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TOWARDS A SET OF REGIONAL GUIDELINES OR CODES OF PRACTICE ON THE IMPLEMENTATION OF THE DECLARATION

(Paper prepared by Tom Hadden, Human Rights Centre,
Queen's University Belfast)

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Background

1. The objective for the Working Group on Minorities proposed at its Eighth Session in May 2002 is to supplement the Commentary on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (E/CN.4/Sub.2/AC.5/2001/2) with a more detailed set of Guidelines or Codes of Practice on practical measures for its implementation on a regional basis. In so far as is practicable these should take into account regional and sub-regional differences in the circumstances of minorities of various types and possible measures to meet the essential principles of the Declaration, namely:

> the protection of the identity and culture of minorities

> measures to ensure effective participation in governance

> the promotion of their economic well-being and development

This working paper is intended to assist the Working Group in this project by drawing together some of the issues that have been raised during recent Sessions and indicating how they might be reflected in the proposed Guidelines or Codes of Practice.

Choices in implementation

2. The discussion at recent sessions of the Working Group has focused on the identification of different approaches to the implementation of these essential principles, notably the choice or balance between measures that are designed to promote territorial or functional autonomy for minorities and those that are designed to promote more effective recognition, representation and integration in a multi-cultural environment. The Declaration itself does not clarify the nature of this choice or balance or give much guidance to States on how best to implement its general principles in the particular circumstances of the minorities within their jurisdiction. But the United Nations has developed some useful general guidelines on possible measures, notably in the report by the current chairman of the Working Group on Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities (E/CN.4/Sub.2/1993/34 and Add-1 to 4).

3. The approach adopted on this broad level has important implications for national policies on governmental structures, equality and non-discrimination, language policy, educational provisions, residential planning and development policies. Some of the most significant issues may be summarised in a simple tabulation:

	Measures to promote autonomy	*Measures to promote integration*
Recognition	formal registration of members of minorities, often linked to their exclusion from some aspects	recognition of existence and culture of minorities while treating their members as

	of national citizenship	full citizens
Governance	the creation of structures for regional or functional autonomy	measures to ensure effective representation in national or local legislative or administrative bodies
Equality	measures to guarantee protection from discrimination and equal treatment for each minority	measures to promote fair participation in public and private sector employment
Language	measures to guarantee the right to use minority languages in prescribed areas or circumstances	measures to promote more general bilingual or multi-lingual capacity
Education	measures to provide separate educational facilities for members of linguistic or religious minorities	measures to promote common or integrated schooling and a shared understanding of history while recognising cultural and linguistic differences
Residence	measures to recognise or promote separate areas for distinctive ethnic communities	measures to promote the inter-mingling of members of different ethnic communities in a multi-cultural environment
Development	measures to promote separate development for members of minorities	measures to promote equitable shares in the benefits of development

4. These are not necessarily mutually exclusive options. There is likely to be a continuum of possible measures lying between the two extremes of more or less complete separation and more or less complete integration. And in many cases a combination of measures to promote autonomy at a local level and measures to promote integration at a national level may be the preferred approach. There are also other issues, such as cross-border co-operation and the recognition of members of an ethnic diaspora, that do not fit neatly into this framework. The essential point is that there is a choice to be made between a wide range of measures for the implementation of minority rights.

National and regional studies

5. To assist in clarifying these policy choices the Working Group has initiated a series of expert studies, on general issues such as different forms of autonomy and different approaches to economic development and on legislation and practice in particular countries. It has also organised a number of regional and sub-regional seminars and workshops in Africa, America and most recently South-east Asia at which issues of particular regional concern have been identified and discussed. And for its Ninth Session in 2003 it has, in co-operation with the Office of the High Commissioner for

Human Rights, commissioned a series of regional and sub-regional studies with a view to identifying patterns in the number and distribution of minorities and possible measures to reduce any associated potential for conflict in the main world regions and sub-regions. The reports and expert studies that are most relevant to this working paper are listed in the Appendix.

Main themes from the studies

6. These studies have emphasised the wide range of variation in the number, distribution and origin of minorities in different countries and regions. They have also drawn attention to some features which are characteristic of certain regions and sub-regions and which should be taken into account in the drafting of the Guidelines or Codes of Practice. Though the particular history and circumstances of each of the minorities covered in these studies are unique, some of the more general regional factors and characteristics may be identified and summarised.

East and Southern Africa

7. The seminars on Multi-culturalism in Africa: Peaceful and Constructive Group Accommodation in Situations Involving Minorities and Indigenous Peoples held in Arusha, United Republic of Tanzania in May 2000 and in Gaborone, Botswana, in February 2002 identified a number of common concerns, notably the need to recognise the existence of different communities in national constitutions and legislation and to provide effective measures to prevent discrimination against indigenous and minority communities, especially hunter-gatherers and pastoralists. The pressure on traditional land use and the need for governments to accommodate different lifestyles within their development plans were also stressed, as was the need to provide appropriate education on the history and cultures of minority and indigenous communities. Effective measures to facilitate access to health and other services were also required. In most cases this would also require more effective representation of minorities and indigenous communities in public institutions and political structures.

West Africa

8. The working paper prepared for the Seminar on Multi-culturalism in Africa: Peaceful and Constructive Group Accommodation in Situations Involving Minorities and Indigenous Peoples held in Kidal, Mali included useful details on the distribution and constitutional position of ethnic and linguistic communities in Cameroon, Mauritania, Burkina Faso, Guinea, Niger, and Cote d'Ivoire. In each of these a large number of ethnic or linguistic minorities can be identified, ranging from over 200 in Cameroon to 10 or 20 in Mauritania. But except in Cameroon there is no constitutional recognition of their existence. Instead their constitutions emphasise national unity and prohibit the formation of political parties based on ethnic or linguistic identity. Almost all of these communities, however, are indigenous, though fewer could be equated to indigenous peoples living in the margins of otherwise more developed communities in other parts of the world. The concluding Kidal Declaration on Indigenous Peoples and Minorities in Africa made reference to the recently established African Commission Working Group on Indigenous Communities and specifically recognised 'the complexity of the concepts of indigenous peoples and minorities in Africa, noting that some participants identified themselves as 'indigenous peoples' and some as 'minorities' and some by another term.' In cases of this kind it may be more useful to tailor guidelines for best practice to the particular territorial

location, economy, lifestyle and culture of the community rather than any formal difference between the rights of minorities and indigenous peoples.

9. The more detailed studies of Ghana and Nigeria highlighted some further significant issues. As in other West African States, a huge number of minority and/or indigenous communities could be identified in both Nigeria (estimated at between 250 and 600) and Ghana (estimated at around 50) though it is also possible to combine them into fewer larger groupings. But there has already been considerable intermingling of members of these larger groups, especially in the larger towns. There has also been continuing population movement in some rural areas, with resulting tensions between established and incoming communities. In both countries some forms of territorial autonomy have been introduced, with a view to giving a greater degree of self-government to the main ethnic groupings. But as in many other areas it has proved impossible to draw clear ethnic boundaries with the result that there are substantial sub-minorities in almost all the autonomous states. There are also quite reasonable fears of ever-increasing fragmentation - in Nigeria the number of autonomous states has been gradually increased from three at the time of independence in 1960 to a current total of thirty-six - and a corresponding desire to preserve a sense of national identity. In such circumstances measures to ensure effective participation or representation of members of different ethnic or linguistic communities in the structures of government must be not only carefully tailored for each level of government but also flexible in response to changing circumstances

Arab Countries and Iran
10. The main focus of the study on political participation in Arab countries was on the difficulty of securing effective participation for minorities within the prevailing political culture. According to the author this is based on a highly centralised ruling elite, whether formally democratic or subordinate to hereditary or religious rulers. Even in formally democratic regimes election as president is in practice regarded as election for life and in many of these countries there is a formal bar on the organisation of religiously based parties. This raises the question whether mechanisms for effective participation by minorities can be promoted within the established political culture, for example by encouraging the appointment or co-option of representatives of minorities within the ruling elites, or whether it should be regarded as dependent on a more general democratisation of the political system. Guidelines for good practice could in principle be developed for either of these alternatives.

