

**Distr.  
RESTRICTED**

**E/CN.4/Sub.2/AC.5/2003/WP.2  
5 May 2003**

**ENGLISH ONLY**

**COMMISSION ON HUMAN RIGHTS  
Sub-Commission on the Promotion and  
Protection of Human Rights  
Fifty-fifth session  
Working Group on Minorities  
Ninth Session  
12-16 May 2003**

**STATEMENT OF PRINCIPLES ON MINORITY AND GROUP RIGHTS  
IN SOUTH ASIA**

**(Paper submitted by the International Centre for Ethnic Studies)\***

\* The views expressed in this paper do not necessarily reflect the views of the Working Group or the United Nations

GE.03-14141

# **STATEMENT OF PRINCIPLES ON MINORITY AND GROUP RIGHTS IN SOUTH ASIA, a working paper submitted by the International Centre for Ethnic Studies<sup>1</sup>**

## **Introduction**

The elaboration of a statement of principles on minority and group rights in South Asia represents one component of a project of the International Centre for Ethnic Studies (ICES) on minority rights and diversity in South Asia. The major aim of this statement is to effectively address minority issues and concerns, which cut across countries in South Asia and enhance regional responses to some of the current weaknesses in constitutional and legislative protection and promotion of minority and group rights in the region.

The process of elaboration of this statement included the preparation of a background paper on the constitutional and legislative provisions and jurisprudence which protect minority and group rights in Bangladesh, India, Nepal, Pakistan and Sri Lanka, and on the gaps in effective protection. The background paper prepared was commented upon and discussed by a number of experts from the region, who made suggestions and comments for input into the statement. Further comments and suggestions on the draft statement of principles were received from an additional number of regional academics and human rights experts. The statement includes each of the principles, an explanation as to its content and scope, and an overview of some of the major national, regional and international human rights standards, from which the principle has been drawn. In the absence of regional standards in South Asia, examples have been provided from European instruments and documents, which are the most advanced in the field of minority protection. The term “minority” has been used throughout the principles, but rather than restricting this concept, the reference to minority is to encompass all groups within South Asian societies, as detailed at principle 1.

This statement of principles may be used as a reference tool for Governments, non-State actors, human rights institutions, NGOs, human rights advocates, and policy makers to draft national legislation, promote legislative reform, undertake advocacy, and influence decisions, policies and programmes to ensure that they focus on the promotion and protection of minority and group rights in South Asia.

## **Preamble**

1. Whereas in South Asia, constitutions have included some provisions relating to protection of minorities, and guarantee the cultural and social diversities in the respective

---

<sup>1</sup> Special thanks to Cecilia Thompson for the preparation of this paper. We would also like to thank François Roch for undertaking the background Research, and the regional experts namely, I.A. Rehman, Iqbal Ansari, Priyadarshini Dias, Ranabir Samaddar, Radhika Coomaraswamy, Rohan Edirisighe, Mario Gomez, and the Minority Rights Programme Officers of ICES, Jeevan Thiagarajah and Dhanya Ratnavale for making comprehensive, insightful and invaluable comments, contributions and suggestions regarding the background paper, draft statement of principles and the annotations.

polities and societies. The ways in which these polities have functioned show that constitutions have not always reflected the realities of the way by which they have functioned, the majoritarian basis of the respective polities, the poor state of the protection mechanisms available in the region, and the low level of the constitutionally acknowledged minority rights;

2. Whereas often the history of majoritarianism seems to suggest that the ideology of majoritarianism still exerts extensive and decisive influence on the conduct of State affairs, and States often think that these are homogeneous polities and societies, and not multi-ethnic and multi-religious compositions, and minorities have not contributed in building these societies. Furthermore, some of these constitutions do not recognise the existence of minorities at all in their texts;

3. Whereas the protection of minority rights is granted in terms of provisions of certain rights as rights of individual citizens, but not specifically as rights of members of minorities, that is group rights, and certain affirmative actions exist mainly as positive discrimination, and rights of minorities are assured only in form of non-discrimination and equality before the law, which has proved insufficient to guarantee that minorities, who are often disadvantaged by society, may exercise all their human rights without discrimination and on a basis of equality, and may effectively participate in cultural, religious, social, economic and public life, as well as in decisions which affect them;

4. Whereas minorities remain excluded from decision-making processes in national life, particularly in various levels of administration, formation and function of representative bodies including assemblies, formulation of cultural policies, and significant norms of citizenship, with the consequence that constitutionally and legally provided rights are not implemented in practice, and widespread violations of minority rights and discrimination against particular groups of the population continue on a daily basis, with citizenship having become an impoverished reality. Members of minorities, including religious minorities, have been exposed to abuses perpetrated by private persons with the connivance or acquiescence of governments, with the criminal justice system failing in many instances in providing persons belonging to minorities with adequate legal redress for abuses suffered;

5. Whereas States of this region have done very little to remove the root causes of religious and other forms of discrimination, and violations perpetrated against minorities. This situation re-emphasises the need to elevate the national-judicial and legal norms and constitutional jurisprudence in South Asia on equal protection and group rights issues to the standards of international human rights law relating to minorities, that include the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the United Nations Guide for Minorities, the OSCE Framework Convention for the protection of National Minorities, the European Charter on Regional or Minority Languages, the Hague Recommendations Relating to the Educational Rights of National Minorities, the Lund Recommendations on the Effective Participation of National Minorities in Public Life, and other similar pronouncements;

6. Whereas this situation of discrimination against minorities has aggravated after the tragic events of September 11, 2001, and certain minority communities have been facing systematic discrimination, and in general the weaker groups are suffering as a consequence of structural reforms, withdrawal of social welfare functions of the States, and the situation calling for immediate establishment of regional standards and harmonisation of juridical-legal guarantees of minority rights,

The South Asia Declaration of Concerned Citizens, Groups, and Public Bodies hereby includes the following principles:

### **Principle 1**

#### **Application of the Principles**

- (a) These principles shall be observed by all States, authorities, public and private organisations, institutions, corporations, NGOs, groups of persons, public officials and private individuals, whether State or non-State actors and irrespective of their legal status;**
- (b) These principles shall apply without distinction to all groups, including, but not limited to, minorities, peoples, nationalities, ethnic groups, castes, tribes, migrant workers, internally displaced persons, refugees as well as, where appropriate, to each member of such groups;**
- (c) These principles shall apply to all persons and groups, irrespective of any citizenship, disenfranchised or other status;**
- (d) These principles complement international, regional and national standards, norms and principles of human rights, refugee and humanitarian law. They shall not affect more favourable provisions concerning minorities, or the legal regime that may exist in a State or is provided for by relevant bilateral or multilateral agreements, in which case the more favourable provisions shall apply.**

#### **Annotations**

These principles not only apply to States but to all actors within South Asian society, and extend beyond the traditional responsibility of States to promote and protect human rights within their territory, in fulfilment of their obligations under international law. Increasingly, with the erosion of the central role of the State, the rise of nationalism, and the expanding role of non-State actors such as extremists, rebel groups and transnational corporations who have become perpetrators of human rights violations, the respect and promotion of human rights have come to concern all sectors of society.

This principle points to the existence of the diversity of different groups and peoples from a variety of religions, beliefs, linguistic, ethnic and cultural backgrounds in South Asia.

The scope of the principles should not be limited to the sometimes restrictive concept of a minority, but should rather apply to all groups within South Asian society, in particular those who are disadvantaged, excluded, marginalized or stateless, or have been disenfranchised. Finally, the principle reiterates that this statement is intended to complement and enhance the effective implementation of international human rights in full respect of individual dignity, tolerance and peaceful coexistence between individuals and groups, and that those provisions at national, regional and international levels which are most favourable to minority protection shall prevail.

### National, regional and international standards

With reference to the responsibility of non-State actors, article 4 of the *Convention on the Prevention and Punishment of the Crime of Genocide* (hereafter referred to as the “Genocide Convention”) states that persons committing genocide shall be punished irrespective of “whether they are constitutionally responsible rulers, public officials or private individuals”. In humanitarian law, common article 3 to the *Geneva Conventions and Protocol II* provides protection in situations of non-international armed conflict and binds not only State actors but also all parties to the conflict. Similar language is used in principle 2 of the *Guiding Principles on Internal Displacement*, which stipulates that “These principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without diverse distinction”.

### Principle 2

#### Non-discrimination and affirmative action

- (1) **All individuals shall be protected from discrimination and shall be treated without distinction of any kind, including, but not limited to, on the basis of language, religion, culture, national or social origin, sex, caste, birth, descent or other status;**
- (2) **all individuals shall be recognised as a person before the law, with full equality before the law, equal protection of the law, and equal benefit from the law;**
- (3) **non-discrimination and equality of treatment shall apply in all areas of economic, educational, social, religious, political and cultural life;**
- (4) **special protection shall be afforded to persons, particularly women, who may be subject to threats or acts of discrimination, hostility, violence and abuse as a result of their ethnic, cultural, linguistic, religious or other identity.**
- (5) **the enactment of laws relating to the crime of genocide and the effective application of laws on hate speech and hate crime shall be promoted;**
- (6) **special measures of affirmative action shall be taken in order for persons belonging to minorities to enjoy equal rights with the rest of the population. These shall, however, be discontinued after the objectives for which they were taken have been achieved.**

### Annotations

Particular attention needs to be paid to the human rights situation of minorities who are often in a disadvantaged, marginalized and vulnerable position, and are therefore discriminated against, thus requiring special measures to ensure that they benefit from the same rights on a basis of equality with the rest of the population. If no special measures are taken in favour of minorities, the non-dominant sectors of the population may ultimately be required to conform to the dominant groups.

Discrimination has been interpreted to “imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, ... language, religion, ... national or social origin... birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”<sup>2</sup>. Discrimination has been prohibited in a number of international instruments that deal with most, if not all, situations in which minority groups and their individual members may be denied equality of treatment. Important safeguards from which individual members of minorities stand to benefit include recognition as a person before the law, equality before the courts, equality before the law, equal protection of the law, and equal benefit from the law.

This principle, and especially the provision in favour of affirmative action, will contribute to reinforcing constitutional and legislative non-discrimination provisions in South Asia, and enhance the protection of minorities who are often disadvantaged by the State and society, with a view to ensuring that they may exercise all their rights without discrimination and on a basis of equality. Affirmative action, as provided for under principle 2(4) aims at redressing the balance in equality of treatment between minorities and the dominant majority. Provided that the measures have such an aim, and that they seek to do no more than promote this equality, they are not to be considered discriminatory. In a number of South Asian States, the law permits affirmative action, or compensatory discrimination, in favour of minorities. However, in some States, such measures have led to further discrimination and inequality, thereby exacerbating the separate legal status of certain groups, on the basis of having been identified and classified to be granted special measures. It is therefore paramount that a balance be sought between measures of affirmative action and the duration of these measures beyond the achievement of their goal on the one hand, and the fundamental right to equality and equal treatment of both minorities and majorities in society, on the other.

### National, regional and international standards

Article 28 of the *Constitution of Bangladesh* proclaims that “the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth”. Article 15 of the *Constitution of India* prohibits any discrimination on the ground of religion, race, caste or place of birth as well as on the basis of disability in access to shops, public restaurants, hotels, or to wells, tanks or bathing places open to the general

---

<sup>2</sup> General Comment 18 of the Human Rights Committee on non-discrimination under the International Covenant on Civil and Political Rights, HRI/GEN/1/Rev.2 of 29 March 1996.

public on the ground of race, religion, caste or place of birth. The latter part of article 15 is a corollary to article 17, which abolishes untouchability and provides that the enforcement of any disability arising out of untouchability shall be a criminal offence. Further principles to non-discrimination are provided for in articles 16, 19 and 29 of the Constitution.

At articles 11 (2 and 3) the *Constitution of Nepal* refers to non-discrimination on the grounds of religion, race, caste, tribe or ideological conviction, and protects the untouchables from non-discrimination. According to the *Constitution of Pakistan*, at articles 26 (1) and 27, reference is made to non-discrimination on the basis of race, religion, caste, residence or place of birth. Article 12 (2) of the *Constitution of Sri Lanka*, states that discrimination shall be prohibited "... on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any other such grounds".

With regard to equality before the law, article 14 of the *Constitution of India* guarantees equality before the law and the equal protection of laws, article 16 guarantees equality in public employment. The *Constitution of Nepal* at article 11 states that "All citizens shall be equal before the law. No person shall be denied the equal protection of the laws". According to the *Constitution of Pakistan* at articles 4 and 25, all citizens are equal before the law and are entitled to equal protection of the law. However, according to the Qisas and Diyat law and the Hudood Ordinances, the evidence of a woman is not equal to that of a man, the evidence of non-Muslims is not admissible in many cases, non-Muslims can be tried before the Federal Shariat Court but cannot be represented by non-Muslim counsel and a case under Section 295-C of the Penal Code (the so-called blasphemy law) must be heard by a Muslim judge. Article 12 (1) of the *Constitution of Sri Lanka* states that "All persons are equal before the law and are entitled to the equal protection of the law" irrespective of race, religion, language, caste, sex, political opinion, place of origin or any one of such grounds. Furthermore, the Social Disabilities Act No. 21 of 1957, as amended by Act No. 18 of 1971 makes it illegal to impose 'social disabilities' on a person by reason of his or her caste, also punishable by imprisonment up to three years with or without a fine for having done so.

On the issue of affirmative action, the *Constitution of India* has prescribed specific affirmative measures with the objective of safeguarding the fundamental human rights of vulnerable and economically disadvantaged sectors of society. In addition, the Constitution allows the State to positively discriminate in favour of backward classes, scheduled castes and scheduled tribes. However, religious minorities in India have been excluded from the benefits of affirmative action under article 16 (4), in spite of the fact that during the framing of the Constitution it was made clear that this provision was incorporated to enable underrepresented religious minorities to secure a fair share in public services. The *Constitution of Pakistan* at articles 25 and 26 provides for affirmative action in favour of women and children. In addition, the Constitution provides for the improvement of the less developed ethnic groups through measures such as the

reservation of seats for various provinces and administrative groups in professional institutions as well as a fixed employment quota<sup>3</sup>.

The Supreme Court of Sri Lanka in the case of *Ramupillai vs Minister of Public Administration, Provincial Councils and Home Affairs* and others stated that reverse discrimination on the basis of ethnicity is valid subject to the following conditions: Discrimination must be objectively established by evidence or by relevant findings of competent bodies: perceptions and opinions are insufficient. The object of affirmative action is to remedy the present effects of the past discrimination and not to perpetuate fixed quotas. Preferential consideration for victims is preferred to rigid quotas. Remedial action must be short term with appropriate review mechanisms; racial quotas cannot be imposed simply for the purpose of ‘correcting’ an existing racial imbalance, except perhaps where there is serious, chronic and pervasive under-representation or over-representation to raise a presumption of past discrimination, and; the proposed remedy would be more strictly scrutinised on account of other compelling needs and interests such as efficiency, higher levels of responsibility involved upon promotions and legitimate expectations of employees that merit and loyal services would be rewarded.

