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Institutional designs promoting minorities' effective participation towards diverse and inclusive societies

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on minority issues, Nicolas Levrat, in accordance with Commission on Human Rights resolution 2005/79.

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Report of the Special Rapporteur on minority issues, Nicolas Levrat

Summary

In the present report, the Special Rapporteur on minority issues provides reflections and recommendations on the institutional designs of States with a view to improving the promotion of minorities' effective participation, which will lead to diverse and inclusive societies. The institutional designs of States are also emphasized as a crucial element in determining the fate of minorities, since it is at the national level that the minorities' rights can be fully implemented, including their right to participate effectively in decision-making processes, in line with article 2, paragraph 3, of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities of 1992 (General Assembly resolution 47/135, annex). The present report serves to examine how States' institutional designs have contributed to the achievement of minorities' rights today and to propose recommendations for improving these designs.

The Special Rapporteur also summarizes his country visits, communications and other mandate activities in the period 2023–2024, in particular since his appointment on 1 November 2023.

I. Introduction

1. The Special Rapporteur on minority issues, Nicolas Levrat, submits the present report to the General Assembly pursuant to his mandate, as established in Commission on Human Rights resolution 2005/79 and Human Rights Council resolution 52/5. In the report, he summarizes his activities between 2023 and 2024 since his appointment on 1 November 2023, and in the thematic part, he provides reflections and recommendations for improving institutional arrangements promoting the effective participation of minorities in diverse and inclusive societies in sections addressing: (a) reasons for examining State institutional arrangements with respect to minority issues; (b) purposes of the effective participation of persons belonging to minorities in decision-making processes, (c) minority issues beyond human rights; (d) underlying factors promoting minority-friendly institutional designs; (e) five ways to realize minority rights at the national level, with and without the effective participation of persons belonging to minorities; (f) effective participation of persons belonging to minorities through specific institutional design; (g) effective participation of persons belonging to minorities through common institutional design; (h) self-rule (autonomy); and (i) implementation of minority rights and policies. The final section contains preliminary conclusions and recommendations.

II. Activities of the Special Rapporteur in 2023 and 2024

2. The Special Rapporteur wishes to draw the attention of the General Assembly to the web page devoted to the mandate on minority issues, where general information is provided on the activities associated with the mandate, including communications, press statements, public appearances, country visits and thematic reports.[1] An overview of the activities of the former mandate holder, Fernand de Varennes, for the period from 1 January to 31 October 2023, as well as the activities of the current mandate holder for the period from November to December 2023, is provided in the report presented to the Human Rights Council at its fifty-fifth session (A/HRC/55/51). Following a three-month extension of his predecessor's tenure by the Human Rights Council, the current Special Rapporteur's mandate exceptionally began on 1 November 2023.

3. The Special Rapporteur has engaged in a number of activities to promote and raise awareness of the human rights of minorities since his appointment. These have included a mission to New York in June 2024, during which he met with representatives of several Member States from different regions, members of civil society and United Nations officials to advocate the mainstreaming of minority issues into the Summit for the Future and into A Pact for the Future. He also attended and spoke at dozens of conferences in person or online and contributed to various other awareness-raising activities such as seminars with minority fellows, students and young people, as well as media interviews.

4. From 15 to 18 February 2024, the Special Rapporteur was in Istanbul, Türkiye, for an event on preserving and reinforcing mother tongues in the country, hosted by Minority Rights Group Europe. On 20 March, the Special Rapporteur delivered a video message at a side event of the Commission on the Status of Women, hosted by the Coptic Solidarity network and the Jubilee Campaign. The focus of the event was on filling the gaps in social protection systems for minority women. On 13 May 2024, he co-organized an event with the Permanent Representation of Malta to the United Nations on the theme "Building peace: minority youth in conflict prevention efforts and inclusive socioeconomic policies". The event was aimed at bridging the existing

[1] See www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/SRminorityissuesIndex.aspx.

gaps in conflict prevention approaches by addressing the potential of young people from minority groups for conflict prevention and socioeconomic development. Among other events and seminars, he delivered lectures at the Minority Rights Academy hosted by the Hrant Dink Foundation in Istanbul, Türkiye, from 7 to 9 June; he participated in and delivered a presentation at a conference entitled "Protecting education in minoritized languages and strengthening language rights – how to progress?", hosted by the European Language Equality Network in Barcelona, Spain, on 14 and 15 June; he delivered a keynote address to participants of the Minority Protection in Europe summer university hosted by the Institute for the Protection of Minority Rights in Budapest, on 8 July; he delivered a presentation at the 2024 Global Minority Rights Summer School hosted by the Tom Lantos Institute in Budapest, on 9 July; and he delivered a presentation at the Summer School of the Eurac Institute for Minority Rights in Bolzano/Bozen, Italy, on 12 July.

A. Country visits

5. In 2023, the previous Special Rapporteur conducted an official visit to Tajikistan from 9 to 20 October. In March 2024, the current Special Rapporteur presented the report on the visit of his predecessor (A/HRC/55/51/Add.2) to the Human Rights Council at its fifty-fifth session.

6. In May 2024, the Government of Costa Rica reported that the country could no longer receive the Special Rapporteur for an official visit in the second half of 2024. The Special Rapporteur has sent several requests for an official visit to Colombia, India, Japan, Jordan, Malaysia, Nepal, New Zealand, Senegal, Saudi Arabia, South Africa, Tunisia and Zambia to be conducted during 2024.

B. Communications

7. In 2023, a total of 49 communications were sent solely or jointly by the Special Rapporteur on minority issues. Of those, 37 were letters of allegation, 6 were urgent appeals and 6 were other letters of concern relating to bills, legislation, policies or practices that did not comply with international human rights law and standards. Of the 49 communications, 41 were sent jointly with other special procedures mandate holders, and 8 communications were issued by the minority mandate holder. With regard to the geographical distribution, 11 of the communications were for the Africa region, 19 for the Asia-Pacific region, 4 for Eastern European countries, 3 for Latin America and the Caribbean and 12 for Western European and other States.

8. From 1 November 2023 to 24 June 2024, a total of 22 communications were sent by the Special Rapporteur on minority issues. Of those, 17 were letters of allegation, 3 were urgent appeals and 2 were other letters of concern relating to bills, legislation, policies or practices that did not comply with international human rights law and standards. With regard to the geographical distribution, 12 of the communications were for the Asia-Pacific region, 2 for Eastern Europe, 1 for the Latin America and Caribbean region and 7 for Western European and other States.

C. Forum on Minority Issues

9. The sixteenth session of the Forum on Minority Issues was held in person at the Palais des Nations in Geneva, with measures in place to accommodate online interventions, on 30 November and 1 December 2023. The theme was "Minorities and cohesive societies: equality, social inclusion and socioeconomic participation". The event gathered more than 570 participants from 74 countries, including representatives of States, United Nations mechanisms, bodies and specialized

agencies, funds and programmes, intergovernmental organizations, regional organizations and entities in the field of human rights, national human rights institutions and other relevant national bodies, minorities and non-governmental organizations, as well as academics and experts on minority issues.

10. The sixteenth session of the Forum was aligned with the Sustainable Development Goals and was intended to work towards a future with no poverty and reduced inequality, and in which peace, justice and strong institutions prevail within cohesive societies.[2] The session was aimed at tackling the multiple challenges faced by minority communities worldwide, with a focus on strengthening their socioeconomic participation and ensuring equality and social inclusion. In March 2024, the recommendations of the Special Rapporteur (A/HRC/55/70) were presented to Human Rights Council at its fifty-fifth session.

III. Reasons for examining State institutional arrangements with respect to minority issues

11. There is no norm of general international law that defines minority rights, and as the International Court of Justice stated in 1975, "no rule of international law, in the view of the Court, requires the structure of a State to follow any particular pattern, as is evident from the diversity of the forms of State found in the world today".[3] In this context, States Members of the United Nations agree to take into account the rights of persons belonging to national or ethnic, religious and linguistic minorities as stipulated in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135, annex), adopted by consensus by the Assembly on 18 December 1992, when dealing with minority issues at the national level. As the Special Rapporteur describes in the present report, based on contributions received following a call for inputs and non-exhaustive but extensive research, many of these minority issues are societal issues involving structural components of national societies. The fate of minorities will therefore largely benefit or suffer from institutional arrangements at the national level, since it is at this level that the rights of persons belonging to minorities need to be materialized. Furthermore, it is stipulated in the Declaration that "persons belonging to minorities 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". The present report serves to examine how this requirement is fulfilled in 2024 and to propose guidelines for improving institutional arrangements promoting minorities' effective participation in diverse and inclusive societies.

12. As regards international law, even specific provisions on minority rights found in multilateral treaties do not define the precise content of these rights. For instance, article 27 of the International Covenant on Civil and Political Rights reads: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." Article 30 of the Convention on the Rights of the Child is similarly phrased.[4] The "non-denial" of rights obviously does not constitute a

[2] See www.ohchr.org/en/events/forums/2023/sixteenth-session-forum-minority-issues.

[3] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at para. 94.

[4] "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

self-executing provision; it therefore requires specific measures, at the national level, to be realized and implemented. The Human Rights Committee, in its general comment No. 23 on article 27 (CCPR/C/21/Rev.1/Add.5), "observes that this article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant". It is therefore on the establishment and implementation of these additional rights at the national level that the present report shall be focused.

13. When, in 2005, the Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights adopted a commentary to the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (E/CN.4/Sub.2/AC.5/2005/2), it also recognized that the Declaration was built on the same logic of the additionality of minority rights to universal human rights.[5] These additional rights are to be found in domestic legal systems. This is perfectly in line with the structure of minority rights in the United Nations human rights architecture. When the General Assembly adopted the Universal Declaration of Human Rights in 1948, it simultaneously decided, in the same resolution, "not to deal in a specific provision with the question of minorities in the text of this Declaration", because "it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises". For that reason, the very substance of minority rights cannot be enacted at the international level and needs to be realized and substantiated at the national, or even sometimes – when institutional arrangements allow – at the subnational level. Even the Framework Convention for the Protection of National Minorities of the Council of Europe,[6] the only plurilateral treaty dealing with minority issues, considers that, "in view of the range of different situations and problems to be resolved, a choice was made for a framework Convention which contains mostly programme-type provisions setting out objectives which the Parties undertake to pursue. These provisions, which will not be directly applicable, leave the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take particular circumstances into account".[7] As a logical consequence, "the implementation of the principles set out in this framework Convention shall be done through national legislation and appropriate governmental policies".[8] This two-level structure of minority rights constitutes the DNA of minority rights.

14. It further needs to be understood that minority rights are of a composite nature. They are all qualified as "minority rights" because of their subjects (persons belonging to minorities), but they are not all of the same nature. Some may be described as claim rights – such as "the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in

[5] "The Declaration builds on and adds to the rights contained in the International Bill of Human Rights and other human rights instruments by strengthening and clarifying those rights which make it possible for persons belonging to minorities to preserve and develop their group identity. The human rights set out in the Universal Declaration of Human Rights must at all times be respected in the process, including the principle of non-discrimination between individuals." (E/CN.4/Sub.2/AC.5/2005/2, para. 4).

[6] European Treaty Series No. 157, adopted on 10 November 1994 and open for signature on 1 February 1995. Currently ratified by 39 European States.

[7] Council of Europe, "Explanatory Report to the Framework Convention for the Protection of National Minorities", February 1995, para. 11. Adopted by the Committee of Ministers of the Council of Europe simultaneously with the Convention.

[8] Council of Europe, "Explanatory Report to the Framework Convention for the Protection of National Minorities", para. 13.

public"[9] or "the right to establish and maintain their own associations",[10] whereas most others require specific actions to be taken by State authorities in order for those rights to be realized. This is also clearly recognized in article 1 of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, which reads: "States shall adopt appropriate legislative and other measures to achieve those ends."[11] And when adopting such measures, "persons belonging to minorities 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."[12]

IV. Purposes of the effective participation of persons belonging to minorities in decision-making processes

15. The purpose of this requirement of effective participation is threefold. First, it should allow persons belonging to minorities to preserve and promote their identity in the public sphere, as required under article 1 of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. Second, effective participation in the decision-making process is aimed at ensuring that the measures adopted that affect the rights or interests of persons belonging to a minority group are in line with their preferences and have no discriminatory effects.[13] Third, it will empower persons belonging to minorities to effectively contribute to the development of society as a whole, in particular by effectively participating in cultural, religious, social, economic and public life[14] but also by providing, through their effective participation, a representation of diverse interests and preferences in complex and composite societies that constitute the substrate of most existing States in 2024.

