

# **The First Mandate: Experiences and Lessons Learned**

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## **I. Introduction**

From 2005 through most of 2011, it was my privilege and my pleasure to serve as the first United Nations Independent Expert on Minority Issues under the mandate first established by what was then the Commission on Human Rights. In 2008, the mandate was reviewed and confirmed by the then new Human Rights Council.

Commission resolution 2005/79, which establishes the independent expert's mandate, in paragraph 6 requests the United Nations High Commissioner for Human Rights to appoint an independent expert on minority issues for a period of two years, with the mandate: (a) To promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, including through consultations with Governments, taking into account existing international standards and national legislation concerning minorities; (b) To identify best practices and possibilities for technical cooperation by the Office of the United Nations High Commissioner for Human Rights at the request of Governments; (c) To apply a gender perspective in his or her work; (d) To cooperate closely, while avoiding duplication, with existing relevant United Nations bodies, mandates, mechanisms as well as regional organizations; and (e) To take into account the views of non-governmental organizations on matters pertaining to his or her mandate.

Based on the Declaration, the Commentary developed by the Working Group on Minorities and the other relevant international norms, I distilled four broad areas of concern relating to minorities around the world, based on the Declaration on the Rights of Minorities and other relevant international standards relating to minority rights: (a) Protecting a minority's existence, including through protection of their physical integrity and the prevention of genocide; (b)

Protecting and promoting cultural and social identity, including the right of individuals to choose which ethnic, linguistic or religious groups they wish to be identified with, and the right of those groups to affirm and protect their collective identity and to reject forced assimilation;(c) Ensuring effective non-discrimination and equality, including ending structural or systemic discrimination; and(d) Ensuring effective participation of members of minorities in public life, especially with regard to decisions that affect them.

When I started my mandate it quickly became clear that there was relatively little knowledge about the Declaration outside of academic circles, European regional bodies and the OSCE. Virtually none existed at the level of civil society, other than those individuals who had been fortunate to participate in the OHCHR Fellows program, or to make a presentation before the Working Group on Minorities. It was particularly concerning to talk with staff in organizations like the World Bank or certain specialized agencies of the UN to find that while they were aware of the norms regarding the rights of Indigenous Peoples (the IP Declaration had not yet been adopted) and indeed some like the World Bank had a policy and dedicated staff on Indigenous Peoples rights, nevertheless there was general ignorance in the institution of the Declaration on Minorities.

Over the course of the first six years of the mandate, I conducted 12 official country visits and visited five additional countries to conduct promotional activities to bring greater awareness of the Declaration. I communicated with governments regarding violations and failures to fulfill the rights of members of minority groups. I held three expert seminars, one of which was co-sponsored by the Inter-American Commission on Human Rights, which focused on a draft regional convention on racial discrimination. I presented three thematic studies to the Human Rights Council: 1) *Minorities, Poverty and the Millennium Development Goals: Assessing Global Issues*, A/HRC/4/9. 2) *Minorities and the Discriminatory Denial or Deprivation of Citizenship*, A/HRC/7/23, 29 January 2008. And 3) *Minorities and Conflict Prevention*. In 2010 I reported for the first time to the General Assembly.

I put significant emphasis on finding ways to work with specialized agencies. I had ongoing collaboration with UNDP to further enhance their policy and programming interventions on minority issues. One tangible outcome of that collaboration was the publication *Marginalised Minorities in Development Programming: A UNDP Resource Guide and Toolkit2*, which was launched and distributed to UNDP offices and staff globally on 26 May 2010. I also developed a highly productive relationship with UNICEF.

Additionally, of course, I had the honor to guide the work of the first three Forums on Minority Issues. The first Forum focused on Minorities and the right of Equal Access to Quality Education. The second Forum considered the topic of Minorities and Effective Political Participation. The third Forum discussed Minorities and Participation in Economic Life. The Forums benefited from the participation and expertise of a wide range of stakeholders. The over 500 participants in each Forum included delegates from over 70 Member States from all regions, United Nations mechanisms including treaty bodies, United Nations specialized agencies, funds and programmes, regional intergovernmental bodies, civil society and representatives of minority communities. The Recommendations of those first three Forums have been widely disseminated and very well received.

## **II. Positive Aspects**

The Mandate has been an unparalleled mechanism to extend the reach of the Declaration out of the elite chambers of international norm-setting into the real world where exclusion and marginalization are daily facts on the ground. The high-level access given during my country visits to cabinet ministers and even heads of state created an opportunity to bring the Declaration to the attention of national governments as never before.