According to regional and international standards, article 1 of the *Universal Declaration of Human Rights* states that “All human beings are born free and equal in dignity and rights”, and article 2 of the *International Covenant on Civil and Political Rights* requires States to ensure that the rights in the Covenant are ensured to all individuals within their territory and subject to their jurisdiction “without distinction of any kind, such as ... language, religion, ... national or social origin, ... birth or other status”. With specific reference to minorities, article 4 of the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (hereafter referred to as “the Declaration”) and article 4 of the *OSCE Framework Convention for the Protection of National Minorities* (hereafter referred to as the “Framework Convention”) guarantee their right of equality before the law and the equal protection of the law. The same article makes specific reference to the adoption of adequate measures “...in order to promote in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to a majority”.

With regard to special measures of affirmative action, article 1(4) of the *Convention on the Elimination of All Forms of Racial Discrimination* states that “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved”. Article 7(2) of the *European Charter for Regional or Minority Languages*, stipulates that “the adoption of special measures in favour of

---

<sup>3</sup> Shaheen Sardar Ali, “The Rights of Ethnic Minorities in Pakistan: A Legal Analysis”, in *International Journal on Minority and Group Rights*, Kluwer Law International, 1999, p.194

regional or minority languages aimed at promoting equality between the users of the languages and the rest of the population or which take account of their specific conditions is not considered to be an act of discrimination against the users of more widely used languages”.

Principle 2(4) draws upon the language of article 6 of the *Framework Convention*, which states that “The Parties undertake to take appropriate measures to protect persons who may be subject to threats of acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity”.

### **Principle 3**

#### **Right of minorities to their identity and characteristics**

**The identity and characteristics of minorities shall be respected and promoted. This includes the right:**

- (a) to express, maintain and develop their identity and characteristics, including their religion, language, culture, traditions, customs and heritage. To this end, measures shall be taken to create the necessary conditions for minorities to enjoy this right. Such measures do not apply in cases where practices, whether ethnic, religious, cultural, linguistic or other, are contrary to international and regional standards, norms and principles and/or in violation of national law in the field of human rights, refugee and humanitarian law;**
- (b) to a nationality or equivalent citizenship status guaranteeing the same rights as those afforded to nationals;**
- (c) of every person belonging to a minority 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.**

#### **Annotations**

The right to identity is paramount to the protection of minorities as it is from such recognition that their protection may be afforded by the State, thereby also facilitating the application of specific measures for the benefit of minorities. The recognition of the identity and characteristics of minorities is very important in the South Asian context as the wide variety of identities and the multiethnic, multireligious and multilinguistic composition of South Asian societies across the region is not sufficiently reflected in constitutional and legislative provisions, nor is the identity of minorities actively promoted. In some countries, certain sectors of the population have not been granted citizenship, and have therefore not been afforded minority protection. Majoritarianism in the region still exerts extensive influence on the conduct of State affairs and dominates the relations between and among groups in society. All minorities within South Asian States should enjoy full protection under the national laws, subject to their conformity with international human rights standards, as well as relevant international human rights instruments. Recognising the identity and characteristics of minorities also contributes to

sharpening the focus on minorities as groups, who are distinct from the majority and dominant sections of the population in South Asian countries.

Principle 2 (c) provides protection to those individuals who may not wish to maintain their separate minority identity and would prefer to assimilate with the majority population, or who may be compelled to embrace membership of a minority against their free choice. This implies that no particular identity can be imposed on a given person or that persons belonging to minorities cannot force a person to belong to, or be expelled from, their group. Of particular relevance therefore is the freedom for individuals to choose whether they wish to belong or not to a minority or other group and to define their own identities.

#### National, regional and international standards

There are few direct references in the Constitutions of South Asian countries that refer to the specific identities and characteristics of minorities. Article 29 of the *Constitution of India* refers to minorities as “any section of the citizens ... having a distinct language, script or culture”. Article 16 (4) refers to the “Scheduled Castes and the Scheduled Tribes” as being distinct from the majority, and at article 25, reference is made to religious minorities, such as the Sikh, the Jain and the Buddhists. At article 28 of the *Constitution of Pakistan*, reference is made to the fact that “... any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same ...”, which seems to imply at least a tacit recognition of the existence of linguistic and cultural minorities. At article 37 (h) reference is made to non-Muslims, inferring that this group is distinct from the Muslim majority population. Although not specifically identified in the *Constitution of Sri Lanka*, protection is provided to the Tamil minority to which the Constitution refers to at articles 18 to 25 regarding special measures to protect the Tamil language.

The issue of the recognition of the identity and characteristics of minorities is firmly rooted in international law. The recognition of national, ethnical, racial or religious groups and their right to existence is referred to at article II of the *Convention on the Prevention and Punishment of the Crime of Genocide*. In many instruments, the protection of the existence and identity of minorities goes beyond mere physical protection to the protection of their religious, cultural and linguistic heritage essential to group identity. Article 1 of the *Declaration* provides for the protection of the “... existence and the national or ethnic, cultural, religious and linguistic identity of minorities”, the encouragement of “... conditions for the promotion of that identity”, and calls for “... appropriate legislative and other measures to achieve those ends”.

With regard to the respect and promotion of the characteristics of minorities, article 4 (2) of the *Declaration* stipulates that “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards” and at article 2 (1) as well as article 27 of the *International Covenant on Civil and Political*

*Rights*, persons belonging to minorities have the right to” ... enjoy their own culture, to profess and practice their own religion, and to use their own language in private and in public, freely and without interference or any form of discrimination”. Article 5 of the *Framework Convention* calls on “ ... Parties to undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage”.

With reference to principle 3 (c) regarding the choice of whether to belong to a minority or not, article 3 (2) of the *Declaration* states that “No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration”. Similar language is to be found at article 3 of the *Framework Convention* which mentions that individuals should have the right to choose whether to be treated as a member of a minority or not.

#### **Principle 4**

##### **The promotion of diversity and intercultural education**

- 1. Effective measures shall be taken, particularly in the fields of education, culture and the media, with a view to combating prejudices and discrimination, and to promoting tolerance, intercultural dialogue, mutual respect, understanding and cooperation among all groups.**
- 2. Intercultural education shall enable all persons and groups within society to participate in a democratic and pluralistic society. To this end;**
  - (a) compulsory curricula should include the study of history, culture, traditions, customs, languages and practices of minorities and majorities, with a view to encouraging mutual appreciation of differences and similarities between them, and as a means of promoting intercultural understanding;**
  - (b) Intercultural education should be included in compulsory education and should be developed with the active participation of the minorities concerned, and, where appropriate, bodies representing the relevant minorities, so that they can share knowledge and perspectives about their history, culture, traditions, customs, languages and practices.**

#### **Annotations**

South Asian countries are far from being homogeneous cultural, religious, linguistic or ethnic entities. Each country is composed of a mosaic of minorities with a rich diversity of languages, religions, cultures and traditions. The identity and characteristics of minorities, groups and communities need to be recognised, and the linguistic, religious, ethnic and cultural diversity, as well as the diversity of opinion and the shared value systems, which cut across states in the South Asian region should be celebrated. Such diversity is not static, rather the pattern of the mosaic of societies changes as identities shift and new identities develop. Respect for diversity, tolerance and understanding

among all groups in society is an essential prerequisite of a democratic society. There is a need to emphasise the right of all social groups and communities to have their due share ensured by developing policies and promoting the principle of diversity. The aim of this principle is to strengthen social cohesion, to promote tolerance and intercultural dialogue by eliminating barriers between persons belonging to ethnic, cultural, linguistic and religious groups through mutual respect and understanding, thereby enabling the integration of minorities into society while preserving their distinct identity and characteristics.

In South Asian States, as in many other States, the culture, history and traditions of minority groups may be subject to distorted or false representations, especially in situations of conflict, producing low self-esteem among minorities and negative stereotypes in the wider community. In some countries in South Asia, the concept of intercultural education is unknown. The compulsory curricula include only the belief, culture, history and traditions of the majority community. Intercultural education should therefore aim at, among others, eradicating the distortions and negative stereotypes of the history, culture and religion of communities, especially of the non-dominant group. Intercultural education allows both minorities and majorities to learn about and appreciate each other in ways which make it possible for them to appreciate each others' cultures as an enrichment of society as a whole. The importance of intercultural education as a means to promote greater tolerance, understanding and respect in minority-majority relations is crucial. Intercultural education aims at highlighting the preservation of the identity of each group in society, accompanied by the acceptance of diversity leading to understanding and tolerance. To this end, intercultural education requires that both the minority and majority learn about each other, about their specific characteristics, their respective histories, as well as about the values of tolerance and pluralism.

#### National, regional and international standards

According to article 27 (5) of the *Constitution of Sri Lanka*, the Directive Principles of State Policy stipulate that the State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the people of Sri Lanka, including racial, religious and other groups, in order to eliminate discrimination and prejudice.

Article 6 of the *Framework Convention* states that “Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and cooperation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media”. Article 7 of the *International Convention on the Elimination of All Forms of Racial Discrimination* stipulates that “States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among national and racial or ethnical groups ...”.

With regard to intercultural education, article 4 (4) of the *Declaration* stipulates that “States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole”. Article 12 of the *Framework Convention* states that Parties shall, where appropriate, take measures in the field of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority. In this context, the Parties shall, *inter alia*, provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities. The *Hague Recommendations* at recommendation 19 provides that “State educational authorities should ensure that the general compulsory curriculum includes the teaching of the histories, cultures and traditions of their respective national minorities”.

## **Principle 5**

### **Right of minorities to freedom of religion**

**Minorities shall enjoy the right to profess, practice, manifest or to adopt their own religion or belief and to establish their own religious institutions, organisations and associations for this purpose. This includes the freedom to:**

- (a) Worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;**
- (b) receive or impart instruction in their own religion or belief;**
- (c) change one’s religion or belief;**
- (d) establish training schools for the faithful;**
- (e) teach a religion or belief in places suitable for these purposes;**
- (f) publish and disseminate their own religious materials, in any language or format, including in the minority language;**
- (g) train, appoint, elect or designate by succession appropriate religious leaders called for by their religion or belief;**
- (h) solicit and receive financial and other contributions to finance their own religious activities;**
- (i) establish, manage and maintain their own religious institutions;**
- (j) observe days of rest and celebrate holidays and ceremonies in accordance with the precepts of their own religion or belief.**

### **Annotations**

The right of minorities to profess, practice and manifest their own religion is of particular relevance in South Asia which is composed of a whole range of religious minorities and groups, and where religious issues and factionalism have come to dominate much of the political discourse, and have sharpened the expression of identity. Some religious minorities may identify themselves solely by their religious identity and its preservation. Others may perceive themselves as an ethnic or linguistic minority where religion is but one distinguishing feature. Furthermore, the nature of most religions is that the believers

acknowledge some supernatural being, a revered teacher or Gods, to guide their lives and communities. As such, compromise can be difficult to achieve in balancing competing interests between religious minorities themselves, between minorities and majorities, and between religious minorities and the State. This situation may be exacerbated in countries where the dominant State religion pervades constitutional and legislative provisions, with little regard for the interests of religious minorities, potentially leading to widespread discrimination, tensions and conflict. There may be many ways by which the right of minorities to profess, practice and manifest their own religion may be implemented in practice.

#### National, regional and international standards

Despite the fact that, according to the eighth amendment to the *Constitution of Bangladesh*, Islam is declared as a State religion, article 41 of the Constitution declares that “every citizen has the right to profess, practice or propagate any religion” and “every religious community or denomination has the right to establish, maintain and manage its institutions”. Further provisions of article 41 guarantee an individual’s right to refuse to practise a religion, or to be compelled to be educated in a religion other than his own. Article 25 of the *Constitution of India* guarantees “...freedom of conscience and the right freely to profess, practice and propagate religion”. Similar language is used in the *Constitution of Nepal* at article 19, which states that “Every citizen has the freedom to profess and practise his own religion...”. In Pakistan, the State recognises only religious minorities and article 2 of the *Constitution of Pakistan*, declares Islam to be the state religion and the Shariat Enforcement Act of 1991 provides for enforcement of Islamic laws and policies. Furthermore, article 20 of the Constitution of Pakistan stipulates that “every citizen shall have the right to profess, practice and propagate his religion” and that “every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions”. Despite these provisions, section 298 of the Penal Code for example exclusively targets Ahmadis who are prohibited from preaching their faith. The *Constitution of Sri Lanka*, at article 10 provides that “Every person is entitled to freedom of thought conscience and religion, including the freedom to have or to adopt a religion or belief of his choice” and at article 14 (1) (e) grants the freedom of every citizen “... to manifest his religion or belief in worship, observance, practice and teaching”. Article 12 (3) of the Constitution further provides that “no person shall, on the ground, *inter alia*, of religion be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion”. This article thus ensures that religious institutions of a public character are accessible equally to all sections and classes of the followers of that particular religion, irrespective of caste. In addition, section 35(1) of the Education Ordinance states that a pupil in a government school should be given instruction in the religion of the parent of each pupil.

With regard to the right to change one’s religion or belief, the State of Tamil Nadu and Gujarat in India have enacted laws regulating conversion from one religion to another. A number of Hindu family laws enactments of 1955-56 penalise conversion of Hindus to Christianity or Islam by making them lose the right to the guardianship of minor children,

and members of the Scheduled Castes lose all benefits of the State's affirmative action by conversion to Christianity or Islam. In Pakistan, the right to change one's religion is not recognised as a fundamental right. In practice, conversion to Islam is welcomed but a Muslim adopting another religion runs the risk of losing his or her life.

With regard to international and regional standards, article 18 of the *Universal Declaration of Human Rights* provides that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance". Article 27 of the *International Covenant on Civil and Political Rights* grants persons belonging to religious minorities the right "... to profess and practise their own religion ...". Article 2 of the *Declaration* stipulates that "Persons belonging to national or ethnic, religious and linguistic minorities have the right to ... profess and practice their own religion". Article 8 of the *Framework Convention* states that "Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations".

Article 1 of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* and article 18 of the *International Covenant on Civil and Political Rights* provide greater detail as to the content and scope of this right. They stipulate that "...this right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching". Furthermore, "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice".

## **Principle 6**

### **Right of minorities to use their own language in private and in public**

- 1. Minorities have the right to use their own language (including their own script) freely, without interference or any form of discrimination, in private and in public, orally, in writing or in any other form. This includes the freedom for minorities to:**
  - (a) Freely express opinions and beliefs and receive and impart information in the minority language across localities, regions and frontiers;**
  - (b) use their language in social, political and cultural gatherings, including in private or public conferences, meetings and assemblies;**
  - (c) use their language for the production and airing of private and public radio and television programmes, and have access to broadcast time in their own language on publicly funded media;**
  - (d) use their language in the creation, development and use of written materials, printed documents, newspapers, magazines, and other materials;**
  - (e) use their own surnames and first names in the minority language, and enjoy official recognition thereof;**

- (f) post signs, inscriptions, commercial and other information in their own language, which can be displayed visibly to the public, and use traditional local names, street names and other topographical information intended for the public.**
- 2. In regions and localities where minorities are present in significant numbers, or if those minorities so request and where such a request corresponds to a real need:**
  - (a) Minorities shall have the right to use their language in relations with administrative authorities at local, regional and national level, as well as contact with public services. Administrative authorities shall take the necessary measures to ensure that public services are provided also in the minority language;**
  - (b) Minorities shall have the right to acquire civil documents and certificates both in the official and minority language, and regional and/or local public institutions shall keep the appropriate civil registers also in the minority language.**
- 3. This principle does not in any way affect the status of the official language or languages of the State concerned, nor does it call into question the need for minorities to know or learn the official language.**

#### Annotations

In South Asia, as elsewhere, language is both a very personal matter closely connected with identity, and an essential tool of social organisation which, in many situations, becomes a matter of public interest. The use of minority language represents one of the principal means by which minorities can assert and preserve their identity, and the use of language bears on numerous aspects of the functioning of South Asian States. Linguistic diversity in South Asia contributes to the richness of society, and its preservation and promotion is testimony to political sensitivity, openness, diversity and pluralism. In some countries, the local authorities do not provide public services in the minority language, nor may minorities have access to civil documents and registers, as well as certificates in their own language. The mere prohibition of discrimination against minorities in the use of their language in private and in public is necessary but insufficient. Special measures need to be taken, and support needs to be provided, to safeguard the rights of linguistic minorities and to preserve and develop minority languages. Furthermore, the right of minorities to use their own language in private and in public involves an obligation on the part of the State to create conditions favourable for the preservation and promotion of the distinct linguistic identity of minorities. This however entails a commitment to provide the resources and make the necessary administrative arrangements required to effectively apply this right.

