



CONCEPT NOTE

In 1992, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM)¹ was adopted in response to the reconfiguration of the international order following the end of the Cold War and the disintegration of the Soviet Union. ‘The fate of minorities’ was at stake, echoing the same calls made by the UN in 1948, when the General Assembly adopted a resolution on this important issue of global concern.² The 30th Anniversary of the UNDM represents a key opportunity for all concerned to take stock of the state of minority rights protection, to identify gaps in the minority protection regime, and to assess how such gaps fuel threats to minorities and the protection of their rights, and to make recommendations on the ways forward. It is time to ‘Review, Rethink, Reform’ the global recognition, protection and promotion of the rights of minorities for a secure life in a diverse and just world.

Background

The UNDM was adopted by the General Assembly in 1992 with a view to promoting more effective protection of the human rights of minorities and more significantly, to work towards the realisation of the principles enshrined in the UN Charter and various human rights instruments at the international and regional levels. In particular, the Preamble of the UNDM asserts that the protection and promotion of minority rights significantly contribute to the political and social stability of states in which minorities reside, and also encourage cooperation across states and peoples.

The UNDM reinforces and builds on the rights enshrined in the UN treaty framework to protect and promote the existence, equality, identity and effective participation of ethnic or national, linguistic and religious minorities. Various institutions and mechanisms have been established to promote the implementation of the norms and examine ways and means of overcoming existing obstacles to their full and effective realization, including, the UN Special Rapporteur on minority issues

¹ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly resolution 47/135 of 18 December 1992.

² In 1948, the General Assembly declared in a resolution that the United Nations could not remain indifferent to the “fate of minorities”. See resolution 217 (III) C, (10 December 1948).

and the UN Forum on Minority Issues.³ The UNDM is a non-binding declaration that remains the only global instrument that deals specifically with minority rights while Article 27 of the International Covenant on Civil and Political Rights, Article 30 of the Convention on the Rights of the Child⁴ and Article 5 of the UNESCO Convention against Discrimination in Education⁵ are legally binding provisions at the international level protecting minority rights. In addition, the UN Convention on the Prevention and Punishment of the Crime of Genocide (1948)⁶, adopted largely in response to the atrocities of World War II, protects the right of minorities to exist by prohibiting “acts committed with intent to destroy a national, ethnical, racial or religious group.” Meanwhile, the International Convention on the Elimination of All Forms of Racial Discrimination (1965)⁷ upholds the right of all to equality by prohibiting discrimination on the basis of “race, colour, descent, or national or ethnic origin”. The Committee on the Elimination of Racial Discrimination has employed an expansive interpretation of race under the Convention, and has shown a clear concern for linguistic and religious minorities as well, particularly when there is an ethnic or racial component to the discrimination faced by such groups.⁸

Yet, despite it being fifty years since Article 27 of the ICCPR came into effect and thirty years since the UNDM’s adoption, we are at a juncture yet again where gaps in the minority rights protection regime are evident in the face of grave violations.

Minorities continue to remain vulnerable to oppression and face denial of their human rights in every corner of the globe. More than three quarters of the world’s stateless are persons who belong to minorities⁹, and in many countries around the same proportion are the targets of hate speech and hate crimes¹⁰. Most of the world’s violence and conflict target minorities on the basis of their religious, linguistic, cultural, racialised and ethnic identities. These attacks have manifested in various

³ The Working Group on Minority Issues was its predecessor but essentially served the same function of providing a forum for dialogue, to raise awareness, understanding and mutual respect between minorities and governments and to make recommendations for peaceful and constructive resolutions to minority issues.

⁴ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

⁵ UN Educational, Scientific and Cultural Organisation (UNESCO), Convention Against Discrimination in Education, 14 December 1960

⁶ Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations Treaty Series (UNTS), vol. 78, p. 277.

⁷ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

⁸ David Keane and Joshua Castellino, ‘Is the International Convention on the Elimination of All Forms of Racial Discrimination the de facto minority rights treaty?’. In Carla Buckley, Alice Donald and Philip Leach (eds.), *Towards Convergence in International Human Rights Law: Approaches of Regional and International Systems*. (Brill/Nijhoff 2016)

⁹ “*This is Our Home*”: *Stateless Minorities and Their Search for Citizenship*, UNHCR Statelessness Report 2017, available at https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR_EN2_2017IBELONG_Report_ePub.pdf.

