

# GUIDELINES TO ASSIST NATIONAL MINORITY PARTICIPATION IN THE ELECTORAL PROCESS



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# 1.

## INTRODUCTION

The OSCE High Commissioner on National Minorities (HCNM) commissioned a group of internationally recognized experts to elaborate Recommendations on the Effective Participation of National Minorities in Public Life (called the “Lund Recommendations”).<sup>1</sup> Support for the Lund Recommendations, as a valuable reference, has been expressed within the Organization for Security and Co-operation in Europe (OSCE)<sup>2</sup> and expressly endorsed by the HCNM. In order to give better effect to those Recommendations, the Office for Democratic Institutions and Human Rights (ODIHR) proposed that practical guidelines be developed in respect of the four recommendations concerning elections.<sup>3</sup>

The objectives of the guidelines are:

- To make effective the participation of national minorities in public decision-making bodies by means of enhanced representation;
- To inform all stakeholders of:
  - The options open to a state in giving effect to the Recommendations;
  - The advantages and disadvantages of the different options;
  - To provide advice on constitutional, legislative and institutional means to realize those options;
- To assist the OSCE participating States and the ODIHR in ensuring coherence of application in the practice of states of the standards upon which the Lund Recommendations were developed.

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<sup>1</sup> These guidelines are based on the Lund Recommendations dated June 1999. For an account of the impetus and process of their elaboration, see John Packer, “The origin and nature of the Lund Recommendations on the Effective Participation of National Minorities in Public Life”, Helsinki Monitor, Volume 11, No. 4, 2000, pp. 29-45; the full text of the Lund Recommendations appears in annex to the aforementioned article at pp. 46-61.

<sup>2</sup> Ibid. pp. 64-67

<sup>3</sup> The project was made possible with a generous contribution from the Canadian International Development Agency (CIDA).

The guidelines were developed by the ODIHR in conjunction with the International Institute for Democracy and Electoral Assistance (International IDEA) and the Office of the HCNM. They are the result of extensive discussion<sup>4</sup> and input from experts<sup>5</sup> in the field.

It is important to stress that the guidelines do not address all of the Lund Recommendations – only those that relate to the work of the ODIHR in respect of elections.

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<sup>4</sup> A discussion document in the form of draft guidelines was prepared by Peter Harris and Halton Cheadle on behalf of International IDEA. The draft was the subject of intense discussion and input from experts assembled by the ODIHR at a workshop held on 3-4 July 2000 in Warsaw. A second draft was prepared and again scrutinized by the ODIHR, the Office of the High Commissioner on National Minorities and the independent experts before being finalized.

<sup>5</sup> The experts were: Dr. Vojin Dimitrijevic, Director of the Belgrade Centre for Human Rights, Federal Republic of Yugoslavia; Dr. Yolanta Hristova, Expert on Minority Rights, OSCE Mission to Croatia; Dr. Jessie Pilgrim, Legal Consultant, USA; Dr. Alexander Postnikov, Researcher, Institute of Legislation and Comparative Law, Russian Federation; Dr. Andrew Stephen Reynolds, Assistant Professor, University of Notre Dame, USA; Dr. Timothy Sisk, Senior Research Associate, Graduate School of International Studies, University of Denver, USA; and Mark Stevens, Program Director, Electoral Reform International Services, United Kingdom.

## 2. BACKGROUND TO THE LUND RECOMMENDATIONS

The HCNM is the OSCE's principal mechanism for the prevention of minority-related conflicts. As an instrument of conflict prevention to act at the earliest stage, the HCNM works closely with governments and minority groups to ensure that government policies respect international standards in this area and that effective practices are adopted.

The HCNM has identified certain recurrent issues that have become the subject of his attention in terms of their potential for conflict within states. In particular, education and use of language were identified as potential sources of conflict within the OSCE States. In order to develop appropriate government policies in respect of these two issues, the HCNM developed two sets of recommendations to serve as references for policy makers and lawmakers in those States. Those recommendations are:

- The Hague Recommendations Regarding the Education Rights of National Minorities (1996),<sup>6</sup>
- The Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998).<sup>7</sup>

In 1998, the HCNM identified a third source of potential conflict: the participation of national minorities in the governance of states. In order to get the views and experiences of OSCE participating States in this area, the HCNM and the ODIHR convened a conference of all OSCE States and certain international organizations entitled "Governance and Participation: Integrating Diversity".<sup>8</sup> The Conference Chairman's Statement noted:

"the desirability of 'concrete follow up activities' including the further elaboration of the various concepts and mechanisms of good governance with the effective participation of minorities, leading to an integration of diversity in the state".

<sup>6</sup> For the full text of the Hague Recommendations, together with some scholarly analysis, see the special issue of the International Journal on Minority and Group Rights, Volume 4, No. 2, 1996/97.

<sup>7</sup> For the full text of the Oslo Recommendations, together with some scholarly analysis, see the special issue of the International Journal on Minority and Group Rights, Volume 6, No. 3, 1999.

<sup>8</sup> The Conference was held at Locarno in October 1998, hosted by the Swiss Confederation.



Arising from the Chairman's Statement, the Government of Sweden offered to fund a group of independent experts to meet in Lund, Sweden, to prepare recommendations on the effective participation of national minorities in the governance of democratic states. Those recommendations have become known as the "Lund Recommendations".

The purpose of the Lund Recommendations, like the Hague and Oslo Recommendations, is to encourage OSCE participating States to alleviate, through adoption of specific measures, tensions involving national minorities and, thus, to serve the ultimate conflict-prevention goal of the HCNM.

The basic premises of the Lund Recommendations are:

- States will respect and implement their human rights obligations, in particular, the freedom from discrimination;
- The object of human rights instruments is to ensure the full and free development of the individual human personality under conditions of equality;
- The object of good democratic government is to serve the needs and interests of all who live and reside under it; and
- Good democratic government will allow, encourage and support all those who are the subject of its decisions to participate in the making of those decisions.

### 3.

## THE IMPORTANCE OF PROCESS

These guidelines have been developed to assist both governments and the organizations that represent or support national minorities. The assistance is directed towards developing a legislative framework for an electoral system that ensures effective participation by national minorities in public life. In doing so, various examples of good practice in certain countries are cited. These examples are not intended to be exhaustive or extensive, and no inference should be drawn from the examples concerning countries that are mentioned or not mentioned.

The process of designing or modifying electoral systems and establishing electoral institutions is critical to the success and durability of those systems and institutions. The process will impact significantly on the quality of the outcome. An inclusive process helps to contribute to the legitimacy of the outcome. It provides an opportunity to debate the options open to a national minority and to pursue alternatives to accommodate its interests and needs.

In order to assist policy makers and decision makers, the following key process issues and principles are identified for consideration:

- A formal process is better than an ad hoc process;
- The more inclusive the process the better. This should not only refer to political parties but also to civil society. It is particularly important to ensure that women participate fully in the process;
- It is essential to build confidence and legitimacy in the process. This includes:
  - Ensuring that all stakeholders are involved and participate in the design of the process itself;<sup>9</sup>
  - Considering the appointment of neutral and legitimate facilitators. In some negotiations, widely respected jurists were employed;<sup>10</sup>
  - Information must be shared as widely as possible;<sup>11</sup>

<sup>9</sup> This can be achieved through different forms of consultation, which would include polling, referenda, negotiation, consensus forums or bodies and working committees.

<sup>10</sup> In Northern Ireland, Senator Mitchell of the United States chaired the peace talks. In South Africa, two judges chaired the peace talks.

<sup>11</sup> The role of the media in relation to the publication and dissemination of information is critical. Equal and transparent access to information, particularly in relation to minority issues, is important.

- It is necessary to ensure that sufficient time is made available for the process;
- It is important for all parties:
  - To avoid setting preconditions or putting up barriers to participation;
  - To recognize the need for flexibility;
- It is important to ensure that the process is funded. All parties to the process must have the necessary resources to participate fully in it, and no party or parties should enjoy an unfair advantage.

## 4. INTERNATIONAL LEGAL FRAMEWORK

The following international standards form the normative basis for both the Lund Recommendations and these guidelines:

- Article 21(3) of the Universal Declaration of Human Rights states that the “will of the people shall be the basis of the authority of the government”;
- The International Covenant on Civil and Political Rights (ICCPR) guarantees the following rights and freedoms:<sup>12</sup>
  - The rights to freedom of thought, conscience and religion and to manifest those beliefs (Article 18);
  - The right to hold opinions without interference and the freedom to express those opinions (Article 19);
  - The right of peaceful assembly (Article 21);
  - The right to freedom of association (Article 22);
  - The right and opportunity, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status:
    - To take part in the conduct of public affairs, directly or through freely chosen representatives;
    - To vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot; and
    - To have access on general terms of equality to public service in one's country (Article 25);
  - The right to equal and effective protection by law against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 26).
- Article 2 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides:

<sup>12</sup> It is to be noted that, aside from permissible restrictions on certain of the stipulated rights, Article 5(1) of the ICCPR prescribes that, “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at their ... limitation to a greater extent than is provided for in the present Covenant”.

“State Parties shall condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
- (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
- (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.”

- Article 5 of the CERD provides:

“In compliance with the fundamental obligations laid down in Article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- ...
- (b) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular: ...
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association.

- Article 2 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities states:

“(2) Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

- (3) 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.
  - (4) Persons belonging to minorities have the right to establish and maintain their own associations.
  - (5) Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.”
- Article 15 of the Council of Europe’s Framework Convention for the Protection of National Minorities states:
 

“Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”
  - Paragraphs 5 and 6 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (the Copenhagen Document) specify that “among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings ... the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all governments”.
  - Paragraph 35 of the Copenhagen Document requires OSCE participating States to “respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities”.

Equally, international law provides some important restrictions on the freedoms and rights enunciated above.<sup>13</sup> These include Article 4 of the CERD, which reads:

<sup>13</sup> Aside from the permissible restrictions on the freedoms and rights enunciated above, it is important to recall that there are also specific prohibitions that may be relevant, such as Article 20 of the ICCPR (prohibiting “propaganda for war” and “any advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility or violence”) and Article 6(2) of the Framework Convention on the Protection of National Minorities (requiring states to take measures to protect persons against discrimination, hostility or violence).

“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

## 5.

# LUND RECOMMENDATION ON ELECTIONS: NO. 7

**“Experience in Europe and elsewhere demonstrates the importance of the electoral process for facilitating the participation of minorities in the political sphere. States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination.”**

## 5.1 Content Explanation

States are required to guarantee the right of persons belonging to national minorities to take part in public life. That guarantee is best established by including the right in the constitution. The constitution should entrench<sup>14</sup> the right. It should also specify the conditions under which the legislature may restrict those rights. For example, the International Covenant on Civil and Political Rights permits states to limit civil and political rights in order to protect the rights of others, to ensure national security or to maintain public order.<sup>15</sup>

<sup>14</sup> There are different formulas for the entrenchment of constitutionally protected rights: see, for example, the incorporation of the 1789 Declaration of the Rights of Man into the French Constitution by the Preamble to that Constitution; the Basic Rights in Articles 1 to 19 of the German Constitution; Amendments I to X, XIII to XV, XIX, XXIV and XXVI of the American Constitution; the Canadian Charter of Rights and Freedoms, which forms Part I of the Canadian Constitution Act; the National Goals and Directive Principles and Basic Social Obligations in the Papua New Guinean Constitution; and the Fundamental Rights in Part III of the Indian Constitution; Luxembourgers and Their Rights, in Chapter II of the Luxembourg Constitution; the *Principi Fundamental*i in Articles 1 to 11 of the Italian Constitution; the Fundamental Rights in Chapter 1 of the Dutch Constitution; Articles 40-44 of the Irish Constitution; Chapter 2 of the Swedish Instrument of Government; Part I of the Spanish Constitution; Article 8 and Chapter XII of the Hungarian Constitution; etc.

<sup>15</sup> See also: specific limitation provisions attached to each right in the European Convention on Human Rights and to the various fundamental rights in Chapter 1 of the Dutch Constitution. For examples of general limitation clauses see: Section 1 of the Canadian Charter of Rights and Freedoms; Section 36 of the South African Constitution; the restriction in Articles 18, 18a and 19 of the German Constitution; and Articles 12 to 14 of the Swedish Instrument of Government.



There are two aspects to the right to participate in public life that require more detailed elaboration. They are:

- The cluster of individual rights guaranteeing participation in elections and public life; and
- The right not to be discriminated against in the exercise of those rights because the person belongs to a national minority.

### **5.1.1**

#### **The individual rights to participate in elections**

There are a cluster of individual rights considered as essential for the establishment and maintenance of a democracy. They extend from the right to form political and other associations to the right to campaign, stand for office and vote. The rights extend beyond the rights of the individual voter to the rights of political parties and other associations to canvas support and campaign.

This cluster is normally divided into the following specific rights:

- The right to vote, in particular the right to a secret ballot;
- The right to regular and fair elections;
- The right to stand for public office;
- Freedom of association;
- Freedom of assembly;
- Freedom of expression.

These rights should be guaranteed in the constitution. Although constitutions generally permit the legislature to restrict these rights, those restrictions must be carefully scrutinized to ensure that they are not in violation of international standards and, more generally, do not impact on the participation of national minorities in public life. Examples of problematic restrictions are:

- Stipulating a language requirement for public office;
- Undue requirements for the registration of political parties;
- Distribution requirements that force parties or candidates to stand in a number of provinces or districts or even force them to have an office in each province if this has the effect of discriminating against national minorities.

#### **The right to vote**

- The right to vote contemplated under this head is the general right to vote. Some states provide persons from national minorities with an additional

vote.<sup>16</sup> The right to an additional vote is properly a matter to be considered under different forms for minority representation and participation in public life. Those issues are dealt with under Paragraph 7 below.

- Although it is common for constitutions to limit the right to vote to citizens, that restriction may constitute a source of conflict in respect of states that have national minorities or large populations composed of non-citizens if it is framed in a manner that discriminates against national minorities. There are many causes for this potential conflict. They range from the manner in which citizenship requirements are stated in the law (for example, limiting citizenship to an ethnic group by making it administratively difficult to become a citizen). In essence, citizenship should not be used in a way that discriminates against persons belonging to national minorities.
- Eligibility criteria for registration as a voter may also have consequences for national minorities. Restricting the right to vote to residents in a constituency will impact negatively on nomadic peoples. The inclusion or exclusion of external voters may also affect national minority participation adversely.

#### **The right to regular and fair elections**

- Elections must not only be regular, but they must also be held at reasonable intervals. In most constitutions, elections are held from between 2 to 5 years.
- The right to a secret ballot is fundamental to a fair election. It is particularly important in societies with national minorities. It follows that the state must take all necessary steps to ensure that voters belonging to a national minority trust that their votes are secret. In this respect, regard should be had for Paragraph 7.4 of the Copenhagen Document, which details that participating States will “ensure that votes are cast by secret ballot or by an equivalent free voting procedure....”
- Elections must be conducted fairly. There are two aspects to this right. The elections must not only be conducted fairly but must also be seen to be so. The legitimacy of the election process is especially important in societies with ethnic tension and high levels of distrust.

<sup>16</sup> For examples of how different states seek to accommodate national minorities see: Articles 32B and 68 of the Hungarian Constitution; Canada (Article 23 of the Canadian Charter of Rights and Freedoms (see Footnote 7 above), which protects minority language educational rights; and Articles 53 and 55 of the Spanish Constitution.

- There are different institutional and procedural ways in which states can ensure that elections are conducted fairly. The different options are considered in Paragraph 7 below.

### **The right to stand for office**

- The right to stand for public office should be constitutionally guaranteed. Restrictions on the right should be carefully scrutinized in order to ensure that persons belonging to national minorities are not barred from office or standing for office. While language regulations may be established for the proceedings of public institutions, including parliamentary institutions, the exclusion on linguistic grounds of anyone to stand for office is in violation of Article 25 of the ICCPR and, more simply, interferes with the freedom of the electorate to choose their representatives.<sup>17</sup> For example, language requirements may have the effect of excluding candidates from national minorities from standing for office.

### **Freedom of association**

- This freedom is important for two reasons. It should guarantee not only the right to form political parties but should also guarantee the formation of organs of civil society such as non-governmental organizations and cultural organizations that may support or represent national minorities in a society.
- The concept of freedom of association includes a number of subsidiary rights. They include:
  - The right to form a political party or association;
  - The right to join a political party or association;
  - The right to participate in the lawful activities of a political party or association. This right to participate should be elaborated to include the specific rights to canvas and campaign on behalf of a political party.
- It is often best to specify these rights in the constitution rather than leave them for ordinary legislation, regulations or elaboration by the courts.
- This right is often restricted by legislation. Those restrictions should be carefully scrutinized in order to ensure that they do not violate international standards or impact negatively on the effective participation of national minorities in public life.

<sup>17</sup> There are well-known examples of elected representatives who are visually, aurally and orally impaired. Moreover, any such linguistic requirement becomes highly problematic in terms of pre-scripting and testing proficiency.

- The right to self-identification for minorities is important. In this respect, the practice of imposing “ethnic” affiliation on minorities should be discouraged. Hungary, in the case of its minority groupings, is a good example of the right to self-identification, although there have also been problems in the case of Hungary. New Zealand, in the case of the Maoris, is another good example.

### **Freedom of assembly**

- This freedom is closely associated with the freedom of association. It is an important freedom in the context of elections because the right to hold meetings is a fundamental part of democratic politics. The right extends to the right to protest.
- This freedom should be guaranteed constitutionally. It is a freedom that is normally subject to restrictions such as the maintenance of public order. Although public order is generally regarded as a justifiable ground for the restriction of the right, the difficulty with the restriction is in its application. The determination of when the ground may be relied on to prohibit a meeting or protest is often left to state functionaries. Unless there is speedy court oversight over these decisions, the freedom may be abrogated in practice.
- This freedom may also be undermined by the practice of refusing political parties or other associations representing national minorities permission to use available public facilities such as town halls, etc.

### **Freedom of expression**

- This freedom is one of the cornerstones of a democratic state and is fundamental to ensuring that national minorities participate effectively in public life. It is best guaranteed in the constitution of the state. Governments sometimes seek to justify restrictions of this freedom on the grounds of national security. These restrictions should be subjected to strict scrutiny to ensure the validity and the proportionality of the restriction. In particular, the effect of the restrictions on the participation of national minorities in public life should be analysed.
- A state's duty to guarantee freedom of expression under international or domestic law should not be limited to a negative duty, i.e., a duty not to interfere with the freedom. It should extend to ensuring that national minorities should be given reasonable access to state-owned public media to express their views.

### 5.1.2

#### The prohibition against discrimination

- The individual rights to participate in public life should be extended to all persons regardless of ethnic or national origin, language or religion. Those rights should be applied equally.<sup>18</sup> Discrimination need not be deliberate. It may arise unintentionally. A neutral criterion may operate in certain circumstances in a discriminatory way. For example, residence is a common requirement for eligibility to vote in a constituency-based electoral system. That requirement may, however, operate in a discriminatory way in respect of refugees (meaning citizens or permanent residents of the state who have fled abroad), nomadic peoples or internally displaced persons. Residency requirements may discriminate against national minorities.

Eligibility requirements to register as a voter may have a discriminatory effect against persons belonging to a national minority. The following are examples of how eligibility requirements, in general, may discriminate against persons belonging to national minorities:

- Citizenship is often the fundamental requirement for eligibility. Accordingly, the requirements for citizenship impact on eligibility to vote. The following are examples of the kind of impact that laws regulating citizenship may have:
  - If ethnicity is a requirement for citizenship, it may discriminate against persons who belong to national minorities that do not share that ethnic origin;
  - A requirement for acquired citizenship that both parents must be citizens may operate in a way that discriminates against a national minority, particularly one that has been the subject of shifting national boundaries;
  - Restrictions on dual citizenship may detrimentally affect national minorities;
- Fluency in an official language is a requirement that may discriminate against a national minority that does not speak that language;

<sup>18</sup> The Treaty of Understanding, Cooperation and Good Neighbourliness between Romania and the Republic of Hungary relates to the Hungarian minority only; however, most of the provisions of this bilateral treaty have consequences for other minorities in Romania as well. Article 15.1(a) confirms that Romania has undertaken "in regulating the rights and obligations of persons belonging to national minorities" to "enforce" the framework Convention of the Council of Europe regarding national minorities if its "lawful internal order does not contain more favourable regulations". Other provisions concerning minorities in Romania generally include access to, and free exchange of, information in the mother tongue (Article 15.4); the right to take part in the resolution of issues of national or local interest through elected representatives in bodies of central or local public authorities (Article 15.5); and respect for the cultural and historical heritage of national minorities (Article 15.6).

- States should not prescribe or proscribe the use of any language in electoral campaigns;
- Residency requirements may discriminate against national minorities. Residence may operate in a discriminatory way against refugees or internally displaced persons. Internally displaced persons should be able to exercise their right to vote; where possible, refugees should enjoy some facility to vote.