There are many situations in daily life in which it is important for minorities to be able to use their own language, freely and without interference. These may include being able to speak in a minority language at home, as well as with family and friends in public places,

use a minority language in social, political or cultural gatherings, and for the production and airing of radio and television programmes. It also includes producing and disseminating materials and documents in the minority language and the posting of commercial and other signs in public places.

Principle 2 ensures that minorities can exercise their right to use their language before administrative authorities, and in their contacts with public services. This allows them to exercise their rights and fulfill their civic duties in conditions that respect their own modes of expression, improves communication between public authorities and minorities, promotes the minority language in the public domain, and thereby contributes to the richness and cultural wealth of multilingual societies. Specific reference is made to the concentration of a minority group in a region and the expressed wish of minorities to use their language in their relations with the authorities, as this principle calls for special measures to be taken which may entail the allocation of resources, other than those provided by the minorities themselves.

#### National, regional and international standards

Despite the fact that Hindi in the Devanagari script has been declared the official language of India at article 343, the *Constitution of India* has recognised the rights of minorities to use their own language in article 29 which states that “any section of the citizens of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same”. At articles 120 and 210, the Constitution also provides to some extent for the rights of minorities to use their language before the authorities, in that any Member of Parliament or the Legislature may be allowed to use his mother tongue if he cannot adequately express himself in Hindi or in English. In accordance with article 344 of the Constitution, persons representing the different languages specified in the Eighth Schedule of the Constitution, namely, Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telegu, and Urdu, may be appointed by the President to a Commission entrusted with making recommendations to the President regarding the progressive use of the Hindi language for official purposes, the restrictions on the use of the English language, and in particular with regard to any language to be used for official purposes, in proceedings of the High Court, subject, however, to previous consent of the President. To this end, particular attention is to be paid to the claims and interests of persons belonging to the non-Hindi speaking areas.

With reference to the right of minorities to use their own language in their relations with administrative authorities, article 345 of the *Constitution of India* grants the freedom of any state of India to adopt any one or more of the languages in use in that state as the language or languages to be used for all or any of the official purposes of that state. According to article 347, “on a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a state desire the use of any language spoken by them to be recognised by that state, direct that such language shall also be officially recognised throughout that state or any part thereof for such purpose as he may specify”. However, articles 345, 347 and 350 (A) on the right to use minority

languages for specified official or administrative purposes as well as for imparting primary education is discretionary, not mandatory.

According to the *Constitution of Nepal* at article 6(1), while Nepali is the official language, “All the languages spoken as the mother tongue in the various parts of Nepal are the national languages”. Nevertheless, in accordance to art. 18 (1) of the constitution, each community has “... the right to preserve and promote its language, script and culture”. According to article 28 of the *Constitution of Pakistan*, “... citizens having a distinct language, script or culture shall have the right to preserve and promote the same ...”. Article 14 (1) (f) of the *Constitution of Sri Lanka* grants the freedom to enjoy and promote his culture and the use of his own language. According to article 19 of the Constitution “the National Languages of Sri Lanka shall be Sinhala and Tamil”. Article 20 provides that members of Parliament or of local authorities may discharge their function in either Sinhala or Tamil. Article 22 provides that Sinhala shall be used as the language of administration throughout Sri Lanka but that Tamil “... shall also be used as the language of administration for the maintenance of public records and the transaction of all business by public institutions in the Northern and Eastern Provinces”. In addition, in those areas Tamil may be used in communications, and transactions, records, documents, and information should be made available in Tamil. Examinations for admission to public service can also be conducted in Sinhala or Tamil. Article 23 provides that legislation shall be enacted and published in Sinhala and Tamil and article 24 states that in the Northern and Eastern Provinces Tamil shall be the language of the courts.

In accordance to regional and international standards, Article 19 of the *International Covenant on Civil and Political Rights* and article 9 of the *Framework Convention* provides that every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, or the language of one’s choice, without interference by public authorities and regardless of frontiers. Article 2(1) of the *Declaration* proclaims the right of persons belonging to national minorities to “use their own language, in private and in public, freely and without interference or any form of discrimination”, with similar wording at article 10 of the *Framework Convention* adding that minorities can do so “...orally and in writing”. More specifically, article 11 of the Convention provides for the right to use surnames and first names in the minority language and the right of official recognition thereof, and stipulates that “...minority language signs, inscriptions and other information of a private nature can be displayed visibly to the public”. In addition, the right to use one’s surname and first names in the minority language and to “ ...display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is sufficient demand for such indications” should be respected.

As far as the right of minorities to use their own language in relations with the administrative authorities is concerned, article 10 of the *Framework Convention*, and the *Oslo Recommendations regarding the linguistic rights of national minorities* (hereafter referred to as the “Oslo Recommendations”) grant minorities the freedom to use their language in relations and communications with the administrative authorities. More

specifically, the *Oslo Recommendations* at recommendation 13 stipulate that the administrative authorities shall, wherever possible, ensure that public services are provided also in the language of the national minority, and that regional and/or local public institutions shall keep the appropriate civil registers also in the language of the national minority. They further grant persons belonging to a national minority the right to acquire civil documents and certificates both in the official language or languages of the State and in the language of the national minority in question from regional and/or local public institutions, and ensure that elected members of regional and local governmental bodies can use also the language of the national minority during activities relating to these bodies.

With reference to the media, article 9 of the *Framework Convention*, prohibits States from discriminating against minorities in their access to the media, and stipulates that “... the creation and the use of printed media ...” shall not be hindered and that the possibility be granted “... of creating and using their own media” with regard to sound radio and television broadcasting. Additional details are provided in the *Oslo Recommendations*, which state at recommendations 8, 9 and 10 that “Persons belonging to national minorities have the right to establish and maintain their own minority language media”. They should also “... have access to broadcast time in their own language on publicly funded media, and the independent nature of the programming of public and private media in the language(s) of national minorities shall be safeguarded. Public media editorial boards overseeing the content and orientation of programming should be independent and include persons belonging to national minorities serving in their independent capacity”.

## **Principle 7**

### **The right of minorities to be taught their language and have instruction in their language**

- 1. Minorities have the right to be taught their language and to receive instruction in their language. To this end, the following measures may be taken:**
  - (a) to make available kindergarten, pre-school, primary, secondary, university, higher and vocational education in the minority language;**
  - (b) to make available a substantial part of primary, secondary and vocational education in the minority language;**
  - (c) to teach the minority language as part of the curriculum of primary, secondary, university, higher and vocational education;**
- 2. This principle shall not prejudice the learning of the official language or the teaching of this language.**

### **Annotations**

The right of every person belonging to a minority to learn his or her minority language represents one of the principal means by which minority identity can be asserted and

preserved. Although this principle refers to measures to be taken for minorities to be taught their language and have instruction in their language, the nature of these measures will depend on the context of the particular situation, including whether the number of students in part of a territory warrant such measures, there is a demand for such measures, and the State is able to commit the necessary resources to respond to such demands. In cases where the language of the minority is a territorial language traditionally spoken and used by many in the region of the country, pre-school and primary school education should, ideally, be in the child's own language. In regard to non-territorial languages spoken traditionally by a minority within a country, minorities should, as a minimum, have an opportunity to learn their mother tongue. In this regard, minorities have a right, like others, to establish their private institutions, where the minority language is the main language of instruction.

#### *National, regional and international standards*

According to article 350 A of the *Constitution of India*, "It shall be the endeavour of every state and of every local authority within the state to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups, and the President may issue such directions to any state as he considers necessary or proper for securing the provision of such facilities". The *Constitution of Pakistan* provides for a language other than the national language to be taught, but does not provide for minority languages to be promoted as a medium for instruction. Accordingly, at article 251 (3), "Without prejudice to the status of the national language, a provincial assembly may by law prescribe measures for the teaching, promotion and use of a provincial language in addition to the national language". According to article 18 (2) of the *Constitution of Nepal*, "each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children". Article 21 (1) of the *Constitution of Sri Lanka* provides that a person shall be entitled to be educated in either Sinhala or Tamil, and at university level, the medium of instruction will be Tamil, in cases when students were educated in Tamil prior to university admission.

With reference to regional and international standards, article 4 (3) of the *Declaration* stipulates that "States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue". At article 14 of the *Framework Convention*, "The Parties undertake to recognise that every person belonging to a minority has the right to learn his or her minority language". In the same article, minorities are granted the right to have adequate opportunities for being taught the minority language or for receiving instruction in this language. Specific mention is made that this right shall be implemented without prejudice to the learning of the official language or the teaching in this language. At recommendations 11 to 13 of the *Hague Recommendations Regarding the Education Rights of National Minorities* (hereafter referred to as "The Hague Recommendations) suggestions are made that pre-school, kindergarten and primary school should ideally be taught in the minority language. "In secondary school a substantial part of the curriculum should be taught through the

medium of the minority language”. At recommendation 15, “Vocational training in the minority language should be made accessible in specific subjects...” and recommendation 17 suggests that minorities “... should have access to tertiary education in their own language...”.

The most detailed treaty in this respect is the *European Charter for Regional or Minority Languages*, which provides at article 8, a sliding scale regarding the extent to which minorities may be taught their own language and have instruction in their own language. The scale ranges from pre-school education to be made available in minority languages to ensuring that a substantial part of pre-school education is available in the relevant language, and making primary, secondary, university education, continuing education and technical and vocational training available in the minority language to teaching the minority language as part of the curriculum.

### **Principle 8**

#### **Right of minorities to establish and manage their own unions, associations and institutions**

**Minorities shall have the right to establish and manage their own unions, non-governmental organisations, associations and institutions, in all fields including education, religion, culture, language, politics and labour, and to associate with any of these at local, national, regional and international levels. To this end:**

- a. any form of discrimination or interference in the establishment and maintenance of such institutions is prohibited;**
- b. minorities shall have the freedom to seek funding for such institutions from the State, local, regional and international sources and from the private sector.**

#### **Annotations**

This principle allows for persons belonging to minorities to set up any union, non-governmental organization, association and institution they may want, and associate with any of these at local, national, regional and international levels. Granting minorities the right to freely associate and to establish and maintain their own institutions contributes to their effective participation in public and political life, and to the maintenance and development of their own identity and characteristics. Such institutions should be able to be established and maintained freely, without interference or discrimination. Minority schools run by minorities themselves are expected to conform to basic national standards applicable to all schools, including rules regarding compulsory schooling, compulsory curricula requirements, and teaching standards, and shall be subjected to normal supervisory standards. Minorities should also have the right to seek sources of funding for these institutions from the budget of the State, local, regional or international sources or the private sector.

### National, regional and international standards

Article 38 of the *Constitution of Bangladesh* provides for every citizen the right to form associations or unions. In accordance with article 30 of the *Constitution of India*, all religious or linguistic minorities "... shall have the right to establish and administer educational institutions of their choice". Furthermore, the Constitution provides for the possibility of the State granting aid to such educational institutions, without discrimination "... against any educational institution on the ground that it is under the management of a minority, whether based on religion or language". In practice, the rights of minority educational institutions under article 30 are subjected to unreasonable restrictions especially in their admissions policy, requiring admission of a certain percentage of non-minority students as obligatory for reasons of national integration, whereas other educational institutions are not required to meet the same criteria and admit a fair number of minority students for the same purpose. Article 12(e) of the *Constitution of Nepal* guarantees freedom "...to form unions and associations, ... to practice any profession or to carry out any occupation, industry or trade". Article 28 of the *Constitution of Pakistan* stipulates that subject to Article 251, "...any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and, subject to law, establish institutions for that purpose". According to articles 20 (b), 21 and 22 of the Constitution, religious minorities have the right to establish their own religion and educational institutions. The *Constitution of Sri Lanka* at Article 14 (1) (g), guarantees to every citizen, "the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise", and Article 14 (1) (d) guarantees the right of every citizen to form and join a trade union.

With regard to regional and international standards, article 13.4 of the *International Covenant on Economic, Social and Cultural Rights* refers to the liberty "...of individuals and bodies to establish and direct educational institutions" and article 6(b) of the *Declaration on Religious Intolerance* specifies that freedom of religion or belief includes the freedom to "establish and maintain appropriate charitable or humanitarian institutions". Article 2(4) of the *Declaration* stipulates that "Persons belonging to minorities have the right to establish and maintain their own associations". At article 13 of the *Framework Convention*, "Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments". Recommendation 6 of the *Oslo Recommendations* grants minorities the right "... to establish and manage their own non-governmental organisations, associations and institutions".

## **Principle 9**

### **Effective participation of minorities in public and political life**

- 1. Minorities have the right, irrespective of citizenship or other status, to effectively participate in cultural, social, economic and political life, and in public affairs, in particular in those that affect them directly. This includes the right of minorities:**
  - (a) to be consulted by means of appropriate procedures and through their representative institutions when legislation or administrative measures are being considered which affect them directly;**
  - (b) to be involved in the preparation, implementation and assessment of national and regional programmes and plans which are likely to affect them directly;**
  - (c) to effectively participate in decision-making processes and elected bodies at local, national and regional levels;**
  - (d) to vote and be elected at genuine periodic elections;**
  - (e) to be effectively represented;**
  - (f) to have access to, and hold, public office.**
  
- 2. Minorities have the right to participate in the conduct of public and political affairs, directly or through freely chosen representatives. To this end, the following measures may be taken:**
  - (a) reduced requirement for the registration of political parties;**
  - (b) lowered threshold for entering parliament;**
  - (c) special representation through reserved seats in parliament, and other elected bodies of the national society;**
  - (d) proportional representation;**
  - (e) favourable delimitation of constituencies;**
  - (f) creation of minority administrative and advisory bodies in particular with regard to education, culture and religion, such as minority parliaments, advisory councils and round tables.**
  
- 3. The imposition of requirements on minorities to freely exercise their right to effective participation shall be prohibited, except for linguistic requirements necessary to hold public office;**
  
- 4. Measures, which alter the proportions of the population in areas inhabited by minorities with the aim of influencing minority representation in elections or for other political purposes, and/or restrict the rights and freedoms flowing from these principles, are prohibited. Examples of such measures include expropriation, evictions, expulsions or redrawing of electoral boundaries.**

### **Annotations**

Effective participation of minorities in cultural, religious, social, economic, public and political life, as well as in decisions that affect them, including in the legislative and

administrative sectors, aims at encouraging real equality within society. It represents a shift from mere protection of minorities to guaranteeing representation by all groups. Special measures are often required to facilitate the effective participation, through substantive contribution, of minorities in decision-making. Effective participation is necessary to ensure that minorities are respected, recognised and heard. The most fundamental requirements of this right is to ensure that minorities enjoy the right to non-discrimination, including on the basis of citizenship or other status, as well as to vote and to be elected. However, this is often insufficient to enable minorities to effectively participate, and special measures are required.

One of the key issues of participation of minorities in South Asian States is their representation in all aspects of society. While it is essential that minorities and groups be given opportunities for effective participation, no single formula exists that is appropriate to all minority situations in South Asia. Forms of participation may therefore require adaptation to the variety of needs and aspirations of different minorities as well as to their size and distribution, and may involve the creation of ethnic, cultural and religious associations and societies, political parties, advisory and decision-making bodies, and minority representation in parliament and other elected bodies within national society.

In many States, minorities may not have the same access to holding public office as the majority or dominant population. Furthermore, in many States, minorities tend to be under-represented in public and political life, as their numbers are lower, implying that they are often outvoted in terms of their representation and their potential for being heard, and cannot elect the number of representatives that reflect the actual percentage of the minority population. In some countries, minorities are persistently under-represented in public and political bodies. In addition, electoral boundaries may be manipulated so that, even when a minority represents a fairly large percentage of the population in a given region, its members are divided between a number of districts restricting their ability to elect even a minimal number of representatives who belong to minorities.

Measures to ensure effective participation of minorities in public and political life may include for example: a minimum number of seats for representatives of minorities in parliament and other elected bodies; proportional representation elections in which seats are allocated according to the vote cast; the lowering of thresholds for minority party representation, thereby allowing minorities to participate in the legislature and other elected bodies; reduced requirements for the registration of a minority party in elections; favourable delimitations of constituencies along minority lines, especially in countries where such minorities may be scattered across the territory, granting adequate opportunities for minority seats; and, the creation of administrative and advisory bodies which may serve advisory functions regarding matters, including policies and programmes, which concern minorities or decisions which affect them.

#### National, regional and international standards

Article 38 of the *Constitution of Bangladesh* grants “Every citizen the right to form associations or unions”. Article 325 of the *Constitution of India* ensures that no person

shall be ineligible for inclusion in the general electoral roll on grounds of religion, race, caste, sex or any of them. Section 125 of the *Representation of Peoples Act* further provides that any persons who in connection with an election promotes or attempts to promote on the grounds of religion, race, caste community or language feelings of enmity shall be punishable with imprisonment as well as fine. According to article 16 (4) and (4A) of the Constitution, the State may make provisions for the reservation of appointments or posts in favour of any backward class of citizens, Scheduled Castes and Scheduled Tribes, who, in the opinion of the State, are not adequately represented in the services under the state. In the *Mandal* controversy (1992), the Supreme Court affirmed that reservations for 'Backward Classes' and 'Other Backward Classes' were part of the doctrine of equality and not an exception to it, and that access to government jobs was a salutary form of empowerment for disadvantaged people and those discriminated against with no access to such power<sup>4</sup>.

Article 12(e) of the *Constitution of Nepal* guarantees freedom to form unions and associations "... to practice any profession or to carry out any occupation, industry or trade". Article 26 (10) of the Constitution stipulates that "the State shall pursue such a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their ... employment". Section 4 of the *Civil Liberties Act* prohibits any restrictions against any citizen on the basis of religion, race, sex, caste or any of these, in appointing to civil posts. Article 36 of the *Constitution of Pakistan* stipulates that the State shall safeguard the legitimate rights and interest of minorities including due representation in the federal and provincial services. The minorities have the right to vote for their representatives as well as to participate in the regular election procedure. Article 27 (1) of the Constitution states that "no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground of only race, religion, caste, sex, residence or place of birth". On the basis of their numerical strength, seats in local bodies such as union councils, town committees/municipal committees, municipal corporations, cantonment boards, metropolitan corporations have been reserved for minorities. These seats are filled by elections with the votes of minorities of the area and only persons belonging to minorities can contest elections for these reserved seats. With regard to the representation of minorities in the decision-making bodies, the 17<sup>th</sup> amendment to the *Constitution of Sri Lanka* requires that three members of the Constitutional Council belong to respective minority communities, nominated to represent the interests of minorities. Furthermore, the 14<sup>th</sup> amendment to the Constitution requires the Commissioner of Elections to determine whether the number of members belonging to any community, ethnic or otherwise, elected to Parliament under Article 98 is commensurate with the national population ratio and request the Secretary of such recognised political party or group leader of such independent group in so nominating persons to be elected as Members of Parliament to ensure as far as practicable, that the representation of all communities is commensurate with its national population ratio.

---

<sup>4</sup> R. Dhavan and F. S. Nariman, "The Supreme Court and Group Life: Religious Freedom, Minority Group, and Disadvantaged Communities", in: B.N. Kirpal et al. (ed.), *Supreme But Not Infallible*, Essays in Honour of the Supreme Court of India, Oxford, Oxford University Press, 2000, p. 271.

With regard to regional and international standards, article 25 of the *International Covenant on Civil and Political Rights* stipulates that every citizen shall have the right and the opportunity without distinctions and without unreasonable restrictions “(a) to take part in the conduct of public affairs, directly or through freely chosen representatives”, (b) “to vote and 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”. Article 2 (2) and (3) of the *Declaration* states that “Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life” and they have “... the right to participate effectively 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”. At article 4(5), States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development of their country”. Article 5 (1) and (2) states that national policies and programmes as well as programmes of cooperation and assistance among States should be planned with “due regard for the legitimate interests of persons belonging to minorities”. The *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (hereafter referred to as the “Lund Recommendations”), recommendation 9 states that the electoral system should facilitate minority representation and influence and recommendation 6 stipulates that minorities should have an effective voice at central government which may include special representation through a reserved number of seats in parliament, on the courts, and allocated positions on advisory bodies and cabinet, mechanisms to ensure that minority interests are considered within relevant ministries, and that minorities participate in civil service.

Article 15 of the *Framework Convention* provides that “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”. At article 16 of the Convention, “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 Convention”. According to the explanatory report to the Convention, examples of such measures might include expropriation, evictions and expulsions or redrawing administrative borders with a view to restricting the enjoyment of such rights and freedoms (i.e. gerrymandering).

## **Principle 10**

### **Devolution of power, autonomy and federalism**

- 1. Consideration shall be given to arrangements, which enhance the capacity of minorities to regulate their affairs and take their decisions, in their own interests and in accordance to local conditions.**
- 2. Where minorities are scattered throughout the territory or part thereof, such arrangements may include: self-administration on a non-territorial basis by a minority of matters, which are essential to its particular identity;**
- 3. In geographic areas where minorities are concentrated and where they constitute a majority, such arrangements may include:**
  - (a) decentralised or local forms of self-government or autonomous arrangements on a territorial and democratic basis, including consultative, legislative and executive bodies chosen through free and periodic elections without discrimination;**
  - (b) a federal system of government.**

### **Annotations**

In South Asia, devolution of power, autonomy and federalism may be necessary to ensure effective participation of minorities in decision-making processes both at the State and sub-State level. These arrangements, which affect the political organisation of multicultural States, allow for the accommodation of minorities and a degree of independence of minority communities in managing a substantial share of public affairs under their own responsibility and in their own interests, in accordance to their circumstances at the local level. Different arrangements may be applied to allow for a different degree of independence of minorities in managing their own affairs, and may range from decentralisation in administrative matters, to self-government with certain legislative powers to a virtually independent administrative, legislative and judicial system. A federal system is somewhat different as it is integral to the State structure and in the functioning of the State, in particular as representation is constitutionally guaranteed at all levels of the structure, with the allocation of powers shared between the Centre and the federal entities which all work towards common aims through compromise.

Such arrangements imply the sharing of power between the Centre and its parts, while preserving the unity of States, with the sub-unit granted a certain degree of authority, which cannot be overruled or restricted by the Centre. These arrangements should therefore be established by legislation or preferably by the Constitution. Furthermore, a prerequisite for an efficient functioning of any of such arrangements is the provision of sufficient resources, either through financial support from central government or from the income of the minority groups themselves.

Special attention needs to be paid to the fact that territorial arrangements may only benefit the minority group concerned, and not those persons living in the same territory but who do not belong to the said minority. This situation of a minority within a minority may lead to added disparities between groups as well as to widespread discrimination and even repression in some cases. Arrangements therefore need to ensure that the autonomous entities respect and promote human rights, including minority rights.

### National, regional and international standards

The *Constitution of India* provides for the subdivision of India into federal entities generally according to linguistic lines. According to the *Constitution of Pakistan*, the country is divided into four provinces, in addition to which there are, among others, the Provincially Administered Tribal Areas and the Federally Administered Tribal Areas, the inhabitants of which are mostly Pukhtun and Baluch. The *Constitution of Sri Lanka* in Article 2 defines the 'Democratic Socialist Republic of Sri Lanka' as a 'unitary state'. However, with the introduction of the following laws, the powers of the central government were devolved in the following bodies: the 13<sup>th</sup> Amendment to the Constitution (November 1987), and the Provincial Councils Act No 42 of 1987, Provincial Councils were established in Sri Lanka for every province. The said Provincial Councils were also given power, *inter alia*, to enact statutes applicable to the Province (Constitution Article 154 G). Provincial Councils Elections Act No 2 of 1988 provide for the conduct of elections in the Provincial Councils; article 154P of the 13<sup>th</sup> amendment to the Constitution and High Court of the Provinces (Special Provisions) Act No 19 of 1990 further established Provincial High Courts with power to exercise, subject to any law, appellate revisionary jurisdiction in respect of orders from the Magistrates Courts, Primary Courts, Labour Tribunals, Commissioner of Agrarian Services, and; Pradeshiya Sabhas were established by Predeshiya Sabha Act No 15 of 1987. Municipal Councils and Urban Councils Acts established Municipal and Urban Councils. Local Authorities Elections Act provides for elections to the Local Authorities.

As for regional and international standards, the *Lund Recommendations*, at recommendation 14 states that "effective participation of minorities in public life may call for non-territorial or territorial arrangements of self-governance or a combination thereof". At recommendation 24 reference is made to "additional dispute resolution mechanisms, such as negotiation, fact finding, mediation, arbitration, an ombudsman for national minorities, and special commissions, which can serve as focal points and mechanisms for the resolution of grievances about governance issues". Paragraph 35 of the *Copenhagen Document* makes reference to the possibility of creating an environment that would be conducive to the participation of national minorities in public affairs, in their own language, by establishing "appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of minorities in accordance with the policies of the State concerned". Article 3 of the *European Charter of Local Self-Government*, states that "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the

local population”. Article 9 of the Charter provides that “Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers”.

## **Principle 11**

### **Effective implementation and redress**

- 1. Institutions shall be established, and where they exist, strengthened, with the mandate to effectively implement these principles and other rights relevant to minorities, address violations of minority rights and provide the necessary redress. These may include national institutions such as human rights commissions, commissioners, and ombudspersons. In particular, these institutions shall:**
  - (a) be accessible to all and their procedures shall be facilitated to provide easy access for minorities;**
  - (b) be independent and autonomous and dedicated to upholding democracy, human rights, the rule of law, and diversity;**
  - (c) provide redress including effective remedies that allow for the implementation of minority rights, sanctioning of perpetrators of violations, and compensation for the victims.**
  
- 2. Minorities have the right to effective remedy and compensation for violations of their rights, and, to this end, shall have easy access to all courts and tribunals, as well as to conciliation, mediation and dispute resolution mechanisms, including through legal assistance;**
  
- 4. Minorities shall have easy access to regional and international tribunals, as well as to the United Nations treaty bodies and complaints procedures.**

### **Annotations**

Human rights acquire real meaning for minorities when the public authorities of the State establish mechanisms to ensure that the rights guaranteed in international conventions and declarations or in domestic legislation, are effectively implemented and protected. In many States, normal procedures are complex, costly and slow and may therefore not be easily accessible to minorities. When confronted with violations of their rights, minorities must often overcome significant obstacles in order to access the judicial system and other domestic human rights protection mechanisms. Furthermore, in some cases, the judicial process may be ineffective in addressing violations of minority rights and granting redress and compensation. It may therefore be useful to consider, as a complement to judicial procedures, the establishment and strengthening of independent national institutions, which are usually able to provide quicker and less expensive recourses and are as such more accessible to minorities. When domestic remedies for violations have been exhausted, concerns can be brought to the attention of United Nations mechanisms and procedures.

In South Asia, the constitutional and legal guarantees to protect the rights of minorities remain all too often unfulfilled. Violations of the rights of minorities are a common feature, with widespread discrimination based on caste, race, religion and ethnic origin. Some of the institutions, which have been established to safeguard the rights of minorities, have limited powers and functions, and have proved ineffective in protecting minorities. In many countries of the region, the electoral system is systematically undermined and the judiciary and legal profession inspire little confidence, resulting in few cases involving minorities being brought before the courts, and the few cases that are prosecuted are being delayed for years. Many violations fail to be investigated, perpetrators have not been brought to justice, and redress and compensation remain unattainable.

*National, regional and international standards*

At article 350, the *Constitution of India* stipulates that “Every person shall be entitled to submit a representation for the redress of any grievance to any officer, or authority of the Union or a state in any of the languages used in the Union or in the state, as the case may be”. Article 350B provides for a “... Special Officer for linguistic minorities to be appointed by the President” who shall have the duty to “... investigate all matters relating to the safeguards provided for linguistic minorities under this constitution and report to the President”.

Furthermore, a number of South Asian countries have established human rights institutions, which aim to promote and protect the rights of minorities and to address violations and injustices. These include, among others: the Bangladesh Human Rights Commission; the National Commission for Scheduled Castes and Scheduled Tribes, the National Human Rights Commission and the National Commission for Minorities of India, the National Human Rights Commission of Nepal; the Human Rights Commission and the Official Languages Commission of Sri Lanka, and; ombudsmen at the centre and the provinces in Pakistan. Their mandates and responsibilities vary but generally they are responsible for conciliating, monitoring, investigating and advising the Government on human rights, including minority rights, and usually have the power to recommend and mediate.

Article 6 of the *Convention on the Elimination of All Forms of Racial Discrimination* declares that “States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention ...”. According to the *Oslo Recommendations*, at recommendation 16, “States in which persons belonging to national minorities live should ensure that these persons have, in addition to appropriate judicial recourses, access to independent national institutions such as ombudspersons or human rights commissions, in cases where they feel that their linguistic rights have been violated”.

## **Annexure Annotations in Draft**

The draft annotations are attached as annexure to the document, due to time constraint we apologize for being unable to include the annotation for Nepal and Bangladesh in this first draft, but will be doing so, together with comments during the session of the Working Group for the final version.

### **Sri Lanka -Draft Annotation for Principles**

---

#### STATEMENT OF PRINCIPLES ON MINORITY AND GROUP RIGHTS IN SOUTH ASIA

##### **Introduction.**

Sri Lanka is a heterogeneous society consisting of several distinct communities, viz Sinhalese, Tamil, Muslim and Burgher. These communities are divided on ethnic, linguistic and religious lines. Sinhalese constitute the majority while the Tamils, Muslims and Burghers the minority communities. Each of these communities has its own language and culture except that the Tamils and Muslims have Tamil as their common language.

The Constitution in Chapter 111 sets out the fundamental rights applicable to citizens and persons in Sri Lanka. In terms of Article 3 fundamental rights are a component of sovereignty and are entrenched (Article 83). Article 4 (a) specifically provides that the fundamental rights shall not be abridged, restricted or denied save in the manner and to the extent referred to subsequently in the Constitution, viz Article 15 (7) which specifies the kind of restrictions that can be imposed on the exercise of fundamental rights. Approval of the People at a referendum is required for any amendment or repeal of fundamental rights. The competence of the legislature and the Executive is restricted by the mandatory provision of Article 4 (d) of the Constitution, in respect of the fundamental rights which are declared and recognized by the Constitution. Thereby the State cannot make a law or act in way which abridges a fundamental right beyond what is warranted by Article 15, even though Directive Principles may be the basis and justification for such law or regulation

Article 27 of our constitution states that Directive principles spelt out by that Article shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and governance of Sri Lanka. The Directive Principles are however not justiciable (Article 28). Unlike in the case of fundamental rights, the Directive principles, articulated by Article 27, are not entrenched and can be amended or repealed without the approval of the people at a referendum. In our constitutional scheme Fundamental Rights are superior in character and status to Directive Principles and in case of conflict between them, Fundamental Rights prevail.

It was held in the case of *Seneviratne vs University Grants Commission (1978-79-90)* (1 SLR 182) that the Directive Principles of State Policy must be given due recognition and proper allowance made for their operation and functioning as part and parcel of the Constitution. They are in the nature of an instrument of instructions which both the legislature and the executive must respect and follow.

## Recommendations on the Principles

Principle 1 - Application of the Principles

Principle 2 - Non-discrimination and affirmative action

Principle 3 - The promotion of diversity and intercultural education

Principle 4 - Right of minorities to their identity, characteristics

Principle 5 - Right of minorities to freedom of religion

Principle 6 - Right of minorities to use their own language in private and in public

Principle 7 - The right of minorities to be taught their language and have instruction in their language

Principle 8 - Right of minorities to establish and manage their own unions, associations and institutions

Principle 9 - Effective participation of minorities in public and political life

Principle 10 - Devolution of power, autonomy and federalism

Principle 11 - Effective implementation and redress

### **Principle 1**

No Annotation required.

### **Principle 2**

#### Annotations

Article 12 of the Constitution of Sri Lanka guarantees to all citizens, the right to equality before the law, irrespective of race, religion, language, caste, sex, political opinion, place of origin or any one of such grounds.

Sri Lanka being a multi-ethnic, multi-religious society there are certain personal laws which are applicable only to specified ethnic and religious groups which defer from the general laws. They are the Kandyan laws on marriage, the Thesavalamai Pre-emption Act, the Muslim Marriage and Divorce Act, Register and Rectification of Muslim Marriage Act etc.

In the context of the Sri Lankan society, uniformity in personal laws has to be achieved through demands originating in the relevant communities themselves. In the case of *Gouse vs Gouse* (1988) (1 SLR 25) the Supreme Court held that the Muslims who could adopt children under a uniform Adoption Statute could nevertheless rely on Islamic principles of inheritance and deny an adopted child's right to succeed to his adoptive parents wealth and property if they died intestate. This case thereby points out that the operation of Article 10 of the Constitution may in some instances erode a child's right to inheritance.

Article 10 of the Constitution, guarantees to every person the freedom of thought, conscience and religion. This right is not subject to any restriction.

Article 14 (1) (e) of the Constitution, guarantees the freedom either by himself, or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching. Article 14 (1) (f) gives the freedom to enjoy and promote his own culture and the use of his own language.

Under the Fundamental Rights chapter of the Constitution, Article 14 (1) (g) guarantees to every citizen, the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise. This right is restricted by Article 15 as may be prescribed by law in the interest of national security, public order etc.

Minority groups are given further protection under the Directive Principles of State Policy embodied in the Constitution, which stipulates that the State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the people of Sri Lanka, including racial, religious and other groups, in order to eliminate discrimination and prejudice (Article 27 (5)).

The minority Tamil and Muslim communities in Sri Lanka have the right to practice and enjoy their culture. Days of cultural and religious significance to the Tamils and Muslims are public holidays and they are celebrated at the national level with State patronage (Regulations made under the Holidays Act No 29 of 1971 as amended). The media promotes and reflects the pluralistic nature of the Sri Lankan culture. The Sri Lanka Broadcasting Corporation has three distinct services catering for the Sinhala, Tamil and Muslim listeners. The Sri Lanka Rupavahini Corporation runs its TV programmes in Sinhala, Tamil and English. The State and private newspaper companies publish dailies and weeklies in all the three languages.

In order to maintain the identity of different ethnic groups the programmes on radio and television and the newspaper coverage are liberally made use of in furthering the interest of a pluralistic society. Tamil, the language of the Tamils and also the majority of Muslims, was made an official language in 1987 in recognition of the fact that language is an important symbol of culture. Every effort is being made to promote tri-linguism in Sri Lanka so that language becomes a vehicle for promoting peace, co-existence and prosperity.

### **Caste**

There is a statutory prohibition on caste based discrimination. The Social Disabilities Act No 21 of 1957 amended by Act No 18 of 1971 makes it illegal to impose 'social disabilities' on a person by reason of his or her caste, and also punishable by imprisonment upto three years with or without a fine upto Rs. 3000 if found to have done so. The Act does not seek to prevent caste-based discrimination in the private or social spheres (despite its terminology). Rather, social disabilities as defined under the Act directly impact on spheres of equal opportunity and constitute prevention or obstruction of a person from, inter alia, admittance to any educational institution; engagement in any lawful employment and activity, entering or being present in any place to which the public have access, other than a place of religious worship, entering or service at a shop, market, fair, hotel, rest house, eating house or restaurant; and being carried as a passenger in any public vehicle or vessel. The exclusion of places of religious worship is significant because religious activity is the prime domain in which caste-based discrimination prevails.

### **Racial discrimination**

Under Article 12 (2) of the Sri Lankan Constitution, any classification based on race or ethnic origin or background of citizens is absolutely forbidden. Thereby our Constitution is committed to eradicating discrimination based on race.

Measures which restrict the rights of citizens on account of race are not constitutional. The central purpose of Article 12 is the prohibition of state action legislative or executive discriminating on the basis of race, a statute neutral on its face must not be applied so as invidiously to discriminate on the basis of race, religion etc.

In *Ramupillai vs Festus Perera*, (1991) (1 SLR 11), a Divisional Bench of seven judges of the Supreme Court was called upon to decide whether the ethnic ration system in promotion to public service violated the principle of equality enunciated in Article 12 of the Constitution. The Court premised that any differentiation made on ethnic grounds per se would be abhorrent and violated the fundamental right of equality. In the particular case the issue related to promotion from lower grade to higher grade. The judgments of the several judges elucidate the principle of equality in the matter of promotion of public officers and condemn ethnic classification of candidates as being repugnant to that principle.

### **Principle 3**

In Sri Lanka, heads of schools have to strictly adhere to the approved criteria in the matter of admission of children, and any deviation is regarded as discrimination amounting to violation of a fundamental right. In recent years, the Supreme Court has granted relief to children who have alleged discriminations in regard to school admissions.

In *Seneviratne vs University Grants Commission* (1978-79-80) (1 SLR 182) it was held that it was a matter of discretion to the authority running an educational institution to indicate the sources from which admissions should be made, after having an over-all assessment of the country's needs and taking into account persons or classes who may be under privileged.. The district wise allocation withstood this test and did not violate Article 12 (1) of the Constitution.

Education Ordinance in Part vi provides for the establishment of Estate Schools. Section 40 states that the premises must be set apart on estates for establishment of schools for children resident on the estates. Section 43 makes it mandatory for a child between the ages five and fourteen to attend school and a parent who contrives the above is said to commit an offence in terms of Section 45.

### **Laws relating to Education and Educational Institutions**

Education Ordinance (Cap 185), Universities, Assisted Schools and Training Colleges (SP) Act No 5 of 1960, Colleges of Education Act, Higher Education Ordinance, National Authority on Teachers Education Act, National Education Commission Act, National Institute of Education Act, Pirivena Education Act, SL Institute of Advanced Technical Education Act, Tertiary and Vocational Education Act, Education (Change of Designations) Law No. 35 of 1973, Council of Legal Education Act, National Libraries and Services Board, Hindu Board of Education Act, National Authority on Teacher Education Act, Institute of fundamental Studies, Vocational Training Authority Act.

## **Principle 4**

### **Stateless Persons**

As discussed in this paper, there have been constitutional and legal protection offered to the minorities in most instances. However in the case of the Plantation People (Indian Origin Tamils) consisting about 5.1 % of the Population in Sri Lanka. those oppressed low castes (Dalits) were often kept as captive labour.

Reference to the following quotation from Goonesekere's Report on Descent and Work based Discrimination as submitted to the UN Sub Commission on Human Rights, addresses descent (caste) based discrimination against the Indian origin Tamils in Sri Lanka. "A recent allegation of discrimination based on descent is that made by Tamils of Indian origin employed mainly as tea estate workers in the hill country. With regard to wages, housing, sanitation, health and educational facilities, they were an oppressed group. Improvements have slowly been made as a result of government policies and powerful trade union action. Integration with the rest of society is more difficult owing to prejudice, but this is breaking down. There are signs of upward mobility through education and non-discriminatory laws. Casts distinctions exist among themselves and complaints have been made that workers (mostly Dalits) are kept out of trade union officers by high caste supervisors. The citizenship laws enacted after independence rendered Indian Tamils, who numbered about 1 million, stateless, and they were denied voting rights"

In the Concluding observations of CERD/C/SR.1478 and 1479, on 7 and 8 August 2001 on Sri Lanka's state report, the Committee expressed concern at the fact that a large number of Tamils of Indian origin, particularly plantation workers, and their descendants have still not been granted citizenship and that many of them even continue to be stateless. Tamils without Sri Lankan citizenship are allegedly discriminated against and do not fully enjoy their economic, social and cultural rights. The Committee recommended that early and effective measures be taken to solve this problem and that these persons should not be threatened with repatriation.

### **Refugees**

The Fundamental Rights Chapter in Sri Lanka restricts the right guaranteed in Article 12 (2), 14 (1) to citizens of the country. Therefore the Stateless Persons and refugees are not afforded the protection of these rights. Sri Lanka is not a signatory to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and thereby is not bound by its provisions.

### **IDP's**

Since an armed campaign for an independent Tamil state began in 1983 there have been repeated and massive displacements of civilians in Sri Lanka. Estimates of the total number of Internally Displaced Persons (IDPs) at the beginning of March 2002 range from 750,000 to about 800,000 with the latter being the most likely figure. There are three main areas of displacement, which are the Jaffna Peninsula, the "Vanni" and the government-controlled or "cleared" areas of Mannar and Vavuniya district. As of March 2002 an estimated 185,000 displaced persons continue to reside in 346 Welfare Centers, mainly in the North. (Figures from UNHCR, November 2000, March 2002, Refugee International 04.03.2002)

Majority of the Displaced persons were Tamils and Muslims.

The new government of Prime Minister Ranil Wickremesinghe is developing an ambitious plan to resettle or relocate upwards of 200,000 IDPs in the next 12 months, and the remaining IDPs and refugees within the following two years. The government's plan is based on the belief that resettlement of the displaced population is central to restoring social and economic normalcy and, therefore, to resolving the political conflict. In fact, the new government relaxed security restrictions at the beginning of this year and IDPs have already begun returning to their areas of origin to check on their homes, most of which have been destroyed. Implementation of the GOSL's plan faces two hurdles: landmines and post-conflict reconstruction.

Some of the legal impediments that were faced by the IDP's as highlighted in a study conducted by the Law & Society Trust and Consortium for Humanitarian Agencies were as follows.

Difficulties in complying with the procedure and rules in filing a fundamental rights application,

Due to the large number of Ministries dealing with the IDP's (such as Ministry of Defence, Health, Northern Rehabilitation, Eastern rehabilitation, Rehabilitation and Reconstruction authority of the North, Commissioner General of Essential Services, Department of Social Services) and due to the absence of a direct Ministerial involvement the IDP's were denied of their basic social rights, thus leading to unequal treatment.

There were discrimination on ethnic, religious, linguistic and political grounds in the treatment the IDPs received.

In the areas of land and housing, there is no legal provision in Sri Lanka, which would guarantee to IDPs against destruction, arbitrary and illegal appropriation, occupation or use of properties and possessions left behind by IDP's. On many occasions when IDP's return they found that their houses and properties were taken over by trespasses. The Prescription Ordinance grants legal rights to top possessors of such lands depending on the duration of their possession.

The Prevention of terrorism Act and the Emergency Regulations which was in force in the past was used to detain large number of Tamils, including IDP's for long periods of time without charging them in courts. In some cases acts of torture were committed on them. Problems of investigations arose as the very persons who tortured or illegally arrested them were left in charge of investigating and inquiring into the alleged crime.

Though the Constitution guaranteed the freedom of movement and the right to choose his residence (Article 14 (1) (h)), this right was severely restricted in the case of the IDP's. Most IDP's who manage to return to their places of residence often found their homes and properties destroyed beyond repair, due to aerial bombing and artillery shelling by the armed forces or occupied by the military. There was also a pass system introduced by the government to certain IDP camps. The freedom to move further curtailed inter alia their right to practice a religion or belief of their choice.

With regard to health issues, our Constitution does not guarantee the right to health in its fundamental rights chapter. By the 13<sup>th</sup> Amendment to the Constitution, health care was devolved to the Provincial Councils and they were given the power inter alia to make provision for the establishment and maintenance of public hospitals, rural hospitals, maternity homes etc.

With regard to the registration of births obtaining replacement birth certificate was a difficulty faced by the IDP's as they did not have the necessary details such as the original birth certificate number and date of registration. The lack of birth certificate brought about problems in gaining

access to education and obtaining National Identity Cards which was particularly necessary for free movement. These children faced difficulties in sitting for public examinations, or in representing their schools in sports or other events. This situation was particularly bad for the children of the Stateless Indian Tamils.

In spite of the right to language guaranteed by the Constitution the IDP's faced difficulties in obtaining their birth certificates in the Tamil language.

Despite the Constitutional guarantees on the right to employment, unemployment was a matter of concern among the IDP's as a majority of them lost their jobs and were not in a position to generate income. The main sources of income were from agriculture, animal husbandry, carpentry, masonry, and allied trades. Restrictions were imposed by the government on fishing in certain war affected areas. Problems relating to transportation of agricultural produce was common to IDP's due to the fact that there are restrictions on the transport of harvested goods such as paddy. Permits had to be obtained to transport a maximum of 30 bags of paddy in a single tractor. Some of the other impediments faced were right to join the government service, right to join a trade union etc.

Some of the other problems faced by the IDP's are difficulties in obtaining compensations, discriminations faced by women and vulnerable IDP groups such as the aged, disabled persons.

### **Principle 5**

Article 12 of the Sri Lankan Constitution offers equality before the law to all 'persons' including aliens. Article 12 (2) prohibits discrimination against any citizen on the ground, inter alia of religion or political opinion. What this clause means is that no citizen of a particular religion or political opinion etc. shall be treated unfavourably by the State when compared with citizens of other religions or political opinion merely on the ground that he belongs to a particular religion or political party etc.

Article 12 (3) further provides that 'no person shall, on the ground, inter alia, of religion be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.

Article 12 (3) prohibits any shop or public restaurants, hotels or places of public entertainment being exclusively reserved for members of a particular religion, race or caste. Access to such public places is available to all persons irrespective of his religion, race or caste. It however provides that a person is entitled to access to a place of public worship only of his own religion.

Articles 10, 12 (1), (2) and (3) embody the principles of religious tolerance that has been the characteristic feature of our civilisation. The freedom of religion and non-discrimination is not guaranteed in respect of one religion only but covers all religions practiced in Sri Lanka, alike.

Article 12 (3) ensures that religious institutions of a public character are accessible equally to all sections and classes of the followers of that particular religion. Thus all Hindu Temples of a public character have by this Article been thrown open to all sections of Hindus, irrespective of caste. Places of public worship of a persons own religion would mean not merely temples dedicated to the public as a whole but even those which are founded for the benefit of sections thereof- denominational temples would thus fall within the scope of this clause. Article 12 (3) guarantees the right to a devotee to enter a place of public worship of his own religion for

purposes of worship. This however is not an unlimited right. Thus, for instance, no Hindu clergy alone are entitled to perform. It is to be noted that the fundamental guarantee by Article 12, unlike Article 10, is not an absolute right but is subject to restrictions that may be imposed by law, in terms of Article 15 (7).

The Education Ordinance in Section 34 provides that no applicant shall be refused admission into any assisted school on account of the religion of such applicant or either of his parents. Section 35 (1) states that a pupil in a government school should be given instruction in the religion of the parent of each pupil.

Some of the laws providing for the establishment of Religious Associations are as follows:

All Ceylon Young Mens Muslim Association Act, Assemblies of God Ceylon Ordinance, Back to the Bible Broadcast Act, Central Cultural Fund Act, Ceylon Baithul Mal Fund Law, Ceylon Baptist Council Ordinance, Ceylon Bible Society Law, Ceylon Moor Ladies Association Act, Ceylon Muslim Scholarship Fund Ordinance, Ceylon Pentecostal Mission Act, Ceylonese Brothers of St Joseph Ordinance, Ceylonese Evangelistic Association Law, Church of Ceylon Act, Church of England Ordinance, Colombo Bible College Act, Colombo Young Men's Christian Association Ordinance, Colombo Young women's Christian Association Ordinance, Congress of Religions Act, Deegavapi Prathisanskarana Sabhawa Act, Episcopal Churches Ordinance, Fellowship of Free Churches Law, Galle Muslim Cultural Association Law, Hindu Board of Education Ordinance, Kandy Church Ordinance, Kandy Young Women's Christian Association Ordinance, Non-Episcopalian Churches Ordinance, Northern Province Teachers Association Benevolent Fund Act, Moors Islamic Cultural Home ordinance, Moratuwa Social Service Society Ordinance, Muslim Hospital Association Ordinance, Muslim Library Law, Muslim Mosques and Charitable Trusts or 'Wakfs' Act, National Council of Young Men's Christian Association Act, Kandy Presbyterian Church, Ramakrishna Mission Ordinance, Roman Catholic Archbishop Ordinance, Rome Convention Act, SL Malay Association Rupee Fund Law

## **Principle 6**

### **Right of minorities to use their own language in private and in public**

Chapter IV of the Constitution of Sri Lanka deals specifically with language. Thereby the official language of Sri Lanka shall be Sinhala and 'Tamil shall also be an official language', and English is specified as the link language. Article 19 sets out that the National languages in Sri Lanka shall be Sinhala and Tamil.

Article 20 provides that either of the National languages shall be used in the parliament, Provincial or Local authorities.

Article 21 (1) gives a person a right to be educated through the medium of either of the National Languages.

Article 22 states inter alia that 'Sinhala and Tamil shall be the languages of administration through out Sri Lanka and Sinhala shall be the language of administration and be used for the maintenance of public records and the transaction of all business by public institutions of all the provinces of Sri Lanka other than the Northern and Eastern Provinces where Tamil shall be so used.

Article 23 states inter alia that ‘all laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English.’

Article 24 states that Sinhala and Tamil shall be the languages of the Courts throughout Sri Lanka and Sinhala shall be used as the Language of the courts situated in all the areas of Sri Lanka except those in any area where Tamil is the language of administration. The record and proceedings shall be in the language of the Court....”

The Official Languages Commission was established under the Official Languages Act No 18 of 1991. The Commission has, inter alia, the following powers.

- (1) Initiate reviews of any regulation, directives, or administrative practices, which affect or may affect the status or use of any of the relevant languages.
- (2) Issue or commission such studies or policy papers on the status of or the use of the relevant languages as it may deem necessary or desirable.
- (3) Undertake such public educational activities, including sponsorship of publications or other media presentations on the status of or the use of the relevant languages as it may consider desirable.

Any person whose language rights have been infringed can apply to the Official Languages Commission for an appropriate investigation (vide Section 18). At the conclusion of the investigation, the Commission is required to make a report and submit its recommendations to the head of the public institution concerned (Section 23). Where the institution defaults on giving effect to the necessary recommendations within the prescribed time period, the Commission is authorised to apply to the Provincial High Court (Section 25). Under certain circumstances, the Supreme Court (on an application made by the Attorney General or the Commission) can direct the Provincial High Court to transfer the relevant application to it (section 26). Both the Provincial High Court and the Supreme Court will grant relief which it considers to be just and equitable (Section 27).

When a public officer wilfully fails or neglects to transact or issue copies or extracts in the relevant language he can be found guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding Rs. 1,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment (Section 28 (1)).

Despite the adoption of a policy of trilinguism at providing facilities for the members of the public to use any of the three languages, there are at present certain difficulties in implementing this policy effectively and meaningfully.

These difficulties are caused by the following factors:

1. The inadequate trilingual/ bilingual capacity in public officers which may be attributed to the fact that most school leavers are monolingual and in consequences entrants to the public service tend to be monolingual.
2. The dearth of support services such as translators, interpreters and stenographers to provide support services.

The Government, through the Department of Official Languages which is responsible for the implementation and monitoring of the language law, is aiming to overcome these constraints by concerted action. The Department’s island wide public advocacy programme uses various strategies such as poster campaigns, distribution of handouts and brochures, seminars, workshops,

book exhibitions, public meetings and publication of newspaper articles to educate the public servants on their duties and to enlighten the public as to how the language law affects them.

The Public Service in Sri Lanka consists of approximately 300,000 persons. Annually approximately 10,000 public servants undergo language training provided by the Department. Presently, the Department is in the process of establishing a language laboratory to facilitate its training activities and to provide refresher and follow-up courses.

### **Reverse Discrimination.**

The Supreme Court in the case of *Ramupillai vs Minister of Public Administration, Provincial Councils and Home Affairs and others* stated that reverse discrimination on the basis of ethnicity is valid subject to the following conditions:

1. Discrimination must be objectively established by evidence or by relevant findings of competent bodies: perceptions and opinions are insufficient. The object affirmative action is to remedy the present effects of the past discrimination and not to perpetuate fixed quotas. Preferential consideration for victims is preferred to rigid quotas. Remedial action must be short term with appropriate review mechanisms.
2. Racial quotas cannot be imposed simply for the purpose of 'correcting' an existing racial imbalance, except perhaps where there is serious, chronic and pervasive under representation to raise or over representation to raise a presumption of past discrimination.
3. The proposed remedy would be more strictly scrutinised on account of other compelling needs and interests such as efficiency, higher levels of responsibility involved upon promotions and legitimate expectations of employees that merit and loyal services would be rewarded.

### **Principle 7**

Article 21 of the Constitution of Sri Lanka deals with the medium of instruction in educational institutions. Accordingly, a person is entitled to be educated through the medium of either of the national languages.

### **Principle 8**

The Constitution in Article 14 (1) (d) guarantees the right to every citizen to form and join a trade union. Further the Trade Unions Ordinance defines a 'trade union' and provides for the formation and conduct of affairs of trade unions.

Some of the special laws provided for the state workers are Trade Union Representatives (Entry into Estates) Act 25 of 1970, Estate Duty Act No 13 of 1980, Estate Labour (Indian) Ordinance No 13 of 1889, Estate Quarters Act No 2 of 1971, Estate Roads Ordinance, Estate Roads (Conversion) Act No 18 of 1956, Estate Staff's Association Ordinance, Indian Estate Labour Ordinance, Indian Immigrant Labour Ordinance, Payment of Gratuities etc to Indian Repatriates Law, Estate Bazars Compulsory Acquisition Act.

## **Principle 9**

### **Effective participation of minorities in public and political life**

Principle 9 (1) (a)

With regard to being consulted when legislative and administrative measures are being considered, Constitution in Article 83 states that approval of the people in a referendum is necessary to repeal Articles 1,2,3 6,7,8,19 and 11 of the Constitution.

In Sri Lanka all existing written law and unwritten law shall be valid and operative. (Article 16, Constitution). Bills can be challenged in the Supreme Court if they are inconsistent with the provisions of the Constitution. (Constitution, Articles 120, 124)

With regard to representation of minorities in the decision making bodies, the 17<sup>th</sup> Amendment to the Constitution requires that three members of the Constitutional Council belong to respective minority communities, nominated to represent minority interest. The Human Rights Commission Act No 21 of 1996 requires minorities to be represented in the Commission (Section 3 (3)).

Franchise and Elections are governed by chapter XIV of the Constitution. Thereby several electoral districts are entitled to return one hundred and ninety six members to be represented in Parliament. The balance twenty-nine seats shall be apportioned by the Commissioner of Elections among the recognised political parties. The fourteenth amendment to the constitution requires the Commissioner of Elections to determine whether the number of members belonging to any community, ethnic or otherwise, elected to Parliament under Article 98 is commensurate with the national population ratio and request the Secretary of such recognised political party or group leader of such independent group in so nominating persons to be elected as Members of Parliament to ensure as far as practicable, that the representation of all communities is commensurate with its national population ratio. (Constitution, Article 99A)

Article 99 as amended by the fourteenth amendment provides for Proportional Representation.

A recognised political partying Sri Lanka enjoys certain advantages, facilities and powers under the Parliamentary Elections Act No 1 of 1981 and exercises control over its members who have been elected to the legislature on its nomination (Article 99 (13) of the Constitution). Being a recognised political party gives a party certain principles and rights which are not available to an ordinary party.

The 17<sup>th</sup> Amendment to the Constitution (Article 41B- Schedule) and Article 95 of the Constitution provides for the establishment of a Delimitation Commission.

### **Rights of Indian Estate workers.**

The citizenship problem for the Tamils of Indian Origin arose following the independence of Sri Lanka in 1948. Before the independence the parties failed to achieve an agreement on the definition of citizenship. The Citizenship Act No 18 of 1948 conferred citizenship by descent on all person who were born in Sri Lanka and whose father was born in Sri Lanka, thus making all Indian Tamils stateless. Application for registration in terms of this Act was in first instance only open to persons who were born out of a mixed marriage where the mother is and the father is not a citizen. Thus the citizenship law of 1948 discriminates against people who had come to Sri Lanka 'recently' and as such only the community of the Indian Tamils were in a vulnerable position under the law. The Indian origin Tamils were made stateless by default and had to prove

that their father was born in Sri Lanka. Furthermore the condition to produce the fathers birth certificate was in many cases an impossible task as the registration of births is only of recent origin.

Sri Lanka and India reached many agreements to solve the problem of the Stateless Tamils and upto 1983, 337,066 Indian Tamils had been repatriated to India, around 374,000 granted Sri Lankan citizenship by registration, 84,000 Indian Tamils had received their Indian passports and 85,000 were waiting for their passports. They are still waiting because India stopped issuing passports and the ethnic violence in July 1983 stopped the ferry service. The people that applied for Indian citizenship on behalf of their respective families are old or no longer alive. The majority of their children, who were under 18 when the applications were submitted in and around 1970s, are still living on the plantations. This new generation is therefore reluctant or unwilling to leave to India. The human rights of this new generation are totally violated in many ways such as, right to participate in politics, vote, employment, higher education, land and settlement and other welfare facilities. The Plantation workers were enjoying equal rights as other citizens in Sri Lanka till 1948. But by Citizenship Act, Citizenship and Voting Rights were removed. Five Acts have been passed as follows to answer this crisis of the number game for the last 50 years, but still around 250,000 people of Tamils of Indian origin are stateless.

- Citizenship Act No 18 of 1948, enacted on 15<sup>th</sup> November 1948.
- Indian & Pakistani Residents Act No 3 of 1949.
- Indo-Ceylon Agreement (Implementation) Act No 14 of 1967)
- Grant of Citizenship to Stateless Persons Act No 5 of 1986.
- Grant of Citizenship to Stateless Persons (Special Provisions) Act No. 39 of 1948.

This problem continues to date as descent and the associated discrimination goes on. When a father does not have the Citizenship as per the requirement of the Citizenship Act, the generation becomes stateless and discriminated against. The majority of these stateless persons are from low class tamils of Indian origin.

Thereby these Stateless persons have no voting rights, and no rights of participation in politics or influence in decision making.

### **Citizenship for Foreign Spouses.**

It would be interesting to note that Sri Lankan Citizenship laws provide for a foreign man or a woman to apply for Sri Lankan citizenship by registration upon marriage to a Sri Lankan. Although there is no discriminatory statutory provision, guidelines formulated for granting citizenship to foreign spouses of Sri Lankan citizens vary. Foreign wives of Sri Lankan citizens have not experienced any problems in this regard yet. However, the position is different in the case of foreign husbands. In 1996, a Sri Lankan woman filed a fundamental rights application in the Supreme Court alleging a violation of her right to equality when there was a denial of resident visa for her foreign husband. Three judges of the Supreme Court made an order that so long as the Sri Lankan wife is married to the foreign husband, the Controller of Immigration and Emigration should issue a residence visa to the husband with the right to work in Sri Lanka. The Attorney General subsequently informed the Controller that the existing guidelines on visa applications were discriminatory of a female spouse and were contrary to equality clauses in the Constitution (SC Application 712/96). Similarly a marital child of a Sri Lankan woman to a foreign national will not acquire Sri Lankan nationality by birth as of right.

In May 1999, the Supreme Court of Sri Lanka issued a direction asking the Controller of Immigration and Emigration to draft guidelines for the grant of resident visas to the foreign male

spouse of Sri Lankan women, in accordance with the non discrimination and equality guarantees in the Constitution. (Bernard Maximilian Fisher vs. The Controller of Immigration and Emigration, SC Application No 436/99. SCM 24.05.1999). However in the absence of a monitoring agency there is no way in ensuring that this obligation is performed.

### **Principle 10**

The Constitution of Sri Lanka in Article 2 defines the 'Democratic Socialist republic of Sri Lanka' as a 'unitary state'. However with the introduction of the following laws, the powers of the central government were devolved in the following bodies.