Those in-country visits also afforded opportunities to build relationships with civil society actors who may have been previously unaware of the Declaration and the associated UN mechanisms that can be used to further and strengthen their work at the local level.

Most important, were the opportunities that the country visits gave me to inter-act directly with minority communities. Often that meant traveling far outside of the major urban centers, to areas where infrastructure was poor to non-existent. That is where the promise of the Declaration was most meaningful.

In addition to the country visits the Mandate offers fruitful opportunities to coordinate work with other mechanisms like the treaty bodies. Most frequently, I coordinated with CERD. On one occasion, when a country had failed to submit its periodic reports to CERD for 16 years, and where there had been events of great concern that fell within my mandate and the provisions of ICERD, I was able to conduct a country visit to investigate the events in person and report my findings confidentially to CERD prior to their reviewing the country situation under their own procedures. My findings also informed a communication to the concerned government from the Secretary General's Special Advisor on the Prevention of Genocide and Mass Atrocities. This all led to the country renewing its commitment to meet its reporting obligations to CERD in the future.

The country visits also afforded the opportunity to interact with the UN Country teams and to bring to their attention how the Declaration could be and should be integrated into their daily operations at the national level. In countries like Colombia, in which the issues covered by the Declaration are very prominent and the High Commissioner has a substantial number of staff throughout the country, the ground support for the mandate was extensive and the follow-up between the mandate and the country team was ongoing and extremely fruitful.

The work I undertook with UN specialized agencies was particularly productive. In May 2006, I initiated and held a high-level constructive dialogue with the UNDP senior management to highlight the impact and negative consequences of long-standing discrimination, exclusion, and denial of basic rights and fundamental freedoms on minorities in development processes. We explored what specific and sustained approaches could be adopted by UNDP, as the main development partner of governments, to ensure that the unique circumstances of minorities are further embedded in its policy, programming, advocacy, and capacity development initiatives.

This dialogue, and a 4 year consultative drafting process, produced the *Marginalised Minorities in Development Programming: A UNDP Resource Guide and Toolkit*. During this period, I led two UNDP global consultations that brought together over 80 staff from Headquarters, Regional Service Centres, UN Resident Coordinators/UNDP Resident Representatives, and Country Offices and other experts (including Ms. Mary Robinson, former President of Ireland and the UN High Commissioner for Human Rights) to discuss experiences, lessons learned, and opportunities for developing policies and programmes that can be more sensitive, inclusive and relevant to the most intractable problems faced by the marginalized and the vulnerable people around the world. The process also benefited tremendously from the inputs provided by the Minority Rights Group International, representatives of civil society organizations working on minority issues in over 35 countries to an internal discussion paper.

The Resource Guide and Toolkit provides an overview of the international and regional legal standards and mechanisms relevant for minority rights and will enable UNDP staff in all regions to understand the key conceptual issues and fundamental principles for the promotion and protection of minority rights. It reviews programming opportunities and relevant strategies for UNDP to integrate minorities in development, including capacity development support for government officials and institutions, UNDP staff and minorities, as well as possible entry points for effective advocacy and partnership building effort. Detailed attention is given to opportunities and strategies in UNDP practice areas. It provides specific tools to assist UNDP staff in building or strengthening their work on minorities in development in such key areas as: situation analysis; data collection; and monitoring and evaluation. Annexes provide a vast number of reference materials, including selected conclusions and recommendations on minority rights from United Nations treaty bodies, and studies and reports of the independent expert.

This invaluable source material has the potential to increase the opportunities available to minorities for meaningful participation and representation in development processes and for strengthening partnerships to protect and promote the rights of minorities. It is currently being operationalized in different regional and country contexts. As an initial regional activity to

launch and promote the Resource Guide and Toolkit , I contributed to a Community of Practice Meeting of National Human Rights Institutions from the Caucasus and Central Asia held from 30 September to 1 October 2010, in Yerevan, Armenia. This conference addressed “Promoting Minority Rights and Gender Equality Agenda – Role of Independent and Effective National Human Rights Institutions” during which the Resource Guide and Toolkit was presented to participants.

This publication is a tangible outcome of a comprehensive consultative and drafting process, which is one of its unique features. It has been referred to as one of the “Best Models” of cooperation between a UN agency and a thematic mandate of the UN Human Rights Council, in various UNGA and HRC reports, with its emphasis on capacity development of governments for targeted and mainstreamed policies and programmes.