11. The more detailed study of ethnic and religious minorities in Iran highlighted the important distinction between religious and ethnic minorities. Though some 90% of the population in Iran are adherents of the Shiite branch of Islam, only about 60% are ethnic Persians. The largest ethnic minorities are the Kurdish and Azeri communities in the north. But the Iranian Constitution grants formal recognition, with reserved parliamentary seats, only to the tiny Christian and Jewish communities, in accordance with Islamic tradition, and also to Zoroastrians. The small Bahai community on the other hand is denied any form of recognition and complains of both legal and other forms of discrimination. The author concludes that consultation on an appropriate form of political participation or autonomy for the most significant ethnic minorities and a more equitable approach to religious minorities would be required to meet current international standards. A more general conclusion might be that in some circumstances different but concurrent forms of recognition and mechanisms for

effective political participation may be required for ethnic, religious and linguistic minorities.

The South Caucasus

12. The study of minority issues in Georgia, Azerbaijan and Armenia draws attention to the particular problems which may arise on the 'democratisation' of previously tightly controlled federations. In each country there are substantial and mostly concentrated ethnic minorities linked to different religions and languages and with various degrees of loyalty to adjacent kin-states or communities. Under the Soviet regime most were granted some form of cultural or linguistic recognition, though with little effective power or autonomy. Following the break-up of the Union of Soviet Socialist Republics the dominant ethnic group in each constituent republic pursued its own political and linguistic aspirations with little regard for these established minorities. In response these minorities looked to Russia or their kin-states to support their claims to continuing autonomy and some resorted to more or less violent campaigns for self-determination or secession. There have also been significant language difficulties as a result of the removal or decline of Russian as a lingua franca and the difficulty experienced by linguistic minorities in participating effectively at a national level in the new national languages.

13. These problems have been particularly severe in Georgia. Though Georgians constituted only 69% of the population in 1989, Georgian nationalism and the Georgian language have been stridently asserted. This has been associated with the departure of many Russians and Armenians from the capital, Tbilisi. It may also be linked to the unresolved violent conflicts in two of the three previously autonomous regions of Abkhazia and South Ossetia. There have also been tensions over the status of Javakheti, where Armenians constitute some 95% of the population. Only in the third previously autonomous Muslim dominated region of Ajara has continuing autonomy been effectively recognised. Throughout the various minority areas there have been associated problems over communication with the Georgian government arising from the inability of most to operate effectively in Georgian and the absence of any co-ordinated programme to promote bi-lingualism.

14. There have been fewer continuing problems in Armenia and Azerbaijan following the decline in the intensity of the conflict in respect of the disputed territory of Nagorno-Karabakh. In both countries the dominant ethnic groups of Armenians and Azeris constitute more than 90% of the total population the minorities pose less of a political or territorial threat. In Azerbaijan some efforts have been made to accommodate the smaller ethnic and religious minorities in that the government has sought to ensure proportional participation on administrative bodies by members of minorities, while at the same time dealing severely with any secessionist movements. In Armenia following the exodus of most Russians ethnic Armenians now constitute over 98% of the total population and the remaining minorities, the largest of which are Kurds and Russians, are in practice too few to give political force to a demand for formal recognition or other special measures.

15. These examples demonstrate the need for careful attention in the context of the creation of newly independent states to the problems which may arise in removing or ignoring specific recognition or rights previously enjoyed by particular minorities. There is a well-established tendency, which has also been observed in the Baltics and

the Balkans following the break-up of the Yugoslav Federation, for newly independent national or ethnic peoples to assert national aspirations, languages and cultures that have previously been suppressed or ignored and in so doing to ignore the corresponding aspiration, languages and cultures of other minorities. This suggests that any effective general or regional codes of practice or guidelines should pay particular attention to the development of principles and procedures for the protection of minorities in the context of the exercise of the right of peoples to self-determination and of other forms of constitutional transition.

Central Asia
16. Similar issues were highlighted in the studies on minorities in Kazakhstan and Kyrgyzstan. In each case during the Soviet regime there had been a substantial settlement of Russians and other displaced communities, including large numbers of Germans and Koreans. In the case of Kazakhstan these resettled communities outnumbered the Kazakhs by roughly two to one in 1959, and it was not until 1999 that the exodus of Russians and other external european communities meant that the Kazakhs became a majority. In Kyrgyzstan the Kyrgyzs had not been outnumbered in this way, but there were substantial Russian, German and Usbek minorities. Following the exodus of many of these resettled communities Kyrgyzs now represent about two thirds of the population, and the largest minority is of Usbeks in the areas adjacent to Usbekistan.