The 13<sup>th</sup> Amendment to the Constitution (November 1987), and the Provincial Councils Act No 42 of 1987, Provincial Councils were established in Sri Lanka for every province. The said Provincial Councils were also given power inter alia to enact statutes applicable to the Province (Constitution Article 154 G). Provincial Councils Elections Act No 2 of 1988 provide for the conduct of elections in the Provincial Councils.

Article 154P of the thirteenth amendment to the Constitution and High Court of the Provinces (Special Provisions) Act No 19 of 1990 further established Provincial High Courts with power to exercise, subject to any law, appellate revisionary jurisdiction in respect of orders from the Magistrates Courts, Primary Courts, Labour Tribunals, Commissioner of Agrarian Services.

Pradeshiya Sabhas were established by Predeshiya Sabha Act No 15 of 1987. Municipal Councils and Urban Councils Acts established Municipal and Urban Councils. Local Authorities Elections Act provides for elections to the Local Authorities.

### **Principle 11**

#### **Effective implementation and redress**

As discussed in this paper the Constitution of Sri Lanka (1978) recognises a number of fundamental rights and freedoms which are justiciable. The Supreme Court, which is the highest Court in the country, is vested with the power to hear and determine any questions relating to the infringement or imminent infringement by executive or administrative action of any fundamental right declared and recognised by the Constitution.

The Human Rights Commission of Sri Lanka was established by Act No 21 of 1996 and is in operation since 1997. The Act sets out that the representation of minorities should be ensured when appointing members to the commission. The Commission is vested with powers of conciliating, mediating monitoring, investigating and advising the government with regard to human rights. It has been set up as a permanent national statutory institution and is given power to on its own motion or on a complaint made to it by an aggrieved person or group of persons or person acting on behalf of an aggrieved person or a group of persons, to investigate an allegation of infringement or imminent infringement of fundamental rights by executive or administrative action. The remedies that can be afforded by the Commission are further specified in the Act, and they are mostly recommendatory and mediatory powers.

The Commission has 2 regional officers. The Special Projects undertaken by the Commission relate inter alia to monitoring the resettlement of internally displaced persons, Capacity Building of the Jaffna Human Rights officers, Review of the compliance of the local Legislation with the international human rights instruments, human rights education programmes etc. The Commission is specifically vested with powers to monitor the welfare of detainees. In addition

the HRC has set up a 24 hour hotline to enable the public to bring to the notice of the Commission any violations of fundamental rights. The Commission conducts three monthly meetings with representatives of the three service commanders and the Inspector General of Police, and officers who have been nominated to liaise with the Commission in order to facilitate the functioning of the hotline.

One of the drawbacks of the Commission is that the powers of investigating, conciliating and mediating is restricted to the fundamental rights set out in Chapter iii of the Constitution. Thereby the Commission is denied of the power to investigate the human rights enumerated in the international human rights instruments, including the right to life, which is not guaranteed in the Sri Lankan Constitution.

In 1981, legislation was enacted to provide for the appointment of a Parliamentary Commissioner for Administration (Ombudsman). The Ombudsman is vested with the power to inquire into allegations of infringement of fundamental rights or other injustices committed by public officials.

On 8<sup>th</sup> September 1998, Parliament passed the National Child Protection Authority (NCPA) Act No 50 of 1998. The NCPA was appointed by the President in June 1999 and is functioning effectively in monitoring child abuse. It acts as a co-ordinating mechanism between government and non governmental organisations concerned with issues relating to prevention of child abuse and the protection and treatment of victims of such abuse. Apart from dealing with sexual violence against children, trafficking in children, cruelty to children, the use of children in obscene publications, exploitative labour, it also has a bearing on compulsory education and the involvement of children in armed conflict

In 2002, the Protection of the Rights of the Elders Act was passed by Parliament. It established the National Council for Elders for the protection of the welfare and rights of the elders and to assist the elders to live with respect, independence and dignity. The Council is empowered to advise the government and other appropriate bodies on measures to strengthen the family unit, to carry out public awareness programmes and to provide information about the services available for elders. It has provision to introduce and implement health insurance benefits for the elderly and also assist them in seeking legal advice. Children are made responsible for and provide care for the elders while destitute elders will be provided for by the State. Under the Act, a National Fund for the Welfare of the Elders is to be established.

---

Comments By

Priyadharshini Dias

Attorney-at-Law

## **India -Draft Annotation for Principles**

### Comments and Suggestions on the Statement of Principles on Minority and Group Rights in South Asia -

#### *I*

1. In my view, unlike the countries of European Union and the U.S., which have established traditions of rule of law and access to justice, the countries in South Asia, including India, do not have institutions of rule of law in place. Governance in these countries is based on ruler-ruled nexus and is State-centric. For example the police in India is supposed to carry out the orders of the political executive during inter-group conflicts, which is based on cynical political calculations, hence its blatantly partisan role during communal violence.
  - 1.1 Then, the operation of the justice system is such that it has not only failed to deliver speedy untainted justice, but has given rise to a pervasive climate of impunity, which is the major source of recurrence of violence against Muslims, Sikhs and Christian in India and respective minorities in each of the countries of the region.
2. The idea of equality of all humans in dignity and rights is simply absent in the Hindu-ethos. Though in Islam and Buddhism potential equality of all humans is given recognition, but their orthodoxies are not ready to extend equal rights to the “other” (those outside the religious/sectarian fold).
  - 2.1 In the countries of the region, especially India, sub-group loyalties of people based on caste and sub-caste, clan and tribe being strong “others” get easily excluded discriminated or neglected.
3. A unique feature of minority situation in India is the fact that the present day Muslims are considered by a section of aggressive Hindu cultural nationalists to have committed wrongs against Hindu Dharma during medieval period and have committed the sin of partition in recent times. This perception has given rise to an open agenda of hate and revenge against Muslims and lately against Christians.
  - 3.1 The continuing conflictual-adversarial Indo-Pak relations, especially over Kashmir, causes aggravation of intolerance against Indian Muslims who are easily subjected to discrimination, assimilation and periodic genocidal violence.
  - 3.2 In other countries of the region occurrence of inter-group violence involving minorities based on religion, sect, race, language and ethnic identity is rather common. Rise of terrorism both by sections of victim groups and by the State, is also common.
4. Apart from threat to life, dignity and places of worship that minorities periodically face in countries of the region, they are also being subjected to aggressive cultural assimilationist majoritarian designs.

#### *II*

Given the situation outlined above, there is a need to recommend the following as a necessary pre-requisite for all citizens and vulnerable groups including minorities to realize their basic human rights:

- i) Reform of the administrative, police, legal and judicial system in accordance with human rights standards

- ii) To establish mechanism of inter-community conflict resolution – both statutory and voluntary - by citizens, in each country.

1

- iii) To adopt SAARC Human Rights Convention along with instruments providing for rights of minorities, refugees, migrant workers, members of the divided families, stateless persons and asylum seekers
- iv) To establish SAARC multinational institutions including Commissioner for Human Rights, Minorities and Non-Citizens & Human Rights Courts
- v) To establish mechanism of inter-State dispute resolution within the framework of SAARC charter.

### **III**

Apart from the requirement of the basic framework of rule of law and mechanism of conflict resolution \_\_\_\_\_ there is a need to emphasise the principles of Durban Declaration and PoA (2001) which require *Social diversity to be reflected in all institutions*, as far as possible, especially in the armed forces, the police and law-enforcement system including the judiciary especially of underrepresented minorities.

Under the Durban Declaration & PoA (2001) member-countries are required to do periodic stock-taking and submit reports to the UN High Commissioner For Human Rights on the measures taken to end discrimination.

### **IV**

Only after having underlined these basic requirements, should we deal with the Guiding Principles for the provisions of guarantees in the Constitution, law and policies regarding minorities in each country of the region. Sections I, II & III may therefore, be incorporated in the Introduction and the Preamble.

## **Comments on Principles**

### ***Principle -1 Annotations***

The rights of migrant workers, say from Bangladesh in India, and members of divided families especially of India and Pakistan and refugees and stateless persons like Bihari Muslims may be brought under law.

Absence of laws applicable to all categories of persons who have been moving because of genuine human needs like economic hardship causing migration from regions now in Bangladesh to India and loss of spouse forcing the widow/divorcee to return to her kin from Pakistan to India or vice-versa, which is the country of her origin \_\_\_\_\_ makes the Governments and xenophobic sections of people in these countries treat all such persons as “infiltrators” (‘enemy’), fit to be forcibly deported.

### **Principle 2**

- (3) add ‘educational’ to economic, social ..... life.
- (4) Special protection to persons facing threat of hostility, violence and abuse require:
  - (a) enactment of laws by each State on the Crime of Genocide

- (b) making laws and application of laws on hate speech and hate crime, more effective
- (i) It needs to be noted that proceedings against persons under Section 153 (A) of the Indian Penal Code for spreading communal hatred require the permission of the Executive. The Union and State governments' role in India in this regard has been callous and selective and the record of the judiciary has not been very inspiring. In the classic case of Shiv Sena leader of Mumbai Bal Thackeray, whose venomous writings engendered the climate of violence in Mumbai in 1992-93, the Writ Petition before the High Court got dismissed which was deplored by eminent jurists like Nani Palkhiwalla, HM Sirvai, Fali S. Nariman and Soli J. Sorabjee, who is now the Attorney General of India. Mr. Sorabjee made the following observations:
- “It is extremely unfortunate that the judiciary has not intervened in this case where the law has been openly flouted and communal hatred spread by Bal Thackeray through his mouthpiece Saamba. History teaches us that unless these pernicious tendencies are scotched they grow to become unmanageable monsters later on. The argument that a prosecution of persons responsible for spewing hatred would rake up past events is totally misconceived because there has been no rethinking or regret by the authors of the writings and there is every likelihood of such actions being repeated.”<sup>(1)</sup>*
- (ii) The fact that the trial of 19 members of the Provincial Armed Constabulary (PAC) of the Government of U.P, in India who were indicted for killing of 40 innocent Muslims of Hashimpura, Meerut in May 1987 has yet to start in the District Court of Delhi, speaks volumes about the State of the Criminal justice system in India.<sup>(2)</sup>
- (iii) Similarly none of the police personnel indicted by Justice Sri Krishna Commission of Inquiry into Mumbai riots of 1992-93 have been brought to justice
- (iv) The political leaders and officials responsible for the massacre of Sikhs in 1984 have not been brought to justice.
- (c) **Enactment of laws on the rights of victims of violence including those on women victims and internally displaced persons.**
- (i) There is no law in India on the rights of victims of violence, who suffer massive losses of life, livelihood, property, dignity, and places of worship, in spite of the Indian higher judiciary recognizing such right. For example Justice Anil Dev Singh of Delhi High Court held the State liable to pay adequate compensation for having failed to protect innocent levies during anti-Sikh violence in Delhi 1984. Its recommendation made in the judgment of 5<sup>th</sup> July, 1996<sup>(3)</sup> to enact a law for adequate compensation to victims and for fixing responsibility of officials whose acts and omissions led to failure of governance \_\_\_ has not been acted upon yet.

It needs to be kept in view that the UN Principles of Justice for Victims of Crime and Abuse of Power 1985 provide for restitution of rights and reparation and compensation.

- (ii) (a) The concern that Crimes against women, like gang rape, during communal violence require special legislation \_\_\_\_ has not been addressed in India
  - (b) India's Commission of Inquiry Act provides for its appointment by the erring executive and gives it the power to reject the recommendations of the Commission
  - (c) The recommendations of the National Police Commission (NPC) (197-81) and of other bodies including the National Commission For Minorities (NCM) and the National Human Rights Commission to make the police (i) autonomous (ii) accountable to law and (iii) of socially diverse composition has not been implemented by the Government of India. <sup>(4)</sup>
- (f) **Specific recommendations of the Union Home Ministry (1997) and of the NCM for Prevention and Control of Riots (1999) continue to remain unimplemented** <sup>(5)</sup>
- (g) In Pakistan the blasphemy laws and other laws regulating freedom of religions are source of threat to religious minorities and dissenters. Ahmediyas who have been declared non-Muslims are not permitted to use specific names and terms for their place of worship and prayer etc.

### **Principle 2 (5)**

- (i) Religious minorities in India have been excluded from the benefits of affirmative action, especially from reservation in public services under Articles 16 (4), in spite of the fact that during the framing of the Constitution it was made clear that this provision was especially incorporated to enable underrepresented religious minorities secure fair share in public services. <sup>(6)</sup>
- Any demand from Muslim forums for redress is dubbed as 'communal'. In this regard the principle of secularism is presented an excuse. There is a need to affirm the principle of pluralism and social diversity. Even in those fields in which appointments are discretionary and political for which no merit based tests are used, the share of Muslim representation is very low. All official studies and surveys on the socio-economic and educational status of communities indicate low position of Muslims <sup>(7)</sup>.

**The National Human Rights Commission (NHRC) of India has had only one Muslim member during about one decade of its existence. Its staff of 250 plus has only one upper division and one lower division clerk from among Muslims.**

- (ii) The law on reservation of Dalits (Scheduled Castes) is discriminatory. It penalizes conversion to Christianity or Islam by withdrawing those benefits. The law makes a distinction between religions of indigenous origin e.g. Sikhism, Buddhism, Hinduism & Jainism and of non-indigenous origin like Christianity and Islam
- (iii) There is a need to emphasise the right of all social groups and communities to have their due share ensured by developing policies promoting the principle of diversity.

Simply formal, legal equality and non-discrimination will not ensure equality of treatment as noted by the Permanent Court of International Justice, the Hague, in its opinion in the Albanian School case in 1935.<sup>(8)</sup>

- (iv) There is a need for Equality / Equal Opportunities Commission to study and monitor all sources of inequality and discrimination and suggest permanent policy measures for right to equality effectively being enjoyed by members of all disadvantaged, vulnerable groups. The Commission should be empowered to attend to and redress specific grievances of individuals and groups.

Principle 4 should become 3 and vice-versa:

So, that right of the minority to distinct identity gets priority – though both 3 & 4 have to be pursued simultaneously.

Inter-cultural education should aim at, among others, eradication of distortions and negative stereotypes of the history, culture and religion of communities, especially of the non-dominant groups.

There is a need to include The Report of the Seminar on Multicultural and Inter-cultural Education organized by the UN Working Group on Minorities; Geneva 23-24 May 1997 as defining international standards.<sup>(9)</sup>

**Principle 4**

The right to distinct identity should include community based family laws, provided they are reformed with a view to ensuring gender justice.

The issue is important as in India demand for uniformity of personal laws has become a tool in the hands of those who are pursuing majoritarian cultural agenda. Moreover practices on marriage and divorce are too intimately culture-bound to be left to be homogenised under any rational, secular principle. Easy or difficult divorce and valid grounds for seeking divorce, for example, are ultimately a matter of cultural choice. However all laws and practices which violate human rights of women should be reformed to remove any injustice.

In Pakistan and Bangladesh the principle of State's non-interference in the non-Muslim personal laws causes hardship to women, as they continue to be governed by traditional Hindu laws which are unjust to women.

The non-Hindu communities have to be encouraged to evolve reform measures which should be legislated. Alternatively the judiciary may take recourse to human rights norms in deciding cases related to women's rights under personal laws.