¹⁰ OSCE Office for Democratic Institutions and Human Rights, *2019 Hate Crime Data Key Findings* available at <https://hatecrime.osce.org/infocus/2019-hate-crime-data-now-available>

forms and domains ranging from online attacks, threats and hate speech to physical acts of aggression, assault, murder and even mass rape, ethnic cleansing and genocide. The coordinated and orchestrated nature of many of these attacks demonstrate the complex historical, territorial, and structural inequities that continue to manifest due to a lack of trust, unequal distribution of resources and powers, and most crucially, a lack of civic space for minority communities to participate in society safely. On a global scale, violations of minority rights continue unabated and have reached a crisis point which must be addressed urgently and effectively.

Rationale for Regional Forums

The four regional forums on the 30th Anniversary of the UNDM take place in 2022. They follow **three sets of regional forums** on *minority language rights* (2019); *hate speech* (2020); *conflict prevention* (2021). All regional forums have been convened by the current UN Special Rapporteur on minority issues (SRMI), Dr Fernand de Varennes.

The **purpose** of the regional forums is to broaden minority, expert, state and international organisation (IO) participation in the principal review mechanism of the UNDM: the UN Forum on Minority Issues. Participation is geared towards the drafting of regional recommendations on select minority rights discussed annually by the UN Forum. These regional recommendations inform the work of the SRMI, and the regional forums more broadly inform the work of the UN Forum in Geneva.

The **process of the regional forums** has been shaped around the production of recommendations on particular minority rights discussed each year. The final set of recommendations are proposed by minorities, experts, states and IOs and they are collated and organised thematically during the two days of the regional forums by the organisers.

In support of the Special Rapporteur's regional forums, the UN General Assembly adopted Resolution A74/165 on the "Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" on 18 December 2019:

26. [The General Assembly] Invites the Office of the High Commissioner, United Nations entities and Member States to support and collaborate in the organization of regional forums on minority issues initiated by the Special Rapporteur in accordance with his mandate, in order to complement and enrich the work and recommendations of the [UN] Forum on Minority Issues.

Objectives

The **overall purpose** of the four regional forums is to undertake a critical assessment of the problem-solving capacity of the UNDM through a gap analysis focusing on the normative framework, institutions and mechanisms, and the effectiveness of

participation. The aim is to formulate concrete recommendations for the improvement of the regional and global minority protection regimes.

Specific objectives include:

- Identify how the existing global and regional minority protection regimes (norms, institutions and mechanisms) can be improved to be more effective at preventing and addressing domestic minority rights violations and at the promotion of minority rights;
- Assess the ways regional forums can bridge the gaps between domestic, regional and global protection regimes;
- Design action plans and platforms for local, regional and global civil society cooperation for the effective implementation of minority rights;
- Based on the presentations and discussions held at the regional forums, develop specific recommendations to address the gaps identified in relation to the improvement and effectiveness of the global and regional minority protection regimes.

These regional insights will feed into the thematic work of the Special Rapporteur on Minority Issues for his report to the 52nd session of the UN Human Rights Council in March 2023. Furthermore, discussions at the regional forums will also inform the work and recommendations of the 15th Session of the UN Forum on Minority Issues, which will take place in Geneva 1 - 2 December 2022, to mark the occasion of the UNDM's 30th Anniversary.

The 30th Anniversary of the UNDM marks a critical turning point, a pivot, to put a spotlight on these crucial gaps and to ensure that minority issues and the rights of minorities are mainstreamed into the UN's agenda more concretely going forward, hence the theme for this year's forums 'Review, Rethink, Reform'.

Areas of Discussion:

A. Normative framework: existing norms and interpretations

In assessing the normative framework with respect to gaps in its scope, substance, and knowledge base, this session will address a number of fundamental questions, including:

- What is the scope of the UNDM, which groups does it cover, and who is left without protection? How can the scope of the normative framework be made more relevant and effective?
- In its 9 articles, the UNDM covers a range of substantive rights. Which are those aspects of minority existence, including economic and land rights, which need to be strengthened normatively or included into the normative

framework? How are regional minority experiences translated into the global normative framework?

- Is the current individualist approach to persons belonging to minorities appropriate for achieving individual as well as group protection?
- Is the current normative framework sufficiently robust in terms of its legal strength, accuracy in its formulation, and in its accountability mechanisms?
- How can we mainstream minority rights to make them a core part of the UN's agenda, institutions and mechanisms, including across Special Procedures and regional UN offices and agencies?
- What are some of the best practices and developments from international and regional bodies that present useful models for securing a more effective normative framework?
- How are knowledge and data produced on minority issues used at the local and regional levels to bridge the current gap between normative standards and their implementation?