It should be noted that, although the right to participate in public life may be enshrined in the constitution and in legislation, it is also necessary to ensure that there are no administrative or other barriers preventing persons belonging to national minorities from the full exercise of their rights. Steps should be taken to ensure that:

- So far as is feasible, persons belonging to a national minority are made aware in their language of their rights to participate in public life and how those rights may be exercised;
- The voter registration process is administered in such a way so as to ensure that persons belonging to a national minority may register without difficulty or material cost. The following kinds of administrative issues are implicated under this head:
  - So far as is feasible, the registration forms and any explanatory documentation should be in the language of the national minority;
  - The registration offices should be located and open for registration at places and times that do not make it difficult or costly for a person to register;
- A climate is created where persons belonging to a national minority may recruit, canvas, vote, stand for office and participate in public life. The state should openly discourage discrimination and violence against national minorities and take active steps to prevent discrimination and violence and to punish perpetrators of these offences;
- Impediments are not too onerous, preventing persons from standing as candidates or registering as political parties, such as unreasonable costs, including the imposition of high deposits;
- Political party funding legislation should not be discriminatory or unfair. In particular, the issue of external or foreign funding of political parties or national minority movements should not be regulated in a way that is discriminatory;
- Any funding of political parties from state funds should be non-discriminatory in terms of discrimination between ethnic or national minority groups;

- The collection of signatures by candidates is regulated in a manner or form that does not unfairly discriminate against minority groupings;
- Distribution requirements in terms of requiring parties to field candidates in a specified number of constituencies or regions do not discriminate;
- There should be no restriction on campaigning in a particular language;
- Language proficiency should not be used for eligibility to register as a voter or to stand for public office;
- Residence outside the country, particularly in post-conflict situations, where there may be substantial numbers of refugees from a minority grouping, should not be used as an eligibility criterion. The issue of external voting is important insofar as it may affect the rights of minorities.

## 5.2 Legal Framework and Options

Domestic law should give effect to international norms and standards. It is preferable for the right to participate in public life without discrimination to be included in the constitution and for those provisions to be constitutionally entrenched. Electoral laws giving effect to those rights should spell out the detail.

### Constitutional rights

The constitution should confer on all persons the right to participate in public life without discrimination. The different States in the OSCE already make provision for these rights in their respective constitutions:<sup>19</sup>

- The general right to participate in public life. For example:
  - Article 70 of the Constitution of Hungary;
  - Article 38 of the German Constitution;
  - Articles 3 and 4 of the Constitution of the Netherlands;
  - Article 39 of the Constitution of the Republic of Moldova;

<sup>19</sup> These examples are not exhaustive and do not mean that because these rights are contained in the constitution that those rights are implemented. The provisions of the constitutions are as of 15 August 2000.

- The right not to be discriminated against on grounds of race or national, ethnic or social origin. For example:
  - Article 14 of the Spanish Constitution;
  - Article 3 of the German Constitution;
  - Article 70A of the Constitution of Hungary;
  - Article 16(2) of the Constitution of the Republic of Moldova;
  - Article 14 of the Constitution of Georgia;
  - Article 15(3) of the Constitution of the Kyrgyz Republic;
  - Article 19 of the Constitution of the Russian Federation;
- The right to vote. For example:
  - Article 4 of the Constitution of the Netherlands;
  - Article 16 of the Constitution Of Ireland;
  - Article 70 of the Constitution of Hungary;
  - Article 38 of the German Constitution;
  - Article 1(6) of the Constitution of the Kyrgyz Republic;
  - Article 49(2) of the Constitution of Georgia;
  - Article 38 of the Constitution of the Republic of Moldova.

### **Constitutional entrenchment**

- Certain provisions and rights in the constitution may be so important that they may need to be entrenched. Constitutional provisions can be entrenched in such a way that it is more onerous for a legislature to amend it. The purpose of constitutional entrenchment is not only to signal the fundamental nature of the provisions entrenched and the constitution's commitment to the values contained in those provisions but also to give security to the beneficiaries of those provisions.
- Entrenchment may take several forms. In this respect, a standard mechanism is to require enhanced voting thresholds in the legislature. Other mechanisms may require a special procedure to be followed requiring engagement with all relevant stakeholders or the majority support of each of the subsidiary legislatures in a federal system of government.
- The use of a referendum or plebiscite may also be prescribed and utilized in cases involving rights issues.



## 6.

# LUND RECOMMENDATION ON ELECTIONS: No. 8

**“The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes the freedom to establish political parties based on communal identities as well as those not identified exclusively with the interest of a specific community.”**

### 6.1 Content Explanation

The first sentence of this recommendation is normative. States must comply with the international principle of freedom of association. That principle is to be found expressed in the following international standards:

- Article 22 of the International Covenant on Civil and Political Rights;
- Article 2 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities specifically states that persons belonging to these minorities have the right to establish and maintain:
  - Their own associations; and
  - Contact with other members of their group even if they are citizens of another state;
- Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms;
- Article 7 of the Council of Europe's Framework Convention for the Protection of National Minorities (ETS No. 157, 1995) states that parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion;
- Paragraph 7.6 of the OSCE's Copenhagen Document: “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the

necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”;

The international principle contemplates that individuals are free:

- To associate with any person whether a citizen, resident, refugee or foreigner;
- To form an association;
- To determine the purpose, defining characteristics and internal rules of the association; and
- To decide, on a non-discriminatory basis, who may join or who may not join the association.<sup>20</sup>

Although states are permitted to regulate the exercise of the freedom to associate, the state may not interfere with it unless the interference is justified on compelling grounds. In both international law and comparative constitutional law, any interference with the freedom is strictly scrutinized.<sup>21</sup>

The interference may be justified only if:

- The interference is prescribed by law;
- The law permits interference on the following grounds only:
  - National security;
  - Public order and safety;
  - The protection of health or morals;
  - The protection of the rights and freedoms of others (as stipulated in international human rights instruments);
- The interference is necessary in a democratic society.

<sup>20</sup> The state is obliged, particularly on the basis of Article 2D and Article 5 of the Convention on the Elimination of all Forms of Racial Discrimination, to prohibit members of majorities from excluding persons belonging to national minorities from taking part in associations set up by members of majorities. Majorities cannot establish trade unions that are closed to members of minorities, nor can professional organizations be set up to which members of minorities have no access. The same principle applies to associations set up by members of minorities. States must prohibit exclusions on, for example, ethnic or national grounds. Thus, associations set up by minorities to promote the culture of a minority cannot exclude a person belonging to other groups from membership if they want.

<sup>21</sup> See, for example, the approach adopted by the European Court of Human Rights in *Sidiropoulos & others v Greece* (57/1997/841/1047) in which the Court states that “[e]xceptions to freedom of association must be narrowly interpreted”, at Paragraph 38.

The restrictions on associations promoting the interests of national minorities are normally based on national security. Unless the association promotes the use of violence in order to achieve its objectives, the restriction is unlikely to be justified as a threat to national security. The European Court of Human Rights has consistently held that unless there is a call to use violence or act undemocratically, an association that seeks to change the existing structures of the state peacefully and democratically does not, on that ground alone, threaten national security.<sup>22</sup> The fact that a political party seeks to mobilize a national minority to pursue its interests does not of itself justify interference.

Although it is normally left to the state to decide if it wishes to curtail the activities of an association in terms of the law, there are positive obligations on states to prohibit certain kinds of activities that may include the prohibition of the associations themselves. Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination requires states to adopt positive measures such as the prohibition of organizations that promote and incite racial discrimination.

The principle applies to all associations and not to political associations only. For the purpose of these guidelines, the principle applies to political parties, cultural and community associations that represent national minorities and non-governmental associations that support those minorities.

The application of the principle in the context of national minorities clearly contemplates the right to establish associations based on communal identities and those that organize across communities. Although states may take steps to encourage associations to diversify their constituencies, the state must guarantee national minorities the right within the law to establish associations based on a communal identity.

It is clear that while it is imperative for each state to find the best way to respond to the polarity of interests of its diverse populations, it must, at the very minimum, ensure that there is freedom of association. Provided the activities of those individuals mobilizing along communal identity lines to form a political party do not resort to violence or conflict with the rights of others, there should be no impediment for them to associate in that manner.

<sup>22</sup> In *The Socialist Party & Others v Turkey* (00021237/93), the ECHR held that the fact that a political party's "political programme is considered incompatible with the current principles and structures of the ... State does not make it incompatible with the rules of democracy. It is the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way the State is currently organised, provided that they do not harm democracy itself", at Paragraph 47.

## 6.2 Legislative Framework

- The right to freedom of association should be entrenched in the state's constitution and should not permit legislative or executive restriction of that right except to the extent necessary in a democratic society.

Any restrictions on the freedom of association should be prescribed in law. There should be no prior consent necessary to establish an association, although it is permissible for a state to require associations to register for certain purposes, provided that the registration procedure does not in effect make it difficult for associations to register and operate.

## 7.

### LUND RECOMMENDATION ON ELECTIONS: No. 9

**“The electoral system should facilitate minority representation and influence.**

- **Where minorities are concentrated territorially, single member districts may provide sufficient minority representation;**
- **Proportional representation systems, where a political party’s share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities;**
- **Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal co-operation;**
- **Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.”**

### 7.1 Content Explanation

The basic premise of the guidelines under this paragraph is that states that have well-designed democratic political institutions are more successful at managing conflict and resolving political grievances, particularly those that relate to national minorities. Accordingly, the design of the political institutions and the electoral system, in particular, performs an important role in managing conflict and providing a peaceful outlet directing the interests that may otherwise fuel conflict into effective participation in public life. This is particularly so in societies in which there are competing ethnic groups. If an electoral system does not address the real needs of a society and the social formations within it, it will not only lead to political and administrative difficulties but may, itself, be the cause of conflict. It follows, therefore, that an important practical application of the Lund Recommendations is to first review the existing electoral system and to improve the design, if necessary, to achieve that objective.

Electoral systems can be specifically constructed to address the particular needs in a society. This is because they prescribe how votes are translated into seats. The choice of system can lead to different outcomes on the same number of votes. For example, an electoral system based on constituencies will often lead to a different result

from a system of strict proportional representation.<sup>23</sup> This may, in certain circumstances, make the critical difference between a party assuming and losing power. It will also determine the level of representation of parties especially representative of minorities.

The choice then of the most appropriate system becomes a critical one. But, electoral systems alone do not solve potential ethnic conflict. The electoral system must be viewed as one of a multiplicity of interlocking mechanisms that, taken together, will have the effect of accommodating national minorities and ensuring their effective participation in public life. By way of illustration, reserved seats for a particular community may ensure them representation, but, unless the underlying processes and mechanisms, such as funding, eligibility, training and education, are provided, that representation may have little influence.

Accordingly, while the electoral system may ensure minority representation in the legislature, there remains no guarantee that the minority represented in the legislature will be accorded any material role in the parliament or in government structures. Representation is often not enough. It needs to be supported by other measures. For example, in parliament, the minority may be accorded key seats in parliamentary committees that concern the interests of national minorities, or special procedures may be established to deal with minority vetoes in respect of minority issues. In government structures, the proportional allocation of civil service positions may be a mechanism that may be considered to give real meaning to minority participation in public life. These kinds of supporting measures all contribute to turning what would otherwise be a formal minority of seats in parliament into meaningful participation of a national minority in public life. There may also be a perception of tokenism in an allocation of seats to a national minority without those seats constituting a platform for a meaningful influence on the decisions that affect that minority. That perception undermines the legitimacy of the state's measures to accommodate the minority, allowing ethnic entrepreneurs to attack and thereby undermine the accommodation accorded to the minority by the state.

It is essential that the electoral system take account of displaced persons or refugees who may be resident outside the country. This is particularly the case after serious ethnic conflict when refugees or displaced persons may consist substantially of

<sup>23</sup> For example, in the last election in 1997 in the United Kingdom, 43 per cent of the vote secured 63 per cent of the seats (418 in total) for the Labour Party. A strictly proportional representation system would have given them only 283 seats. A particularly stark example of how an electoral system can lead to serious conflict is Lesotho. In the 1998 election, the ruling party won 79 out of 80 constituencies with only 60.5 percent of the votes. The post-election violence protesting the result led to armed intervention by neighbouring states and the establishment of an interim political authority charged with the responsibility of designing a new electoral system with elements of both a constituency-based system and proportional representation.

one communal group. In that event, a constituency system may not be appropriate because of the difficulties associated with access to the constituency either for the purpose of registration or for voting.

It is also essential for an electoral system to take into account the existence of national minorities that are, or may in the past have been, nomadic. The strict application of a constituency system may effectively disenfranchise them. The establishment of an electoral district in the former Yugoslav Republic of Macedonia to enable the election of a representative of the Roma community is an example of a good practice. This district, Shuto Orizari, encompasses the largest concentration of Roma in Europe.

External-voting provisions should apply equally and should not have a detrimental effect on national minority representation. If there are external-voting provisions, national minority suffrage and representation should be encouraged.

The manner and form in which statistics are compiled, or in which a national census takes place, is important in that reliability, accuracy and fairness may affect issues of national minority representation in particular areas.<sup>24</sup> This is a highly sensitive and delicate matter that should not require declarations of affiliation that may be used in a subsequently discriminatory manner.<sup>25</sup>

If a national minority is given a special entitlement to elect minority representatives to a legislative body, it is imperative that this "minority vote" should be in addition to, rather than an alternative to, the ordinary right to elect representatives. Accordingly, if it is considered necessary for an electoral system to allow voters belonging to a national minority to have a special vote, those voters should be entitled to vote in both. In the Croatian parliamentary elections (lower house), members of national minorities may choose to vote for a general national list but may also vote for specific minority lists. (The Hungarian, Serbian and Italian minorities have one seat each, while minorities with small numbers of members are grouped together to elect one deputy among them.) The reason is that it is wrong to assume that members of ethnic or other communities will automatically vote along such lines. Parties should, where possible, be encouraged to include minority representatives in their parties, which will, in turn, ensure greater representation and contribute to curtailling ethnic mobilization.

<sup>24</sup> On the complex and sensitive issues of data collection and census, see the contributions to the International Association of Statisticians' Conference "Statistics, Development and Human Rights" held in Montreux, Switzerland, on 4-8 September 2000, in particular, the 6 September session on minorities (publication forthcoming). Most of the papers are available on the Conference website at [www.iaos2000.admin.ch](http://www.iaos2000.admin.ch).

<sup>25</sup> Many minorities (inter alia, Jews and Roma) have had severe experiences as a result of such ascription in the past.

It should not always be assumed that national minorities want to participate in government. In this respect, there may be circumstances that have led them to conclude that it may not be in their interests to adopt a certain political profile. Notwithstanding this, there should be no impediment to their participation should they choose to do so.

## 7.2 Legislative Framework and Options

In this general principle of the Lund Recommendations, four options are detailed. Each is a mechanism that may, depending on the circumstances, facilitate and encourage minority representation and influence in legislatures. They are:

- The use of single-member districts;
- A system of proportional representation;
- The use of preference voting;
- The establishment of lower numerical thresholds for representation.

Each option is elaborated below. Neither the options nor these guidelines are exhaustive.

### **Option 1    Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation**

Many electoral systems are based on representatives elected from defined single-member districts – called a single-member system. There are two variants:

- A plurality system such as first past the post. This system grants victory to the highest-polling candidate even if the candidate does not enjoy majority support;<sup>26</sup>

<sup>26</sup> Accordingly, if there are five candidates, it is theoretically possible that a candidate with only 21 per cent of the vote may be declared the winner.



- A majority system such as the two-round runoff or the alternative vote. This system requires the winner to win at least a majority of the votes cast in order to be elected. This may mean a runoff between the top two candidates if none of the candidates in the first round gets a majority of the votes cast.

Representatives elected under these kinds of electoral systems are therefore linked to the constituencies that elected them to office. If a national minority is concentrated in a particular area, then it will have a better chance of having its representatives elected.

In most cases, single-member systems will be of assistance to minority representation only in countries where minorities are concentrated territorially. If minorities are concentrated territorially and there is a majority electoral system, then the chances of a member of such minority being elected are very high. This is the case, for example, in Albania with the Greek minority in the south of the country, in Canada with the French-speaking population of Quebec and in Italy with the French-speaking minority in the Valle d'Aosta and the German-speaking minority in the province of Bolzano. If minorities are dispersed generally throughout the country, depending on their numbers, they would not necessarily be ensured representation because there may not be sufficient votes to ensure a minority winner in any of the single-member districts.

The potential advantages of a single-member system are:

- A territorially concentrated minority may be ensured representation;
- Direct accountability of the candidates to the constituencies.

The potential disadvantages of such a system are:

- There is every incentive for national minorities to campaign in their own area, resulting in a potentially chauvinistic and exclusivist approach and campaign. This also results in the potential to compartmentalize national minorities and the drawing of potential ethnic fault lines for future conflict;
- It can also lead to non-competitive districts in that persons from the dominant ethnic grouping will always be elected;
- Unless there are appropriate external-voting provisions, displaced persons who may have been driven from their communities will be unable to vote.

There are implications for national minorities in the choice between plurality (first past the post) and majority systems. In a plurality system, there is no incentive to seek

votes across the constituency if the national minority represents the largest percentage of voters but not the majority. In a majority system, there is an incentive to seek votes outside that of the national minority in order to acquire the required majority.

If a national minority is concentrated in some areas but a significant number of that minority are dispersed nationally, a mixed system may be more appropriate to ensure fair representation of the national minority in the legislature. One such mixed system is called the mixed member proportional system (MMP). This is a variation of the single-member system and the proportional representation system (PR). It is used in Germany, New Zealand, Bolivia, Italy, Mexico, Venezuela and Hungary. It attempts to combine the positive attributes of the two systems. A proportion<sup>27</sup> of the representatives are elected in single-member districts and the balance by PR. The PR seats are used in this system to compensate for any disproportionality produced by the district seat results. The single-member districts ensure that voters have geographical representation.

Another mixed system is called the parallel system. Like the MMP system, it combines the single-member system with the PR system. But under this system, the PR seats are not used to compensate for any disproportionality. The PR seats are allocated in accordance with the number of votes in favour of the political party. These votes are determined either by counting the votes in favour of the political parties that have fielded candidates in the single-district elections or by a second vote. Examples of countries using parallel systems are Albania, Armenia, Croatia, Georgia, Russia and Lithuania.

**Option 2: Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities**

The list PR system is the most prevalent form of PR and the most common electoral system choice amongst OSCE countries. Under this system, each party submits a list of candidates to the electorate, and voters therefore vote for a party as opposed to an individual candidate. This system is applied in numerous states, e.g., Azerbaijan, Bulgaria, Croatia, Spain, Portugal and Romania. The more proportional an electoral system, the more it allows minorities, even dispersed ones, to be represented in an elected body, at least if the threshold is met. The proportional system in Finland allows the Swedish minority, which is in the majority only on the Åland Islands, to be represented

<sup>27</sup> Roughly half of the parliamentary representatives in the German, New Zealand, Bolivian and Venezuelan electoral systems.

by its own list in three other constituencies. It also has a seat in a further constituency through alliances with other parties.

This system has a number of clear advantages:

- It delivers highly proportional election results. The number of votes won is proportional to the number of seats gained;
- It is relatively invulnerable to gerrymandering, mal-apportionment and other forms of manipulation of results by the manipulation of electoral boundaries;
- It is relatively simple for both voters and electoral officials;
- Because of its high levels of proportionality, list PR systems are often favoured as being the most likely to ensure the representation of even small minorities.

It should be noted that list PR may have the effect of entrenching ethnic politics rather than working to encourage inter-ethnic alliances. The experience of list PR in post-Dayton Bosnia is a good example of how proportionality alone will not encourage accommodation. In Bosnia, groups are represented in parliament in proportion to their numbers in the community as a whole. But because parties can rely exclusively on the votes of members of their own community for their electoral success, there is little incentive for them to accommodate on ethnic issues. In fact, the incentives work in the other direction. Because it is easy to mobilize support by playing the “ethnic card”, the major parties in Bosnia have every incentive to emphasize ethnic issues and sectarian appeals. Bosnia’s 1996 elections were effectively an ethnic census, with electors voting along ethnic lines and each of the major nationalist parties gaining support almost exclusively from its own ethnic group. In the case of Bosnia, this electoral system not only promoted ethnic mobilization but served to encourage the most extreme elements within those ethnic groups.

In post-conflict situations where there may be external voting by refugees, a proportional representation system will generally better serve their interests.

The use of compulsory multi-ethnic lists in which parties are legally compelled to include multi-ethnic representatives on their party lists is a further mechanism that can be employed to ensure that rather than creating purely ethnic parties, the groupings are assimilated into “regular” party politics.<sup>28</sup>

<sup>28</sup> The Taef Agreement for Lebanon provides: “Until the Chamber of Deputies passes an election law free of sectarian restriction, the parliamentary seats shall be divided according to the following bases: a) Equally between Christians and Muslims, b) Proportionately between the denominations of each sect, c) Proportionately between the districts.”

The MMP and parallel systems discussed above are forms of PR and may also be used to enhance minority representation. However, as noted earlier, proportionality of outcomes is not guaranteed if a parallel system is used, particularly if the majority of seats are actually elected from single-member districts rather than national party lists. In Albania, Armenia and Azerbaijan, for example, over three-quarters of all seats are elected from districts rather than nationally.

The advantages of PR systems are as follows:

- They faithfully translate votes cast into seats won and thus avoid some of the more destabilizing and “unfair” results thrown up by plurality-majority electoral systems;
- They facilitate minority party access to representation;
- They encourage parties to present inclusive and socially diverse lists of candidates;
- They make it more likely that the representatives of minority cultures or groups are elected;
- They make it more likely that women are elected;
- They restrict the growth of “regional fiefdoms”; and
- They make power sharing between parties and interest groups more visible.

The disadvantages are as follows:

- The lack of accountability and responsiveness between elected politicians and voters;
- The fact that ethnic leaders can be elected exclusively by members of their own group, thus replicating, rather than breaking down, social divisions in the legislature;
- The concentration of power at the centre of the political party in the hands of leaders who may be responsible for the compilation of party lists;
- The problem of government formation and stability in cases of multi-party coalitions;
- In cases of multi-ethnic candidacy, there may be instances where “token” national minority representatives are included in party “lists”, which may give a false impression of representation and inclusion.

