nations

Introduction

In 2001, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) published *Guidelines to Assist National Minority Participation in the Electoral Process* (2001 Guidelines).¹ The main objective of the 2001 Guidelines was to give participating States specific advice on how they could implement the *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (Lund Recommendations) with respect to electoral processes, explaining the advantages and disadvantages of the available options.²

As some 13 years have passed since publication of the 2001 Guidelines, there is certainly good cause to revisit and update their contents. The present publication builds on the 2001 Guidelines by including new material on the development of international standards and good practice in the field of promoting the participation of national minorities in electoral processes.

In addition, this publication contains a new chapter outlining the methodology used by ODIHR election observation missions (EOMs) to observe the participation of national minorities. Included in this chapter are insights and experience gained over nearly two decades of election observation. The practical part is aimed at election observers from the OSCE in particular; observers from other organizations who are concerned with the question of participation of national minorities will find useful information on this topic that is also relevant in other electoral contexts. Owing to the inclusion of this practical part in the publication, it is released in a handbook format with the hope it will provide guidance to experts and practitioners working in this area.

By providing a solid basis for election observation methodology in this area, this publication should help ensure that assessments of minority participation in elections are carried out in a professional and consistent manner and are anchored in OSCE commitments, other applicable international standards and good practice. By bringing up-to-date information together with the most important points from the 2001 Guidelines, this publication provides, in a concise format, a broad overview of the

1 OSCE/ODIHR, *Guidelines to Assist National Minority Participation in the Electoral Process*, Warsaw, 2001.

2 HCNM, *The Lund Recommendations on the Effective Participation of National Minorities*, The Hague, 1999 (Lund Recommendations).

OSCE's approach to promoting and observing the participation of national minorities in elections.

The reader should remember, however, that the OSCE's work related to national minorities is only one part of what must be done for any real success to be achieved. The OSCE High Commissioner on National Minorities (HCNM) provides early warning on potential conflicts and advice on how to deal with rising tensions to prevent such conflicts, including through guarantees for the effective participation of national minorities. ODIHR observes the degree to which persons belonging to national minorities actually participate in elections and provides recommendations on how to overcome obstacles that may prevent them from doing so. To increase the participation and achieve adequate representation of national minorities in modern democratic states, the governments of participating States must also do much work at the national and local levels.³

As a readily accessible overview and guide, this document should also be useful for legislators and political decision makers at all levels. It can be used to support the efforts of governments, political parties and civil society groups, including those representing minority communities, to promote the effective participation of persons belonging to national minorities in public life in general, and in elections in particular.

Finally, it should be noted that this handbook is the fruit of collaborative efforts between ODIHR and the HCNM. It is based on a broad consensus that effective participation of persons belonging to national minorities in public affairs is essential for the development of a democratic society that respects human rights, promotes integration and ensures peace and stability. The development of such societies is an objective that has been recognized by the OSCE, the Council of Europe and the United Nations (UN).

This publication includes four chapters and an annex. Chapter I provides a comprehensive list of regional and international obligations relevant to the effective participation of national minorities in electoral processes. These include conventions, political commitments and other standards adopted by the OSCE, the Council of Europe and the UN to date.

Chapters II and III provide a detailed explanation of the content of each of the four election-related Lund Recommendations:

- Recommendation No. 7 addresses electoral rights, including the right to stand as a candidate and the right to vote, as well as guarantees for political participation;

³ See, generally, the Lund Recommendations; HCNM, *The Ljubljana Guidelines on Integration of Diverse Societies* (Ljubljana Guidelines), The Hague, 2012, especially Guidelines 9, 38 and 39.

- Recommendation No. 8 focuses on freedom of association and, particularly, on the right to establish community-based political parties;
- Recommendation No. 9 discusses how different electoral systems and special measures facilitate or discourage minority representation; and
- Recommendation No. 10 deals with equitable representation through the delineation of electoral districts (constituencies).

Chapters II and III also offer possible options for the promotion of minority representation in electoral processes, derived from good practice in a variety of states and taking into account specific characteristics of minority groups (composition, size, etc.).

Chapter IV describes ODIHR's election observation methodology, with a particular focus on monitoring and assessing the effective participation of national minorities.

The annex contains extracts from the main international and regional instruments related to national minorities, providing interested readers with an easy reference to these documents.

I.

OSCE Commitments and Other Applicable International and Regional Standards on the Participation of National Minorities in Electoral Processes



A. Introduction

National minorities' involvement in the various aspects of the functioning of a society is an important factor in the integration of society⁴ and in the prevention of conflicts.⁵ The need for national minorities to effectively participate in public life has been recognized in various international human rights standards.

The legal evolution of the right of persons belonging to national minorities to effective participation in electoral processes derives from two developments in international law and international relations: (1) the emergence of a right to take part in elections and (2) the recognition of the rights of national minorities to participate in public affairs and in social and economic life.

In order to facilitate the electoral participation of minorities, states should consider introducing legal provisions in their electoral laws and, if necessary, make appropriate arrangements to facilitate minority representation in elected bodies. Political parties can also play an important role in facilitating the participation of persons belonging

4 On the link between integration and conflict prevention, see, in general, the Ljubljana Guidelines. Integration is defined in the Ljubljana Guidelines as "a dynamic, multi-actor process of mutual engagement that facilitates effective participation by all members of a diverse society in the economic, political, social and cultural life, and fosters a shared and inclusive sense of belonging at national and local levels."

5 European Commission for Democracy through Law (Venice Commission), "Study on Electoral Law and National Minorities", CDL-INF(2000)4 (Strasbourg: 25 January 2000), p. 2.

to national minorities in public affairs. It is crucial that political parties select their candidates based on internal democratic processes that allow and facilitate the participation of persons belonging to national minorities.⁶ They can include minority candidates in their electoral lists in proportional representation systems or nominate individual candidates in majoritarian electoral systems, and take minority demands and concerns into account in their electoral programmes.

In addition to upholding specific standards of international human rights law on the rights to elect and be elected, general principles of equality and non-discrimination must also be respected. For example, states are obliged to prohibit discrimination and to guarantee that everyone under their jurisdiction has equal and effective protection against discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.⁷

Some of the international standards also provide for special measures in favour of disadvantaged groups. These may include sets of legal measures, policies or practices that ensure equality, non-discrimination, and inclusiveness. Recourse to special measures is considered justified if certain groups or categories of people have traditionally experienced systemic disadvantages or if *de facto* inequalities persist. It is important to note that, under international law, such measures are not prohibited by the principle of non-discrimination provided that there is an objective and reasonable justification for their application (the principle of proportionality) and that the measures do not run counter to other guaranteed human rights.⁸

The international instruments presented in the rest of this chapter have been adopted by the OSCE, the UN or the Council of Europe. International treaties are legally binding under international law upon their ratification and entry into force. These need to be integrated into the domestic legislation of each state party.⁹ Declarations, resolutions and recommendations are usually instruments of a non-binding nature.

6 See, Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), *Commentary on Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs* (Commentary on Effective Participation), adopted on 27 February 2008, ACFC/31DOC(2008)001, paragraph 78.

7 See, *Universal Declaration of Human Rights* (UDHR), Articles 2 and 7; *International Covenant on Civil and Political Rights* (ICCPR), Articles 2, 26 and 27; *International Covenant on Economic, Social and Cultural Rights* (ICESCR), Article 2; *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), Article 1; *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), Article 14; and Protocol No. 12 to the ECHR, Article 1.

8 See, for instance, Article 2 of ICERD and the third recital of the preamble to Protocol No. 12 to the ECHR. For additional commentary, see *Electoral Law* (Strasbourg: Council of Europe Publishing, 2008), pp. 96–98.

9 Compatibility of domestic law with a treaty is also important in light of Article 27 of the Vienna Convention on the Law of Treaties, which states that: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

B. The Organization for Security and Co-operation in Europe

The OSCE operates through a political process that creates politically binding norms and principles. Unlike many other human rights documents, OSCE commitments are not legally binding. While the legal enforceability of OSCE standards is limited, OSCE commitments are more than simple declarations of will or good intention; they are political promises to comply with these standards.

Deliberations on international legal documents usually mean that considerable time passes before an agreement on a final text is reached and that such final documents are subject to ratification and reservations; this is not the case with OSCE documents. Their political nature creates the unique situation where, once there is consensus among participating States, decisions enter into force immediately and are politically binding upon all OSCE participating states.

This enables the OSCE to react rapidly to emerging needs. For example, when the human rights of persons belonging to national minorities were increasingly violated in the early 1990s, the Conference on Security and Co-operation in Europe (CSCE, the OSCE's name up until 1995) was the first to adopt a comprehensive set of standards in the field of minority protection, which became an integral part of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document).¹⁰ Later, these political standards served as the basis for the legally binding Council of Europe Framework Convention on the Protection of National Minorities (FCNM). Overall, the Copenhagen Document reflected Europe's post-Cold War transformation towards representative and pluralistic democracy, the rule of law and respect for human rights and fundamental freedoms.

In the Copenhagen Document, the participating States made numerous fundamental commitments on issues concerning national minorities and democratic electoral processes, recognizing, above all, that "questions relating to national minorities can only be satisfactorily resolved in a democratic political framework." They also recognized that "respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States."¹¹ The Document also states that:

"The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities."¹²

10 CSCE, Copenhagen Document (Copenhagen: 29 June 1990), paragraphs 30–39.

11 Ibid., paragraphs 30–31.

12 Ibid., paragraph 35.

This general provision on effective participation was further developed at the CSCE Meeting of Experts on National Minorities in Geneva in 1991. The findings from the meeting were reflected in the 1991 Report of the CSCE Meeting of Experts on National Minorities (the Geneva Report), which pointed out that “appropriate democratic participation in decision-making or consultative bodies constitutes an important element of effective participation in public affairs.”¹³ Furthermore, an explicit connection was made between the Copenhagen commitment regarding election observation and national minorities. The Geneva Report states that the participating States “will consider favourably, to the extent permitted by law, the presence of observers at elections held below the national level, including in areas inhabited by national minorities, and will endeavor to facilitate their access.”¹⁴ The Report also mentions “advisory and decision-making bodies in which minorities are represented” as recommended approaches within some constitutional systems.¹⁵

Another important CSCE document concerning national minorities is the 1992 Helsinki Document: The Challenges of Change (the Helsinki Document), which established the HCNM.¹⁶ The HCNM was created as an instrument of conflict prevention in relation to national-minority issues.

In accordance with the mandate handed down in Helsinki, the HCNM can take a number of actions to investigate and respond to situations involving national minorities, including:

- collecting and receiving information regarding national minorities;
- visiting countries to obtain first-hand reports; and
- making specific recommendations regarding measures that can be taken to resolve a particular situation.

In 1996 the HCNM began to draw up thematic Recommendations and Guidelines, with the input of experts, addressed to all participating States.¹⁷ The purpose is not to create new international standards but, rather, to “interpret and elaborate the existing

13 CSCE, Geneva Report (Geneva: 19 July 1991), Chapter III, paragraph 1.

14 Ibid., Chapter III, paragraph 5.

15 Ibid., Chapter IV, paragraph 7.

16 CSCE, Helsinki Document (Helsinki: 9 July 1992).

17 In addition to the Lund Recommendations and the Ljubljana Guidelines, the HCNM has published the following sets of thematic Recommendations and Guidelines: *The Hague Recommendations Regarding the Education Rights of National Minorities* (The Hague Recommendations) (The Hague: 1996); *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities* (Oslo Recommendations) (The Hague: 1998); *Guidelines on the Use of Minority Languages in the Broadcast Media* (Media Guidelines) (The Hague: 2003); *Recommendations on Policing in Multi-Ethnic Societies* (Policing Recommendations) (The Hague: 2006); and *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* (Bolzano Recommendations) (The Hague: 2008).

international rules regarding [the] subjects [in question]”.¹⁸ The Recommendations and Guidelines aim to provide OSCE participating States with guidance and policy options on how to implement minority-rights standards effectively and coherently, thereby reducing the risk of inter-ethnic tensions.

It was in this light that the HCNM published the Lund Recommendations in 1999. While these recommendations cover a broad range of issues related to the participation of national minorities in public life, the present publication is concerned primarily with the four that deal with elections.¹⁹ In addition, the Ljubljana Guidelines address participation in public affairs as one of the key policy areas for integration.²⁰

ODIHR has at its disposal a number of instruments that it uses to deal with national-minority issues. For example, the Contact Point for Roma and Sinti Issues works specifically on a variety of problems facing Roma, Sinti and other groups throughout the OSCE region. Within this framework, ODIHR conducts fact-finding missions to participating States. In addition, ODIHR deals with a number of minority-related issues in its general human rights and democratization work, including in the areas of tolerance and non-discrimination, gender equality and freedom of assembly and association.

ODIHR also provides an important forum for states and non-governmental bodies to bring issues of compliance with OSCE commitments to light by openly discussing them at the annual Human Dimension Implementation Meeting, as well as the three annual Supplementary Human Dimension Meetings and the annual Human Dimension Seminar.²¹

18 See Max van der Stoep, “The Hague, Oslo and Lund Recommendations Regarding Minority Questions”, in M. Bergsmo (Ed.), *Human Rights and Criminal Justice for the Down-trodden: Essays in Honour of Asbjørn Eide* (Leiden, Boston: Martinus Nijhoff Publishers, 2003), p. 505.

19 Other Lund Recommendations, in particular Recommendation No. 6, could also be relevant and consulted. This Recommendation stipulates that “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.”