B. Implementation: Institutions, Mechanisms, Policies, and Programmes

Normative frameworks and the policies and programmes ensuring their implementation need to be underpinned by adequately resourced institutional structures in order to ensure the realisation of rights. This section looks at the principal institutional tools that are available in the UN and at the regional levels for the implementation of minority rights to achieve compliance. At the UN level we look at mechanisms, such as the UN Forum on minority issues, the Special Rapporteur on Minority Issues, the Voluntary Fund, as well as OHCHR policies and programmes including the Minority Fellows Programme launched in 2005. The effectiveness of relevant regional institutions and policies and their interaction with the global level are also in focus. This session will look to address the following key issues:

- How well-resourced and effective are the existing minority rights mechanisms and policies at the level of the UN, and how can they be improved?
- What institutions, mechanisms, policies, and programmes could provide a more comprehensive approach to monitoring state violations of minority rights at the regional level? Can these be mainstreamed as part of existing UN processes, for instance, through reporting by relevant regional bodies to the UN Forum on Minority Issues?
- What roles can National Human Rights Institutions, domestic courts, expert communities, and civil society organisations play in implementing minority rights?
- What can we learn from other UN human rights monitoring mechanisms to strengthen the approach to monitoring minority rights?

C. Minority participation as a procedural and substantive right

Effective minority participation is a *sine qua non* of effective minority protection since it is a precondition for access to and enjoyment of rights. Minority participation must be ensured procedurally at all levels of decision-making, as well as in specific substantive areas, including public affairs and cultural, social, and economic life. Accordingly, minority representatives must be involved at the local, national, regional and international levels in the formulation, adoption, implementation and monitoring of norms, policies, and decisions affecting them. This session will address the following key issues:

- What procedural mechanisms are in place at the global, regional, and local levels to ensure the effective participation of minorities in all levels of decision-making processes? What accountability mechanisms exist in the event of exclusion, discrimination, or victimisation in relation to minority participation?
- Is the scope of minority participation appropriate? Which specific areas of minority participation need to be strengthened normatively?
- How can global and regional participatory spaces for minorities, such as the UN and Regional Forums on Minority Issues, be strengthened to ensure broader and more effective minority participation?
- Recognising that their advocacy often places minorities and their defenders at a distinct risk of retaliation, targeting and silencing, how do we ensure that participatory spaces for minorities are safe, conducive to sharing experiences, and promote solidarity to empower minority groups?
- How do we build capacities of minority groups to engage in regional and global forums and decision-making spaces? What are the resources and budgetary requirements to facilitate such capacity building on a regular basis to enable meaningful engagement with and participation in regional and global processes and structures?

D. Moving Forward: Reforming the Protection and Implementation of the Minority Rights Framework

In light of the gaps in knowledge, norms, policies, institutions, and compliance with respect to the multilevel minority protection regime, how do we move towards a more relevant and effective framework to protect and implement minority rights and achieve the highest standards of human rights protections for all? Since most recommendations on this question are made under the three thematic areas already discussed, this session will consider several essential additional issues:

- What is the role of the media in the protection and promotion of minority rights, and in addressing the gaps in the minority protection regime identified in the previous sessions?
- What is the role of businesses or other international economic institutions, including development aid, in putting these issues on their agenda? Could this serve as an impetus to governments to change tact if it impacts their attractiveness as places of business, investment, and economic growth?
- How do we engage existing transnational networks of friendly states, international organisations, civil society organisations, academics, and experts to address the identified gaps in the minority protection regime?
- How can we develop programmes of action beyond the 30th Anniversary?

Participation

The regional forums will be open to the participation of States, UN entities, international and regional organizations, national human rights institutions, civil society organizations, minority representatives, academics and experts on minority issues, and representatives of Internet companies and social and traditional media organisations. It is also expected to engage other special procedures mandate holders and UN treaty body members.

Outputs

Based on the discussions and the contributions of the participants, the main output produced from each regional forum will be a document with practical recommendations reflective of regional contexts and challenges.

These documents will be available as reference documents for the UN Forum on Minority issues to be held in Geneva in December 2022, as well as the Special Rapporteur's thematic report for the 52nd session of the UN Human Rights Council in March 2023.