17. The combination of this substantial population movement and the legacy of the Soviet system of registering the ethnic identity of individuals has clearly complicated the process of building stable relationships in the newly independent states. Initially each sought to promote its own language and to discourage the use of Russian. But the problems of effective communication with the large numbers, both of Russians and other ethnic minorities and of returning exiles, who spoke only Russian has led to a change in policy towards a pragmatic recognition of Russian as a second national language. And in the absence of any serious ethnic conflict, the main focus of government policy has been on economic stabilisation and development rather than on the development of innovative policies for minorities. The underlying problem of the absence of effective representation of minorities in the decision making process, however, remains unresolved.

South Asia
18. The study of minorities in South Asia draws attention to the common colonial heritage of the major countries, India, Pakistan, Bangladesh and Sri Lanka, under which some recognition was granted to minority religious and ethnic communities. In India a sustained effort has been made to maintain and develop this approach, though there have been some recent set-backs. In the other countries the trend following the achievement of independence has been an increasing focus on the religion and culture of the majority communities and the erosion of special protection for minorities.

19. The founders of the Indian Constitution recognised the existence of the numerous distinctive ethnic and cultural communities within its boundaries and gave formal constitutional protection to some scheduled castes and tribes. The Indian Constitution also grants a large measure of autonomy to its constituent states, and in some cases guarantees a degree of special status to reflect their particular history and populations. But there have been recurrent problems in many areas. Despite the constitutional

protection against discrimination the largest communal group of Dalits, constituting about a quarter of the total population throughout the country, complain of continuing marginalisation. The Muslim minority of some 12% are seriously under-represented in public employment and the security forces. And there have been serious conflicts in a number of areas, notably Jammu and Kashmir, Punjab and Assam, in which religious or ethnic 'minorities' outnumber the national Hindu majority. The recent and increasing assertion of Hindu values and culture has also led to a number of serious outbreaks of violence.

20. In Pakistan there are fewer major ethnic groups - the Punjabis, the Sindhis, the Pashtuns and the Baloch - and they are for the most part concentrated in particular regions. But the expectation of substantial regional autonomy has not been delivered, partly due to the promotion of a national Islamic identity and partly to the repeated suspension of the constitution and the imposition central of military rule. There are also tensions and conflicts stemming from the way in which provincial borders have been drawn, notably in respect of Balochistan, and the very substantial influx of refugees from India, the'mohajirs', into Sindh province. There have also been continuing complaints of discrimination and aggression against religious minorities, notably the Ahmadis, whose claim to Islamic status has been denied by a constitutional amendment, and Christians. The constitutional provision for separate voting rolls and reserved parliamentary seats for Christians has recently been replaced following complaints that it resulted in their political marginalisation and the major Islamic parties will now be required to make appointments to the reserved seats on a proportional basis.

21. A similar towards the assertion of Islamic identity and religion can be observed in Bangladesh following its secession from Pakistan in 1973. The substantial Hindu minority has declined from some 25% in 1947 to 12% in 1991 and there are continuing complaints of the abuse of legislation permitting the appropriation of their land and property. There has also been a lengthy violent campaign by indigenous hill tribes in the Chittagong area against the settlement of large numbers of the majority Bengali population on their lands, and there are fears that the peace accord signed in 1997 may break down.

22. The most obvious and disastrous failure to deal effectively with minority issues in the region has been in Sri Lanka. The assertion by the Sinhalese majority of some 75% of their language and religion and the failure by the government to implement repeated offers of constitutional autonomy for the Tamil minority of some 18% has led to one of the most serious ethnic conflicts in recent years. Though the Tamil demand for self-determination and independence has been reduced to an acceptance of a form of autonomy, it is as yet unclear whether the recent cease-fire and constitutional re-negotiation will succeed.