According to Geraldine J Fraser-Moleketi ,Practice Director for Democratic Governance Group, UNDP: “The legacy of this engagement with UNDP, which in turn has already triggered a similar process in another UN agency (UNICEF), is already starting to see the actual benefits as our staff are now in a better position to offer more targeted, inclusive, and contextualized support to our programme countries and partners, and with the Post-2015 development process has already commenced, we are further convinced of the intrinsic and instrumental value of this critical knowledge product [*Marginalised Minorities in Development Programming: A UNDP Resource Guide and Toolkit*]. Moreover, [the Independent Expert’s] constructive partnership with UNDP has not only led to our continued engagement at the UN Forum on Minority Issues, thereby cementing our cooperation with one of the critical UN Human Rights Council processes, but also in the recently established UN Network on Racial Discrimination and the Protection on Minorities, as called for by the UN Secretary General.”

The United Nations Children’s Fund (UNICEF) has been engaged in minority rights interventions as part of its overall child-focused programming strategy which pays particular attention to vulnerable and excluded groups. A comprehensive assessment of UNICEF activities, undertaken in 2009, revealed the organization’s active involvement in initiatives bringing real benefits to ethnic, religious, and linguistic minority communities. The most visible

and common forms have been in the field of education, where inter-culturalism and bilingual education have been the focus, and in the field of health, where special efforts are being made to target children with services in hard to reach areas. The assessment report recognized, however, the absence of an overall policy for guidance to country offices on minorities programme formulation and recommended the design of such a framework for the consolidation and improvement of future work on minorities.

The agency organized a consultation on indigenous peoples' and minorities' issues in April 2009, in which I participated, as a major step towards providing a broad and interactive orientation into issues affecting minorities and minority children in particular. Senior UNICEF managers, practitioners, and external experts had the objective of identifying a policy framework and ways of strengthening programme guidance on minority issues, improving knowledge sharing, and promoting cooperation with international mechanisms and other partners.

Perhaps the most innovative approach to using and seeking implementation of the Declaration was the creation of the Forum on Minority Issues. The Forum has quickly become an extremely important opportunity to increase knowledge of the Declaration around the world, grow the constituency for implementation of the Declaration, amplify the voices of minority communities and to refine the UN's understanding of the issues facing those communities and the solutions they prioritize.

It was my privilege to guide the work of the Forum for three years in its focus on education, political participation and economic inclusion. It was a unique opportunity for a wide variety of stakeholders to come together to exchange views, experiences, good practices and to strategize together regarding how to ensure that minorities enjoy all their rights. The lively participation of minorities from all regions has been an important reminder of the exceptional wealth of expertise in minority communities, while at the same time highlighting the importance of support for minority groups and organisations--particularly at the grass roots level.

The Forums also offer new opportunities to gain the involvement of the treaty bodies, the regional organizations and the specialized agencies.

### **III. Future Opportunities**

There were, of course, a number of factors that limited the Mandate's ability to realize fully its potential. Those factors were primary the same that bedeviled all mandates that made up the Special Procedures: limited resources, insufficient staffing, less than stellar cooperation from States, no systematic way to follow-up on the recommendations.

Perhaps at this stage it is more useful to list the ways in which the potential of the Mandate might be maximized in the future:

- The recommendations put forward in the mission reports and in the thematic reports should be collated and analyzed along with the communications and all government responses. This may be a job best suited for an outside independent scholar.
- There should be much closer coordination between the Mandate and the Unit on Minorities and Indigenous Peoples.
- Given the fact that approximately 70% of current armed conflicts around the world raise and aspect of minority rights, the Mandate should report annually to the General Assembly.
- The OHCHR and all organs of the UN and specialized agencies should have a policy on minority rights and staff should all receive training.
- The Mandate should focus considerable attention on the development of strong interactions with regional bodies and mechanisms, in addition to its current good relations with the HCNM of the OSCE.
- Further attention should be placed on strengthening cooperation and coordination with the Treaty Bodies.
- Austria has been an important and faithful supporter of the Mandate. It would be extremely useful to broaden that support to other regional groups. A five member support group should be established which would include a Member State from each of the 5 regions.

- While during my tenure as the Mandate-holder, I had a number of informal meetings with the Secretary-General's Special Advisor on the Prevention of Genocide and Mass Atrocities; it would be efficacious to have a more formal institutional relationship and a protocol for the sharing of information.
- A Voluntary Fund for Minorities should be established.

It is my hope that the Forum will become stronger, and more institutionalized, yet retain its edginess and openness. Due to the range and depth of topics covered during the Forum, I would recommend that the Human Rights Council considers adding another day to the Forum. The Independent Expert could consider diversifying the format for the additional day. New and impactful ways should be developed to disseminate and encourage implementation of the Recommendations. I also call upon Member States to increase their financial and political support for the Forum. It has been encouraging to see the valuable participation of the United Nations mechanisms and specialized agencies. