

**Distr.
RESTRICTED**

**E/CN.4/Sub.2/AC.5/2003/WP.3
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**

**POSSIBLE NEW UNITED NATIONS MECHANISMS FOR THE
PROTECTION AND PROMOTION OF THE RIGHTS OF MINORITIES**

(Paper prepared by Minority Rights Group International)*

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

GE.03-14143

Possible new United Nations mechanisms for the protection and promotion of the rights of minorities

Minority Rights Group International

Introduction

The current UN system is inadequate for fully protecting and promoting the rights of minorities. The Working Group on Minorities, as the focal point within the UN on issues of concern to minorities, has made a number of recommendations for improving the capacity of the United Nations in this regard. In this paper Minority Rights Group International draws upon these recommendations, its own experiences and those of its partner organizations in some 60 countries worldwide, to examine the current gaps in the UN system and to discuss possible solutions.

Existing mechanisms

The UN Working Group on Minorities

The only UN mechanism specifically dedicated to the protection and promotion of the rights of minorities is the Working Group on Minorities, whose mandate is to:

- (a) Review the promotion and practical realisation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- (b) Examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments; and
- (c) Recommend further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities;¹

The Working Group meets once a year for five days, and is composed of independent experts, who are themselves members of the Sub-Commission on the Promotion and Protection of Human Rights.

In practice, the Working Group offers an effective forum for the discussion of specific situations facing minorities, and of themes of direct relevance to them. It is very open to minority NGOs, unlike other UN bodies, (which either exclude NGOs completely or limit participation to those that have ECOSOC consultative status). It has been effective in promoting dialogue between minorities and states, and in making thematic recommendations on the improvement of minority protection.

However, its mandate does not allow it to take effective action to remedy urgent situations, either regarding individuals or groups. It cannot follow up on the submissions of minority representatives alleging violations, other than by simply forwarding them to the government concerned. It does not make specific recommendations to states based on the allegations of violations that are presented during its sessions.

¹ Commission on Human Rights, resolution on Rights of persons belonging to national or ethnic, religious and linguistic minorities, 1995/24

Although not explicitly established in its mandate, the Working Group has made one country visit, to Mauritius in 2001. This was on the invitation of the government of Mauritius, facilitated by Mr Sik Yuen, then member of the Working Group and Senior Puisne Judge of Mauritius. However the WGM does not have a budget for country visits and it is clear that such visits will not form a regular part of its work.

Mechanisms concerned with the rights of indigenous peoples

A number of Charter-based mechanisms exist dealing with the rights of indigenous peoples, including the Working Group on Indigenous Populations, the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, and the new Permanent Forum on Indigenous Issues. There is also the open-ended inter-sessional Working Group of the Commission on Human Rights on the draft declaration on the rights of indigenous peoples.

However, although many indigenous peoples may be minorities,² most ethnic, religious or linguistic minority communities could not be classed as indigenous peoples and do not therefore benefit from any protection offered by these mechanisms.

Other UN human rights mechanisms

The considerable number of other special rapporteurs and working groups of the Commission on Human Rights, and the human rights treaty bodies, constitute essential cornerstones of the UN's efforts to promote and protect human rights. None of these mechanisms specifically address minorities. In relation to thematic issues such as religious intolerance and racial discrimination, or with respect to country mandates, treaty monitoring bodies and special procedures sometimes highlight situations of concern to minorities. However, given that the subject matter falls within a broader mandate, their engagement with minority issues is limited, as is their capability to provide insight into situations involving minorities, and the impact they can have in providing solutions. Any action by treaty bodies can only relate to states parties to the treaty over which the body has supervision, and in respect of the particular treaty provisions.

Conflict prevention mechanisms

Particular concern has been raised by the Secretary-General of the United Nations, and at sessions of the WGM and in other fora, regarding the need for mechanisms for the effective prevention of conflict involving minorities (which is often caused by violations of minority rights). In the Secretary-General's report on the rights of persons belonging to minorities to the 58th session of the Commission on Human Rights, it is stated: 'Within the context of the work of the Commission on Human Rights, the General Assembly and other human rights bodies and organs, there is growing recognition that the promotion and protection of the rights of persons belonging to minorities contributes to the stability of States. Likewise, the view has been gaining ground that the effective protection of the rights of persons belonging to minorities is an essential element of efforts to prevent conflict.'³

² It should be noted that many indigenous peoples reject the label of 'minority'.

³ E/CN.4/2002/91, December 2001, para 10.

Space does not permit a review of UN conflict prevention mechanisms here,⁴ but it is clear that the WGM, the only minority-specific mechanism in the UN system, is not designed to address these issues, not least because it meets for one week each year, and cannot follow up on complaints. Moreover, a particular problem exists with inadequate communication or coordination between UN mechanisms responsible for conflict prevention, and those tasked with the promotion and protection of human rights.

Possible new mechanisms for the promotion and protection of the rights of minorities

1. A special procedure on minorities

The limited mandate of the WGM could be addressed by creating a further special procedure with a complementary mandate. In 2002, the Sub-Commission on the Promotion and Protection of Human Rights recommended ‘that the Commission on Human Rights consider the establishment of a special procedure on minority issues’.⁵ This strengthened a similar request in the previous year, not directed at any particular body, that ‘consideration be given to ... the possible appointment of a special rapporteur on minority issues’,⁶ and reflected recommendations made by the Working Group on Minorities. For example, in 2002 the Working Group proposed ‘that the Sub-Commission recommend to the Commission on Human Rights that it explore ... the possibilities of establishing a special procedure mechanism on the rights of persons belonging to minorities, such as a special rapporteur or special representative. The mandate could include monitoring the implementation of the Declaration, facilitating the provision of technical cooperation on issues relating to conflict prevention, and assisting the Working Group in drawing up a code of conduct’.⁷

This proposal has been supported by a number of NGOs, including Minority Rights Group International, in statements at the Working Group, Sub-Commission and Commission. The Commission on Human Rights is still examining these proposals.

The two special procedures that have been discussed in detail to date are a Special Rapporteur on Minorities and a Special Representative of the Secretary-General on Minorities.

Special Rapporteur on Minorities

A Special Rapporteur on Minorities could address the questions of allegations of violations of minority rights that the WGM is unable to do. S/he could receive communications from individuals or groups alleging violations of the rights of persons belonging to minorities – most likely using the Minorities Declaration as a guideline, in the same way that the Special Representative of the Secretary-General on Human Rights Defenders uses the Declaration on Human Rights Defenders. S/he would then investigate allegations which were deemed admissible, including requesting a visit to the State concerned, requesting clarification from the government, recommending any necessary measures of redress, and reporting on the issue to the Commission on Human Rights. S/he could also visit states in order to assess and report on the general situation with regard to minority rights.

⁴ See ‘Prevention of armed conflict : Report of the Secretary-General’, General Assembly 55th session, 7 June 2001, A/55/985-S/2001/574.

⁵ Resolution 2002/16, The rights of minorities

⁶ Sub-Commission on Human Rights resolution 2001/9

⁷ Report of the Working Group on Minorities on its eighth session, E/CN.4/Sub.2/2002/19

Careful drafting of the mandate of a Special Rapporteur would ensure there was no duplication with the mandate of the Working Group on Minorities. Unlike the Working Group, a Special Rapporteur would have a mandate to undertake an investigation into alleged violations of the Declaration.⁸ As already noted, the Working Group does not investigate allegations nor assess the general situation of minorities in a particular country – both of which would be a major part of the work of a Special Rapporteur. With the addition of a Special Rapporteur, the Working Group would remain a main focus for dialogue between minorities and states, and the development of thematic recommendations.

With regard to conflict prevention, the rapporteur could investigate allegations of widespread violations, which might be a precursor to ethnic violence/genocide. On the other hand, it is unlikely that a Special Rapporteur created by the Commission on Human Rights would have effective powers to deal with conflict prevention, as has been pointed out: ‘the Commission on Human Rights lacks the capacity to act in the same way that the Secretary-General can through his good offices, and it is unlikely that a special rapporteur would be empowered personally to mediate in a developing dispute’.⁹

Special Representative of the Secretary General (SRSG)

A Special Representative of the Secretary-General would report to the UN Secretary-General, and would normally be based in New York. The mandate might contain some similar elements to that of the High Commissioner on National Minorities of the Organisation for Security and Cooperation in Europe; i.e. the SRSG would be focused on conflict prevention through the implementation of minority rights. S/he would receive and analyse information from a variety of sources, including the human rights monitoring apparatus of the United Nations, but also from states, non-governmental organisations, and research institutions, regarding situations of tension involving minorities which point to a risk of violent conflict. The SRSG could then exercise a preventive diplomacy role, by visiting the country if necessary, and entering into discussions with the state and representatives of the minority, with a view to suggesting measures to reduce tensions. In doing so, the SRSG would work within the framework of international human rights standards, including the Minorities Declaration. If necessary, the SRSG would communicate with the Secretary-General, the Department of Political Affairs and the Security Council regarding situations where early preventive action may need to be taken.¹⁰

MRG has previously argued¹¹ that a special representative would increase capacities for linking up the human rights investigation activities of the UN, based mainly in Geneva, and the activities regarding security and conflict prevention, which centre for the main part on New York: ‘Despite repeated emphasis being placed on the connection between human rights and peace and security, consultation between holders of human rights mandates in Geneva and the UN Secretariat in New York is intermittent at best and entirely lacking at worst ... the

⁸ See S. Chesterman, ‘Minority Protection, Conflict Prevention and the UN System’, revised version of a paper presented at a meeting convened by the Rockefeller Foundation and the Neelan Tiruchelvam Trust, 18 October 2001, p17

⁹ *idem* p.18.

¹⁰ The Committee on the Elimination of Racial Discrimination also has an urgent action/early warning procedure. However it is necessarily only applicable in the case of states which have ratified the International Convention on the Elimination of Racial Discrimination (ICERD), and some misgivings have been expressed about its effectiveness, for example by former CERD member Theo van Boven (“Prevention, Early Warning and Urgent Procedures: a new Approach by the Committee on the Elimination of Racial Discrimination”, in E. Denters and N. Schrijver (eds.), *Reflections on International Law from the Low Countries, The Hague, Kluwer, 1998*).

¹¹ In its briefing paper ‘Minorities and Conflict Prevention: the Case for a Special Representative’

proximity of the Special Representative to the UN Secretariat would ensure effective early warning on situations involving minorities and proper follow-up to such situations within the core activities of the UN organization'.¹²

An SRSG of this nature would go a long way towards filling the gaps in the United Nations system with regard to the protection of minorities in conflict situations. In particular, it would be an important step towards implementation of some of the recommendations of the Independent Inquiry of the Actions of the United Nations During the 1994 Genocide in Rwanda (see below, under "*Specific mechanisms for dealing with genocide*"). The issue of duplication of mandates will need to be considered, but an SRSG with a mandate based on the above principles would have very little, if any, overlap with the Working Group on Minorities.

In sum, MRG would suggest that the creation of a Special Rapporteur on Minorities would address some of the gaps in minority protection in the UN system. However, in potentially fulfilling an important role in the prevention of conflict – where most of the gravest violations of the rights of minorities take place – the creation of an SRSG on minorities would be a higher priority.

2. *Voluntary Fund*

As well as new mechanisms within the UN, a reliable source of funding for minorities would allow them much greater access to the UN system. In 1998, the Working Group on Minorities recommended “the establishment of a voluntary fund to enable, *inter alia*, greater participation of minority representatives at its sessions”¹³. The then Sub-Commission on the Prevention of Discrimination and Protection of Minorities proposed a text in this regard to be adopted by the Commission on Human Rights. However the Commission, at its following meeting, decided not to act on this recommendation and merely invited “the High Commissioner for Human Rights to seek voluntary contributions in this regard”.¹⁴ This has since become established practice and a small number of minority representatives have been able to participate in the Working Group session each year. It is however extremely unsatisfactory as there is no certainty regarding the amount of funds which will be secured each year and when they will be made available.

The Working Group has continued to recommend the setting up of a fund. A number of NGOs and the representative of Finland have endorsed the recommendation.¹⁵ However the Sub-Commission did not return to the issue until 2001 and 2002, and then used more cautious language.¹⁶

A voluntary fund would improve the participation of representatives of minority communities in the work of the United Nations regarding minorities, considerably strengthen their ability to draw attention to serious issues affecting them, help to build a cohesive, coordinated movement at the international level and bring their direct experience to bear in the discussions of UN bodies. Minority representatives who are able to attend the WGM also have the

¹² 'Minorities and Conflict Prevention: The Case for a Special Representative', Briefing, Minority Rights Group International, 2002

¹³ Report of the Working Group on Minorities on its fourth session, E/CN.4/Sub.2/1998/18

¹⁴ Commission on Human Rights resolution 1999/48

¹⁵ Report of the Working Group on Minorities on its eighth session, E/CN.4/Sub.2/2002/19

¹⁶ In 2002 the Sub-Commission recommended “that consideration be given ... to the possible establishment of a voluntary trust fund to facilitate the participation in the Working Group of minority representatives and experts”

opportunity to carry out other advocacy work in Geneva, for example by meeting with state delegates, the High Commissioner's office, international NGOs, and the International Labour Organisation. The capacity for advocacy at the international level of indigenous populations has been considerably strengthened by the availability of a trust fund, which provides financial support for a large number of indigenous representatives to attend three UN bodies working on indigenous issues. A similar fund exists for the Working Group on Contemporary Forms of Slavery. MRG therefore strongly supports the creation of a voluntary fund for minorities.

3. *Strengthening the legal protection of minorities*

The international legal protection of minorities still requires strengthening, particularly as the most elaborate minority standard, the Declaration, is not legally binding or constitutes only 'soft law'. The first step would be to ensure universal ratification of the existing Conventions of particular relevance to minorities, including the International Covenant on Civil and Political Rights (ICCPR) (given Article 27), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of Racial Discrimination (ICERD). At the same time, universal ratification of the Optional Protocol to the ICCPR and the making of Article 14 Declarations under ICERD, would allow minorities to make individual complaints to the respective treaty bodies. All of these steps would greatly strengthen the legal protection of minorities.