**Option 3: Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal co-operation**

Preference-voting systems enable electors to indicate how they would vote if their favoured candidate was defeated and they had to choose between those remaining. It is this particular feature that distinguishes preferential voting from other electoral system choices. The two key forms of preferential voting are a proportional system, the Single Transferable Vote (STV); and a majority system, the Alternative Vote (AV). Under both systems, electors rank the candidates in order of choice, marking a “1” for their favourite candidate, “2” for their second choice, “3” for their third choice, and so on. In essence, voters are saying to the election officer: “if my first choice does not win, use my second vote”.

STV elections generally utilize small, multi-member electoral districts. After the total number of first-preference votes is tallied, “a quota” of votes is established, which a candidate must achieve to be elected. Any candidate who has more first preferences than the quota is immediately elected. If no one has achieved the quota, the candidate with the lowest number of first preferences is eliminated and their second preferences are redistributed amongst the remaining candidates, and the surplus votes of elected candidates are redistributed according to the second preferences on the ballot papers until all seats for the constituency are filled. This system is well established in Ireland and Malta and has also been used for elections in Northern Ireland and Estonia.

STV was successfully used at the 1998 Northern Ireland “Good Friday” agreement elections. It appears to have promoted a degree of moderation and accommodation in the political process. Because of its preferential ballot, STV enabled voters to pass their lower-order preferences on to “pro-agreement” parties and also encouraged some of the sectarian parties to soften their rhetoric and policies in the hope of gaining such preference votes. It also produced fairly proportional outcomes. In terms of accommodating minority interests, it has much to recommend it, particularly in deeply divided societies.

On the other hand, political parties tend to dislike STV, as it takes the decision over candidates away from them. In addition, because of the complicated and technical nature of the vote-counting process, there may be perceptions of manipulation or fraud. It should also be noted that the system appeared to work well in Estonia in 1992 when there were no political parties but fared less well in 1995 when there were political parties.

The other major preferential system, AV, is a majority system that usually takes place in single-member districts, requiring winning candidates to gain an absolute majority of the vote to be elected, either directly or indirectly by the distribution of alternative

votes. For example, if no candidate has over 50 per cent of the direct votes, the lower-order alternative votes are transferred until a majority winner emerges. Under some circumstances, this feature presents candidates with a strong incentive to try to attract the second preferences from voters from other groups (assuming that the voters' first preference would usually be a candidate from their own group). This is because winners need to gain an absolute majority of the vote under AV rules. Candidates who successfully "pool" their own first preferences and the second preferences of others will be more successful than those who fail to attract any second-order support. This system is used in Australia and for presidential elections in the Republic of Ireland. It is particularly appropriate for the election of single-person offices such as presidencies. A related system, the supplementary vote, has recently been used for mayoral elections in London.

The advantages of preferential-vote systems are as follows:

- They can produce incentives to accommodate minority interests;
- They give voters a greater degree of choice amongst candidates – they are not limited to a single choice;
- Candidates who are elected will sometimes be dependent on the votes of groups other than their own;
- They have the advantage of using small single-member (AV) or multi-member (STV) electoral districts, thus guaranteeing geographic accountability.

The disadvantages of preferential- or alternative-vote systems are as follows:

- Preferential-voting systems are more complicated for both voters and electoral officials than other choices and can be problematic in circumstances of high illiteracy;
- Majority versions like AV can produce disproportional outcomes;
- Proportional versions like STV can encourage candidates from the same party to compete with each other for votes;
- They are not widely used in practice, and, consequently, it is difficult to assess their merits in concrete situations.

#### **Option 4: Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in government**

The threshold of representation in legislatures means the minimum level of support that a party needs to gain representation. The threshold will affect the ability of smaller

parties, particularly minority parties, to get representation in parliament. A high threshold will discourage minority representation. Certain countries such as Germany and Russia have a 5 per cent threshold, which is the minimum level that parties would need to secure in order to be awarded seats from the PR lists. It should, however, be noted that in relation to Germany, there is a subsidiary qualification mechanism in that threshold rules do not apply to national minorities. On the other hand, in Russia in 1995 there were no other routes of electoral qualification, which had the result of a substantial number of party-list votes for smaller parties having no effect.

Legal thresholds vary in extent, from 0.67 per cent in the Netherlands and 2 per cent in Denmark to 10 per cent in Turkey and in the Seychelles. In many cases, high thresholds tend to increase the levels of disproportionality because there may be many votes cast that have no effect. By way of illustration, in Poland in 1993 over 34 per cent of the votes were cast for parties that did not meet the threshold of 5 per cent, although in Poland the threshold rules do not apply to national minorities. It should also be noted that if the threshold is too low, then that might result in the fragmentation of political parties and the entrenchment of minority parties, particularly if funding is also made available.

High thresholds may serve to discriminate against small parties – indeed, in some cases this is the express purpose. A high threshold may impel smaller parties to group together particularly if there is a provision in the election law to permit political parties to do so, thus forming a “cartel or apparentement” to contest the election. This means that the parties themselves remain separate entities and are listed separately on the ballot paper, but their votes are counted as one, thus increasing their chances of making the threshold. This device is a feature of a number of list PR systems in continental Europe, Latin America and Israel.

## 7.3 Other Mechanisms

In addition to the above mechanisms and systems, there are other methods that may be utilized to assist and facilitate minority representation. Two of these are listed below:

### **Reserved seats**

- Reserved seats are special seats allocated to national minorities. The representatives in these seats are elected by members of the specified minority grouping only. Examples of reserved-seat representation are to be found in Croatia, Slovenia, Romania, the Russian Federation upper chamber and the ex-officio participation of the Sami people in Finland. The particular form that the special

representation of national minorities may take requires detailed consideration of the process, representation, structure, implementation and maintenance. In the Russian Federation, national minority voters preferred to vote "against all" rather than fill reserved seats with candidates who they did not feel would represent their interests.

- It should be noted that it may be better not to reinforce ethnic differences through reserved seats, as that may, in itself, be a potential cause of mistrust and antagonism. Furthermore, in some situations there may be some risk for voters to identify themselves in a separate voters' roll. The primary objection to the use of reserved seats is that it may perpetuate the identification and division of candidates based on ethnicity and that such labels can result in differentiation and discrimination.
- In most cases, special or reserved seats are instituted as short-term mechanisms in transitional situations in order to address the fears and concerns of vulnerable minorities. Experience is, however, that these mechanisms do not wither away but endure as they become part of the electoral landscape of the country.
- Other communal devices that explicitly recognize ethnic identity as part of the electoral process include the use of mandated ethnically mixed candidate lists, as in Lebanon, and the use of "best loser" seats for underrepresented ethnic minorities, as in Mauritius.

### **Over-representation**

- The mechanism of over-representation of minority groups can also be utilized. This is the case in the United Kingdom, where Scotland and Wales have more MPs in the British House of Commons than they would be entitled to if population size alone were the only criterion.



## 8.

# LUND RECOMMENDATION ON ELECTIONS: No. 10

**“The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.”**

### 8.1 Content Explanation

In any electoral system, the design of the constituencies will determine the level of representation gained by a national minority. The constituencies can be drawn either to ensure representation or to ensure that there is limited or even no representation.

There are two aspects to the issue of boundaries of electoral districts that may have an effect on the equitable representation of minorities. These are:

- District magnitude;
- Territorial delimitation.

#### 8.1.1 District magnitude

The crucial determinant of an electoral system's ability to translate votes cast into seats won proportionately is the district magnitude, that is to say the number of members to be elected in each electoral district. Under a single-member system such as first past the post, AV or the two-round system, there is a district magnitude of one, i.e., voters are electing a single representative. Under a multi-member system, by contrast, there will be, by definition, more than one member elected in each district. Under any proportional system, the number of members to be chosen in each district determines, to a significant extent, how proportional the election results will be. In this respect, the systems that achieve the greatest degree of proportionality will utilize very large districts, because such districts are able to ensure that even very small parties are represented in the legislature. For example, a district in which there are only three members to be elected means that a party must gain at least 25 per cent + 1 of the vote to be assured of winning a seat. A party that has the support of only 10 per cent of the electorate would not win a seat, and the votes of this party's supporters could therefore be said to have been wasted. The problem is that as districts grow larger, both in terms of the

number of seats and often, as a consequence, in the geographic size as well, so the linkage between an elected member and his or her constituency grows weaker. This can have serious consequences in societies where local factors play a strong role in politics or where voters expect their member to maintain strong links with their electorate and act as their “delegate” in the legislature.

There will always be degrees of the deviation among the various magnitudes of the delimited districts. Many election laws stipulate the degree of acceptable deviation, such as 5 per cent in Croatia and 10 per cent in the United Kingdom. However, certain countries allow greater degrees of deviation, and it is therefore difficult to refer to acceptable degrees of deviation without regard to the specific circumstances applicable to each country. It is important that whatever the degree of deviation that may be found, such deviation should not in any way prejudice national minorities in terms of their representation or voting power.

Constituencies with several seats, even under a majority system, may make it easier for members of minorities to be elected in constituencies where the minority is not in the majority. If there is only one seat to be filled, voters from the majority tend to choose a candidate from the majority, whereas in a multi-member constituency system, voters may vote for a list of candidates that includes majority and minority candidates. Thus, in Greece, parties include Muslim candidates on their lists, and at least two of them are usually elected. In Poland and in Switzerland, parties tend to balance their lists so as to ensure that minorities are fully represented.

### **8.1.2 Territorial delimitation**

The manner in which electoral boundaries are demarcated will have a determinant effect on the nature of representation in a particular area. While the general principles governing boundary demarcation are dealt with below, it remains important for policy makers and decision makers to first decide whether they want to demarcate electoral boundaries in a manner that will enhance and facilitate the greater representation of minorities. The delimitation of electoral districts is most commonly associated with plurality or majority electoral systems. Both systems rely heavily, if not exclusively, on single-member districts. These districts must be redrawn periodically to reflect changes in the population.

Election legislation outlining the formal structure and rules for redistricting should address the following issues:

- Who appoints the body?

- Who will draw the district lines or boundaries?
- Who will have the ultimate responsibility for selecting the final redistricting plan?
- Should the persons who draw the districts be independent from the legislature and be politically neutral?
- Should the legislature have any formal role at all in the process?
- Should some mechanism exist for public input into the redistricting process?
- Should the redistricting criteria be adopted for the line drawers to follow?
- How often should districts be redrawn, and how long should the redistricting process take place?
- What are the sources of funds of the body?

The basic principle in relation to delimitation of electoral districts is that it should be done fairly and should not have the effect of prejudicing the representation of any party or minority grouping. In some cases, electoral districts may be purposely designed and drawn to ensure that minority groupings are represented. Again, this will depend upon the spread of the minority grouping, whether it is concentrated territorially in a specific geographic area or whether it is spread evenly throughout a large portion of the country.

It is a trend in developing countries, as well as in certain established democracies, for the demarcation body to be independent from government and to be representative and legitimate in composition and structure. While, as is the case with election commissions, many countries in Western Europe locate this responsibility within a government department, there is no doubt that the legitimacy and credibility of the body is considerably enhanced by locating it outside government with separate sources of funding that will thereby ensure its legitimacy and operational independence. In addition, the decisions of the demarcation body should be subject to judicial review, as with all executive decisions. In certain countries, this decision rests with the legislature; however, leaving this critical area of decision-making purely in the hands of the legislature needs to be carefully considered.