23. The issues in the smaller and monarchical states of Nepal and Bhutan are somewhat different. In Nepal, though the Hindu population represents some 86% of the total, there are continuing difficulties over political domination by a small ruling elite and substantial immigration from adjacent territories. There is a need to address the socio-economic root causes of grievances in Nepal. In Bhutan, where the Buddhist majority is divided into a number of distinct ethnic communities and there are large numbers of smaller indigenous communities, the ruling Ngalungs represent only some

15% of the total population and there are continuing disputes over the proposed new and less authoritarian constitution, notably over the apparent denial of citizenship to one of the largest ethnic groups

South-East Asia
24. The study of minorities in Laos, Vietnam and Thailand highlights a different set of issues, centred on the relationships between the dominant and expanding national majorities and the large number of much smaller indigenous hill tribes on the margins of these dominant populations. In Laos and Vietnam, as in China and under the Soviet regime, there is a highly developed system of ethnic classification for census purposes, identifying different ethnic origins for those in the dominant lowland population as well as in the highlands. But the main focus of official policy is on the development of national unity by assimilation rather than by providing separate or autonomous structures. In Thailand the dominant Thai community is regarded as more homogeneous and the initial focus on minorities was on the control of insurgency among hill tribes. This was associated with policies of exclusion and the denial of full citizenship to their members, which has yet to be fully remedied.

25. In all three countries, however, the major problem has been pressure on land from the growing lowland population and increasing encroachment on traditional agricultural and forest areas previously occupied by minority hill peoples.   In Laos this has been linked to a practice of relocating some hill villages and in Vietnam with both official and unofficial settlement of lowland communities in minority areas. In both this was regarded as an essential part of a policy of agricultural development and the replacement of traditional and 'backward' cultivation practices with more commercial and intensive exploitation. From the point of view of minority communities these policies were based on a basic misunderstanding of the nature of established land utilisation and conservation practices, compounded by difficulties of effective communication between central government officials and cadres and minority communities. The achievement of more effective participation by these minorities in central government decisions affecting their territories and even their survival is therefore likely to depend as much on the development of programmes to ensure better mutual understanding both in terms of bilingual capacity and of the contribution of traditional land use practices to conservation and sustainable development as well as the development of appropriate forms of autonomy.

26. At the recent Sub-Regional Seminar on Minority Rights: Cultural Diversity in Southeast Asia held in Chiang Mai, Thailand attention was again drawn to the difficulty in many cases of distinguishing clearly between ethnic and indigenous minorities. The major concern was the lack of formal recognition of and respect for the identity and culture of minority communities, however they are classified, and the resulting denial of their rights to citizenship, to effective participation in government and to the recognition of their distinctive histories, cultures and lifestyles, notably in the context of national development policies. In making provision for formal recognition, however, it was important not to permit the registration of individual communal identity or membership as a basis for the denigration of minorities as 'backward' or for their marginalisation from political processes at national level.

Singapore/Malaysia

27. The study on the Chinese minority in Malaysia and the Malay minority in Singapore focuses attention on another aspect of majority-minority relationships, that of economic competition. In Malaysia the Chinese community constitutes some 25% of the total population, compared with almost 60% Malays and some 7% Indians. But the Chinese community was economically dominant. In response to ethnic riots in the 1960s the Malaysian Government embarked on a policy of positive discrimination for ethnic Malays in education and employment. This soon became linked to the promotion of Islam as the state religion. The resulting preference for Malays as Muslims eventually contributed to renewed riots in Indian areas and concerns over the promotion of Islam in the outlying island provinces of Sarawak and Sabah. The study contrasts this approach with what is portrayed as a 'mirror image' in Singapore where the dominant Chinese population of some 77% is alleged to be ignoring the concerns of the 'indigenous' Malay minority of some 14% and the smaller Indian community of some 8%. Though the Singapore Constitution proclaims the multi-cultural nature of the state and recognises the special position of the Malay community, it is alleged that the Chinese community is being favoured in advanced educational schools, that Malays are effectively excluded from full participation in the security forces and that the wearing of the Muslim headscarf in schools is formally banned. It is also argued that the Presidential Council on Minority Rights has had little effective impact. In cases such as these the main focus for minority protection should be on equitable economic participation in a largely urban environment rather than on claims for communal autonomy on a territorial or functional basis.