A. Preserving and promoting minorities' identity in the public sphere

16. It would be absurd to ask the dominant group – the majority – to define and promote the identity of persons belonging to different minority groups. In article 1 of the Declaration, States are asked not only to protect the existence of national or ethnic, cultural, religious and linguistic minorities but also to "encourage conditions for the promotion of that identity". In the same article, a link is clearly established between the existence of minorities and their capacity to promote their identity. Moreover, under article 1, paragraph 2, States are even required to "adopt appropriate legislative and other measures to achieve those ends". This appears to be a novel type of positive obligation for States: to offer "conditions" allowing persons belonging to minorities to promote their common identity. In contributions received following the call for input,[15] several submitters underlined that, to allow effective participation, such conditions also needed to include measures of empowerment of the members of the minority group. The conditions are also related, beyond specific provisions, to the distribution of competences within each State, in particular in fields such as culture,

[9] General Assembly resolution 47/135, annex, art. 2, para. 1.
[10] Ibid., para. 4.
[11] Ibid., art. 1, para. 2.
[12] Ibid., art. 2, para. 3.
[13] This requirement should cover both aspects of legal discrimination, i.e. no discrimination before the law and no discrimination within the law. This double aspect is specifically set forth in article 26 of the International Covenant on Civil and Political Rights, which reads: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."
[14] General Assembly resolution 47/135, annex, art. 2, para. 2.
[15] See www.ohchr.org/en/calls-for-input/2024/call-input-report-special-rapporteur-minority-issues-un-general-assembly.

education and religion, which can significantly support or impair the capacity of persons belonging to a minority to promote their identity. Thus, a degree of territorial and/or sectoral autonomy[16] (self-rule) in these fields is required under article 1 of the Declaration. The vectors through which this identity may be promoted can either be private (such as cultural associations and private schools) or public. In the latter case, some institutional level – whether territorially or sectorally based – shall exist in the State structure for the realization of policies facilitating the promotion of the identity of minorities.

B. Effective participation in the adoption of specific non-discriminatory normative frameworks

17. With regard to the requirement of non-discrimination, it must be underlined at the outset that it needs to go beyond the prohibition of discrimination on grounds by which minorities are defined[17] (such as national or ethnic origins, belonging to a religious community or using a minority language), as stated in human rights instruments,[18] and must include the adoption of specific provisions or policies in order for minority rights to be effectively recognized and implemented. For all rights to be realized through national measures, it is requested in the Declaration that persons belonging to minorities be given the right to participate effectively in the decision-making process. Obviously, institutional arrangements will have a clear impact on the effectiveness of such participation.

C. Inclusion of minorities in decision-making processes for the benefit of society as a whole

18. Implementing the third objective implies that effective participation should not be limited to attributing, recognizing or guaranteeing specific additional rights for persons belonging to minorities but should also be conceived as a way for persons belonging to minority groups to contribute, through their effective participation in decision-making processes, to the shaping of society as a whole. Such participation is expected to promote the adoption of policies and legislative frameworks that reflect the diverse and inclusive dimensions of society. As stated by the independent expert on minority issues, Gay McDougall: “Effective participation should give minorities a stake in society.”[19] The Declaration is even more specific in its fifth preambular

[16] In para. 136 of its thematic commentary No. 2 entitled “The effective participation of persons belonging to national minorities in cultural, social and economic life and public affairs”, adopted on 27 February 2008, the Advisory Committee on the Framework Convention for the Protection of National Minorities noted that, “where State Parties provide for cultural autonomy arrangements, the corresponding constitutional and legislative provisions should clearly specify the nature and scope of the autonomy system and the competencies of the autonomous bodies. In addition, their legal status, the relations between them and other relevant State institutions as well as the funding of the envisaged autonomy system, should be clarified in the respective legislation. It is important that persons belonging to national minorities be involved and that their views be duly taken into account when legislation on autonomy arrangements is being prepared or amended”. See https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800bc7e8.

[17] For an explanation of the specific requirements of the non-discriminatory treatment of persons belonging to minorities, see A/HRC/55/51, paras. 28 to 32.

[18] For example, Universal Declaration of Human Rights, art. 2; International Covenant on Civil and Political Rights, art. 2, para. 1, and art. 26; and International Covenant on Economic, Social and Cultural Rights, art. 2, para. 2.

[19] A/HRC/13/23, para. 29.

paragraph, in which it is asserted "that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live". And the following paragraph further emphasizes "that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States." Therefore, the recognition of and respect for national, ethnic, religious and linguistic diversities[20] need to be considered a factor that is as important for life within and between societies as biodiversity is considered to be for life in the biological sense. This is why protecting and promoting diversity, as an essential societal value, is a necessity for the existence of thriving, sustainable, resilient and human-centred societies.

V. Minority issues beyond human rights

19. This societal dimension of minorities' rights implies a significance that goes beyond human rights and confers upon them relevance to peace and security issues, in terms of the "political and social stability of States"[21] (the opposite of which could result in civil war) as well as international peace (through "the strengthening of friendship and cooperation among peoples and States").[22] On the basis of the same assumption, the independent expert on minority issues devoted her thematic report to the Human Rights Council at its sixteenth session to the role of minority rights protection in promoting stability and conflict prevention (A/HRC/16/45, paras. 24 to 64).[23] In that regard, it may be worth recalling that regimes for the international protection of minorities existed before the emergence of the universal protection of human rights[24] and were conceived as much to benefit persons belonging to minorities as they were to attempt to prevent persons belonging to a minority being used as a pretext for waging war against a neighbouring State.[25] Thus, even historically, the protection and promotion of the rights of persons belonging to minorities were conceived not only for the benefit of those persons but also for the benefit of the societies in which they live as well as the international community. Therefore, dealing with minority issues effectively, rather than solely as a human rights requirement, is also an important part of conflict prevention as well as a central element in successful and lasting peacebuilding.

[20] These are the four categories of minorities referred to in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135). However, diversity in societies doesn't have to be limited to these four categories and needs to be considered as an added value as such, therefore potentially covering other categories in which diversity is relevant.

[21] General Assembly resolution 47/135, annex, preambular para. 5.

[22] Ibid., preambular para. 6.

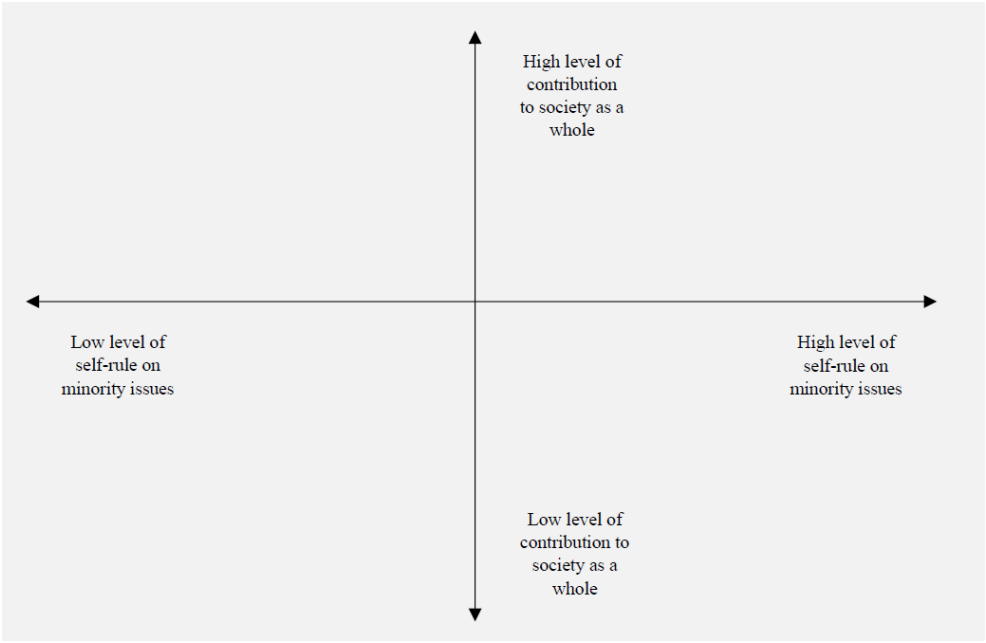
[23] See also Organization for Security and Cooperation in Europe, *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (The Hague, 1999), the first general principle of which begins: "Effective participation of national minorities in public life is an essential component of a peaceful and democratic society."

[24] See Peter Hilpold, "The League of Nations and the protection of minorities – Rediscovering a great experiment", in *Max Planck Yearbook of United Nations Law Online*, vol. 17, Erika de Wet and Kathrin Maria Scherr (eds.) (Brill, 2013).

[25] See Joseph S. Roucek, "The Problem of Minorities and the League of Nations", in *Journal of Comparative Legislation and International Law*, vol. 15, No. 1 (Cambridge University Press, 1933); for a more critical perspective on the efficiency of this regime, see also Baron Heyking, "The International Protection of Minorities. The Achilles' Heel of the League of Nations" in *Transactions of the Grotius Society*, vol. 13 (Cambridge University Press, 1927).

20. When examining national or subnational institutional arrangements and their impact on the right of persons belonging to minorities to participate effectively to decision-making processes, the purposes of minority rights to participation – as underlined above – need to be borne in mind at all times. Institutional arrangements should be examined with respect to how they help persons belonging to minorities "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",[26] as well as with respect to how they allow minority effective participation "in cultural, religious, social, economic and public life",[27] so that they contribute to the recognition and appreciation of diversity within society at the State level. There is a need to be aware that these two dimensions do not necessarily reinforce each other. For example, institutional arrangements promoting autonomous processes of decision-making by minority groups on matters of their concern may lead to persons belonging to minorities being isolated from societal choices at the national level. Quota systems or reserved seats in national elections may produce the same negative effects. Therefore, each institutional arrangement will always be examined under both angles. Institutional arrangements regarding minority rights may therefore be compared using the two scales shown in the figure below.

Figure
Two scales for measuring the fitness of institutional arrangements



21. The Special Rapporteur understands that such a comparison may seem to be of limited practical value, given that each State has its own institutional system as a direct consequence of the right to self-determination, which leads to States having very different political, economic, social and cultural arrangements, according to their own sovereign preferences.[28] Furthermore, the Special Rapporteur is naturally mindful that it would be contradictory to advocate one specific type of State organization in order to promote diversity within and between societies, as it would be both a

[26] General Assembly resolution 47/135, annex, art. 2, para. 1.
[27] Ibid., para. 2.
[28] For more on this aspect, see A/HRC/55/51, para. 26.

contradiction in terms[29] and blatant disregard for "the diversity of the forms of State found in the world today".[30] On the contrary, examining the diversity of a State's structure as it relates to minority rights is precisely the object of the present report. Beyond the intellectual and academic interest of such an analysis, two compelling reasons justify, in the view of the Special Rapporteur, the effort required to produce such a report, and the time required for Member States to take it into consideration. First, State institutions are not static; they regularly evolve. Having some guidance, or even benchmarks, on how the evolution of institutional arrangements may affect minority rights may, in such an evolutionary context, be of use. Second, genuine post-conflict peacebuilding will benefit from having some guiding principles on how to build strong, inclusive and resilient institutions for a just and lasting peace, so that the fate of minorities does not become or remain a destabilizing factor, in the interest of both the affected populations and the international community. It is for these reasons that the Special Rapporteur submits the present thematic report to the General Assembly, presenting elements that may prove relevant for designing minority-friendly institutional arrangements or policies.

VI. Underlying factors promoting minority-friendly institutional designs

22. As shown above, minority rights must be specifically defined at the national level. Some types of institutional arrangements may promote the enjoyment of rights by persons belonging to minorities, others less so. According to international law, States are defined by a territory, a population and a Government.[31] How these three elements relate to each other is not defined in international law but is left to each State to arrange, according to the principle of self-determination. Nevertheless, the institutional structure of a State should allow it to respect its international obligations, in particular in the field of human rights, and even more specifically as regards "a minority population".[32] In that regard, one preliminary and essential issue is that persons belonging to minorities should be allowed to participate to public life in the country where they live. Institutional design which leads to the exclusion of persons belonging to a minority from decision-making processes should not be tolerated under any circumstances. Some minority groups are not recognized for citizenship in the country where they live, therefore ending up fully excluded from decision-making processes.[33] This is not contrary to international law as such but often entails disastrous consequences for their enjoyment of socioeconomic rights. It is therefore important that States find ways in such cases to take into account the civil, socioeconomic and cultural rights of these minority groups, even if they are deprived of effective participation in decision-making on issues of direct concern to them. Consultative mechanisms, or a specific State administration dedicated to ensuring

[29] In the same vein, the General Assembly, when adopting resolution 217 (III) on 10 December 1948 stated that "it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises".