At the same time the need remains for a legally binding treaty that would be much more detailed in setting out rights and obligations than Article 27 of the ICCPR. This would be based on the Declaration as well as the jurisprudence that has emerged around Article 27 ICCPR, as well as in regional fora. Two possible ways to pursue this would either be a Convention on the Rights of Minorities, or an optional protocol to the ICCPR which would set out additional rights and obligations for those states that chose to ratify it (much as the 2nd Optional Protocol does on the issue of the death penalty).

In 2000, the Sub-Commission on the Promotion and Protection of Human Rights recommended 'that the Commission on Human Rights request Governments and intergovernmental and non-governmental organizations to submit their views on the desirability or otherwise of the drafting of a convention on the rights of persons belonging to minorities',¹⁷ reflecting recommendations by the Working Group on Minorities. The Commission did not pursue this recommendation. In the following year the Sub-Commission recommended that the High Commissioner for Human Rights include a request for views on the subject in her annual invitation to states to submit their views on minority protection.¹⁸ Support for the possibility of a new binding legal standard has been expressed during previous sessions of the Working Group on Minorities,¹⁹ and the Commission on Human Rights²⁰.

Given the delays that the drafting of a Convention could entail, and the likely difficulty in securing universal political support, MRG suggests that an optional protocol to the ICCPR based on the Declaration would be the speediest way of developing a legally-binding

¹⁷ Sub-Commission on Human Rights resolution 2000/16

¹⁸ Sub-Commission on Human Rights resolution 2001/9

¹⁹ See statements by V. Kartashkin, WGM member, UN Doc. E/CN.4/Sub.2/AC.5/2000 and E/CN.4/Sub.2/2001/22

²⁰ Statement by the Observer for Hungary at the UN Commission on Human Rights, 58th Session, 24 April 2002 (UN Doc. E/CN.4/2002/SR.53)

instrument on minority rights. The crucial concern is that any new standard must strengthen minority rights protection, and not in any way undermine existing standards.

A further possibility would be the drafting of a new General Comment on Article 27 of the ICCPR, to reflect new developments in thinking regarding the protection of minority rights.

4. *Specific mechanisms for dealing with genocide*

Any strengthening of the UN mechanisms for protecting minority rights should also consider the current proposals within the field of genocide prevention, where certain mechanisms have been suggested in order to strengthen early warning and urgent action. The lessons of Rwanda were partly that the UN system as a whole ignored evidence of early warning of conflict from, *inter alia*, the Commission on Human Rights. The 1999 Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda²¹ recommended that "the Secretary-General initiate a United Nations action plan to prevent genocide ... The plan should establish networks of cooperation with humanitarian organisations, academic institutions and other non-governmental organisations with the aim of enhancing early warning and early response capacity". It went on to state that "The Inquiry feels it essential both to continue to improve the capacity of the organisation to analyse and respond to information about possible conflicts, and its operational capability for preventive action", and "Reports by the Secretary-General to the Security Council should include an analysis of the human rights situation in the conflict concerned. Human rights information must be brought to bear in the internal deliberations of the Secretariat on early warning, preventive action and peacekeeping". The Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance recommended, in Paragraph 153, that 'the Department of Peacekeeping Operations of the Secretariat and other concerned United Nations agencies, bodies and programmes strengthen their coordination to discern patterns of serious violations of human rights and humanitarian law with a view to assessing the risk of further deterioration that could lead to genocide, war crimes or crimes against humanity'.²² For the United Nations to implement this recommendation, the International Campaign to End Genocide has urged that: 'A genocide prevention bureau be established within the UN Secretariat to deal exclusively with genocide and responsible for investigating allegations of genocide or incitement to genocide and for taking urgent steps to prevent or suppress genocide'.²³

Conclusion

In view of the gaps in the current mechanisms for the promotion and protection of the rights of minorities, it is recommended that the Working Group on Minorities adopt as a theme for a future session, new mechanisms within the United Nations for the promotion and protection of minority rights, and make recommendations to the Sub-Commission on the Promotion and Protection of Human Rights based on these discussions. MRG suggests that the discussions include consideration of:

- i. New structural mechanisms, including either a Special Rapporteur or an SRSG on minorities;

²¹ UN Doc. S/1999/1257

²² Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12

²³ Bernard F. Hamilton, 'World Conference Against Racism And The Prevention Of Genocide', paper presented to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

- ii. Addressing the gap within the UN system related to the prevention of genocide and conflict involving minorities;
- iii. Securing of funding for minorities to use the UN mechanisms;
- iv. Strengthening the legal protection of minorities.

April 2003