The Pacific

28. The study on minority rights in Fiji and the Solomon Islands draws attention to a more general distinction between Melanesia, in which there are typically very large numbers of highly fragmented indigenous populations with distinctive languages, and Micronesia in which there is often less fragmentation within the indigenous populations but potential or actual conflict between them and the substantial non-indigenous populations imported during the colonial period.

29. The more detailed account of recent events in Fiji illustrates the difficulties which may arise from some otherwise acceptable policies. During the colonial period large numbers of Indians were imported to work on plantations, but there were strict limitations on the acquisition of land by non-Fijians. Prior to independence a tri-partite council was created to represent the interests of Fijians, Indians and the colonial administration. This led to the election under the first independence constitution of a series of power-sharing governments. But the strength of the Indian community, assessed in 1996 as representing 44% of the total population compared with 51 % of indigenous Fijians, led to a military coup in 1987 to prevent the installation a government dominated by Fijian Indians. An interim constitution in 1990 reserved the position of prime minister for an ethnic Fijian and created separate voting rolls for Fijians and Indians with a view to encouraging power-sharing in government. But following the adoption of a new constitution in 1997 which removed some of these provisions there was a second military coup in 2000 to overthrow an Indian led coalition. Despite continuing efforts to restore the 1997 constitution by legal actions the situation remains unresolved, suggesting that in the absence of political consensus complex constitutional arrangements for the protection of major ethnic groups in divided societies may not work.

30. The associated study of the Solomon Islands highlights the issue of inter-island differences in multi-island states. Though the ethnic Melanesian population represents some 95% of the total, there are tensions between the peoples of two of the major islands, Guadalcanal and Malaita, due largely to inter-island population movement, both of Malaitans to more fertile land in Guadalcanal and more generally to the capital in Honiara. The most significant conflict has been over land and led to the eviction of many Malaitans from the areas they had occupied in Guadalcanal. But there are also some secessionist pressures in the outlying Micronesian islands. It is as yet unclear whether the development of a more federal constitution will help to resolve these issues and how the multi-ethnic population of the capital might be dealt with in such a structure.

Latin America
31. The main focus of attention by the Working Group in this region has been on the situation and rights of the Afro-American minorities. The regional seminars in La Ceiba and Montreal have highlighted the relative lack of priority given both by the countries concerned and regional bodies to the concerns of these communities, which are typically widely dispersed or concentrated in small areas, in comparison with those of indigenous minorities with a well-defined traditional territory. Two principal issues have been raised: the low socio-economic status of these communities and their claims for reparations. The first of these is shared by many other marginal minority communities and may best be addressed by specifically directed anti-discrimination and positive action programmes with a view to the better recognition and integration of their members in the wider society. The claim for reparations in respect of enslavement and forced removal from their countries of origin raises issues which are specific to these particular minorities, though there are obvious parallels with the claims of some indigenous communities for compensation in respect of the occupations of their traditional lands or interference with their traditional economies and life-styles. This is a relatively undeveloped area of work in respect of the rights of minorities and requires careful consideration in any regional or general guidelines of best practice.

Western Europe
32. In its recent meetings the Working Group has tended to focus on general codes of conduct developed by European institutions, notably the Flensberg Proposals on the Effective Participation of Minorities (E/CN.4/Sub.2/AC.5/1999/WP.4) and the Lund Recommendations on the Effective Participation of National Minorities in Public Life (E/CN.4/Sub.2/AC.5/2001/WP.7), and examples of practice in respect of some established national minorities, notably in Finland, Hungary, Northern Ireland and Russia. These have concentrated on the potential benefits from various forms of territorial and cultural autonomy and in respect of Northern Ireland on cross-border co-operation with adjacent kin-states, though concerns have been raised over the recent Hungarian legislation over the proposed conferral of rights on ethnic Hungarians in adjacent states. Less attention has been paid to the treatment of the rapidly growing immigrant minorities which have generally been excluded from formal protection as 'national minorities' under the European Framework Convention on the Protection of National Minorities and the European Charter on Regional or Minority Languages. There has also been a lack of focus on the failure of European practice in respect of the continuing violent conflicts over autonomy and self-determination for some established national minorities in Spain, Corsica and the Balkans. The somewhat euro-

centric approach in these various conventions and codes has contributed to the desire within the Working Group to develop guidelines and codes of practice that address the particular circumstances in other world regions and sub-regions.