Refugees or displaced persons need to be given careful consideration in terms of their choice of constituency or the external-voting provisions relating to them. This should apply to nomadic groupings to ensure that they are represented. The dispensations for the Bedouin people in Jordan provide a good example. Similarly, the establish-

ment of a district to enable the election of a representative of the Roma community in District 85, in Shuto Orizam in the former Yugoslav Republic of Macedonia, which encompasses the largest Roma population in Europe, is a good example.

Best practices for boundary delimitation are as follows:

- **Representativeness.** Electoral-district boundaries should be drawn such that constituents have an opportunity to elect candidates who they feel truly represent them. This usually means that district boundaries should coincide with communities of interest as much as possible. Communities of interest can be defined in a variety of ways and would include administrative divisions, ethnic or cultural neighbourhoods or natural communities delineated by physical boundaries (such as islands). If districts are not composed of communities of interest, however defined, it may be difficult for a single candidate to represent the entire constituency;
- **Equality of voting strength.** Electoral-district boundaries should be drawn so that districts are relatively equal in population size. These districts allow voters to have an equally weighted vote in the election of representatives;
- **Reciprocity.** The procedure for delimiting electoral districts should be clearly spelt out in legislation so that the rules regulating the process are the same, regardless of who is drawing the district boundaries. If the redistricting process is to be non-partisan, then all political parties must refrain from attempting to influence the outcome. If political concerns are permitted to play a role in the process, then all political parties must be given access to the process. The rules must be clearly understood and must be accessible to all relevant political parties and participants in the redistricting process.

## 9.

## ENSURING FAIR CONDUCT OF ELECTIONS: THE ADMINISTRATION OF THE ELECTIONS

The guidelines and options detailed above are essentially mechanisms and legislative prescriptions that are intended to address the issue of minority representation and to prevent discrimination against minorities. The real efficacy of these provisions will, however, depend on two critical factors: first, the strong commitment of all major political parties and actors to ensure that these provisions and mechanisms are effectively installed and maintained, with specific attention being given to monitoring mechanisms. Monitoring mechanisms could include joint committees or commissions that would ensure compliance by parties with election codes of conduct or other provisions that may be designed to ensure that there is no discrimination against national minorities and that the electoral process takes place in an atmosphere that is both free and fair. In this respect, it is necessary to give attention to the appropriate adjudicatory mechanisms (electoral courts/tribunals) that would be responsible for both compliance and sanction in the event of breach.

### Adjudicatory mechanism

The issue of disputes/complaints that arise during the course of an electoral process is one that gives rise to much debate and, in certain cases, controversy.<sup>29</sup> These disputes and complaints would include those that relate to behaviour and conduct, as well as those of an administrative nature that pertain to the electoral process and affect the equity and fairness of that process. There are a number of different approaches and structures that are used to address electoral disputes, certain of which have proved to be effective, while others have been used at great financial cost and with disastrous consequences for the electoral process and, in certain instances, for the democratic process. The primary issue is the manner and efficacy with which electoral disputes are resolved. In addressing the issue of the resolution of electoral disputes, the following aspects should be emphasized:

- The importance of a comprehensive legislative framework for electoral dispute resolution;

<sup>29</sup> OSCE/ODIHR publication "Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System", Warsaw, October 2000.

- The adoption and use of independent systems or institutions in relation to the resolution of electoral disputes and complaints;
- The implementation of cost-effective models and systems of electoral justice and dispute resolution;
- The need for consistency, reliability and stability in the administration of electoral justice;
- The need for the constructive, timely and effective resolution of disputes and complaints;
- The need to improve training in legal aspects, conciliation, and administration of electoral justice;
- The need for the selection of impartial and professional personnel to administer and execute the electoral justice system.

The second component is the importance of having the appropriate independent and/or neutral bodies to ensure proper implementation, which will ultimately guarantee that minority provisions and prescriptions do not become “paper” provisions. In this regard, the major implementing body in relation to electoral laws, systems and administration will be the electoral administration or election commission in a particular country. In order to build confidence and encourage minority participation in elections, members of minorities should be included in election commissions.

## 9.1 Electoral Body Options

Once the functions and features of an electoral body have been considered, it is then necessary to determine where that body should be situated. To put it in its simplest form, there are two competing options: inside the government or outside the government in an election commission. However, there are variations on these two options, based on a variety of facts and circumstances, four of which are discussed below:

### 9.1.1 Government approach

The first model is that the electoral body is located within a government ministry and is tasked with the responsibility of conducting and managing elections and utilizing

the resources of that ministry and civil service to achieve the task. This system works well in cases where the civil service is respected as being professional and politically neutral.

### **9.1.2 Supervisory or judicial approach**

A variation on the above is that a government ministry is tasked with the conduct of the electoral process but is supervised by an independent election commission consisting of selected judges. The task of the commission is to oversee and monitor the conduct of the electoral process by the relevant government ministry. This is the case in Eastern and Central Europe in such countries as Albania, Croatia, the Czech Republic, Hungary, Romania and Slovakia.

### **9.1.3 Independent approach**

The third model is that an independent election commission is established that is directly accountable to parliament or a parliamentary committee. Independent election commissions need to have a substantial degree of financial and administrative independence from the executive branch of the government. The selection process for appointing election commissioners should be transparent and impartial. Ideally, the selection should be based on a consensus of the political parties contesting the elections and be individuals with the relevant experience and expertise and who also have a reputation for independence and integrity. The use of internationally recognized or prominent persons, who would also include prominent members of civil society, has also been proven successful in countries where there has been conflict or a breakdown of trust between the parties.

### **9.1.4 Political party approach**

A further option in terms of comparison is to have all registered political parties designate representatives to the national election commission. This ensures that various interests are represented on the commission and that each party exercises some form of oversight concerning the operation of the commission. The problem associated with this is that in transitional situations, the number of parties often proliferates, thereby resulting in an unwieldy and ineffective commission. Second, the commission may be comprised of individuals who lack the requisite skills and/or experience to ensure effective participation on the commission.

In Eastern and Central Europe, in practically all emerging democracies, elections are managed either by independent commissions (71 per cent) or by the government under supervisory authority (29 per cent), which usually includes political party representatives. It should, however, be noted that while there may be legislative provision for the independence and neutrality of election commissions, in practice this is often much harder to achieve. Issues such as the manner of appointment and by whom, as well as the funding of election commissions, are aspects that may detract from and influence the independence or neutrality of the electoral body.

## **9.2 Composition of Election Commission or Body**

It is essential that in terms of the composition of the election commission or body, there is appropriate national minority representation. This would apply to all of the approaches detailed above, although it would be harder to achieve if the electoral body is located within a government ministry. Notwithstanding this, if the body should be located within a government ministry, then there should be sufficient representation and transparency to ensure that national minorities not only play a role in the making of decisions, but that all decisions and the reasons therefor should be made public.

This participation of minorities, where appropriate, in the composition of the commission at a senior level should be replicated to ensure that there is minority participation and representation at every level of the electoral administration, from national to local. In communities where individuals and voters will interact with representatives of the electoral administration, it is particularly important for minority groupings to be represented and included in the administration. In addition, the principles of transparency and impartiality are important in allaying the fears and concerns of minorities.

### **9.2.1 Transparency**

The overall credibility of an electoral process is substantially dependent on all relevant groups from government and civil society participating in the formation and functioning of electoral structures and processes. In this respect, the value of constant consultation, communication and co-operation amongst the electoral administration, the political parties and the institutions of society cannot be overemphasized. In the formulation of the legislative framework of an electoral administration, this aspect should receive particular attention.



### 9.2.2 Impartiality

The functioning of an electoral body should not be subject to the direction of any other person, authority or political party; it must function without political favour or bias. The body in charge of administering or supervising an election must be able to operate free of interference, simply because any allegation of manipulation, perception of bias, or alleged interference will have a direct impact not only on the credibility of the body in charge but on the entire process. There are many instances in which the perceived influence of a political party or parties of the electoral machinery has severely detracted from the validity of election results. Particularly in developing and emerging democracies, there is a much greater degree of vulnerability to allegations of undue influence and bias, thereby making the entire process more susceptible to credibility judgements, which then inevitably result in a limited acceptance of election results and of the process as a whole.

## 9.3 Permanent/Ad Hoc Electoral Bodies

The decision will need to be made as to whether the election commission should be a permanent one, which would be appointed and operate on a continuous basis, as opposed to an ad hoc one, which would constitute itself over the period of the election and then disband until the next electoral event. The trend is towards permanent electoral bodies, which provide for a much more consistent and effective administration of elections. The advantages of a permanent electoral body, particularly insofar as national minorities are concerned, are the following:

- A body of permanent and accountable officials who are known to the public and who develop a reputation in the electoral field;
- The retention of professional skills from election to election, as well as the institutional memory that is necessary in this area;
- The ability of national minorities to interact with a properly constituted and permanent group of individuals and professionals;
- The ability of electoral officials to interact internationally and also to ensure that international norms are adhered to in relation to minority issues.

## Addendum I

### Checklists

#### Checklist of key provisions for the design of electoral systems

	Item	Yes	No
1.	What is the structure of the society? Is it divided along ethnic, religious, linguistic or other lines?		
2.	Do the existing political institutions facilitate the management of conflict and resolution of grievances related to minority issues?		
3.	Are ethnic groups concentrated in one or several distinct regions? Are ethnic groups spread across the country as a whole?		
4.	Is there a specific conflict between groups that can be addressed via the design of the electoral system? What is the source of this conflict, e.g., over resources, territory, group rights, etc.?		
5.	Will the preferred electoral system design adequately represent all groups in parliament?		
6.	Are any groups likely to be disadvantaged by the proposed design? Can their representation be secured in other ways?		
7.	How will the electoral system impact the development of the political party system? Is it possible to encourage the development of multi-ethnic parties?		
8.	Where there is minority representation in the legislature, are there mechanisms for their effective representation?		
9.	Are there specific provisions that encourage minority appointments to public service positions?		
10.	Are there numerical or percentage thresholds that enhance or reduce possibilities of minority inclusion in government?		

	Item	Yes	No
11.	Does the existing electoral system provide for a clear link between some or all elected members and the minority electorate or community?		
12.	Does the electoral system encourage inter-ethnic alliances?		
13.	Are parties encouraged to present inclusive and socially diverse candidates or candidate lists?		
14.	Does the system tend to promote moderation and accommodation and soften ethnic rivalries?		
15.	Are small parties allowed to group together for electoral purposes but at the same time remain separate entities?		
16.	Are there reserved or quota seats for minority groups?		
17.	Are there mandatory, ethnically mixed candidate lists?		
18.	Is the mechanism of over-representation of minority groups used to facilitate their participation?		