[30] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at para. 94.

[31] As there is no authoritative legal definition of "State" in international law, it is commonly agreed that the criteria set forth in article 1 of the Inter-American Convention on the Rights and Duties of States of 1933 reflect a shared understanding of what a State is, as a legal person of international law.

[32] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022*, p. 477, at paras. 103 and 106. See also Oona A. Hathaway and Alaa Hachem and Justin Cole, "A new tool for enforcing human rights: erga omnes partes standing", *Columbia Journal of Transnational Law*, Vol. 61, No. 2 (2024).

[33] See A/73/205.

that, despite the absence of the inclusion of these persons in public decision-making, they enjoy their civil, cultural and socioeconomic rights without discrimination, is fundamental. Other disenfranchisement mechanisms are sometimes observed, such as gerrymandering[34] or language requirement tests prior to exercising the right to vote. These are illegitimate measures that have disproportionate consequences on the right of persons belonging to minorities to effectively participate in decision-making processes. Such measures should therefore be avoided when they directly affect the rights of persons belonging to a minority to effectively participate in decision-making.

23. As the focus is on the third component of States, Government, when investigating institutional designs and their impact on the effective participation of persons belonging to minorities in decision-making processes and their implementation, two important underlying factors, related to population and territory, should be examined. The first is linked to the definition of the State population and the second to the territorial distribution of different population groups on the State's territory. How and why they may affect institutional designs promoting the effective participation of persons belonging to minority groups will be demonstrated.

24. Minorities are always defined as a group of the population of a country that is numerically smaller than half of the total population and that shares some common characteristics that differentiate its members from the rest of the population.[35] In that respect, the way in which the entire population of the State is defined may be inclusive or exclusive of persons belonging to minorities, allowing more or less room for their effective participation, as regards both matters of concern to them and their contribution to the nation as a whole. The Charter of the United Nations unites "nations" – as the name of the organization indicates – represented by States, as requested under the membership criteria set forth in article 4, paragraph 1, of the Charter, as a consequence of which the international organization created in 1945 with the Charter as its backbone is implicitly based on the model of nation States. It is therefore extremely important to see how minority groups relate to the nation, within a national polity. For example, a Constitution which defines the nation in such terms (for example, in the case of Nepal: "All the Nepalese people, with multiethnic, multilingual, multi-religious, multicultural characteristics and in geographical diversities, and having common aspirations and being united by a bond of allegiance to national independence, territorial integrity, national interest and prosperity of Nepal, collectively constitute the nation")[36] can be considered very supportive of persons belonging to minorities. Similarly, a State that defines itself as a plurinational State[37] or a multiethnic State[38], or whose Constitution include a declaration to "recognise and uphold the multi-ethnic, multi-racial, multi-religious and multi-cultural character of our Nation",[39] shall be open to the effective participation of persons belonging to minorities in society as a whole. Conversely, defining the State as belonging to – or being constituted by – only one ethnic, national, religious or linguistic group will make it more difficult to guarantee the effective participation of

[34] In para. 90 of its thematic comment No. 2, the Advisory Committee of the Council of Europe strongly asserted that "State parties should not adopt measures which aim to reduce the proportion of the population in areas inhabited by persons belonging to national minorities".

[35] For reflections on the definition of minorities, see A/74/160.

[36] Translation of the Constitution of Nepal of 20 September 2015. Available at https://ag.gov.np/files/Constitution-of-Nepal_2072_Eng_www.moljpa.gov_.npDate-72_11_16.pdf.

[37] Following the adoption of a new Constitution that entered into force on 7 February 2009, Bolivia has since defined itself as the "Plurinational State of Bolivia", pursuant to article 1 of the Constitution.

[38] Constitution of China, eleventh preambular para. Available at https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html.

[39] Constitution of Zambia (as amended in 2016), seventh preambular para. Available at www.parliament.gov.zm/sites/default/files/documents/amendment_act/Constitution%20of%20Zambia%20%20(Amendment),%202016-Act%20No.%202_0.pdf.

persons belonging to minorities in society as a whole through institutional arrangements. Similarly, having one official State religion makes it more difficult to treat persons belonging to other religions in a non-discriminatory way.

25. Another factor that may play an important role in the effective participation of persons belonging to minorities in public affairs is the geographical distribution of minority groups on the territory of the State in which they live. With regard to both effective participation in decision-making and the provision of public services specifically tailored to the need of persons belonging to a minority, the geographical concentration of persons belonging to a minority group may facilitate institutional solutions.[40] A linguistic minority concentrated in a specific part of the State territory may constitute a relative majority[41] if that territory is constituted as a political and/or administrative unit. Catalonia and Euskadi in Spain constitute interesting examples in that respect. The same will be true with ethnic or national minorities; for example, it could be the case in Tibet, if relevant provisions of the Constitution of China were effectively implemented.[42] The geographical concentration of persons belonging to a minority group will also facilitate the provision of specific services or policies to persons belonging to a minority group. As an example, concerning linguistic minorities, the European Charter for Regional or Minority Languages distinguishes between "regional and minority languages", which are "traditionally used within a given territory of a State … and different from the official language(s) of that State"[43] and "non-territorial languages", which are "languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof".[44] For practical reasons, as the European Charter requires services in the fields of education, access to justice, provision of administrative and public services, media, cultural activities and facilities, as well as opportunities for full participation in economic and social life, to be provided in the appropriate regional or minority language, only the article about general principles should be applied "mutatis mutandis"[45] to non-territorial languages; all other detailed and specific provisions concern only "territorially based languages". As a rule, institutional arrangements allowing better participation of persons belonging to minorities are easier to conceive and more targeted in their effects when persons belonging to minority groups represent a relative majority in part of the territory. At the same time, and beyond the institutional design issue, the Special Rapporteur needs to emphasize the duty of States not to neglect areas principally inhabited by persons belonging to minorities. National social, economic and development policies should not serve to discriminate against or neglect these territories and their populations and should serve to allocate appropriate resources and opportunities to them.

[40] Nicolas Levrat, "Solutions institutionnelles pour des sociétés plurielles", in *Minorités et Organisation de l'Etat: textes présentés au quatrième colloque international du Centre international de la common law en français*, Nicolas Levrat (ed.), (Brussels, Bruylant, 1998), pp. 3–90.

[41] Persons belonging to a group which is a minority relative to the entire State population may be the largest population group in the specific administrative or political constituency in which they live.

[42] In particular, articles 4 and 30, and sections 5 and 6 of chapter III.

[43] European Treaty Series no. 148, art. 1; opened for signature on 5 November 1992.

[44] European Treaty Series no. 148, art. 1.

[45] Ibid., art. 7, para. 5.

VII. Five ways to realize minority rights at the national level, with and without the effective participation of persons belonging to minorities

26. As shown above, the definition of substantial “minority rights” needs to be done at the national level. Through research, five mechanisms that allow the realization of minority rights at the national level have been identified. As will be shown below, two allow only marginal participation of persons belonging to minorities, while three lead to different forms of effective participation. The first mechanism is through an institutional design that provides for the existence of specific institutions guaranteeing that the voices of persons belonging to minorities are effectively taken into account. The second is through reliance on effective participation in decision-making processes at the national level in common institutions, by means of direct participation in legislative processes. The third method involves autonomy (self-rule); this is usually efficient for guaranteeing persons belonging to minorities specific non-discriminatory treatment with regard to their own rights; it proves less efficient in terms of the contribution of persons belonging to minority groups to society as a whole.

27. As regards the realization of the rights of persons belonging to minorities without their effective participation, the first method for achieving this is through a specific (bilateral or plurilateral) treaty which defines certain rights that one or each of the parties to the Treaty recognizes for specific minority groups living on its territory. That was the “minority regime” invented after the First World War, in which the rights of some minorities – identified in the peace treaties – were defined and guaranteed by an international regime (under the auspices of the League of Nations). Such a solution is still envisaged, for example, under the Framework Convention for the Protection of National Minorities of the Council of Europe, in article 18, paragraph 1, of which it stipulates: “The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.” Such a method will not be examined further in the present report for three reasons. First, it does not involve persons belonging to a minority in the definition of their own rights – even though, in a treaty negotiation process, each (State) party is free to include in its negotiating team any member, which could leave room for forms of participation. Second, it relates only to “national minorities” issues, since a minority group living in a given country would see rights and opportunities to participate negotiated by a neighbouring State only if that State has specific interests in protecting that particular minority group: this is typically the case of national minorities. Third, the wording of article 2, paragraph 3, of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities does not appear to encompass such a decision-making process.

28. The other way to realize minority rights that only marginally involves persons belonging to a minority consists of the realization of the specific rights of a person belonging to a minority through a judicial process. Persons belonging to minorities may play a crucial role in bringing cases before the jurisdictions, but they will then not be part of the decision-making process. Furthermore, two caveats should be underlined with regard to the process of realizing minority rights. First, the claim to a specific minority right by a person belonging to a minority will be treated by the judges in the light of the positioning of minorities within the legal framework of a given State. Thus, if the conception of the nation is exclusive, or if a State religion exists, the national judge may assess the claim of the persons belonging to a minority in the light of the general conception of the minority/majority relationships in the legal system in question. For example, with regard to linguistic rights, despite the fact

that "regional languages belong to the heritage of France",[46] the acceptance by France of the European Charter for Regional or Minority Languages would, according to the Constitutional Council of France, be contrary to the Constitution, "considering that the European Charter for Regional or Minority Languages, in that it confers specific rights to 'groups' of speakers of regional or minority languages, within 'territories' in which these languages are practiced, undermines the constitutional principles of indivisibility of the Republic, equality before the law and the unity of the French people".[47] A second risk of this method is that it can be used by persons belonging to the dominant group to claim – contrary to the clear stipulation in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities that "measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights"[48] – that specific measures offering a different regime in order for persons belonging to a minority not to be discriminated against constitute discrimination against the individual rights of members of the dominant group (for example, the right to education).

VIII. Effective participation of persons belonging to minorities through specific institutional design

29. Some States are structurally and institutionally organized around the co-existence of several linguistic, ethnic/national or religious communities, as is the case with Belgium (linguistic communities), Bosnia and Herzegovina (ethnic/national communities) and Lebanon (religious communities). Such an institutional structure is not built on a logic of majority/minority relationships; on the contrary, it builds a political community as a composite society comprising several non-dominant groups. For that reason, in such institutional arrangements, which are focused on the equilibrium between different communities, it is usually difficult to offer effective participation in decision-making to "other minorities" (different from the constituent communities), since that could destabilize the institutional equilibrium between the recognized groups. Such institutional schemes, although they may provide some minority groups[49] with a considerable number of rights and the possibility of effective participation in decision-making processes at the State level, are therefore not very minority-friendly in terms of persons belonging to minorities other than the constitutive recognized communities.

30. Less fundamental specific institutional designs allow for the creation of institutions in the legislative or the executive branch, specially tailored to minority representation. For example, in the legislative branch, the parliament of Hungary has a "Committee on National Minorities"[50] which can express opinions on draft legislation as an ordinary parliamentary committee. Its members represent minorities and can contribute to the adoption of decisions within the Committee, which are transmitted to the plenary. However, members of the Committee (except the Chair, who has been elected as a member of the European Parliament) cannot vote in plenary sessions of the parliament, as they are not elected. Such a mechanism could therefore be

[46] Constitution of France, art. 75-1.
[47] Constitutional Council of France, decision No. 99-412 DC of 15 June 1999, para. 10.
[48] General Assembly resolution 47/135, annex, art. 8, para. 3.
[49] Without entering into a debate about the definition of minority (for more on that issue, see the reports of the previous Special Rapporteur, Fernand de Varennes (A/74/160 and A/75/211)), the term is used here only to refer to groups of persons sharing a common characteristic – language, religion, nationality or ethnicity – and constituting less than half of the population of the State as a whole.
[50] Act CLXXIX of 2011 on the rights of national minorities, art. 21 A and B of (available at https://njt.hu/jogszabaly/en/2011-179-00-00).

described as a mixed mechanism. Most other specific institutions are genuinely consultative, for example, the National Council of Traditional Peoples and Communities in Brazil.[51] Dozens of countries have such consultative councils. Regarding such bodies, the Advisory Committee on the Framework Convention for the Protection of National Minorities advises that such consultative mechanisms "should not substitute the work of mainstream government institutions on minority-related issues".[52] The Special Rapporteur can only concur. Consultative or specialized government bodies may also be useful in the executive branch, in order to initiate or monitor minority-specific policies. If legislation and policies are legitimately tailored to the interests of the majority, such specialized or specific institutional arrangements help persons belonging to minorities to influence legislation and policies addressing their own interests. It is less evident that such specific institutional designs allow minorities to effectively contribute to the shaping of society as a whole.