Some general issues for consideration

33. These studies demonstrate the very wide range of circumstances which must be taken into account in any set of Guidelines or Codes of Practice on the implementation of minority rights, whether intended for general or for more limited regional application. At the most general level four major concerns may be identified:

> the complexity of the historical development and current situation of all minorities

> the difficulty in distinguishing indigenous and non-indigenous minority rights

> the dangers from removing or diminishing established forms of recognition, special treatment or autonomy

> the need to allow for continuing demographic change or population movement

Understanding historical and current complexity

34. In approaching the implementation of minority rights in any particular case it is essential to understand the complexity both of the historical developments in the country concerned and of the current social and economic inter-relationships of all the communities. This need for analysis and understanding of this kind is increasingly accepted by all those involved in conflict avoidance, conflict management and conflict resolution, as has been recognised in the current programme for the training of field officers on early warning and preventive measures throughout the United Nations system. Similar analysis and understanding is also essential for human rights activists in choosing the most appropriate way of implementing minority rights principles.

Indigenous and non-indigenous minority rights

35. There is considerable difficulty in many cases in distinguishing the rights and the most appropriate way of implementing them of indigenous and non-indigenous minorities. Where the distinction is clear, there may be a case for granting additional rights or special treatment for indigenous minorities with well-established territories. But where all or almost all minority communities are indigenous or have been established over lengthy periods, this may be less appropriate. In such cases it may be better to focus attention on the nature of their land use and occupation and the distinction between rural and urban populations.

Removing or diminishing established rights or privileges

36. The studies set out above highlight the risks which may involved in removing or curtailing established forms of recognition, autonomy or special treatment for particular minority communities. Where it is necessary in the interests of peace and stability to do so, special care should always be taken in the means and timing for implementing the changes so as to diminish the risk of an adverse or violent reaction..

Allowing for demographic change and population movement

37. It is important to take account of current and future trends in the balance between majority and minority communities as a result of demographic changes and/or continuing population movement. Protective provisions which may be necessary or desirable in current circumstances may in time become a barrier to peace and stability.

Recommendations for the form and content of the proposed regional Guidelines or Codes of Practice

38. The preparation of any regional Guidelines or Codes of Practice will clearly require careful consideration by members of the Working Group in consultation with representatives and experts from the regions concerned. At this initial stage in the process it should be sufficient to identify some of the issues which will need to be addressed:

(a) Given the complexity and variation in circumstances in every region any workable Guidelines or Codes of Practice should be flexible rather than prescriptive and should encourage participation and negotiation within broad principles.

(b) Some form of recognition of the existence of minorities is likely to be a primary requirement, whether in formal constitutional or legislative provisions or by way of less formal but accepted customary practice.

(c) There is likely to be a need for discussion and guidance on the potentially controversial issues of self-determination or autonomy and their relationship to territorial integrity; the emphasis should be on practical solutions based on consideration of past and present status and the distinction between territorial and other forms of functional or cultural autonomy.

(d) There should be equal emphasis on mechanisms to ensure effective participation at national levels to ensure that national resource allocation and development strategies take due account of minority concerns; this will involve discussion of different forms of voting and representation within an overall concept of democracy.

(e) For these and other purposes the size and distribution of each community should be recognised as a key factor; in many cases the length of settlement is also likely to be relevant.

(f) There will be a need for discussion of the relationship between the need for formal recognition and the principles of non-discrimination; this will involve guidance on issues of formal identification and registration of members of minority communities and structures for monitoring equitable participation in public bodies and employment; the associated issues of multiple identity and the need to avoid institutionalising ethnic differences will also be relevant.

(g) There will be a need for careful consideration of the balance between the provision of separate educational structures, the promotion of separate linguistic communities and the need for effective communication at national level; this will involve guidance on the encouragement of bilingual capacities and in some cases the use of a national or international lingua franca.

(h) There will be a need to consider how a shared understanding of history can be developed and promoted, whether in separate or integrated schools.

(i) There will be a need for discussion and guidance on issues of national and regional economic development and their relationship to the preservation of traditional land uses.