## I

**Depending on the electoral system in place, do the electoral boundaries take into consideration or assume:**

	Item	Yes	No
1.	Physical/geographical constraints and facilities such as rivers, mountains, roads, etc.		
2.	Communities of interests		
3.	Ease of access by minority groups		
4.	A close identification by electors with an elected representative		
5.	The avoidance of dividing and dispersing minority groups in terms of voting impact		
6.	The "independence" and neutrality of those charged with drawing up or changing electoral boundaries		

	Item	Yes	No
7.	The opportunity for public input into the redistricting process		
8.	The intervals between major revisions to existing boundaries		
9.	The criteria (over and above those listed above) affecting the determination of boundary lines		
10.	That electoral districts are relatively equal or equitable with respect to population/geographic ratio		
11.	The need for equitable and balanced input by all parties if political involvement is permitted		
12.	The existence of minority representation on, or official input into, the body responsible for drawing up the electoral boundaries		
13.	The avoidance of gerrymandering or boundary manipulation		
14.	The rights of refugees and displaced persons		

### Safeguards to address minority fears and concerns

	Item
1.	The appointment of an independent adjudicatory mechanism for complaints and ensuring the appointment of the necessary level of minority representation on the adjudicatory body
2.	Availability of special complaints/appeals mechanisms devoted to minority concerns
3.	Appointment of a special "demarcations committee" accountable to parliament and on which minorities are represented
4.	Minority representation or participation in a "census committee" for population counts as the basis for demarcating constituencies
5.	Ensuring that such aspects as finances and budgetary allocations for elections are transparent and made available to the public
6.	Specific monitoring bodies in which minorities may be represented and that are tasked with the responsibility to monitor such aspects as use of government resources and use of state media, including TV and radio time, etc.

	Item
7.	The participation of minorities in the drawing up of campaign finance and political party funding regulations to ensure equity
8.	The use of political party liaison committees within the electoral administration to ensure that there is constant communication and liaison with political parties and particularly minority groupings with respect to their concerns and special electoral needs
9.	Provision for international and local election observers in electoral legislation to ensure observation and scrutiny of the freeness and fairness of the elections
10.	Ensuring that specific regulations/directives have been issued by the electoral management body that support constitutional and/or legislative provisions concerning minority rights

## Addendum II

### Electoral Systems: Glossary of Terms

**Alternative Vote (AV)** – A preferential, plurality-majority system used in single-member districts in which voters use numbers to mark their preferences on the ballot paper. A candidate who receives over 50 per cent of first preferences is declared elected. If no candidate achieves an absolute majority of first preferences, votes are reallocated until one candidate has an absolute majority of votes cast.

**Block Vote (BV)** – A plurality-majority system used in multi-member districts in which electors have as many votes as there are candidates to be elected. Voting can be either candidate-centred or party-centred. Counting is identical to a first-past-the-post system, with the candidates with the highest vote totals winning the seats.

**Closed List** – A form of list proportional representation in which electors are restricted to voting for a party only and cannot express a preference for any candidate within a party list.

**First Past the Post (FPTP)** – The simplest form of plurality-majority electoral system, using single-member districts, a categorical ballot and candidate-centred voting. The winning candidate is the one who gains more votes than any other candidate but not necessarily a majority of votes.

**Free List** – A form of list proportional representation that provides for apparentement or cumulation.

**Limited Vote** – A plurality-majority system used in multi-member districts in which electors have more than one vote but fewer votes than there are candidates to be elected. Counting is identical to a first-past-the-post system, with the candidates with the highest vote totals winning the seats.

**List Proportional Representation (List PR)** – In its most simple form, List PR involves each party presenting a list of candidates to the electorate, voters voting for a party, and parties receiving seats in proportion to their overall share of the national vote. Winning candidates are taken from the lists.

**Majority-Plurality (Two-Round System)** – In French two-round elections, any candidate who has received the votes of over 12.5 per cent of the registered electorate in the

first round can stand in the second round. Whoever wins the highest number of votes in the second round is then declared elected, regardless of whether they have won an absolute majority or not. We therefore refer to this as majority-plurality variant of the Two-Round System.

**Majority-Runoff (Two-Round System)** – The most common method for the second round of voting in a Two-Round System is a straight “runoff” contest between the two candidates receiving the most votes from the first round – this we term a majority-runoff system.

**Mixed Member Proportional (MMP)** – Systems in which a proportion of the parliament (usually half) is elected from plurality-majority districts, while the remaining members are chosen from PR lists. Under MMP, the List PR seats compensate for any disproportionality produced by the district seat results.

**Open List** – A form of List PR in which electors can express a preference for a candidate within a party list, as well as voting for the party.

**Parallel System** – A semi-proportional system in which proportional representation is used in conjunction with a plurality-majority system but where, unlike MMP, the PR seats do not compensate for any disproportionality arising from elections to the plurality-majority seats.

**Party Block Vote (PB)** – A form of the BV in which electors choose between parties rather than candidates. The successful party will typically win every seat in the district.

**Plurality-Majority Systems** – The distinguishing feature of plurality-majority systems is that they almost always use single-member districts. In an FPTP system, the winner is the candidate with a plurality of votes but not necessarily an absolute majority of the votes. When this system is used in multi-member districts, it becomes the BV. Majority systems, such as the Australian AV and the French Two-Round System, try to ensure that the winning candidate receives an absolute majority of votes cast.

**Preferential Voting** – Electoral systems in which voters can rank-order candidates on the ballot paper in order of their choice. The AV, the Single Transferable Vote and the system used to elect the Sri Lankan president are all examples of preferential voting.

**Proportional Representation (PR)** – Any system that consciously attempts to reduce the disparity between a party’s share of the national vote and its share of the parliamentary seats. For example, if a party wins 40 per cent of the votes, it should win approximately 40 per cent of the seats.

**Semi-Proportional Systems (Semi-PR)** – Those electoral systems that provide, on average, results that fall somewhere in between the proportionality of PR systems and the disproportionality of plurality-majority systems.

**Single Non-Transferable Vote (SNTV)** – A semi-proportional system that combines multi-member districts with an FPTP method of vote counting and in which electors have only one vote.

**Single Transferable Vote (STV)** – A preferential proportional representation system used in multi-member districts. To gain election, candidates must surpass a specified quota of first-preference votes. Voters' preferences are reallocated to other continuing candidates when an unsuccessful candidate is excluded or if an elected candidate has a surplus.

**Two-Round System** – A plurality-majority system in which a second election is held if no candidate achieves an absolute majority of votes in the first election.



# Addendum III

## Integrating Minority Issues into ODIHR Election Observation

### ELECTION OBSERVATION

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#### I. INTRODUCTION

How far a participating State's electoral system could assist representation for national minorities in elected bodies raises interesting problems for ODIHR Election Observation Missions (EOMs) in terms of international standards. The challenge for the ODIHR is to provide EOMs with a framework for assessing the extent to which partici-

pating States meet those standards, whilst taking full account of comparative experience in the OSCE region and the political dynamic of the country in question.

This section will attempt to place the Lund Recommendations in the context of the work and existing methodology of an ODIHR EOM, highlighting the important factors to be considered and seeking to identify ways in which they can be adequately addressed.

The format of the paper considers each component of an EOM, from the ODIHR Election Section to the deployment of short-term observers (STOs). Suggestions are also offered on how the findings can be reported, both within an EOM and publicly. Finally, some changes are recommended to the existing ODIHR EOM methodology in order to accommodate this new approach.

## II. ROLE OF THE ODIHR IN PRE-MISSION PHASE

- The ODIHR Election Section routinely obtains relevant legislation prior to the commencement of a Needs Assessment Mission (NAM). This will include:
  - Election law;
  - Constitution;
  - Law on political parties;
  - Other relevant laws and decisions that affect the process, such as the formation of election commissions and media coverage of the campaign.
- In addition, the ODIHR should also obtain copies of any reports on the situation of national minorities in the country to be observed. This might include:
  - Law on national minorities;
  - OSCE reports, reports by the HCNM, Council of Europe reports on the implementation of the Framework Convention for the Protection of National Minorities, or in-country mission reports;
  - International and domestic NGO reports, etc.
- When the ODIHR carries out an assessment of the electoral legislation, defining whether the legal framework governing the election process is in line with the OSCE commitments, the assessment should include a consideration of national minority issues in line with the present guidelines.

The following table raises some of the basic questions that can be asked:

**Table 1**

- ✓ Does the constitution afford universal suffrage without restrictions pertaining to national minorities?
- ✓ Are there any special criteria on voting rights relating to national minorities, and do these raise concerns?
- ✓ Are there specific provisions within the election laws for national minority participation?
- ✓ Is the right to form a political party or political formation universally applied without limitations aimed at preventing participation by national minorities?
- ✓ Are there any restrictions on the establishment of political parties based on communal identity?
- ✓ Does the election law raise any administrative restrictions that limit the fair participation of candidates/parties from national minorities?
- ✓ Is the participation of candidates from national minorities prejudiced by unreasonable requirements?
- ✓ Is the provision of state funding of parties/candidates (where applicable) equal in law and practice?
- ✓ Do media regulations afford candidates/parties of national minorities reasonable and fair access?

### III. ROLE OF NEEDS ASSESSMENT MISSION

- **Assess General Legislative Framework**

Depending upon whether an analysis of the legislative framework has been conducted prior to the NAM, the NAM team should seek to identify the main concerns and the political implications of the relevant laws.

Based on Table 1 above, the NAM should assess to what extent legislative provisions may limit the participation of national minorities.

If a full analysis has already been completed, the NAM should raise the key points and concerns with their interlocutors to gain a greater insight into the issues.

- **Meet Representatives of Political and Civil Society**

One of the prime reasons for a NAM is to meet with representatives of key institutions and organizations. With regards to national minority issues, interlocutors may include:

- Central Election Commission/Ministry responsible for election;
- Government ministry responsible for citizenship claims;
- Political parties, including parties representing national minorities;
- National minority interest groups/representatives;
- International and domestic NGOs concerned with national minority issues;
- Local media, including representatives of national minorities.

During these meetings, the NAM should raise any specific concerns that have come to light, such as during the analysis of the legislative framework, or based on previous elections or recent developments.

- **Assess Process for Attaining Citizenship and Implications for Voter Registration**

During NAM meetings, it is important to ascertain whether any national minorities have faced impediments in trying to register to vote. This may be due to problems in attaining citizenship, in which case the NAM should look into the issue of citizenship with the appropriate body.

Table 2 below lists some of the questions that may be raised:

**Table 2**

- ✓ Is a permanent residence or address a requirement for registration?
- ✓ Did a particular national minority face problems registering as voters?
- ✓ Are these problems legislative, administrative, or political?
- ✓ Are the authorities making a good-faith effort to rectify the shortcomings?
- ✓ What will be the political ramifications of the gaps in the registration process?
- ✓ Will it affect the level of representation for the national minority?
- ✓ Can a citizen without identity documentation register to vote?

**Assess to what extent there may be restrictions on the possibility for minority representation due to provisions in the process for nominating candidates, forming parties, etc.**

Such restrictions may include:

- Limitations on forming parties with a communal identity;
- Language requirement for nominated candidates.