IX. Effective participation of persons belonging to minorities through common institutional design

31. Participation in decision-making processes without a special institutional design implies that persons belonging to minorities may be able to be elected and influence political choices in the institutions that they join. Some systems guarantee reserved seats[53] for persons belonging to minorities, double votes for persons belonging to minorities[54] or lower (or even remove) the threshold for the number of votes required to obtain a seat in parliament.[55] Usually, it is political parties that guarantee access to decision-making bodies. In single-party as well as multiparty systems, parties should be encouraged to place persons belonging to minorities in positions which give them a genuine chance of being elected. A quota system, for example, as provided for in the Electoral Regulation for the Constituent Assembly of Nepal[56] – and as has been implemented in numerous countries to promote the effective participation of women in elective bodies – could, in some cases, be an appropriate solution. Alternatively, "minority parties" may allow persons belonging to minorities to have access to decision-making entities by competing in general elections. Several States in Europe have tried to restrain or ban "minority parties". The European Court of Human Rights, basing its rulings on freedom of expression, freedom of association and the right to vote and stand for election – sometimes combined with a general provision banning discrimination – has upheld the right of persons belonging to minority groups to create and operate their own political parties in almost all cases.[57] Such access to political decision-making does not guarantee influence over the outcome of decision-making

[51] Established by decree No. 8,750 of 9 May 2016.

[52] Thematic commentary No. 2 of the Advisory Committee on the Framework Convention for the Protection of National Minorities, para. 105. Available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800bc7e8.

[53] For a general view, see Andrew Reynolds, "Reserved seats in national legislatures: a research note", *Legislative Studies Quarterly*, vol. 30, no. 2 (May 2005), pp. 301–310.

[54] See, for example, art. 8 of the Law on Self-governing Ethnic Communities of Slovenia of 5 October 1994. Available at www.svi-bz.org/uploads/tx_bh/231/law_on_self_governing_ethnic_communities.pdf.

[55] See, for example, art. 137–140 of the Law on the Election of Members of Parliament of Serbia.

[56] Under art. 7, schedule 3, of the Election to the Members of the Constituent Assembly Act of Nepal, of 2007, parties fielding more than 100 candidates under the proportional representation system, in addition to allotting 50 per cent of seats to women, are requested to include in their candidate lists for the proportional segment of the election 37.8 per cent members of indigenous communities, 31.2 per cent Madhesis, 13 percent Dalits and 4 per cent members of other disadvantaged groups. The remaining 30.2 per cent of seats could be allotted to other persons.

[57] For a detailed analysis of relevant case law, see Lourdes Peroni, "Minorities before the European Court of Human Rights: democratic pluralism unfolded", in *International Approaches to Governing Ethnic Diversity* Jane Boulden and Will Kymlicka (eds), (Oxford, Oxford Academic, 2015).

(which depends on the electoral result) but can, in the view of the Special Rapporteur, be considered effective participation. On the other hand, it may result in the political and socioeconomic marginalization of areas where such non-mainstream parties are dominant; in such cases, the degree of territorial or sectoral autonomy will determine the relevance of the outcome.

32. States with a large diversity of groups in the population may have an institutional structure which is not based on group representation but which allows groups a degree of self-rule and/or representation in central decision-making processes. This is the case in federal States such as, Switzerland or Canada, whose institutional State structures, although not based on the representation of linguistic groups, allow a large degree of autonomy as regards linguistic policies in different parts of the country. The federal structure also usually helps with regard to recognizing the contributions of minority groups to the federal institutions, through the composition of a second chamber of parliament. However, one should not conclude that federal structures necessarily facilitate the capacity of persons belonging to minorities to participate in decision-making processes. For example, Australia, Brazil, Mexico and the United States of America have federal structures that do not per se facilitate the participation of persons belonging to minorities in decision-making processes, although neither do they hinder such participation. Outside of federal institutional arrangements, decentralization, devolution or regionalization processes may, within a unitary State, and depending on the distribution of populations[58] and competencies, also offer solutions in which the participation of persons belonging to a minority group in decision-making at the subnational level may lend their voice more weight in decisions of direct concern to their situation. However, such institutional schemes do not allow specific effective participation of persons belonging to minorities in decision-making at the national level.

X. Self-rule (autonomy)

33. Autonomy means the capacity of members of a polity to adopt their own rules (from the ancient Greek for self (*auto*) and rules (*nomos*). Naturally, this appears to be an obvious solution for participating in "decisions … concerning the minority to which they belong".[59] The question as to the granting or recognition of autonomy concerns the degree of diversity that is tolerated within a sovereign State, in order to accommodate the specificities of its diverse population. In other words, are they domains (such as education, cultural policy or relations with religious communities) that may be regulated differently for the majoritarian population and minority groups? In the Special Rapporteur's view, a minority-sensitive institutional design should be built around a subsidiarity principle. In such institutional logic, the relevant approach should not be to question whether a minority issue in a specific field (such as education) should be dealt with differently for persons belonging to a minority group than it is for the whole population of the State. The appropriate question is whether such a field needs to be tackled by a single common approach at the State level, or whether different groups (majority on one side, minority or minorities on the other) could manage that field in different ways. For example, in States in which there are populations with different mother tongues, should the educational system be organized and regulated at the State level, with possible exceptions for some minority groups, or should education be organized by each linguistic group, according to its

[58] See para. 23 above.

[59] General Assembly resolution 47/135, annex, art. 2, para. 3.

own priorities and preferences?[60] Some limits on autonomy may be set out in constitutional or national legislative frameworks, which would prevail over decisions taken autonomously. In such cases, autonomy could result from the recognition of sectoral autonomy combined with community autonomy – autonomy recognized for persons belonging to certain minority groups in a specific field of public affairs[61] – or from a combination of territorial autonomy, division of competencies (between the different levels of government) and distribution of populations on the territory.