(j) There will be a need for guidance on appropriate procedures and structures for the negotiation and implementation of agreed strategies on all these issues; this should involve consideration of mechanisms for international, regional and kin-state involvement, advice and assistance.

Appendix: List of reports, working papers and commissioned studies

1. <u>Reports of regional seminars</u>

    Report on the Seminar on Multi-culturalism in Africa: Peaceful and Constructive Group Accommodation in Situations involving Minorities and Indigenous Peoples, held in Arusha, United Republic of Tanzania, May 2000 (E/CN.4/Sub.2/AC.5/2000/WP.3)

    Report of the Second Workshop on Multi-culturalism in Africa: Peaceful and Constructive Group Accommodation in Situations involving Minorities and Indigenous Peoples, held in Kidal, Mali, January 2001 (E/CN.4/Sub.2/AC.5/2001/3)

    Report from the Conference on the Rights of Minorities of African Descent in the Americas, held in Montreal, Canada, September 2001 (E/CN.4/Sub.2/AC.5/2002/WP.3)

    Report of the Third Workshop on Multi-culturalism in Africa: Peaceful and Constructive Group Accommodation in Situations involving Minorities and Indigenous Peoples, held in Gaborone, February 2002 (E/CN.4/Sub.2/AC.4/2002/4)

    Report of the Regional Seminar on Afro-descendants in the Americas, held in La Ceiba, Honduras, March 2002 (E/CN.4/Sub.2/2002/40)

    Report of the Sub-Regional Seminar on Minority Rights: Cultural Diversity and Development in Southeast Asia, held in Chiang Mai, Thailand, December 2002 (E/CN.4/Sub.2/AC.5/2003/2)

2. <u>Working Papers already presented to the Working Group</u>

    Peoples' Rights in Africa: The Recognition and Protection of Ethnic, Religious and Linguistic Specificities by Samia Slimane (E/CN.4/Sub.2/AC.5/2001/WP.2)

Study on the use of Autonomy Approaches in the Russian Federation by Vladimir Katarshkin & A X Abarhidze (E/CN.4/Sub.2/AC.5/2001/WP.3)

Examples of Autonomy in Finland: the Territorial Autonomy of the Aland Islands and the Cultural Autonomy of the Indigenous Saami People by Lauri Hannikainen (E/CN.4/Sub.2/AC.5/2001/WP.5)

Integrative Approaches to the Accommodation of Minorities by Tom Hadden & Ciaran O Maolain (E/CN.4/Sub.2/AC.5/2001/WP.6)

Autonomy and Minority Groups: a Legal Right in International Law? by Geoff Gilbert (E/CN.4/Sub.2/AC.5/2001/CRP.5)

3. <u>Conference Room Papers of the ninth session of the Working Group on Minorities:</u>

Minorities in Ghana by E. Gyimah-Boadi & Richard Asante, E/CN.4/Sub.2/AC.5/2003/CRP.1

Minority Rights in Fiji and the Solomon Islands by Jon Fraenkel, E/CN.4/Sub.2/AC.5/2003/CRP.2

Minorities in the South Caucasus by Anna Matveeva, E/CN.4/Sub.2/AC.5/2003/CRP.4

Ethnic and Religious Minorities in the Islamic Republic of Iran by Nazila Ghanea-Hercock, E/CN.4/Sub.2/AC.5/2003/CRP.5

Minorities and participation in public life: Kazakhstan by Bhavna Dave, E/CN.4/Sub.2/AC.5/2003/CRP.6

Ethnic Minority Groups in Nigeria by Abdul Raufu Mustapha, E/CN.4/Sub.2/AC.5/2003/CRP.7

Inclusion of Minorities in Public Life in Laos, Thailand and Vietnam by Vatthana Pholsena, E/CN.4/Sub.2/AC.5/2003/CRP.8

Minorities and the State in Malaysia and Singapore by Lily Zubaidah Rahim, E/CN.4/Sub.2/AC.5/2003/CRP.9

Minorities in South Asia, by I. A. Rehman, E/CN.4/Sub.2/AC.5/2003/CRP.10

4. <u>Other studies</u>

Political Participation in Arab Countries by Mustapha Kamel Al-Sayyid, background paper prepared as input for the Arab Human Development Report