- **Assess Media Regulations**

The NAM should ascertain whether there are restrictions for national minorities to gain access to the media.

Restrictions could include:

- A lack of media coverage in outlying areas populated by the national minority;
- No broadcasting in language of national minority;
- A lack of access for candidates/parties from national minorities;
- Unequal coverage for candidate/parties from national minorities.

## IV. ROLE OF ELECTION OBSERVATION MISSION CORE TEAM

- **Prepare Overview of National Minorities in Country**

One of the first tasks of an EOM should be to supplement an overview of the national minorities in the country. This overview could include:

- Identification of areas in which national minorities are present;
- Identification of main issues raised by NAM/law review/other reports;
- Identification of main parties/candidates/groups representing national minorities;
- Incorporation of national minority areas into LTO deployment plan;
- Briefing for long-term observers (LTOs) deployed to these areas (see LTO below).

- **Meet Representatives of Political and Civil Society on an Ongoing Basis**

The EOM should continue to meet with representatives of government, parties, civil society and national minority groups throughout the mission, seeking to follow up on issues and concerns.

- **Follow Registration of Voters and Compilation of Voter Lists**

Using information from LTO meetings and the ongoing meetings with local representatives, follow issues raised in Table 2 above.

- **Civic and Voter Education**

Any voter education undertaken should also be in the languages of national minorities. Election-related information will normally include:

- Information for prospective candidates;
- Pre-election information for voters;
- Election-day information for voters.

An EOM can incorporate the following points into its analytical framework for core staff and LTOs:

**Table 3**

- ✓ Does the law obligate the central election commission, or some other body, to adequately inform voters on all aspects of the electoral process? Was this obligation met?
- ✓ Have the national and local media adequately met their responsibility to inform the public?
- ✓ Were prospective candidates well enough informed to seek and attain registration?
- ✓ Were there a high number of invalid ballots, indicating a lack of comprehension among voters?
- ✓ Were the invalid ballots concentrated in a particular area or among a particular societal group?
- ✓ Were the communication means of the voter and civic education campaign adequate to reach all parts of the country?
- ✓ Did minorities in remote areas have access to voter and civic education materials?
- ✓ Were minority languages utilized for the voter and civic education programmes?

- **Follow Nomination Procedures for Candidates and Parties**

In addition to analysing the extent to which existing legislation might limit or prevent minority participation (such as with a strict language requirement), an EOM must also follow the actual implementation of the legislation.

The appropriate core staff and LTOs should monitor the nomination process and investigate instances of refusal of nomination. Core staff and LTOs should meet regularly with representatives of minority parties/groups/candidates and, in cases where nomination has been refused, should gather copies of all relevant documentation. Meetings

should then be held with the relevant election commission/ministry for clarification of the issue.

- **Monitor Media**

Consideration of the fair participation for national minorities should be part of the standard ODIHR media-monitoring methodology.

Key concerns are:

- Do minority parties/candidates have reasonable and fair access to media?
- Are media available in the language(s) of national minorities?
- Do minorities in outlying areas have sufficient access to media?

- **Observe Campaign**

As part of the regular observation of the election campaign, the EOM should incorporate consideration of national minorities into the methodology.

Important questions that parallel the basic campaign methodology include:

- Was there freedom of movement and assembly in minority areas? Were voters prevented from attending meetings, or were parties and candidates prevented from moving around their electoral districts and organizing meetings?
- Are national minority associations and parties allowed to use public facilities during the campaign?
- Can national minorities print and display campaign posters publicly?
- Can they print these posters and campaign in the minority language?
- Was there any anti-minority campaigning or intimidation by other groups or the authorities, possibly attempting to incite hatred?

- **Assess Impact of Electoral System and Constituencies on National Minorities**

Through meetings with national minority representatives and by analysing the election results, an EOM should be able to ascertain whether the election system and drawing of election constituencies has had an impact on minority representation.

Important factors to consider are:

- Have minorities secured representation? If yes, to what extent is it comparable to their proportion of the population?



- Are the constituencies containing minorities drawn in a way that serves to minimize or exclude minority representation?
- Are constituencies drawn across natural demographic borders, in that a national minority population is divided and therefore subsumed by the majority population in constituencies?
- Based on the number of registered persons per constituency, are national minorities underrepresented by having larger numbers of voters in their constituencies than in others?
- Is any consideration given to nomadic citizens?

## V. ROLE OF LONG-TERM OBSERVERS

- **Framework Established by Core Team**

The EOM Core Team should include national minority issues and questions as part of the analytical framework for LTOs.

This will include:

- Incorporating above questions and issues into LTO briefing materials, including:
  - List of relevant persons/organizations for LTOs to meet, such as election commissions, political parties/candidates, national minority representatives, civil society groups, media;
  - List of relevant questions to be asked regarding opinions on election law and system, candidate nomination, voter registration, election campaign, etc.
- The deployment of LTOs should take into account areas with a concentration of national minorities, and such LTO team should be specially briefed.

- **LTOs To Fully Brief STOs**

LTOs with responsibility for areas with a concentration of national minorities should ensure STO teams deployed to the area are fully briefed on the particularities of the area.

Written materials from LTOs should clearly explain to STOs the demographic composition of the area and identify the main issues and concerns.

LTOs should ensure that STOs properly cover polling stations serving national minority communities. The issues to be considered are outlined below.

## VI. ROLE OF SHORT-TERM OBSERVERS (STOs)

Where appropriate, STO Report Forms should include special sections on national minority questions, and STO briefings should cover the same questions.

- **Level of Participation and Understanding of Process**

STO Report Forms may well ask questions regarding the level of participation and voters' understanding of the process.

STOs in areas with a national minority should be encouraged to report specifically on these issues, as they are highly pertinent to the assessment of minority participation and the extent to which the issues of voter registration and voter education have been addressed by the authorities.

- **Evidence of Intimidation or Restrictions on Movement**

As above, all STOs will be asked about instances of intimidation of voters or restrictions on movement.

STOs should be asked whether there were, for example, roadblocks or large number of police/security forces/party activists either preventing voters from participating or intimidating them into voting for a particular party/candidate.

- **Accuracy of Voter Registers**

STOs should be asked to observe closely the processing of voters in national minority areas and check for instances of voters not on the register.

If the incidence of names missing is high, STOs should ask election commissions (including at the district level) and voters for a possible explanation?

- **Provision of Polling Stations and Composition of Election Commissions**

STOs should report on the convenience of polling stations for national minorities. For example, were polling stations situated in a location that made it impossible to vote without undue hindrance and without having to travel excessive distances?

STOs should also have a sense of the composition of election commissions and to what extent they reflect the local community.

## VII. REPORTING ON NATIONAL MINORITY ISSUES

- **NAM Report**

The NAM report should include a specific section on national minorities if there are serious concerns that require highlighting. This is important, as it raises issues that can then be incorporated into the EOM analytical framework, including the deployment of observers to the areas at issue.

- **Internal Mission Reports: Weekly Report/LTO Reports/STO Reports**

As outlined above, LTOs will report on issues of concern for national minorities. Important issues can also be raised in the EOM weekly reports to the ODIHR Election Section.

STOs can report both through the regular report forms and during the LTO de-briefing, which will focus on region-specific information.

- **Press Statement and Preliminary Findings and Conclusions**

If there are any important concerns during the EOM, these can be included in the post-election press statement and preliminary findings and conclusions.

- **Final Report/Annex**

Issues and concerns regarding national minorities should also be raised in the ODIHR final report on a given election. If there are significant issues regarding national minorities, then a more lengthy annex to the final report can be considered. This will allow more scope for a discussion of the issues.

- **Special Minorities Report**

See below.

## **VIII. RECOMMENDATIONS FOR FUTURE EOMs**

- **National Minority Focal Point**

An expert in the EOM, probably the Political Analyst, should be the national minorities Focal Point.

The Focal Point can work with the Head of Mission to set the analytical framework for LTOs and to produce written reports. The Focal Point will also be responsible for collating all LTO reports on national minority issues.

A local national minority specialist should be included in the EOM to work under the supervision of the Political Analyst or the Focal Point.

STOs and LTOs in areas where there is a large concentration of national minorities should be provided interpreters in both minority and majority languages.

## ANNEX 1

### National Minority Issues and Observation Techniques

Recommendation	Issue	Observation Technique	Responsibility
Right of persons belonging to national minorities to take part in the conduct of public affairs, including through the right to vote and stand for office without discrimination	Legislative framework	Assessment of constitution, election law and other relevant legislation to assess whether they adequately provide for basic human rights for national minorities	Pre-NAM Assessment/ NAM/EOM
		Meeting with representatives of national minorities, political parties and governmental representatives to identify the key issues for national minorities in the country	NAM/EOM/LTO
	Voter registration and citizenship	Check with national minority groups and relevant officials whether there are problems for the national minority relating to the securing of citizenship and/or voter registration	NAM/EOM/LTO
		Check voter registration figures for relevant constituencies and observe the administrative process for amending/updating voter lists	LTO

Recommendation	Issue	Observation Technique	Responsibility
	Voter and civic education	Check if voter and civic education are targeted to meet the needs of the national minority, both in the language used and the communication mode	EOM/LTO
	Nomination of candidates and political parties	Check whether there are any stipulations relating to the nomination of parties and candidates, such as language provisions, which might serve to prevent participation of representatives from national minorities	NAM/EOM
	Campaign rights and media access	Check if candidates/parties from minorities are free to campaign in the language of their choice, at rallies, in printed materials and through media broadcasts	NAM/EOM
		Check if minority candidates/parties are free to organize and hold rallies and political meetings without intimidation or undue interference	EOM/LTO
There should be freedom to establish political parties based on communal identities, as well as those not exclusively identified with the interest of a specific community	Establishment of political parties	Are there any legislative or administrative impediments to the formation of political parties based on communal identity?	NAM/EOM

Recommendation	Issue	Observation Technique	Responsibility
		EOMs should follow the nomination process to check whether the spirit and letter of the legislation have been followed in practice	EOM/LTO
	Funding of political parties	Assess whether the mechanism for providing financial support to parties/candidates is fair and if it is implemented properly	NAM/EOM
The electoral system should facilitate minority representation and influence	The choice of electoral system	There should be a full analysis of the electoral system and the implications thereof for any national minority	EOM
		A final analysis on the fairness of the system with regards to national minorities should take full account of the national political culture, recent political history, the implications of other systems for the country's political and democratic development, and the regional context	EOM
Geographic boundaries of electoral districts should facilitate the representation of national minorities	Delineation of election constituencies	Assess whether the drawing of the electoral boundaries has been designed to deliberately exclude or underrepresent a national minority. Such an assessment should consider the settlement patterns of the minority in question and the extent to which they could have been accommodated.	EOM/LTO

ADDENDUM III

Recommendation	Issue	Observation Technique	Responsibility
	Size of election constituencies	Based on registration figures per constituency, an assessment should be made as to the number of voters per constituency to ascertain whether the size of the constituency is in line with the overall national trend and in line with electoral legislation	EOM/LTO