20 Ljubljana Guidelines, Guideline 9 (Inclusion and effective participation as principle for integration), Guideline 38 (Effective participation as key policy area) and Guideline 39 (Participation in public affairs).

21 ODIHR hosted a Human Dimension Seminar called “Case Studies on National Minority Issues: Positive Results” in 1993. A number of Supplementary Human Dimension Meetings have been dedicated specifically to Roma and Sinti issues (see, for example, <<http://www.osce.org/institutions/110011>>, and <<http://www.osce.org/odihr/33663>>). National-minority issues are also included in the Human Dimension Implementation Meetings. For more information, see the reports from individual meetings on the OSCE website: <<http://www.osce.org/odihr/44078>>.

The work with the most relevance for the subject matter at hand, however, is that of election observation.²² During two decades of election observation, ODIHR has constantly refined its methodology to take better account of a variety of issues, including gender equality and the participation of national minorities.

In examining national-minority participation in a particular election, ODIHR not only looks at the degree to which national minorities participate, but also takes full account of any obstacles that might prevent their participation. As is the case with any other aspect of an ODIHR EOM, one of its most important functions is to provide recommendations to participating States on how to overcome any shortcomings identified and further improve electoral processes. Thus, observing national-minority participation is not an end in itself; it is a means to promote and facilitate the effective participation of minorities in electoral processes by providing states with relevant recommendations.

C. United Nations

Article 1 of the UDHR states that: “All human beings are born free and equal in dignity and rights.” Article 21(1) contains the first universal formulation of the principle of participation, in a proclamation of the right of everyone “to take part in the government of his country, directly or through freely chosen representatives.” This principle stems from the UDHR’s recognition in part 3 of same article that the “will of the people shall be the basis of the authority of government.”

The right to participate in government and public affairs outlined in the non-binding UDHR has since been translated into several binding international treaties. For example, Article 25 of the ICCPR stipulates that:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.”

22 Readers interested in ODIHR’s work in the field of elections in general are encouraged to see all of ODIHR’s election-related publications as well as reports on specific elections on the OSCE website: <<http://www.osce.org/resources?activities=120>>.

Article 2 of the ICCPR also contains a provision that says that all the rights recognized in the ICCPR belong to all individuals without distinction, including “national or social origin”. In addition, Article 26 guarantees equality before the law and entitlement, without any discrimination, to equal protection of the law.

Another reference to the obligation not to discriminate on ethnic or other grounds in the enjoyment of political rights is found in the ICERD. Article 5 stipulates:

“States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...]

“(c) political rights, in particular the rights to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.”

Both the ICCPR and the ICERD not only envisage the right of everyone to participate in government and public affairs, including elections, but they make this human right applicable to everyone by prohibiting discrimination against ethnic or national minorities.

The link between the rights of people belonging to national minorities and the right to participate in public affairs is further strengthened by Article 27 of the ICCPR, which explicitly recognizes minority rights:

“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 practice their own religion, or to use their own language.”

This provision was the first in a UN treaty to recognize the rights of ethnic, religious or linguistic minorities. Article 27 does not explicitly mention the right of persons belonging to minorities to participate in public affairs, including elections. However, the ICCPR’s treaty-based body, the Human Rights Committee, refers to the effective political participation of minorities in its General Comment 25: “The right to participate in public affairs, voting rights and the right of equal access to public service” by requesting governments to take positive measures to overcome various obstacles that hamper the right to participate in public affairs, including language barriers, *inter alia* through ensuring access to voter information in minority languages.²³

23 UN Human Rights Committee, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, Article 25, CCPR/C/21/Rev.1/Add.7, 12 July 1996.

Furthermore, although not an international treaty, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, adopted by the UN General Assembly in 1992, reaffirmed “the right of persons belonging to minorities to participate effectively in cultural, religious, social, economic and public life”, including in “decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.”²⁴

D. Council of Europe

The Council of Europe was created as an organization of European states based on the principles of representative democracy, the rule of law and respect for human rights.²⁵ States are required to be genuine democracies when they are admitted and to remain as such as long as they are members.

The Council of Europe’s fundamental treaty, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), makes an important connection, albeit not explicitly, between electoral rights and the prohibition of discrimination. Article 14 establishes the principle that all the rights and freedoms set out in the ECHR shall be enjoyed without discrimination:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Electoral rights are established by Article 3 of Protocol No. 1:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

Initially, Article 3 of Protocol No. 1 was construed only as a set of obligations for states and not as a human right that could be invoked by applicants before the European Court of Human Rights (ECtHR). The Court subsequently changed this interpretation and, since 1987, has regarded Article 3 as conferring rights of participation in

24 See Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, UN General Assembly (1992), Article 2, paragraphs 2 and 3. For further information and a number of recommendations of good practices, see “Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, E/CN.4/Sub.2/AC.5/2005/2.

25 See paragraph 3 of the Preamble and Article 1 of the Statute of the Council of Europe.

the form of the right to vote and the right to stand for election. It is thus accepted that the right to participate in free elections is also a fully-fledged human right.²⁶

The Council of Europe prohibits discrimination on the basis of association with a national minority when it comes to electoral rights. Article 14 explicitly prohibits discrimination on the basis of “association with a national minority.”

Initially application of the non-discrimination principle was limited in practice, since Article 14 can be invoked in conjunction with a violation of a substantive right of the ECHR, such as an allegation of discrimination that interferes with an individual’s freedom of association or electoral rights. With the adoption of Protocol No. 12 to the ECHR, however, this has changed, as discrimination has been made a general, independent and autonomous ground for complaints. Under Protocol No. 12, a complainant can invoke allegations of discrimination without reference to specific rights contained in the ECHR.²⁷

An important aspect of human rights law under the ECHR and its protocols is their judicial protection by the ECtHR, which examines individual applications and inter-state cases. The Court’s judgments and other decisions are binding for the parties, and the execution of judgments is supervised by the Council of Europe’s Committee of Ministers.²⁸

Since the adoption of the Framework Convention for the Protection of National Minorities (FCNM) in 1995, which entered into force in 1998, the Council of Europe has been able to provide more effective protection of minority rights. The FCNM is the first international treaty devoted exclusively to the comprehensive protection of national minorities. Its supervisory mechanism is based upon examination of regular state reports by the Council’s Committee of Ministers, with the assistance of an expert body – the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC).

26 The ECtHR’s interpretation was adopted in the case of *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987. For more commentary, see A.H. Robertson and J.G. Merrills, *Human Rights in Europe* (Manchester and New York: Manchester University Press, 1994), p. 226.

27 See Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. So far it has been ratified by 18 out of 47 states-members of Council of Europe.

28 On the developments in case law on minority issues, see regular reports in the *European Yearbook of Minority Issues* (Leiden, Boston: Martinus Nijhoff Publishers).

As far as participation by national minorities is concerned, the FCNM states in Article 15:

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

There is consensus on the interpretation of Article 15 that the effective participation of persons belonging to national minorities extends to decision-making processes and elected bodies at both the national and local levels.²⁹ While agreeing that states have a margin of appreciation,³⁰ the ACFC has listed a whole range of special measures that can be taken by states for the purpose of achieving equal rights for national minorities and overcoming discrimination against them.

In commenting on state reports under the FCNM, the ACFC has developed a catalogue of good practices that have a bearing on the interpretation and application of the four Lund Recommendations under consideration in this handbook. These good practices relate, *inter alia*, to protecting national minorities under constitutional law; drawing electoral-district boundaries; introducing lower electoral thresholds and reserved seats; protecting numerically small minorities; facilitating the access to citizenship and protecting the rights of non-citizens; setting up special institutions or committees in parliaments and the executive branches of governments; and representation resulting in real influence in elected bodies.³¹

In 2008, the ACFC adopted the Commentary on Effective Participation. Its purpose is to set out the Advisory Committee’s interpretation of the provisions within the FCNM relating to the effective participation of persons belonging to national minorities, as stipulated in Article 15 of the FCNM, drawing on the Advisory Committee’s country-specific Opinions adopted between 1999 and 2007. The Commentary on Effective Participation is a useful tool for state authorities and decision makers, public officials, civil society organizations, including those representing minority communities, academics and other stakeholders involved in minority protection.³²

29 See, generally, Commentary on Effective Participation, paragraphs 90–93.

30 The term “margin of appreciation” refers to the room for discretion that the Council of Europe is willing to grant national authorities in fulfilling their obligations under the ECHR. For more information, see “Margin of Appreciation” on the Council of Europe website at: <http://www.coe.int/t/dghl/cooperation/lisbonnetwork/Themis/ECHR/Paper2_en.asp>.

31 See, country reports, ACFC opinions and resolutions of the Committee of Ministers at the ACFC website: <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp>.

32 See note 6 *supra*.

In 2012, the ACFC adopted the Commentary on the Language Rights of Persons Belonging to National Minorities (the Commentary on Language Rights) that, *inter alia*, deals with language rights and effective participation in public affairs.³³

Another important source of guidelines and thematic recommendations is the European Commission for Democracy through Law (the Venice Commission). The Venice Commission has issued a number of general and thematic reports on electoral participation by national minorities and several reports on minority participation in individual states.³⁴ These reports reflect a common European electoral heritage, provide useful lists of good practices and often indicate areas for possible improvements. In one of its most important documents on electoral matters, the Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (the Code of Good Practice in Electoral Matters), the Venice Commission devotes significant attention to electoral practices in relation to national minorities. The Code states that:

- Parties representing national minorities must be permitted;
- Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat-allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not, in principle, run counter to equal suffrage; and
- Neither candidates nor voters must be obliged to reveal that they belong to a national minority.³⁵

33 See ACFC, Commentary on Language Rights, adopted on 24 May 2012, ACFC/44DOC(2012)001 rev.

34 See Venice Commission, Electoral Law and National Minorities, CDL-INF (2000) 004, 25 January 2000; Report on Electoral Rules and Affirmative Action for National Minorities' Participation in Decision Making Process in European Countries, Study No. 307/2004, Document CDL-AD (2005)009, 15 March 2005; Report on Non Citizens and Minority Rights, Study No. 294/2004, Document CDL-AD(2007)001, 18 January 2007; and Report on Dual Voting for Persons Belonging to National Minorities, Study No. 387/2006, Document CDL AD (2008)013, 16 June 2008. All of these reports are available on the Venice Commission's website: <<http://www.venice.coe.int/webforms/events/>>.

35 Venice Commission, *Code of Good Practice in Electoral Matters*, Opinion No. 190/2002, Document CDL AD (2002)023, 23 May 2003, point 2.4 and the respective part of the Explanatory Report thereto.



II. *Fundamental Civil and Political Rights Relevant to the Participation of National Minorities in Electoral Processes*

A. Introduction

Lund Recommendation No. 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.”

Lund Recommendation No. 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 interest of a specific community.”

In order to establish and maintain a democracy, a whole range of fundamental civil and political rights must be guaranteed, including the rights to form political parties and other associations, to express political opinions, to campaign, to exercise freedom of assembly, to stand for public office and to express one’s will “freely and fairly ... through periodic and genuine elections.”³⁶ No restrictions may be placed on the

36

Copenhagen Document, paragraph 6.

exercise of these rights other than those that are prescribed by law and are necessary in a democratic society to achieve a small number of narrowly defined aims, such as those related to national security or public safety, or to protect the rights of others.

Limitations are permissible only when they pursue an aim that is legitimate under international law, and they must not go beyond what is proportional to the justified needs underlying the restrictions. Any such restrictions must, therefore, be interpreted and applied carefully so that they do not lead to violations of human rights standards and, specifically, do not negatively impact the equal rights of national minorities to participate in public life. Restrictions of freedoms on the grounds of national security should be subjected to strict scrutiny to ensure their validity, proportionality and compliance with international standards.

Whenever restrictions are placed on an individual's electoral rights, that person should have access to an independent and effective judicial remedy at both the national and international levels, in order to establish the legitimacy of the restriction and its compliance with international standards.

B. Political and Civil Rights

1. Right to Vote

Paragraph 7.3 of the Copenhagen Document states that OSCE participating States commit to “guarantee universal and equal suffrage to adult citizens.” Paragraph 7.4 commits states to “ensure that votes are cast by secret ballot or by equivalent free voting procedure.” These commitments are fundamental to a genuinely democratic election and are of key importance to national minorities, given their often vulnerable position in society, which can expose them to political pressure. OSCE participating States must take all necessary steps to ensure that voters belonging to a national minority enjoy universal and equal suffrage and that their right to vote in secret is respected.

Paragraph 34 of the Copenhagen Document commits OSCE participating States to “endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.” For instance, participating States could consider facilitating the efforts of citizens belonging to national minorities to exercise their right to vote by introducing targeted measures to overcome specific difficulties, such as language barriers, including by providing readily accessible

information and materials about voting in minority languages in areas inhabited by minorities.³⁷

While states often limit the right to vote in national elections to their citizens, this approach may constitute a human rights problem if citizenship and electoral legislation are unduly restrictive. In particular, this can be a source of tensions with respect to states where the population includes a large share of non-citizens, including persons belonging to national minorities. Disproportionate restrictions may take different forms, such as by making it administratively difficult or financially burdensome for members of an ethnic group to become citizens. While citizenship requirements can be applied in relation to parliamentary elections, participating States are encouraged to provide non-citizens belonging to national minorities with the possibility to vote and to stand as candidates in local elections.³⁸

The ACFC has recommended the adoption of measures that would make the process of naturalization more accessible.³⁹

There may also be other conditions on the right to vote related to residence requirements that may limit the right of persons belonging to national minorities to vote. While these requirements are allowed, in principle, they should be reasonable and should take into account the special situation of minorities.⁴⁰

2. Right to Stand for Office

In paragraph 7.5 of the Copenhagen Document, the OSCE participating States committed to “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”

37 General Comment 25 states that “[...] positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice”, paragraph 12. See also: Commentary on Effective Participation, paragraph 17, and Ljubljana Guidelines, explanatory note to Guideline 27.

38 Commentary on Effective Participation, paragraph 101; Venice Commission, *Report on Non-Citizens and Minority Rights*, Study No. 294/ 2004, Document CDL-AD(2007)001, 18 January 2007. See also: OSCE Parliamentary Assembly, the Edinburgh Declaration of the OSCE Parliamentary Assembly, July 2004, available at: <www.oscepa.org/meetings/annual-sessions/2004-edinburgh-annual-session>; Congress of Local and Regional Authorities of the Council of Europe, “Local democracy in Latvia: the participation of non citizens in public and political life at local level”, Recommendation 257 (2008), available at: <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1613800&SecMode=1&DocId=1328420&Usage=2>>; and Statement by the OSCE High Commissioner on National Minorities to the OSCE Permanent Council, 26 June 2008, <<http://www.osce.org/hcnm/32569?download=true>>.

39 See Resolution ResCMN(2006)1 on Estonia’s implementation of the FCNM, adopted by the Committee of Ministers on 15 February 2006.

40 General Comment 25, paragraph 11.

The right to stand for public office should be constitutionally guaranteed. General restrictions to this right should be interpreted and applied carefully to ensure that persons belonging to national minorities are not unreasonably or disproportionately barred from standing for public or political office.⁴¹ In some countries, language proficiency in the state language is required of heads of state and/or government. In that case, the legislation should provide for clear, minimum, objective and reasonable criteria for transparent evaluation of language fluency.⁴²

Notwithstanding the need to learn the official language or languages of the state concerned,⁴³ language requirements for the registration of aspiring candidates in parliamentary and local elections raise issues of compatibility with Article 15 of the FCNM, as they may negatively affect the participation of persons belonging to national minorities.⁴⁴ Excluding candidates from running for seats in a national or local legislature on purely linguistic grounds could also potentially violate Article 25 of the ICCPR. There have been instances where the application of such requirements has been found to be in violation of international standards.⁴⁵

Special measures to promote the election of national-minority candidates to public office should be encouraged. For example, experience has shown that lowering the number of supporting signatures required for the registration of candidates from national-minority parties can be an effective special measure. This could also be combined with an exemption from the requirement to surpass a nationwide threshold in proportional representation systems. When determining the size of electoral deposits, contribution and spending limits, eligibility thresholds and other parameters of electoral frameworks, states should consider their impact on the participation of candidates belonging to national minorities and, if needed, take targeted measures to ensure that the right to effective participation of minorities in the electoral processes is not unduly restricted.

41 See the ECtHR's judgment in the case of *Sejdić and Finci v. Bosnia and Herzegovina* (Nos. 27996/06 and 34836/06), 22 December 2009. Constitutional limitations on the right to stand for office for only "constituent people" were ruled discriminatory.

42 See OSCE/ODIHR Final Report, Republic of Kazakhstan, Early Presidential Election of 3 April 2011, <<http://www.osce.org/odihr/elections/78714>>, OSCE/ODIHR Final Report, Kyrgyz Republic, Presidential Election of 29 October 2000, <<http://www.osce.org/odihr/elections/kyrgyzstan/15802>>, and OSCE/ODIHR Final Report, Kyrgyz Republic, Presidential Election of 10 July 2005, <<http://www.osce.org/odihr/elections/17661>>.

43 See Copenhagen Document, paragraph 34; FCNM, Article 14.3.

44 See ACFC Commentary on Effective Participation, paragraph 102, and Commentary on Language Rights, paragraph 92.

45 See UN Human Rights Committee, *Ignatane v. Latvia* (No. 884/1999), 25 July 2001, where limitations to the right to stand for office based on language requirements were ruled a violation of Article 25 of the ICCPR because they were not based on objective criteria and were not applied in a procedurally objective manner. Also see the ECtHR's judgment in *Podkolzina v. Latvia* (No. 46726/99), 9 April 2002.

In some instances, special measures aimed at promoting minority participation may be instrumentalized by persons with no link to a national minority, creating a need to establish some restrictions or criteria for such special measures. While these restrictions may be justified, it is important that they remain proportional to the aim of preventing abuses.

3. Freedom of Association

The freedom of association is an indispensable part of the democratic process, including for the participation of national minorities in elections. It guarantees the right to establish political parties and civil-society groups, such as non-governmental organizations (NGOs) and community-based associations. Such public associations may support or represent national minorities.

The concept of freedom of association includes the rights to: (a) form a political party or association; (b) join a political party or association; and (c) participate in the lawful activities of a political party or association, which includes the right to canvas and campaign on behalf of a political party. These rights can be specified in a state's constitution or (least advisably) through ordinary legislation or elaboration by the courts.

States must comply with international law on freedom of association. This is set forth in a series of international human rights instruments, including ratified treaties and politically binding documents.⁴⁶

Furthermore, according to paragraph 7.6 of the Copenhagen Document, the OSCE participating States have agreed to “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.”

International law concerning freedom of association implies that individuals and their associations are free to: (a) associate with any person, whether a citizen, resident, refugee or foreigner; (b) form an association; (c) determine the purpose, defining characteristics and internal rules of the association; and (d) decide, on a non-discriminatory basis, who may join or who may not join the association.⁴⁷

46 These include the Copenhagen Document, paragraphs 7.6, 32.6, 35 and 38; the ICCPR, Article 22; the ECHR, Article 11; the FCNM, Article 7; and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, Article 2.

47 See Article 3, paragraph 1, of the FCNM, which states: “Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”

This approach applies to all associations, including political parties. It also applies to cultural and community associations that represent national minorities and NGOs that support minorities. Although states may encourage associations to diversify their membership, a state should respect the rights of national minorities to establish associations, including political parties, based on minority or communal identities.⁴⁸

The right to self-identification for minorities is important.⁴⁹ The practice of arbitrarily denying the existence of minority groups or imposing ethnic affiliation on persons belonging to national minorities should not be allowed.⁵⁰ Associations or political parties based on such self-identification can be established by minority groups.⁵¹ While each state is entitled to find the best way to respond to the diversity of interests of its citizens, it must ensure full respect for freedom of association. As long as the activities of individuals mobilizing communities along identity lines to form a political party do not call for, or resort to, violence, there should be no impediment to them associating in that manner.

Any restrictions to the freedom of association must be kept within the limitations set under international human rights law, which means that they must be clearly justifiable for exceptional circumstances and be proportional to the circumstances in

48 See Article 2 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, which states: “persons belonging to minorities have the right to establish and maintain their own associations.” Also see paragraph 33 of the UN General Assembly recommendations of the second session of the Forum on Minority Issues on minorities and effective participation, which states: “political parties based primarily on minority or regional affiliation should not be prohibited solely for this reason. Nevertheless, narrowly drawn restrictions may be placed on the advocacy of violence to achieve political goals or on political platforms that incite hatred or discrimination.” See United Nations Forum on Minority Issues Compilation of Recommendations of the First Four Sessions 2008 to 2011. Available at: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/MinorityIssues/Forum_On_Minority_Pub_en_low.pdf>. In addition, see also Venice Commission, *Code of Good Practice in Electoral Matters*, Opinion No. 190/2002, Document CDL AD (2002)023, 23 May 2003, point 2.4 and the respective part of the Explanatory Report thereto.

49 See Article 3, paragraph 1, of the FCNM, which states: “Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.” See also the Ljubljana Guidelines, Guideline 6, which states that “identities are subject to the primacy of individual choice through the principle of voluntary self-identification. Minority rights include the right of individual members of minority communities to choose to be treated or not be treated as such. No disadvantage shall result from such a choice or the refusal to choose. No restriction should be placed on this freedom of choice.”

50 In *Giubotaru v. Moldova* (App.no.27138/2004, 27 April 2010), the ECtHR considered that ethnic identity is to be based not only on the subjective perception of the individual, but also on objective criteria.

51 In a landmark decision, the ECtHR unanimously held in July 1998 that the refusal by Greek courts to register a Macedonian cultural association was an interference with the applicants’ exercise of their right to freedom of association. The Court stated unequivocally that “the right to form an association is an inherent part” of the right to freedom of association. “That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which the right would be deprived of any meaning.” See judgment in *Sidiropoulos & Others v. Greece* (No. 26695/95), 10 July 1998.

question. All restrictions must be interpreted and applied narrowly and carefully to ensure that they do not lead to violations of international standards by negatively impacting the effective participation of national minorities in public life. The state's interference may be justified only if it fulfils the following conditions: the interference is prescribed by law; the law permits interference only on the grounds of national security, public order or safety, the protection of health or morals, or the protection of the rights of others; and it is necessary in a democratic society. The same conclusion stems from comparative constitutional law; any interference with the freedom should be strictly scrutinized.⁵² In addition, it should be possible to contest any such limitations before independent and impartial courts.

Justifications for restrictions on associations promoting the interests of national minorities often invoke national security. Unless the association promotes the use of violence to achieve its objectives, the restriction is unlikely to be justifiable as a threat to national security. The ECtHR has consistently held that, unless there is a call to use violence or otherwise challenge democracy, an association that seeks to change the existing structures of the state peacefully and democratically does not, on that ground alone, threaten national security.⁵³ The fact that a political party seeks to mobilize a national minority to pursue its interests does not of itself justify interference.⁵⁴

While full respect for equal rights and non-discrimination may reduce or even eliminate the demand for political parties formed on the basis of ethnic ties, in some situations such communal parties may be the only hope for effective representation of specific interests and, thus, promote the effective participation of national minorities. At the same time, all parties should be open and should seek to include members of minorities, but ethnic parties are also bound, like any other actor, by the prohibition against discrimination.⁵⁵ Moreover, inter-community political platforms can play

52 For the approach adopted by the ECtHR, see its judgment in *Sidiropoulos & Others v. Greece* (No. 26695/95), 10 July 1998, where, in paragraph 38, the ECtHR states that: “[e]xceptions to freedom of association must be narrowly interpreted.”

53 In *The Socialist Party & Others v. Turkey* (No. 26482/95), 25 May 1998, the ECtHR held, in paragraph 47, that the fact that a political party's “political programme is considered incompatible with the current principles and structures of the ... State does not make it incompatible with the rules of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way the State is currently organized, provided that they do not harm democracy itself.”

54 See the ECtHR's judgment in *Stankov et al. v. Bulgaria* (No.68490/01), 12 July 2007, in which the ECtHR held that: “the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security,” paragraph 97.

55 Ljubljana Guidelines, Guideline 27 and explanatory note to Guideline 39; Commentary on Participation, paragraph 78.

an important role in promoting the integration of society and the effective participation of minorities.⁵⁶

Although it is usually left to the state to decide whether it wishes to curtail the activities of an association on legal grounds, states have positive obligations to prohibit certain activities, which may necessitate the banning of associations themselves. Article 4 of the ICERD requires states to adopt positive measures, such as prohibiting organizations that promote and incite racial discrimination.⁵⁷

4. Freedom of Expression

Freedom of expression is a cornerstone of democracy. It is fundamental to ensuring that national minorities can participate effectively in public life. The right to freedom of expression is closely related to the right to freely impart information, which is important for national minorities as a means to uphold their cultural identity.⁵⁸

At the UN level, the right is secured in Article 19 of the ICCPR, which states that everyone has the right to hold opinions without interference and the right to freedom of expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the person's choice. Paragraph 9.1 of the Copenhagen Document specifically mentions that the right to freedom of expression "will include freedom [...] to receive and impart information and ideas without interference by public authority and regardless of frontiers."

Notably, international standards provide for the right of national minorities to conduct election campaigns in their mother tongues. Paragraph 32.1 of the Copenhagen Document commits participating States to grant national minorities the right "to use freely their mother tongue in private as well as in public." According to paragraph 32.5, national minorities have the right "to disseminate, have access to and exchange information in their mother tongue."⁵⁹ It is the state's responsibility to ensure that national minorities have reasonable access to public media to express their views, including through use of their mother tongue in election campaigns.⁶⁰

56 Ljubljana Guidelines, explanatory note to Guideline 39.

57 See also a recent judgment of the ECtHR in *Vona v. Hungary* (No. 35943/10), 9 July 2013, where the Court ruled that an association can be banned lawfully if its activities amount to widespread racist intimidation of a group.

58 See, *inter alia*, FCNM, Articles 6 and 9; the Media Guidelines; and the Ljubljana Guidelines, Guideline 48.

59 See also FCNM, Article 9, paragraph 1 and the Code of Good Practice in Electoral Matters, paragraph I.3.

60 See the ECtHR's position in *Şükran Aydın and Others v. Turkey* (No. 49197/06), 22 January 2013. Accepting, in principle, that States are entitled to regulate the use of languages during election campaigns, the ECtHR noted, however, that a total prohibition of the use of unofficial languages coupled with criminal sanctions is not compatible with freedom of expression.