**Principle 5**

1. In India though Constitutional provisions regarding freedom of religion adequately protect the right, the Hindus generally disapprove of any individual or group of people converting to Christianity or Islam. Anti-conversion sentiments of Hindus got manifested in the following bills/laws:
  - i) 'A Congress member's Indian Converts (Regulation & Registration) Bill, 1954 - which was eventually dropped

- ii) Backward Communities (Religious Protection) Bill, 1960 introduced in the Parliament aimed at checking conversion to non-Indian religions – which was rejected
  - iii) Orissa : Freedom of Religions Act 2 of 1967
  - iv) Madhya Pradesh : Freedom of Religion (Regulation) Act 27 of 1968
  - v) Arunachal Pradesh: Freedom of Religion (Regulation) Act 1978
  - vi) Recently the State of Tamil Nadu and Gujrat have enacted laws regulating conversion from one religion to another, which has caused strong resentment among Christian communities, especially in view of the fact that Hindu Chauvinists have been targeting Christians, especially their missionary activities.
- 1.1 While upholding the validity of the laws (1967-68) of Orissa and Madhya Pradesh regulating freedom of religion, the Supreme Court of India made the following observation: <sup>(10)</sup>  
 “what is freedom for one is freedom for others in equal measure, and there can, therefore, be no such thing as a Fundamental Right to convert any person to one’s own religion.”
- 1.2 The judgment attracted severe criticism from eminent jurists including Soli J. Sorabjee and HM Seervai. The latter observed that <sup>(11)</sup> “The Supreme Court judgment is clearly wrong. It is productive of the greatest public mischief and ought to be overruled.”
2. Apart from increasing anti-conversion legislative pressure, a number of Hindu family laws enactments of 1955-56 penalise conversion of a Hindu to Christianity or Islam by making them lose the right to the guardianship of minor children. A Hindu wife after conversion to Christianity or Islam cannot claim maintenance from her husband.  
 We have earlier noted how Dalit (members of the Scheduled Castes) lose all benefits of State’s affirmative action by conversion to Christianity or Islam.
3. It needs to be noted that under Article 48 of the Indian Constitution, the Direction to the State to prohibit slaughter of cow and calf is based on Hindu religious sentiments. In most States of India cow slaughter is banned, though not explicitly on religious grounds.  
 The Parliament has recently passed a resolution favouring a countrywide ban on cow-slaughter.
4. Pakistan, Bangladesh and Nepal having State religions makes citizens professing other religious suffer from some disadvantages.

**Principle 6**

- 1. ‘Script’ needs to be added to language wherever it occurs in the text, because in some cases like that of Urdu, it is the script used by a minority community that faces discrimination/ suppression.
- 2. The section needs to be re-written emphasizing more adequate Constitutional protection to minority languages- not only guarantee of freedom to users of these languages, but involving obligation of the State to create conditions favourable for the preservation and promotion of the distinct identity in terms of Article 4 (2) & (3) of the UN Declaration on the Rights of Persons Belonging to ..... Minorities (1992) and the UN Human Rights Committee’s comments on Article 27 of the ICCPR (1994) para 6.2 and 9.
- 3. Protection of minority languages in the Indian Constitution is inadequate. While Article 29 guarantees any section of citizens with distinct language, script and

culture to conserve the same, under Articles 345, 347, 350(A) the right to use minority languages for specified official- administrative purposes as well as for imparting primary education is discretionary not mandatory.

As a result Urdu has been officially suppressed in many States especially U.P. because of political prejudice and majoritarian Hindi linguistic chauvinism. In view of the distribution pattern of speakers of Urdu, it needs protection under a Central Law under a comprehensive Multiculturalism Act.

4. The claim of many dialects to the status of language, are being denied to them in Indian.
5. Smaller languages cannot survive without official support; hence the obligation of the State in terms of Articles 4(2) and HRC (1994)

### ***Principle 8***

The rights of Minority educational institutions under Article 30 are subjected to unreasonable restrictions especially in their admission policy, requiring admission of a certain percentage of non-minority students as obligatory for reasons national of integration – whereas other educational institutions are not required to admit a fair number of minority students for the same purpose i.e. national integration.

### ***Principle 9***

1. In Pakistan non-Muslims enjoy a guaranteed quota of seats proportionate to their population under separate electorate. They are demanding abolition of separate electorate to be able to fully participate in the political process of the country as equal citizens.

In India religious minorities do not have population based reserved seats in legislatures as was provided for in the Draft Constitution (1948-49). Muslims who constitute 12% of India's population have been persistently underrepresented in the Lok Sabha (Central Legislature) and State Assemblies. The average of their representation in the Parliament has been 50% of their share in population. In State Assemblies it has ranged from zero to 1/3<sup>rd</sup> or even less of their share in population. <sup>(12)</sup>

The reasons lie in single member constituencies; plurality voting, regional distribution of Muslims and consideration of Caste and community by political parties for nomination of candidates.

The National Commission to Review the Working of the Constitution (2002) has for the first time officially noted this pattern of underrepresentation making recommendation to political parties and the State to make Indian polity truly plural. <sup>(13)</sup>

But there is no move by the political class recognize it as an issue that needs to be addressed.

The share of Muslims even in those public offices in which appointment is discretionary has been rather low.

### ***Principle 10***

Religious minorities in India, Pakistan, Bangladesh are scattered with some areas of concentration. The situation requires coalescing of social federalism and territorial devolution of power and autonomy.

### **Principle 11**

Though during the framing of the Indian Constitution a Constitutional mechanism for implementation of safeguards for minorities was provided for under Draft Article 299, it was eventually deleted.

The present National Commission For Minorities was established in India in 1992 under an Act of Parliament. Its Chair and members are appointed by the Government of India. Its reports and recommendations can be easily ignored and disregarded.

There is a need for more empowered NCM to function as part of the NHRC. Similar institutional arrangement needs to be made in each country of the region.

Comments by :

**Iqbal A. Ansari**

---

#### Notes:

1. *Communal Riots, the State and Law In India*, ed. Iqbal A. Ansari, !.O.S., New Delhi 1997, pp.66-75
2. See 'Hashimpura (Meerut) Killings' – Is There Any Hope of Justice? Iqbal A. Ansari, *Economic & Political Weekly*, Dec. 30, 2000
3. Judgment of the Delhi High Court in Civil Writ Petition No. 1429 of 1996
4. (i) National Police Commission's Report, Union Home Ministry 1978-81, especially Report II and Report VI  
(ii) Recommendations of the National Human Rights Commission's Reports, 1994, 1995 etc. & Special Report on Gujrat May 2002
5. (i) National Commission For Minorities Report on Communal Riots, Prevention and Control (1999)  
(ii) Union Home Ministry's Guidelines To Prompt Communal Harmony/issued on 22 October 1997
6. B. Shiva Rao, *The Framing of India's Constitution : Select Documents* Vol II, pp. 200-208, 258-262
7. See the Report on Minorities : Volume I & II by High Powered Panel on Minorities, S.C. & S.T. and, other Weaker Sections, Govt. Of India, New Delhi 1983
8. Advisory opinion on Minority School in Albania, 6<sup>th</sup> April, 1935, Series A/B, No. 64 p. 19
9. E/CN.4/Sub.2/1997/W.P.5
10. Rev. Stainislaus Vs. Union of India, AIR 1977 SC 908
11. *Constitutional Law of India : A Critical Commentary* 912-916 (3<sup>rd</sup> Edn. 1983)
12. See Iqbal A. Ansari, "Minority Representation" in *Seminar*, New Delhi, October, 2001

13. Report of the National Commission To Review The Working of the Constitution (NCRWC) Report 2002 para 10.11.2 (b)

-----  
**Pakistan -Draft Annotation for Principles**

**Statement of Principles**

1. Introduction and Preamble.

2. Principle 1

*No annotation required*

3. Principle 2

In the case of Pakistan, the following may be noted (all Articles are articles of the Constitution)

i) Re clause (1) of Principle 2. The State of Pakistan recognises only religious minorities. The Objectives Resolution, which was made a substantive part of the Constitution in 1985 by Gen. Ziaul Haq vide (Article 2-A,) treats Muslims and non-Muslims differently. In the case of Muslims, they “shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah.” With reference to minorities, it says that “adequate provision shall be made for the minorities to profess and practise their religions and develop their cultures.”

Article 2 declares Islam to be the state religion of Pakistan.

All laws must be brought in conformity with the Injunctions of Islam and no law can be enacted which is repugnant to these injunctions. (Articles 227) Any law found repugnant to Islam can be struck down by the Federal Shariat Court (religions court) (Article 203)

The Shariat Enforcement Act of 1991 provides for enforcement of Islamic laws and policies.

**(All religious minorities believe that these provisions create a bias in favour of the majority religious community.**

ii) Re clause (2) of Principle 2. All citizens are equal before law and are entitled to equal protection of law (Articles 4 and 25). However, Article 25 bars discrimination on the basis of sex alone and provides for affirmative action in favour of women and children only.

Article 26 bars discrimination on the ground of race, religion, caste, sex, residence or place of birth in respect of access to places of public entertainment or resort and provides for affirmative action in favour of women and children. It does not recognise possible discrimination on the ground of language or social status.

However, laws have been placed on the statute book that do not accord women and religious minorities equality (with Muslims and Males) before law. The law of evidence, the Qisas and Diyat law and the Hudood Ordinances (Islamic penal laws) discriminate against women and religious minorities. The evidence of a woman is not equal to that of man, the evidence of non-Muslims is not admissible in many cases, non-Muslims can be tried before the Federal Shariat Court but cannot be represented by non-Muslim counsel and a case under Sec 295-C of the Penal Code (the so-called blasphemy law) must be heard by a Muslim judge.

iii) Re clause (3) of Principle 2.

Article 27 bars discrimination on the basis of race, religion, caste, sex, residence or place of birth in respect of appointment in the service of Pakistan and provides for reservation of quotas on class and territory basis for the disadvantaged and also for reservation of posts and services for members of either sex

However, the President of Pakistan must be a Muslim (Article 41) and the oath prescribed for the Prime Minister indicates that he should also be a Muslim.

In practice non-Muslims are barred from certain services. For example, Ahmedis, treated as non-Muslims, cannot get commission in the army. Non-Muslims cannot gain promotion beyond a certain limit.

In education, non-Muslim students are allowed a small quota in state institutions which deprives them of the right to admission on merit.

As regards religious rights, every citizen has the right to profess, practise and propagate his religion, but the Ahmadis are barred from preaching their faith and laws have been made (such as Sec 298 of the Penal Code) that exclusively target them.

The religious minorities have the right to establish their religious and educational institutions (Article 20 (b), Article 21 and Article 22.

iv) Re clause (4) of Principle 2. No special protection is afforded.

v) Re clause (5) of Principle 2. Affirmative action has been taken in favour of religious minorities by reserving seats for them in the National and Provincial Assemblies and in local councils. Similar reservations have been made for women. The women are also promised 5 % of the posts in state services – a target yet to be achieved.

Article 28 says that “any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and, subject to law, establish institutions for that purpose”. However, the State does little to facilitate enjoyment of this right except for giving small grants to academies for the promotion of regional languages.

#### **4. Principle 3**

i) Re clause (1) of Principle 3. No measures as envisaged here are taken.

ii) Re clause (2) of Principle 3. The concept of intercultural education is unknown. The compulsory curricula includes only the belief, culture, traditions, etc., of the majority community and does speak of the minorities. The religious minorities can, however, do so in their institutions.

#### **5. Principle 4.**

i) The identity of minorities is recognised but not promoted.

ii) The minorities are not discriminated in respect of citizenship status.

#### **6. Principle 5.**

i) Re clause (a) of Principle 5. Article 20 gives religious minorities the right to profess, practise and propagate their religions but the Ahmadis are denied the right to maintain their prayer houses in the shape and under the title they wish.

ii) Re clause (b) of Principle 5. The religious minorities have the right to receive and impart instruction in their belief at institutions established by them.

iii) Re clause (c) of Principle 5. The right to change one’s religion is not recognised as a fundamental right. In practice, conversion to Islam is welcomed but a Muslim adopting another religion runs the risk of losing his life.

iv) Re clause (d). The freedom to establish training schools for the faithful is recognised.

v) Re clause (e) the freedom suggested here is recognised.

vi) Re clause (f). The freedom to publish and disseminate their religious materials is denied to Ahmadis. Their freedom to receive their TV programmes via satellite / dish has also been interfered with by non-state actors.

vii) Re clause (g) of Principle 5. The freedom envisaged here is allowed.

viii) Re clauses (h), (i) and (j). The freedoms envisaged here are allowed.

#### **7. Principle 6.**

i) Re para 1 of Principle 6. There are no restrictions on the exercise of freedoms envisaged in this para.

ii) Re para 2 of principle 6. The right of national minorities that are in majority in specific areas to use their languages in relations with administrative authorities is not explicitly denied. However, the local authorities do not provide public services in the minority language. The right envisaged in clause (b) of para 2 of Principle 6 is not available to minorities in practice.

### **8. Principle 7.**

i) Re para 1 of Principle 7. Article 28 does grant the minorities the right to develop their languages and cultures but minority languages are not the medium of instruction. The rights envisaged in clauses (a) and (b) are not available in practice. As regards clause (c) all minority languages are not taught at the primary level. Minority languages are taught as optional courses at higher levels.

### **9. Principle 8.**

The right to form associations, unions and political parties allowed to citizens under Article 17 are available to minorities too. The freedom to seek funding from local sources is not interfered with. Receipt of funds from regional and international sources is not prohibited by law. However, the state does not discourage prejudice against groups that have contacts with certain countries such as India.

### **10. Principle 9**

- i) Re clause (a) of para 1 of Principle 9. There is no tradition of consultation envisaged here.
- ii) Re clauses (b) and (c) of para 1. The right to freedoms envisaged here is better respected now than earlier.
- iii) Re clauses (d) and (e).. There are no bars to the exercise of freedoms envisaged in these clauses.
- iv) Re clause (f). There are no constitutional and legal bars to access to and holding public offices except for the office of the President, as noted earlier.
- v) Re clauses (a) and (b) of para 2. No concessions of the kind envisaged in these clauses is available to minorities.
- vi) Re clauses (c) and (d) of para 2. The constitution and law allow the rights mentioned in these clauses.
- vii) Re clause (e) of para 2. The delimitation of constituencies is unfavourable to religious minorities.
- viii) Re clause (f) of para 2. Some minority advisory bodies have been established.
- ix) Re para 3 and 4. The restrictions envisaged here do not figure in the constitution and the law.

### **11. Principle 10.**

- i) Re paras 1 and 2, principle 10. The concepts alluded to here are unknown in Pakistan.
- ii) Re clause (a) of para 3. The arrangements envisaged here have been provided for.
- iii) Re clause (b) of para 3. Pakistan is a federal republic (Article 1) but the minority national groups are not satisfied with the division of power between the federation and the provinces.

### **12. Principle 11.**

- i) Pakistan does not have a national human rights commission but it does have ombudsmen at both the centre and the provinces, though their role is largely advisory. There are no special bodies to defend the minorities. There are no special redress forums for minorities.
- ii) Re para 3 of Principle 11. Minorities have access to courts / tribunals but no special mechanisms have been created specifically to redress their grievances.
- iii) Re para 4 of principle 11. The minorities do not have access to UN treaty bodies and complaints procedures as Pakistan has not ratified the relevant instruments and protocols.

Comments By:

**I .A. Rehman**