34. Naturally, in a system in which persons belonging to a minority have the capacity, in some domains of particular relevance to their minority situation or identity, to adopt their own rules and policies, a system for coordinating their choices with the choices of the majoritarian population should be provided for. Rules for conflicts between choices, for preferences or for hierarchies of norms should exist and be implemented. It goes without saying that these rules of coordination should not be designed and/or implemented such that the autonomy formally recognized through the institutional design becomes ineffective in practice. Such mechanisms should be administered by a third party (judicial power) or based on conciliatory processes.

35. Self-rule will de facto induce diversity in the national society. However, it should not create "parallel societies", precluding persons belonging to minorities from fully participating, integrating into and contributing to the national society. In the case of territorial autonomy, if the composition of State-level authorities provides for representation of the autonomous political/administrative units at the State level (as is the case in federal systems with a second chamber of parliament), then the contribution is institutionally enforced; this could be described as a best-case scenario. In other cases, the self-ruling minorities may be represented, through their self-ruling authorities or through a parallel mechanism, in consultative bodies. Some State authorities also have the practice of consulting self-governing authorities (informally) on matters which may affect the self-governing communities or their members. Naturally, formal mechanisms will be more effective in cases of normative dissensus or conflicts of interest.

XI. Implementation of minority rights and policies

36. Even though the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities is silent on this issue, the Special Rapporteur deems it important to ensure that the diversity of the State population is effectively represented in the implementation mechanisms. There are three reasons for this: first, for the sake of efficiency (for example, if there is a State policy on minority language, it is evident that speakers of the minority language are needed for implementing such a policy); second, because it is important that persons belonging to minorities, in order to feel included and represented in society as a whole, can see that the participation of their group is effectively acknowledged not only in the decision-making process but also on the implementation side; and third, if relationships between

[60] This is the case in Switzerland, for example, where there is no educational policy at the country level, allowing each canton to have its own educational system and policies. See the Federal Constitution of the Swiss Confederation, art. 62, para. 1. Available at www.fedlex.admin.ch/eli/cc/ 1999/404/en.

[61] For example, in Belgium, some linguistic rights are conferred on the linguistic communities themselves. In Slovenia, a law on self-governing ethnic communities was adopted in 1994, in part guaranteeing rights of participation for recognized ethnic minorities (Italians and Hungarians initially, then extended to Roma and possibly to Germans); however, it mostly guarantees special rights of representations for these communities in local governments. See Council of Europe, document ACFC/SR/VI(2023)006.

the dominant group and minority groups are complex or tense, it is important to have confidence-building practices between the different communities. Including persons belonging to minorities in the implementation of legislation or policies to whose design and/or content they have effectively contributed appears to the Special Rapporteur a necessary component of effective participation. Such inclusion of persons belonging to minorities in implementing institutions could easily be achieved through quota mechanisms.

XII. Conclusions and recommendations

37. **Substantial minority rights are defined at the State or sub-State level, as recognized in article 2, paragraph 3, of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. The present report shows that the most effective way in which persons belonging to a minority can be effectively associated with the definition of the normative content of their minority rights is through forms of territorial or sectoral autonomy at the sub-State level.**

38. **Institutional design starts at the constitutional level. States should therefore, and wherever possible, strive to define their population in an inclusive manner, either through a constitutional provision explicitly referring to minority communities or through an inclusive formula which cannot be interpreted as excluding persons belonging to a minority from the national polity. Any definition which leads to the deprivation of the human rights of part of the resident population is prohibited at all times.**

39. **The Special Rapporteur stresses that a definition of the State's population which includes minority communities, explicitly or implicitly, would not only grant symbolic, legal and institutional recognition to persons belonging to minorities as a specific component of the national polity but would also lead to better implementation of minority rights. For example, judges, when deciding on claims related to minority rights, would have to interpret legal provisions in accordance with such a definition. In that respect, the Special Rapporteur encourages States to organize specific awareness-raising programmes on the specificities of non-discrimination with a view to the full enjoyment of their rights by persons belonging to minorities. The Special Rapporteur hereby indicates his willingness to contribute to the elaboration of such programmes.**

40. **The Special Rapporteur emphasizes that participative mechanisms allowing persons belonging to ethnic or national, religious or linguistic minorities on matters of their direct concern should not be detrimental to the capacity of these persons to contribute to decision-making processes on issues concerning society as a whole.**

41. **The Special Rapporteur therefore calls upon States to envisage institutional designs promoting the inclusion of persons belonging to minorities, by allowing them to effectively participate in decisions on matters of direct concern to them, as well as to contribute, as persons belonging to a minority, to addressing issues relevant for society as a whole. These mechanisms should relate to both decision-making and implementation processes. They should help to build trust between different national or ethnic, religious and linguistic communities. Specific confidence-building measures around these arrangements should be envisaged.**

42. **In order to allow a degree of self-rule in specific fields of competence of particular relevance to minorities, such as education or culture, the Special Rapporteur recommends that the allocation of competencies between different**

authorities in a State be based on a subsidiarity logic rather than conceived as derogatory regimes from common rules for the sole benefit of persons belonging to minorities. This means that only issues requiring a common solution at the national level should be matters of common regulation. As treating persons in different situations in a similar way is the main form of discrimination against minorities,[62] the Special Rapporteur insists that other matters should be regulated in different ways, according to the preferences and needs of the different groups of population, thereby facilitating genuine non-discrimination.

43. **The Special Rapporteur recalls that such an institutional design needs to include dispute resolution mechanisms, either allowing judges to decide on normative conflicts on a case-by-case basis or instituting a conciliatory body in charge of arbitrating conflicting claims.**

44. **Finally, the Special Rapporteur strongly emphasizes that minority-suitable institutional design needs to be prioritized in peacebuilding contexts. He recalls that peacebuilding processes are both a time for major institutional changes and an opportunity to alleviate potential tensions between different groups co-existing within a single but diverse, peaceful, stable and inclusive society. The Special Rapporteur therefore calls upon States and international organizations, starting with the United Nations, to give appropriate and important priority to such institutional considerations in peacebuilding processes.**

[62] A/HRC/55/51, paras. 26 to 32.