A broadly recognized restriction on the freedom of speech includes the prohibition of hate speech,⁶¹ incitement to violence and the promotion of terrorism. In paragraph 6 of the Copenhagen Document, the OSCE participating States “recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.” Article 20.2 of the ICCPR says that “[a]ny advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”⁶²

5. Freedom of Peaceful Assembly

The right to hold political meetings is a fundamental component of democracy. The right extends to the right to demonstrate and to protest peacefully. Any regulation of the freedom of assembly should be limited to requiring that the relevant authorities are notified. It should not extend to requiring that prior permission be sought from those authorities.

This freedom should be guaranteed constitutionally. It can be restricted for legitimate purposes, such as the maintenance of public order. Restrictions must not, however, go beyond what is strictly necessary and proportional to the needs underlying the restriction, nor should they last longer than necessary. The difficulty with such restrictions is their application. The determination of when a public meeting or a protest should be prohibited is often left to the police or state officials, but legislation should contain clear regulations on the conditions under which such decisions can be made. There should also be the possibility to have prohibitions of demonstrations and other exercises of the freedom of association reviewed by independent courts in a timely manner. If such effective remedies do not exist, then the freedom of assembly may be abrogated in practice.⁶³

The freedom of peaceful assembly may also be undermined by unequal or discriminatory practices if political parties or other associations representing national minorities are not allowed to use available public facilities, such as town halls or sports stadiums, on an equal basis with other political parties and/or associations.

61 See, generally, “International and Comparative Law on Hate Speech”, Ace Project website, <<http://aceproject.org/ace-en/topics/me/mea/mec03d/mec03d01>>.

62 See ICERD, Article 4.

63 For more information on this topic, see *Guidelines on Freedom of Peaceful Assembly* (Warsaw: ODHR, Venice Commission), 2010.

C. Prohibition against Discrimination

Non-discrimination is a cross-cutting human rights principle that should underpin the exercise of any human rights, including those of persons belonging to national minorities. Paragraph 7.5 of the Copenhagen Document requires that “participating States [...] respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”

The individual right to participate in public life, including in elections as voters and candidates, must be extended to all citizens, regardless of ethnicity, mother tongue or religion.⁶⁴ This right should be applied on an equal basis, with no discrimination in the law or its implementation.⁶⁵ Although the right to participate in public life needs to be enshrined in legislation, it is also necessary to ensure that there are no administrative barriers that prevent people belonging to national minorities from fully exercising this right. It should be possible to challenge any such barriers before independent and impartial courts.

Citizenship is normally a requirement for eligibility to run for public office and for the right to vote.⁶⁶ A requirement that both parents must be citizens to acquire citizenship may result in discrimination against individuals from minority groups, particularly those who live in border areas. Restrictions on dual citizenship may also affect the right of people belonging to national minorities to participate in public life.

64 See *Aziz v. Cyprus* (No. 69949/01), ECtHR 2004-V. The applicant was unable to vote in the 2001 parliamentary elections on the grounds that, under Cyprus’s Constitution, members of the Turkish Cypriot community were excluded from the Greek Cypriot electoral roll. The ECtHR found this to be a violation of Article 14 (prohibition of discrimination) of the ECHR, taken together with Article 3 of Protocol No. 1 to the ECHR. The ECtHR reiterated that States have considerable latitude to establish rules for parliamentary elections, but such rules have to be justified on reasonable and objective grounds. The difference in treatment of which the applicant complained, resulting from the fact that he was a Turkish Cypriot, could not be justified on reasonable and objective grounds, particularly in the light of the fact that Turkish Cypriots in the applicant’s situation had been prevented from voting at any parliamentary election.

65 Discrimination need not be deliberate. In certain circumstances, seemingly objective criteria may result in indirect discrimination. For example, registration of residence is a common requirement for an individual to be eligible to vote. Such a requirement can, however, lead to discrimination against nomadic groups and internally displaced people, who often belong to national minorities. Participating States should be mindful of such specific circumstances and seek ways to avoid possible unintentional discrimination.

66 Many States have entered into international treaties that promote the participation of non-citizens in sub-national or supranational elections. An example is the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level, which entered into force in 1997, <<http://conventions.coe.int/Treaty/en/Treaties/Word/144.doc>>. While there continue to be general discussions about extending the right to vote to non-citizens, there is a growing trend among European Union (EU) Member States to extend the franchise. In EU Member States, permanent residents who are precluded from national elections are entitled to vote in elections for the European Parliament and, on occasion, in local elections.

To guarantee non-discrimination, states should, among other things, ensure that:

- › National-minority communities are duly informed, in their mother tongues if possible, of their right to participate in public life and of how this right is best exercised;
- › National-minority representatives are not unreasonably or disproportionately barred from standing for public or political office;
- › Any restrictions on the freedom of association and assembly are kept within the limitations set under international human rights law, and are clearly justifiable for exceptional circumstances and proportional to the circumstances in question;
- › National minorities are represented in electoral administration bodies. The rules for the composition of electoral administration bodies should not create barriers to the participation of national minorities;⁶⁷
- › The voter registration process is administered in such a way to ensure that persons belonging to a national minority are not discriminated against;⁶⁸
- › Discrimination and incitement to violence are openly and officially discouraged, including through prevention and sanctions against offenders;
- › Funding of political parties, including domestic and foreign funding, is regulated in a way that prevents discrimination against national minorities and political parties or civic groups associated with them;
- › The collection of signatures by prospective candidates is regulated in a manner or form that does not result in discrimination against minority groups;
- › Requirements for parties to field candidates and/or register offices in a specified number of electoral constituencies or administrative regions are not discriminatory, especially if these requirements extend beyond the area where most of the members of a minority are living;
- › There is no restriction on campaigning in a particular language; and
- › Language proficiency requirements are not used to deny registration as a voter or as a candidate.

67 Code of Good Practice in Electoral Matters, paragraph 3.1 d (iv).

68 See Chapter VII. A of the *Handbook for the Observation of Voter Registration* (Warsaw: ODIHR, 2011), <<http://www.osce.org/odihr/elections/92058>>.



III.

Electoral Systems and National Minorities

A. Introduction

Lund Recommendation No. 9:

“The electoral system should facilitate minority representation and influence. (1) Where minorities are concentrated territorially, single member districts may provide sufficient minority representation. (2) 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. (3) Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal co-operation. (4) Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.”

Lund Recommendation No. 10:

“The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.”

The purpose of electoral systems is to translate ballots cast in popular votes into seats won by political parties and candidates in representative institutions.⁶⁹ Each electoral system is based on one or several electoral constituencies or districts, which

⁶⁹ Notably, according to paragraph 7.2 of the Copenhagen Document, “participating States will ... permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote”.

represent an essential element of the system. There are no international standards on electoral systems and the choice of an electoral system is considered to be a sovereign decision of each state. Within the OSCE region, all electoral systems are acceptable, so long as they comply with OSCE commitments.

The choice of an electoral system is fundamentally an outcome of a political process, and resulting choices are hardly neutral. Generally, in a democratic society it is preferable that the electoral system be the result of an open, inclusive and transparent process that involves a wide array of election stakeholders, particularly political parties, but also civil-society representatives, including election experts and groups representing the interests of women and minorities. Building consensus on the choice of an electoral system should contribute to the acceptance, legitimacy and stability of the system, thus minimizing accusations of partisanship. Furthermore, such an inclusive process provides a good opportunity for debating different options to ensure meaningful representation of national minorities in elected posts. Ultimately, democratic states should strive to adopt an electoral system that is aimed at resulting in the most representative government possible. This is especially important for persons belonging to national minorities, who might otherwise not have adequate representation and influence.

It is important to underscore that the extent to which electoral-system design might impact national-minority representation depends considerably on the country-specific context. National minorities may also adopt various strategies for their participation in public affairs, including in the political process. It should not be assumed that such interests are restricted to choices exclusively based along community lines. Ideally, electoral systems that facilitate minority representation and meaningful participation impacting on the political process should also strive to allow open competition for votes among all sectors of society. As such, inter-community political platforms can play an important role not only in promoting minority participation, but also in fostering better integration of a society.⁷⁰

B. Types of Electoral Systems

Electoral systems can be divided roughly into three main categories. The first comprises *majoritarian* systems of representation, characterized by competition between individuals. The second includes *proportional* systems of representation, characterized by competition between political parties represented by lists of candidates. There are also electoral systems that combine elements of majoritarian and proportional systems, *parallel* and *mixed member systems*. The choice of one of these electoral systems and the specifics of their practical design may have an impact on the representation of national minorities: some may limit minority representation, while others

70 See Explanatory note to Guideline 39 of the Ljubljana Guidelines.

may facilitate it. The sub-sections below examine the possible effects of the various systems.

1. Majoritarian Systems

There are two main majoritarian systems in common use. The first is the *plurality* or *first-past-the-post* (FPTP) system, while the second is often called the *majority* system. With the FPTP system, the candidate who receives the largest number of votes in an electoral district becomes the elected representative for that district. With a majority system, a candidate needs to win more than 50 per cent of all valid votes cast to be elected in the first round. If none of the candidates collects an absolute majority, then a second round is organized between the two candidates garnering the largest number of votes in the first round. The candidate who receives the largest number of votes in the second round is the winner and becomes the elected representative for the district.

Majoritarian systems are simple and easy for citizens to understand. It has been argued that they generally ensure a strong link of accountability between elected representatives and their constituencies, and that they are more likely to produce stable majorities. On the other hand, majoritarian systems, and especially FPTP systems, may lead to the marginalization of smaller parties, resulting in a bipolarization of political life. They may result in a majority of legislators being elected with less than half of the votes, which could raise questions about the inclusiveness and representativeness of the elected body.

In most cases, those majoritarian systems that are based on single-seat electoral districts will only be advantageous for minority representation in states where minorities are concentrated territorially. If minorities are concentrated territorially, with a sufficient number of persons belonging to national minorities registered as voters in the territory, and there is a majority system, then the chances of a person belonging to that minority being elected are enhanced. If a national minority community is dispersed throughout the state, it would not necessarily be ensured representation because there may not be sufficient votes to ensure a national-minority winner in any of the single-seat districts.

The representation of a sizable concentrated national minority achieved in a single-seat district may prove to be less than the representation that would be achieved under a proportional system, as majoritarian candidates may receive more votes than are necessary to win seats. In other words, such districts may prove to be non-competitive, in the sense that people from the locally dominant ethnic group would always be elected. This may also result in the compartmentalization of national minorities or the emergence of tensions between communities. Furthermore, in cases where voters' preferences are split across more than one national-minority party,

the fragmentation of their votes may produce the opposite result and lead to a national minority being under-represented, even if it is the largest group in that constituency.

There are also implications for national minorities in the choice between FPTP and majority systems. In a FPTP system, there is no incentive to seek votes across constituencies if the national minority represents the largest percentage of voters but not the majority. In a majority system, there could be an incentive to seek votes outside the national minority in order to acquire the required majority.

Another, less common type of majoritarian system is the Alternative Vote (AV), which is applied in single-member districts (as such AV can be considered a variant of a preferential voting in a majoritarian system). This gives voters more voting options and, depending on the number of voting preferences granted to voters, may allow them to rank several choices of candidates in order of preference. Under the AV system, voters rank the candidates in order by marking their first, second and subsequent choices as allowed by the law. Under the AV system, if no candidate receives a majority of the first choices, the second and subsequent choices are counted. The number of votes required for a candidate to win depends on the particular AV system. In some cases, a plurality of votes may be sufficient to win. In other AV systems, however, the counting of subsequent choices continues until a candidate has a majority. In some circumstances, such a system presents candidates with a strong incentive to try to attract second preferences from voters from other groups. This is because winners need to gain additional votes under AV rules. Candidates who successfully pool first preferences and get the second preferences from other groups may be more successful than those who fail to attract any second preferences. Therefore, under AV, national-minority candidates may receive the second or subsequent preference votes of voters who did not choose such candidates as their first preference, possibly increasing minority representation.

2. Proportional Representation Systems

Proportional representation (PR) systems have been developed in order to ensure the representation of political parties in proportion to their popularity. Seats are allocated proportionally to the share of the votes received in a nationwide constituency or in regional electoral districts. PR systems can, therefore, be national or regional. Seats can be allocated within a single electoral district, which coincides with the entire territory of the state, or within multi-seat electoral districts. Although more inclusive, it has been argued that PR systems may lead to more fragmented parliaments and less stable majorities. However, many countries with PR systems have not experienced problems with political stability or fragmentation in parliament. Fragmentation and stability are influenced more by political and cultural, history and context than by the type of electoral system employed. Furthermore, coalitions of parties

are often necessary in order to form a majority in elected bodies even in majoritarian systems.

A characteristic feature of PR systems is the existence of a legal threshold. A legal threshold is stated in the law, usually expressed as a percentage, and is the minimum percentage of all votes that a party needs to collect in order to obtain seats in the legislature. The threshold can be set at a nationwide or regional level. The threshold will have an impact on the parties represented in legislative bodies, including those representing national minorities (see sub-sections III.C.1 and 2).

A variation of the PR system is the single transferable vote (STV) system, used in relatively small, multi-seat electoral districts. STV is a proportional preferential voting system that permits voters to rank candidates in order of preference. Indicating preferences is usually optional, and a voter may mark one candidate or rank all candidates. The quota is the number of first-preference votes a candidate must obtain in order to be elected. Any candidate who receives more first preferences than the quota is immediately elected. If no candidate reaches the quota, the candidate with the lowest number of first-preference votes is eliminated, and the eliminated candidate's second-preference votes are redistributed among the remaining candidates.

Proportional systems produce results more representative of different opinions, including those of national minorities. Such systems give parties an opportunity to field diverse lists of candidates that have the potential to facilitate the election of representatives of national minorities. This creates the possibility to build bridges among various national minorities and between national minorities and majorities, to move away from purely minority-based parties. In addition, proportional systems are less susceptible to manipulation, including in the establishment of district boundaries to serve partisan interests, as may be the case with majoritarian systems. On the other hand, it has been argued that in proportional systems the link between elected representatives and the electorate might be weak, and the power within a political party might be concentrated in the hands of leaders responsible for the compilation of party lists.

It is essential that an electoral system takes into account the existence of national minorities that are, or may have been, nomadic, as well as minority populations or groups without fixed residence. It should also take account of those voters that are displaced, which is often the case following ethnic conflicts, when there may be considerable numbers of internally displaced persons belonging to national-minority or other communities. Ensuring electoral rights for all these groups can be achieved by different electoral systems. However, majoritarian systems may not be the best option because of the difficulties representatives of such groups may face with access to the electoral district for the purpose of campaigning, voter registration or voting, effectively disenfranchising them. In this context, PR systems are a better option.

3. Parallel Systems and Mixed-Member Proportional Systems

A parallel system represents a combination of majoritarian and proportional systems, without any design or requirement for overall proportionality in election results. A mixed member proportional system (MMP) also uses a combination of majoritarian and proportional systems, but is either designed for or has a legal requirement for overall proportionality in the election results. In parallel and MMP systems, electors should cast two votes: one for a candidate in a single-seat district and the other for a party contesting the election in a multi-seat electoral district. Therefore, some representatives are elected in single-seat districts and the others by proportional representation, usually in one nationwide multi-seat electoral district.

In terms of proportionality, parallel systems usually produce results that fall somewhere between pure plurality/majority and pure PR systems. Although it has been argued that the parallel system was developed in an attempt to combine the key advantages of both systems of representation, such systems do not guarantee overall proportionality, and some parties may still be excluded from representation despite winning substantial numbers of votes. Parallel systems are also relatively complex, and can leave voters confused as to the nature and operation of the electoral system. One advantage is that, when there are enough PR seats, small minority parties that have been unsuccessful in the plurality/majority elections can still be rewarded for their votes by winning seats in the proportional allocation. In addition, a parallel system should, in theory, fragment the party system less than a pure PR electoral system.

MMP is similar to other forms of PR in that the overall total of party members in the elected body is intended to mirror the overall proportion of votes received. It differs from PR by including a set of members elected by geographic constituency, who are deducted from the party totals so as to maintain the overall proportionality. As in numerous PR systems, in order to be eligible for list seats in many MMP models, a party must earn at least a certain percentage of the total party vote or no candidates will be elected from the party list. Candidates having won a constituency will still have won their seats.

Regardless of their particular design, both systems may be considered when trying to promote the representation of national minorities in a particular legislature. The advantage of both systems is that when there are enough PR seats to be allocated, smaller parties that were unsuccessful in the majoritarian elections can still obtain seats in the proportional contest. The impact on minority representation and influence would depend on such factors as concentration or dispersal of minorities across election districts and the role of political parties in promoting minority interests.

C. Specific Elements of Electoral Systems That Facilitate Minority Representation

Two factors are important when choosing an electoral system that is best adapted to national circumstances. The first is whether the overall population of a national minority is large enough to enable it to elect a representative without the application of special measures. The likelihood of such a possibility can be determined by comparing estimates of the size of the minority population and the average number of votes required for securing a mandate.⁷¹ The second factor is the geographical concentration of the national-minority population. There are national minorities that densely inhabit well-delineated areas in a state and might otherwise be absent from the remaining area of the state. There are also national minorities that may be dispersed throughout a state among the majority population.

1. Low Thresholds

To ensure adequate representation, the legal threshold for parties to enter the parliament under PR systems should be low enough to ensure that one or more national-minority parties surpass it. If the numbers of seats allocated to eligible political parties, including national-minority parties, are determined at the national level, the system will better ensure representation that is fully proportional to the votes cast both for national-minority and other parties. Representation will not depend on whether the national-minority population is geographically concentrated or dispersed across the state. If regional legal thresholds are applied countrywide, this can effectively prevent minority parties from representation at the national level. Ideally, both national and regional thresholds should be low enough to give national-minority parties the chance to have their candidates elected to a national legislature.

On the other hand, high legal thresholds may be tools used to bar national-minority parties from representation. Even with a nationwide legal threshold, if seats are allocated to eligible parties within each individual district, except in districts with a substantial national-minority population, national-minority parties may experience difficulties in winning representation if natural (also referred to as mathematical or effective) thresholds are high.

Any electoral system has a natural threshold that should not be confused with the legal threshold. The natural threshold is the minimum number of votes required to win one mandate and is determined by the number of mandates to be allocated. A party that receives a number of votes equivalent to or greater than the natural threshold is ensured at least one mandate in the elected institution. Natural thresholds are mainly dependent on the mean district magnitude (the average number of legislators

71 The average number of valid votes required to win a mandate can be estimated on the basis of past elections as the ratio of valid votes cast divided by the seats returned from an electoral district, taking into account the manner in which a particular electoral system functions.

returned per electoral district), but are also affected by the seat-allocation formula, the number of contestant political parties and the size of the legislature.

Even when there is no legal threshold at all, small parties, including national-minority parties, can thus still face considerable natural thresholds for access to parliament. In order to facilitate minority representation, increasing the number of mandates will lower the mathematical threshold that must be reached in order to win a mandate.⁷² Even a small reduction in the mathematical threshold may be enough for a political party to win a mandate where the party is just below the threshold.

2. Preferential Voting

Electoral systems that provide the possibility of preferential voting, such as AV and STV systems, enable voters to indicate how they would vote if their preferred candidate lost, by indicating second, third and subsequent choices. These systems also create incentives to accommodate minority interests. Candidates may have to reach out to a wider range of voters, including national minorities, in order to get elected. They might be encouraged to include national-minority issues in their platforms in order to attract their support.

At the same time, both AV and STV systems have disadvantages. They can be quite complicated both for voters and electoral officials, especially during the counting phase, and they require a certain degree of technical literacy on the part of the election administration to be implemented effectively. In addition, because of the complicated vote count, such systems are better suited to cases where confidence in the electoral process is high.

3. Boundaries of Electoral Districts and Equitable Representation of National Minorities

While electoral districts are an integral part of any electoral system, the delimitation of their borders can be of critical importance to the performance of the system in representing national minorities, limiting or enhancing their representation as a result.

There is not only a positive obligation to facilitate the equitable representation of minorities but also a negative obligation to refrain from measures that could adversely affect the boundaries of electoral districts and/or their composition. Such measures might include, for instance, expropriation, evictions and expulsions, or redrawing or adjusting administrative or electoral district borders.

The delimitation of electoral districts, regardless of the electoral system itself, should respect the standard of equal suffrage. In other words, the sizes of districts should

⁷² See the Venice Commission's "Comparative Report on Thresholds and Other Features of Electoral Systems Which Bar Parties from Access to Parliament", CDL-AD(2008)037, Strasbourg, 15 December 2008, p. 8.

be comparable, so that each elected representative represents an approximately equal number of inhabitants.⁷³ In addition, good practice suggests that districts be compact and contiguous, that they respect administrative territorial divisions, and that they preserve communities of interest.

The boundaries of electoral districts should be drawn so that constituents have an opportunity to elect candidates that they feel truly represent them. District boundaries may be drawn taking into account administrative divisions, ethnic or cultural lines, or natural communities delineated by physical boundaries (such as islands). However, this should be done based on objective and commonly accepted principles. It is also important that elected national-minority representatives should not represent larger numbers of inhabitants compared to the representatives of the majority population.

There are two aspects to the delimitation of electoral districts that may have a particularly strong impact on the representation of minorities: (1) territorial delimitation under a majoritarian system; and (2) the number of members to be elected from a district under a proportional representation system.

Under PR systems, electoral districts returning low numbers of representatives diminish the proportionality between the votes received and the seats won. In addition, the number of votes that remains unrepresented increases because fewer parties qualify for seats. Districts returning high numbers of representatives increase the degree of proportionality and decrease the number of unrepresented votes. A decrease in the degree of proportionality usually has a negative impact on the inclusion of smaller parties, including parties representing national minorities.

Delimitation of the boundaries of electoral districts could have a decisive effect on election results and, therefore, on the representation of a particular area. For instance, a single polling station moved from one electoral district to another could influence the outcome of the election in both electoral districts, in particular under an FPTP system, which requires candidates to receive a simple plurality of votes to be elected. Such redistricting of electoral constituencies for partisan purposes is illegitimate. In order to prevent this from happening, a number of principles should be considered.

The procedures for delimiting electoral districts and for redistricting should be clearly spelled out in legislation so that the rules regulating the process are uniformly applied,

73 See point 2.2.IV of the Venice Commission's "Code of Good Practice in Electoral Matters": "The permissible departure from the norm should not be more than 10 per cent, and should certainly not exceed 15 per cent, except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity)." In Section 2.2, "Equal Voting Power", the Code provides further details with regard to delimitation of the borders of electoral districts, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023-e)>.

regardless of who is drawing the district boundaries. If the districting process is to be non-partisan, all political parties must refrain from attempting to influence the outcome of the districting. If the process is partisan, all political parties, including those representing minority interests, should participate. The rules must be clear, transparent and accessible to all relevant political parties and participants in the redistricting process. In addition, districting should be subject to judicial oversight. The boundaries of electoral districts should be reviewed periodically in order to reflect changes in the population. Such reviews are usually conducted following a census. The process of review should be undertaken well in advance of scheduled elections.

In a number of OSCE participating States, districting is the responsibility of the central or local authorities, while in others it is the task of legislatures. On occasion, districting has been informally the responsibility of *ad hoc* multiparty bodies that draft districting plans and submit such drafts to legislatures for final approval. While it is good practice to include the finalized districting plan in legislation, the practice of tasking the legislature alone to produce the districting plan may involve possible conflicts of interest. A new positive trend is emerging whereby the body responsible for districting is independent from the government and the legislature in composition and structure.

Consideration should be given to defining electoral boundaries in a manner that will enhance and facilitate the representation of national minorities. Even though the key principle is that delimitation of electoral districts should not prejudice the representation of any party or population group, it is acceptable to design electoral districts so that minority representation is ensured, and even enhanced.

D. Special Measures

A number of states provide for special measures for persons belonging to national minorities in order to guarantee their equal rights, eliminate discrimination, and facilitate effective participation by minorities in public life, with a specific emphasis on participation in elections. Notwithstanding the exceptional possibility to use special measures, political parties should be encouraged to involve minority representatives in their electoral campaigns, including as candidates. This has the potential to enhance the representation of national minorities through parties representing broader interests and views of the society.

1. Special Threshold Requirements for National Minorities

Lund Recommendation No. 9 foresees a mechanism to increase the representation of national minorities through the introduction of more favourable (legal) threshold requirements for national-minority parties. Such a mechanism can only be implemented in PR systems. For example, national-minority parties can be exempted from

the need to surpass a legal threshold in order to qualify for seat allocation or can benefit from a lower legal threshold than other parties to obtain representation.

2. Dual Voting

States have considerable discretion in determining how effective participation by national minorities in public affairs is to be achieved. While the principle of one person, one vote is one of the most fundamental rules of democratic electoral systems, in some cases a dual voting system can be used to promote representation of minority communities. This measure can be considered if it is in the public interest and if the existing system does not appear inclusive enough. In such exceptional circumstances, voters belonging to a national minority may be legally granted special entitlement to elect their minority representatives to take the reserved seats in the legislative body by using a second vote, in addition to their regular vote.

According to a study by the Venice Commission, dual voting is an exceptional measure that has to be within the legal framework of the constitution and may be permitted if it respects the principle of proportionality in its various aspects. This implies that it can only be justified if:

- It is impossible to reach the aim pursued through other less intrusive measures that do not infringe upon equal voting rights;
- It has a transitional character; and
- It concerns only a numerically small minority.⁷⁴

3. Reserved Seats

There may be national-minority communities, in particular indigenous populations, whose small populations make it difficult for them to win a seat under an established electoral system. If there is the political will to ensure the representation of such minorities, this can be achieved by introducing special measures through reserved seats. Reserved seats are contested within a minority community and filled by people representing minority communities. This mechanism can also be combined with other special measures, such as over-representation, whereby minorities are allocated more (reserved) seats than they would be entitled to if population size were the only criterion.

One possible way to fill seats reserved for national minorities is to allow only national-minority voters to vote for candidates for the reserved seats. Although efficient in ensuring formal representation, reserved seats may potentially promote token representation of minorities, be perceived to reinforce differences between minorities and the majority or might even result in discrimination. A further problematic aspect of a system of reserved seats is that it requires that national-minority voters and

⁷⁴ See “Conclusion” in Report on Dual Voting for Persons Belonging to National Minorities, paragraph 71, *op. cit.*, note 34.

candidates be registered as such. This is potentially a sensitive matter, since it can be further complicated by a fear of possible abuse of collected data. History shows that such information has often played a role in persecution based on ethnic affiliation and in other serious human rights violations. If a state chooses to use registration of the minority background of voters or candidates as part of a special measure to ensure the representation of minorities, it should be voluntary and respect the principle of self-identification and protection of personal data.

Another way to fill reserved seats is to form a special electoral district by creating a set of polling stations that cover areas densely populated by a national-minority community. This special district does not need to comply with some of the usual geographical features of an electoral district (e.g., it does not need to be compact or contiguous), nor does it have to respect administrative territorial divisions. It is only a vehicle to compete for reserved seats among the national-minority parties or individual candidates representing a particular minority. Under such an arrangement, all voters are allowed to vote for the party of their choice in the regular electoral districts or in the special district where the minority parties are contesting the reserved seats.



IV. *ODIHR Election Observation and National Minorities*

A. Introduction

The purpose of an ODIHR EOM is to assess the extent to which an election process meets OSCE commitments and international standards, including in regard to the participation of national minorities. The fundamental principles of universal and equal suffrage underline states' obligation to ensure the effective participation of national minorities in elections, both as voters and as candidates. For an election to meet OSCE commitments and international standards, opportunities must, therefore, be provided to facilitate national-minority participation.

Recognizing the importance of this issue in democratic elections, ODIHR has integrated the assessment of national-minority participation into its overall election observation methodology.⁷⁵ Each EOM takes full account of how an election process affects national minorities and whether their participation in the election was facilitated or hindered. Since ODIHR views elections as long-term processes rather than one-day events, EOMs consider issues related to national-minority participation during the pre-election and post-election periods, as well as on election day.

The aim of this chapter is to provide the information necessary to ensure that EOMs take a consistent approach to monitoring issues related to national-minority

⁷⁵ For a full explanation of ODIHR's election observation methodology, see Election Observation Handbook (Warsaw: ODIHR, 2010), 6th edition, <<http://www.osce.org/odihr/elections/68439>>.

participation. It provides guidance to EOM members – including the core team, long-term observers (LTOs) and short-term observers (STOs) – in identifying any factors that might have an impact on national-minority participation.

While this chapter assumes the deployment of a full-scale EOM to a country, the guidance is also applicable for other types of missions, such as a limited election observation mission (LEOM – no short-term observers) or an election assessment mission (EAM – no short-term or long-term observers). Because an EAM is deployed to focus on particular issues of concern in an election, it is especially important to determine whether issues of national-minority participation may be relevant. If this is the case, it may be necessary to identify a national-minority expert to join the EAM so that the relevant issues can be fully explored.

B. Role of the Needs Assessment Mission

Several months prior to a given election, ODIHR conducts a needs assessment mission (NAM) to assess early preparations for the election and to provide recommendations regarding the scope of possible observation activities by ODIHR. The NAM is conducted over a period of several days by members of ODIHR's Elections Department and, at times, a representative of the OSCE Parliamentary Assembly. The mission is concluded with the publication of a NAM report. In the context of national minorities, the NAM tries to identify any preliminary issues related to national-minority participation, in law or in practice, that should be further investigated and monitored by an election observation or assessment mission. The NAM also attempts to determine the extent to which any previous ODIHR recommendations have been implemented, including those related to national-minority issues, which could demonstrate progress in this area.

Prior to conducting a NAM, ODIHR compiles briefing materials on the country and its political process, including the situation of national minorities. In this regard, ODIHR typically liaises with the HCNM to determine whether there are any ongoing issues of concern related to national-minority participation and to receive any relevant reports or other information. Additional sources of information may include reports by domestic and international NGOs, Council of Europe reports on the implementation of the FCNM, in-country reports by OSCE missions, information provided by the OSCE/ODIHR Contact Point for Roma and Sinti Issues and final reports by previous ODIHR EOMs.

ODIHR also obtains relevant legislation related to the elections, including the constitution, electoral laws, laws on political parties and any other laws and regulations related to the conduct of elections, including those on national minorities or minority languages. In many cases, ODIHR will have previously reviewed the legal framework for elections, and such reviews then support the work of the NAM. ODIHR legal reviews include a consideration of any issues related to national-minority participation. If a

legal review has not been conducted, the NAM should try to identify the main concerns and political implications of relevant laws, both through a preliminary review of the legislation and during meetings with stakeholders.

Some questions to consider about the legal framework appear in the box below.

-
- › Does the constitution guarantee universal suffrage without unreasonable restrictions?
-
- › What are the implications of the electoral system for the representation of national minorities?
-
- › Are there any special conditions on voting rights relating to national minorities, and do these raise concerns?
-
- › Are there specific provisions in the election legislation for national-minority participation as candidates and voters?
-
- › Is the right to form a political party guaranteed by law and respected in practice, without unreasonable restrictions?
-
- › Are there any restrictions on the establishment of political parties based on communal identity?
-
- › Does the electoral law raise any administrative restrictions that limit the effective participation of national-minority candidates or parties?
-
- › Is the representation of national minorities achieved through the application of ordinary electoral-law rules that treat persons belonging to national minorities and others in the same way?
-
- › Does the electoral law foresee any special measures for the representation of national minorities?
-
- › Are there any language-proficiency requirements for candidates and, if so, what is their impact on national-minority participation in the election process?
-
- › Are there any restrictions on campaigning in minority languages?
-
- › Is state funding for parties or candidates (where applicable) provided on a fair basis?
-
- › Do media regulations afford national-minority candidates or parties reasonable and fair access?
-
- › Are there special measures to ensure an adequate representation of women belonging to national minorities?
-

In general, members of a NAM meet with representatives of the Ministry of Foreign Affairs, the election administration, the Ministry of Interior, institutions responsible

for national minorities or human rights, political parties, media, civil-society groups, OSCE field operations (where relevant), the embassies of OSCE participating States and any other interested international organizations. During these meetings, the NAM should raise any specific concerns related to national-minority participation, including those identified during any legal review or based on previous elections or recent developments.

The NAM should determine whether representatives of national-minority communities anticipate any obstacles to their full participation in the election process, both as voters and as candidates. In this way, the NAM can raise key issues early in the process for consideration by the authorities and also identify priority issues for the potential election observation or assessment mission to follow.

If there is a national-minority population concentrated in a certain part of the country, the NAM may wish to consider whether it is feasible to travel to that location to better understand the opinions of national-minority political and civic representatives. If this is not possible during the NAM, such a visit should take place for members of the core team early in a mission.

Possible issues related to national-minority participation that may be identified by a NAM include:

-
- › Discriminatory electoral-district boundaries;
 - › Difficulties registering candidates;
 - › Obstacles to voter registration;
 - › Lack of identification documents;
 - › Lack of election materials available in minority languages;
 - › Intolerant rhetoric towards minorities in political campaigning;
 - › Lack of access to the media;
 - › Inadequate voter education;
 - › Lack of representation of national minorities on election-administration bodies and other official bodies that have a role in regulating elections (e.g., media boards and delimitation commissions); and
 - › A low level of confidence in the impartiality of the election administration.
-

Positive steps related to national-minority participation that may be identified by a NAM include:

- › An electoral system designed to promote or ensure meaningful and adequate national-minority representation;
- › Minority representatives on election administration bodies and other official bodies that have a role in regulating elections;
- › A voter-education campaign, including through broadcast media, targeting minority groups;
- › Voting and election materials available in minority languages; and
- › A code of conduct for election participants prohibiting hate speech in the campaign.

C. Guidance for the Core Team

The core team plays a leading role in an EOM, with analysts assigned to monitor and report on all aspects of the election process. While the head of mission has overall responsibility for directing the monitoring of national-minority participation, all members of the core team share the responsibility for monitoring national-minority participation as they collect information from election stakeholders during their ongoing election observation duties. Findings on national-minority participation are included in the EOM's regular reporting, including interim reports, the preliminary statement and the final report, which may also include recommendations for how to improve the process.

In countries where national-minority issues are particularly salient, ODIHR may assign a dedicated national-minority analyst to the mission. In countries where the HCNM is active, it may designate a staff member to join the mission to monitor the participation of national minorities. The mission benefits from the HCNM's expertise and country-specific experience. With a dedicated analyst, the EOM is able to investigate national-minority participation in greater depth and increase its contact with civil-society organizations and other representatives of national-minority communities. In the absence of a national-minority analyst, a focal point for national minorities will be selected from the core team, usually the political analyst, to take the lead in monitoring national-minority participation and to co-ordinate with other members of the core team on specific issues.

The following are some of the key tasks for members of the core team in effectively monitoring national-minority participation.

1. Provide an Overview of the Situation

During the first week of the mission, the national-minority analyst or focal point should prepare a brief overview on the situation of national minorities in the host state to serve as a background document for all members of the mission. This overview should include:

-
- › A list of all national-minority groups present in the country and their approximate population, based on census or other recent and credible data;⁷⁶
 - › Identification of geographic areas in which national minorities reside traditionally or in substantial numbers;
 - › Background on the status of national-minority groups in society, including any relevant human rights issues;
 - › Information on any parties, candidates or NGOs representing national-minority groups or their interests; and
 - › The main preliminary issues raised by the NAM, the review of the legal framework and any past EOM reports.
-

The overview serves as a starting point for the core team's monitoring of national-minority participation, and also provides information for the LTO and STO briefing materials and sessions on these issues.

2. Collect Basic Statistical Data

Each EOM should collect quantitative data on national-minority participation to be included in EOM reports. While quantitative information alone does not provide a comprehensive picture of national-minority participation in a country, it can serve as a useful gauge of positive and negative trends, particularly regarding representation. These data can also be used to recommend measures aimed at increasing national-minority representation.

The national-minority analyst or focal point should collect the following basic information, where available:

-
- › The number of self-declared national-minority representatives in the outgoing parliament, and whether they represent national-minority or other parties;

⁷⁶ As census figures do not always reflect the actual size of all minorities, especially Roma, additional estimates by experts should be considered together with the census numbers.

-
- › The number of self-declared national-minority representatives serving as cabinet ministers or in other senior government positions;
-
- › The numbers of national-minority representatives in local councils;
-
- › The numbers and ratio of self-declared national-minority candidates on political-party lists;
-
- › The numbers and ratio of national-minority representative in the election administration bodies at various levels.
-

Any sensitive personal data available on the proportion of national minorities registered to vote should be protected.⁷⁷

3. Identify and Meet Key Stakeholders

Early in the course of an EOM, members of the core team should determine which organizations and individuals it would be important to meet with to explore key issues related to national-minority participation. While some of these interlocutors might represent national-minority organizations, others might be government officials responsible for administering processes that affect national minorities, such as voter registration or the delimitation of electoral boundaries. Recognizing that some topics are the shared responsibility of several members of the core team, analysts should closely co-ordinate the scheduling of meetings.

4. Analyse Voter Registration

The election analyst or voter registration analyst should analyse the process of voter registration and the compilation of voter lists to determine whether national minorities face any particular obstacles in registering to vote or in being included in voter lists.⁷⁸ Such problems may be related to the broader process of obtaining citizenship. While citizenship questions are generally outside the scope of election observation, they should be investigated in the context of voter eligibility and registration. In most countries, preliminary voter lists are displayed prior to elections for public scrutiny.

⁷⁷ A related consideration is that voter-registration data for national minorities might not be available, as it is considered contrary to good practice to include one's ethnicity or religion on voter lists, and it may be contrary to international standards on the protection of sensitive personal data. However, public-opinion polling or other data, including expert's assessments may be available.

⁷⁸ For more information, please see *Handbook for the Observation of Voter Registration* (Warsaw: ODIHR, 2011), <<http://www.osce.org/odihr/elections/92058>>.

The following questions should be considered when analysing voter registration:

-
- › What system is used for voter registration? Is it active or passive?⁷⁹ Periodic or continuous?⁸⁰ Does the system affect the registration and participation in elections of national minorities?
-
- › Is registration of permanent residence or an address a requirement for voter registration?
-
- › What identity documents are necessary to register to vote?
-
- › Was there adequate information available to national-minority communities about the voter-registration process? Was information available in minority languages?
-
- › Did any national-minority communities face problems registering as voters or obtaining citizenship? If so, were these legal, administrative or political problems?
-
- › Are the authorities making a good-faith effort to rectify any possible shortcomings?
-
- › What could be the political consequences of any gaps in the voter-registration process in terms of national-minority representation?
-

5. Assess Civic and Voter Education

The national-minority, political and media analysts should assess the voter and civic education available to national-minority voters and candidates. In particular, analysts should determine whether any voter-education campaigns were specifically targeted at national-minority communities and to what extent election and voter-education materials were provided in minority languages. Some national-minority communities may have a higher rate of illiteracy, and this should be taken into account when evaluating voter-education campaigns.

The following questions should be answered with regard to voter education:

-
- › Does the law oblige election-administration bodies or other official bodies to inform voters about all aspects of the electoral process? Was this obligation met with respect to national minorities? Did persons belonging to national minorities in remote areas have access to civic and voter-education materials?
-

79 In an active registration system, the responsibility to be added to or removed from the voter list rests on the voter, while in a passive system of registration, the administration responsible for compiling the voter list takes the initiative.

80 Periodic voter lists are established for a specific electoral event and are not maintained or updated for future use. Continuous lists are maintained and regularly updated by the bodies responsible for voter registration.

-
- › Have the national and local media met their responsibility to inform the public? Did voter-education programmes broadcast by the media reach all parts of the country? Did the media specifically broadcast such programmes in national-minority languages?
-
- › Were prospective candidates representing national minorities informed adequately about nomination and registration procedures?
-
- › Were there a high number of invalid ballots, indicating a possible lack of understanding of the process by voters? Were the invalid ballots concentrated in a particular area or did they affect a particular community?
-

6. Follow Candidate- and Party-Nomination Processes

The political analyst should follow the candidate-nomination and registration process and investigate any instances where registration or de-registration was refused, including of prospective candidates from national-minority parties and/or communities. In any such cases, the EOM should arrange to meet with the affected candidate or party, request copies of relevant documentation and hold follow-up discussions with the election administration body to clarify the grounds for refusal. Analysis should be done to determine whether any specific legal, administrative or political factors adversely affected national-minority candidates in these cases. It should also be assessed whether the requirements for support signatures and/or disproportionate deposits could hinder the participation of national minorities.

Similarly, the political analyst should determine whether any political parties have been refused registration or have been de-registered, and whether any of these were national-minority parties. Although such cases would likely have taken place prior to the election period, they may still be directly relevant to the election process and should be investigated.

7. Monitor Media Coverage

The state has a responsibility to provide adequate access to the media for national minorities. The media also plays an important role in promoting pluralism and tolerance in a society, in overcoming discrimination and fighting racism. During an election, media outlets should provide reasonable access to minority candidates and political parties, and cover issues of interest to national minorities. Public media have a particular responsibility to promote the development of a democratic society by allowing for a plurality of views in their programmes without preference to any political party, group, religion or faith. Private media should also not discriminate against any candidates or parties on the basis that they represent national minorities. No media should portray national-minority representatives and issues with stereotypes, which may negatively affect their credibility and importance to voters.

As part of the EOM's standard approach to media monitoring, the media analyst should assess the coverage of national-minority candidates, parties and issues to determine whether they were afforded fair access and coverage.⁸¹

In particular, the media analyst should determine whether:

- › National-minority parties and candidates had access to the media to present their views;
- › National-minority areas could receive national media coverage;
- › The media landscape is polarized along ethnic lines;
- › Campaign and election information was broadcast in minority languages; and
- › There were any incidents of hate speech that could negatively impact national-minority candidates, parties or communities, as well as the overall election process.⁸²

8. Observe the Campaign

Campaign observation is an important indication of whether fundamental freedoms, including of association, assembly, speech and movement, have been respected, including for national-minority candidates, parties and voters. The political and national-minority analysts should carefully monitor the campaign and investigate any possible issues regarding national-minority representatives. They should also determine whether national-minority candidates and parties have been given the same opportunities to campaign, especially in countries where parties begin promoting themselves prior to the start of the official campaign.

Specific questions to examine with regard to the conduct of the campaign include:

- › Were freedom of movement and assembly respected in minority areas? Were voters able to attend campaign events without impediments? Were parties and candidates able to travel freely and organize campaign events?
- › Were national-minority candidates, associations and parties able to use public facilities during the campaign on a fair basis?
- › Were national minorities able to print and display campaign posters? Could they display posters in minority languages?

81 For more information, please see *Handbook on Media Monitoring for Election Observation Missions* (Warsaw: ODIHR, 2011), <<http://www.osce.org/odihr/92057>>.

82 Several international documents discussed in this handbook aim not only to ban direct hate speech, but also explicitly to “encourage a spirit of tolerance and intercultural dialogue and take effective measure to promote mutual respect and understanding...”, FCNM, Article 6. See also: ICERD, Articles 1 and 2, and Copenhagen Document, paragraphs 2 and 30.

-
- › Were candidates and parties able to address campaign events in minority languages?
 - › Was there any anti-minority campaigning or intimidation carried out by other groups or the authorities? Were there cases where hate speech was used in the campaign?
 - › Were issues related to national minorities addressed in the campaign?
-

9. Consider the Impact of the Electoral System

The election and legal analysts should assess the potential impact of the electoral system on national-minority participation. Such an assessment should evaluate the formula for translating votes cast into seats and consider whether it impacts the seat allocation for minority candidates and parties. The impact of the electoral system on any nomadic populations should also be considered. While it should not generally be the policy of an EOM to comment on a country's choice of electoral system, any mechanisms that either inhibit or promote minority representation may be important to note.

The election analyst should also assess the possible impact of delimitation of electoral boundaries on the representation of national minorities in the newly elected body. Specific attention should be given to delimitation of electoral districts where: (a) minority candidates win with many more votes than necessary; and (b) minority populations are diluted among different electoral districts where they may lose by small margins. The election analyst should also look at the process of delimitation, whether it was politically inclusive and whether it included representatives of national minorities.

The questions below provide guidance for assessing the electoral system, including the issue of delimitation of electoral boundaries.

-
- › What is the electoral system, and how does it affect national-minority representation?
 - › Are any national-minority groups likely to be disadvantaged by the existing electoral system?
 - › Are there legal thresholds and, if so, how do they affect possibilities for national-minority representation?
 - › Are there special measures, such as reserved seats and/or dual voting for national-minority groups?
 - › Are ethnically mixed candidate lists mandatory?
-

-
- › Does the electoral system encourage inter-community political platforms? Are political parties allowed to form blocs for electoral purposes but remain as separate entities?
-
- › Are minorities represented in, or able to provide official input to, the body responsible for drawing up the electoral boundaries?
-
- › Does the system for the delimitation of electoral-district boundaries take into consideration the interests of minority communities?
-
- › Are there mechanisms to avoid dispersion of small minority groups between electoral districts and, thus, the limitation of their voting impact?
-
- › Are those charged with drafting or reviewing electoral-district boundaries considered to be professional and politically unbiased?
-
- › What is the process for redistricting? Does it allow for public input?
-
- › Are electoral districts relatively equal or equitable with respect to population?
-
- › Is there a process to monitor and prevent possible partisan manipulation in the establishment of electoral-district boundaries?
-

D. Guidance for Long-Term Observers

LTOs ensure that an EOM has a countrywide perspective on an election process.⁸³ They collect information at the regional and local levels that bolsters the findings of the EOM and, at the same time, identify any regional particularities that may have an impact on the electoral process. Because LTOs interact with local stakeholders, they are in a key position to collect information related to national-minority participation, particularly if they are covering areas with concentrations of national-minority populations.

Prior to their deployment, LTOs should be briefed on ODIHR's approach to monitoring national-minority participation in elections, including with reference to the Lund Recommendations and the role of the HCNM. These issues should be covered during the LTO briefing session and incorporated into the LTO briefing book.

The LTO Co-ordinator ensures that LTOs understand the EOM's role in monitoring national-minority participation and facilitates their reporting on these issues in co-operation with the other members of the core team. The LTO Co-ordinator works closely with the national-minority focal point or analyst to assign specific tasks related to national-minority issues to LTOs. In areas with a concentration of national minorities, LTOs may have regular communication with the national-minority analyst through the LTO Co-ordinator, and the national-minority analyst may travel to the

⁸³ For additional information on the role of LTOs, please see *Handbook for Long-Term Election Observers* (Warsaw: ODIHR, 2007), <<http://www.osce.org/odihr/elections/24678>>.

area to follow up on any particular issues. LTOs regularly report their findings related to national-minority participation in a designated section of the LTO weekly reporting form.

LTOs should investigate issues related to national-minority participation as part of their regular duties. Each meeting they have with local election stakeholders presents an opportunity to collect information on national-minority participation. The checklists in the previous section may also be useful to LTOs in collecting relevant information during meetings. LTOs in areas with national-minority communities should also identify and meet with civil society and political leaders representing those communities. In addition to national-minority political parties and candidates, there may be local NGOs, newspapers or other associations that represent the community. When meeting with such representatives, it is important to bear in mind that there may be differences of opinion and divisions within a community. For that reason, it is good practice to meet with as broad a selection of interlocutors as possible.

E. Guidance for Short-Term Observers

STOs focus on election-day procedures, including the opening of polling stations, voting, counting of ballots and the tabulation of votes. STOs are deployed throughout the country and collect information on reporting forms that the EOM can use to create a profile of the entire election-day process and to draw conclusions. The information provided by STOs can be particularly important in discerning whether notable events or election violations are an anomaly or part of a broader nationwide or regional trend.

LTOs in areas with a concentration of national minorities should ensure that STO teams deployed to their areas are fully briefed on the local situation. STO regional briefing materials prepared by LTOs should explain the ethnic composition of the area and identify any possible issues or concerns. LTOs should ensure that polling stations in national-minority communities are adequately covered on election day by STOs in the area, and that interpreters are provided in areas where minority languages are widely spoken.

In countries with concentrations of national minorities, STOs may be asked to indicate on the reporting form whether the polling stations they visit are in a minority or mixed community. This information allows the EOM's statistical analyst to determine whether there are particular patterns within minority communities that may affect national-minority participation. For instance, if some voters cannot find their names on the voter lists, this data will show whether the problem was more prevalent in minority areas.

Experience has shown that, depending on the political dynamics of a country or region, voters in national-minority communities may be more vulnerable to election-day irregularities. Such problems could include: group voting, vote-buying, vote suppression and intimidation. STOs should be aware of these possible problems, but should keep an open mind and not prejudice their observations.

Technical or administrative problems may also be more prevalent in minority communities. These could include: lack of ballots or other election materials in minority languages, lack of voter understanding of election procedures due to inadequate voter education and/or illiteracy, lack of state-language proficiency and problems with voter lists due to transliteration errors or other discrepancies. In countries where issues related to national minorities have been identified, specific questions may be included on observer forms.

ANNEX

Extracts from OSCE Commitments and other Relevant International Standards and Instruments Related to National-Minority Participation in Electoral Processes

1. OSCE

Copenhagen Document, 1990

(1) The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.

(2) They are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

(3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

(4) They confirm that they will respect each other's right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other OSCE commitments.

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.1) — free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

(5.2) — a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;

[...]

(5.7) — human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;

(5.8) — legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;

(5.9) — all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;

(5.10) — everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

[...]

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will:

(7.1) — hold free elections at reasonable intervals, as established by law;

(7.2) — permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

(7.3) — guarantee universal and equal suffrage to adult citizens;

(7.4) — ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.5) — respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) — respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) — ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(7.8) — provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

(7.9) — ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

[...]

(30) The 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. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power. They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion

of tolerance, cultural diversity and the resolution of questions relating to national minorities. They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

(31) Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law. The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

(32) To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice. Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right:

(32.1) — to use freely their mother tongue in private as well as in public;

(32.2) — to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(32.3) — to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

(32.4) — to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

(32.5) — to disseminate, have access to and exchange information in their mother tongue;

(32.6) — to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations. Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State. Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

(34) The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation. In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

(35) The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities. The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

(36) The participating States recognize the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities. Such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice. Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.

(37) None of these commitments may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of States.

(38) The participating States, in their efforts to protect and promote the rights of persons belonging to national minorities, will fully respect their undertakings under existing human rights conventions and other relevant international instruments and

consider adhering to the relevant conventions, if they have not yet done so, including those providing for a right of complaint by individuals.

(39) The participating States will co-operate closely in the competent international organizations to which they belong, including the United Nations and, as appropriate, the Council of Europe, bearing in mind their on-going work with respect to questions relating to national minorities. They will consider convening a meeting of experts for a thorough discussion of the issue of national minorities.

HCNM, Lund Recommendations on the Effective Participation of National Minorities and Explanatory Note, 1999

II. PARTICIPATION IN DECISION-MAKING

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.

7) Representative government through free, fair and periodic elections is the hallmark of contemporary democracy. The fundamental objective is, in the words of Article 21(3) of the **Universal Declaration of Human Rights**, that “The will of the people shall be the basis of the authority of government”. This basic standard is articulated in universal and European treaties, namely Article 25 of the **International Covenant on Civil and Political Rights** and Article 3 of Protocol I additional to the **European Convention on Human Rights**. For OSCE participating States, paragraphs 5 and 6 of the **Copenhagen Document** specify that, “among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings”, “the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government”.

While States have considerable latitude in choosing the specific manner in which to comply with these obligations, they must do so without discrimination and should aim for as much representativeness as possible. Indeed, within the context of the United Nations, the Human Rights Committee has explained in paragraph 12 of its **General Comment 25** on Article 25 (57th Session 1996) that “Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. ... Information and materials about voting should be available in minority languages.” Moreover, paragraph 5 of **General Comment 25**

clarifies that “The conduct of public affairs ... is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”

Insofar as no electoral system is neutral from the perspective of varying views and interests, States should adopt the system which would result in the most representative government in their specific situation. This is especially important for persons belonging to national minorities who might otherwise not have adequate representation.

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.

8) In principle, democracies should not interfere with the way in which people organize themselves politically — as long as their means are peaceful and respectful of the rights of others. Essentially, this is a matter of freedom of association, as articulated in a wide variety of international instruments including: Article 20 of the **Universal Declaration of Human Rights**; Article 22 of the **International Covenant on Civil and Political Rights**; Article 11 of the **European Convention on Human Rights**; and paragraph 6 of the **Copenhagen Document**. Freedom of association has also been guaranteed specifically for persons belonging to national minorities under paragraph 32.6 of the **Copenhagen Document** and Article 7 of the **Framework Convention**. More specifically, paragraph 24 of Part VI of the **Helsinki Document** commits OSCE participating States “to ensure the free exercise by persons belonging to national minorities, individually or in community with others, of their human rights and fundamental freedoms, including the right to participate fully, ... in the political ... life of their countries including ... through political parties and associations.”

While full respect for equal rights and non-discrimination will reduce or eliminate the demand and need for political parties formed on the basis of ethnic ties, in some situations such communal parties may be the only hope for effective representation of specific interests and, thus, for effective participation. Of course, parties may be formed on other bases, e.g. regional interests. Ideally, parties should be open and should cut across narrow ethnic issues; thus, mainstream parties should seek to include members of minorities to reduce the need or desire for ethnic parties. The choice of electoral system may be important in this regard. In any event, no political party or other association may incite racial hatred, which is prohibited by Article 20 of the **International Covenant on Civil and Political Rights** and Article 4 of the **Convention on the Elimination of All Forms of Racial Discrimination**.

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.*

9) The electoral system may provide for the selection of both the legislature and other bodies and institutions, including individual officials. While single member constituencies may provide sufficient representation for minorities, depending upon how the constituencies are drawn and the concentration of minority communities, proportional representation might help guarantee such minority representation. Various forms of proportional representation are practised in OSCE participating States, including the following: “preference voting”, whereby voters rank candidates in order of choice; “open list systems”, whereby electors can express a preference for a candidate within a party list, as well as voting for the party; “*panachage*”, whereby electors can vote for more than one candidate across different party lines; and “*cumulation*”, whereby voters can cast more than one vote for a preferred candidate. Thresholds should not be so high as to hamper minority representation.

10) *The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.*

10) In drawing the boundaries of electoral districts, the concerns and interests of national minorities should be taken into account with a view to assuring their representation in decision-making bodies. The notion of “equity” means that no one should be prejudiced by the chosen method and that all concerns and interests should be given fair consideration. Ideally, boundaries should be determined by an independent and impartial body to ensure, among other concerns, respect for minority rights. This is often accomplished in OSCE participating States by means of standing, professional electoral commissions.

In any event, States should not alter electoral boundaries, or otherwise alter the proportions of the population in a district, for the purpose of diluting or excluding minority representation. This is expressly prohibited by Article 16 of the **Framework Convention**, while Article 5 of the **European Charter of Local Self-Government** stipulates that “Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum

where this is permitted by statute” (see recommendation 19 regarding territorial arrangements).

HCNM, Ljubljana Guidelines on Integration of Diverse Societies, 2012⁸⁴

[...] Adequate representation ensures direct participation and is also important as a means to provide a genuine opportunity for minority voices to be heard. In order to be adequate, the representation need not be mathematically proportional, but should aim to reflect the composition of society. Care should be taken to ensure that numerically small groups also have opportunities to effectively participate. At the same time, States should strive to uphold gender-equality principles in facilitating representation and public participation of persons belonging to minorities.

Based on international standards and promising practices, as well as on the experience of the HCNM, targeted policies might include one or more of the following:

- Special arrangements for the representation and participation of minorities in elected assemblies and/or in the executive as well as in branches of government and the wider public sector at the national, regional and local levels. Such special arrangements may include, depending upon the circumstances: reserved seats in one or both chambers of parliament or in parliamentary committees and other forms of guaranteed participation in the legislative process, facilitated minority representation in the electoral system, affirmative action for allocation of cabinet posts, seats on the supreme or constitutional court or in lower courts, and/or positions on nominated advisory bodies or other high-level organs as well as special measures for minority participation in the civil service;
- Electoral systems that facilitate minority representation and influence, while opening competition for votes among all sectors in society. Inter-community political platforms can play an important role in the integration of society and effective participation of minorities;
- Advisory or consultative bodies and mechanisms that act as formal or informal channels of communication between governments and community representatives;
- Bodies and processes designed to ensure and promote effective dialogue;
- Non-territorial self-governance arrangements or power-sharing arrangements aiming to enhance particular groups’ influence over matters of special concern to them;
- In certain circumstances, territorial self-governance arrangements, such as territorial devolution of powers, may also facilitate the representation of individual minority groups. Regardless of form, institutions of self-governance must be based on democratic principles and processes to ensure that they can legitimately claim to reflect the views of all the communities settled in the concerned territory and that they fully respect the human rights of all persons, including

84 Original footnotes are omitted.

of minorities, within their jurisdictions. In this context, power-sharing arrangements, where in place, should not be constructed in a manner that excludes any communities from representation.

2. United Nations

UN International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965

Article 1

1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

[...]

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Article 5

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

[...]

(c) Political rights, in particular the right to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

[...]

(vii) The right to freedom of thought, conscience and religion;

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association

[...]

3. Council of Europe

Council of Europe, Framework Convention for the Protection of National Minorities and Explanatory report, 1993

Article 15

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

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Explanatory Report:

Article 15

80. This article requires Parties to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them. It aims above all to encourage real equality between persons belonging to national minorities and those forming part of the majority. In order to create the necessary conditions for such participation by persons belonging to national minorities, Parties could promote – in the framework of their constitutional systems – *inter alia*, the following measures:

- consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;
- involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;

- undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities;
- effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels;
- decentralised or local forms of government.

Article 16

81. The purpose of this article is to protect against measures which change the proportion of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms which flow from the present framework Convention. Examples of such measures might be expropriation, evictions and expulsions or redrawing administrative borders with a view to restricting the enjoyment of such rights and freedoms (“gerrymandering”).

82. The article prohibits only measures which are aimed at restricting the rights and freedoms flowing from the Framework Convention. It was considered impossible to extend the prohibition to measures having the effect of restricting such rights and freedoms, since such measures may sometimes be entirely justified and legitimate. One example might be resettlement of inhabitants of a village in order to build a dam.

ACFC, Commentary the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs, adopted on 27 February 2008

a) Participation of persons belonging to national minorities in legislative process

i. Political parties

75. The right of every person belonging to a national minority to freedom of peaceful assembly and freedom of association as stipulated in Article 7 of the Framework Convention implies, *inter alia*, the right to form political parties and/or organisations. Legislation which prohibits the formation of political parties on an ethnic or religious basis can lead to undue limitations of this right. Any limitation should, in any case, be in line with the norms of international law and the principles embedded in the European Convention on Human Rights.

76. The registration of national minority organisations and political parties may be subject to certain conditions. Such requirements should, however, be designed so that they do not limit, unreasonably or in a disproportionate manner, the possibilities for persons belonging to national minorities to form such organisations and thereby restrict their opportunities to participate in political life and the

decision-making process. This concerns, *inter alia*, numerical and geographical conditions for registration.

77. State Parties should ensure that parties representing or including persons belonging to national minorities have adequate opportunities in election campaigning. This may imply the display of electoral advertising in minority languages. The authorities should also consider providing opportunities for the use of minority languages in public service television and radio programmes devoted to election campaigns and on ballot slips and other electoral material in areas inhabited by persons belonging to national minorities traditionally or in substantive numbers.

78. Political parties, both mainstream and those formed by persons belonging to national minorities, can play an important role in facilitating participation of persons belonging to national minorities in public affairs. Internal democratic processes of selection of their candidates by mainstream parties are crucial in ensuring participation of persons belonging to national minorities. Inclusion of minority representatives in mainstream political parties does, however, not necessarily mean the effective representation of the interests of minorities.

79. In countries where prominent minority parties exist, it is important to ensure that other minority parties or political organisations wishing to represent the interests of other persons belonging to the same national minorities have opportunities to do so.

ii. Design of electoral systems at national, regional and local levels

80. The participation of persons belonging to national minorities in electoral processes is crucial to enable minorities to express their views when legislative measures and public policies of relevance to them are designed.

81. Bearing in mind that State Parties are sovereign to decide on their electoral systems, the Advisory Committee has highlighted that it is important to provide opportunities for minority concerns to be included on the public agenda. This may be achieved either through the presence of minority representatives in elected bodies and/or through the inclusion of their concerns in the agenda of elected bodies.

82. The Advisory Committee has noted that when electoral laws provide for a threshold requirement, its potentially negative impact on the participation of national minorities in the electoral process needs to be duly taken into account. Exemptions from threshold requirements have proved useful to enhance national minority participation in elected bodies.

83. Constitutional guarantees for the representation of persons belonging to national minorities in elected bodies need to be coupled with effective implementing

legislation and accompanying measures within reasonable time. The Advisory Committee considers it essential that persons belonging to national minorities participate or are consulted in the process of drafting such legislation and monitoring its implementation.

84. State Parties are encouraged to strengthen the participation of persons belonging to national minorities, including those in a disadvantaged position, in local elected councils. In this respect, the Advisory Committee has underlined that due attention should be paid to the possible negative impact of certain residency requirements on the participation of persons belonging to national minorities in local elections.

85. Electoral provisions aimed at promoting a balanced presence of women in elected bodies can be designed to have a positive impact on the participation of women belonging to national minorities in public affairs.

86. Whatever the arrangements chosen, it is in general advisable to carry out a periodical review in order to ensure that they adequately reflect developments in the society and the needs of persons belonging to national minorities.

87. Where possibilities for persons belonging to national minorities to be represented in elected bodies are in practice limited, alternative channels, such as specific arrangements to facilitate minority representation, need to be considered in order to enhance their participation.

iii. Administrative and constituency boundaries

88. Changes of electoral constituencies may affect efforts to ensure effective participation of persons belonging to national minorities in public affairs, including in elected bodies. When considering reforms leading to constituency changes, State Parties should ensure that they do not undermine the opportunities of persons belonging to national minorities to be elected.

89. When considering reforms which aim to modify administrative boundaries, the authorities should consult persons belonging to national minorities and carefully consider the possible impact of such reforms on their participation in public affairs.

90. In any case, State Parties should not adopt measures which aim to reduce the proportion of the population in areas inhabited by persons belonging to national minorities or to limit the rights protected by the Framework Convention. On the contrary, administrative reforms in such areas should aim, *inter alia*, to increase opportunities for minority participation.

iv. Reserved seats system

91. Arrangements involving reserved and/or shared seats for representatives of national minorities have in a number of cases proved to be a useful means to enhance participation of persons belonging to national minorities in decision-making. The provision of reserved seats, whether shared between various national minorities or designed for one group, is one of the ways in which the representation of persons belonging to national minorities can be ensured in elected bodies.

92. The 'shared seats' system is particularly adapted to the needs of numerically small minorities. For such an arrangement to have a significant impact on the participation of all the national minorities represented through the shared seat(s), it is important that the minorities concerned agree on a common strategy and shared goals to be reached through the representation in the electoral body at stake. Elected representatives occupying shared seats should take due care to represent the concerns of all persons belonging to national minorities in the constituency. A rotation of the representatives of the different national minorities may help create the sense of a shared seat.

93. In order to ensure that a guaranteed seat arrangement contributes substantially to effective participation, it is important that the minority representatives elected are effectively involved in decision-making processes. Moreover, they should have a real possibility to influence decisions taken by the elected body, including those not strictly related to national minorities. It is therefore important that they have speaking and voting rights in the elected body and that their role is not limited to a mere observer status.

94. However, the Advisory Committee is of the opinion that the mere establishment of such arrangements does not automatically provide persons belonging to national minorities with a genuine and substantial influence in decision-making.

v. Parliamentary practice

95. In those State Parties where there are special parliamentary committees to address minority issues, these bodies have, in a number of cases, helped take into account concerns of national minorities in decision-making processes. The possibility of using minority languages in these committees has proved particularly effective. Nonetheless, the importance of effective participation in other parliamentary committees also involved in aspects of minority protection should not be neglected. Co-operation across party lines within the parliamentary committees strengthens efforts conducive to mainstreaming minority issues into policies.

96. For the work of such committees to be effective, it is essential that appropriate attention be given to their recommendations, particularly when drafting or amending legislation concerning national minorities. In addition, regular dialogue should be pursued between the committees and the relevant authorities as well as between them and minority associations.

[...]

vii. Citizenship requirements

100. Citizenship is an important element that can substantially influence participation in public affairs. Experience has shown that citizenship requirements can hamper effective participation in certain fields of public affairs. When examining the personal scope of application of the Framework Convention, the Advisory Committee has, in a number of cases, called for flexibility and inclusiveness in the approach taken by the State Parties. Moreover, the Advisory Committee has consistently emphasised the fact that the application of the Framework Convention to non-citizens belonging to national minorities can enhance a spirit of tolerance, intercultural dialogue and co-operation.

101. Although it is legitimate to impose certain restrictions on non-citizens concerning their right to vote and to be elected, such restrictions should not be applied more widely than is necessary. While citizenship requirements can be applied in relation to parliamentary elections, State Parties are encouraged to provide non-citizens belonging to national minorities with a possibility to vote and to stand as candidates in local elections and governing boards of cultural autonomies. Citizenship should not be a condition for persons belonging to national minorities to join trade unions and other civil society associations. This is particularly important in State Parties where citizenship policy has been in a state of flux.

102. Language proficiency requirements imposed on candidates for parliamentary and local elections are not compatible with Article 15 of the Framework Convention. They negatively affect the effective participation of persons belonging to national minorities in public affairs.

ACFC, Commentary on the Language Rights of Persons Belonging to National Minorities under the Framework Convention, adopted on 24 May 2012

92. States Parties should ensure that political parties representing or including persons belonging to national minorities have equal opportunities in election campaigning. This may imply the display of electoral advertisements in minority languages. The authorities should also consider providing opportunities for the use of minority languages in public service television and radio programmes devoted to election campaigns and on ballot slips and other electoral material in areas inhabited by persons

belonging to national minorities traditionally or in substantial numbers. Language proficiency requirements imposed on candidates for parliamentary and local elections may raise issues of compatibility with Article 15 of the Framework Convention as they negatively affect the participation of persons belonging to national minorities in public affairs. In particular, within locally-elected bodies, the possibility to use minority languages can allow persons belonging to national minorities to participate more effectively in decision-making. The Advisory Committee has welcomed efforts to allow for minority languages to be used internally in public administration in areas that are inhabited substantially by persons belonging to national minorities.

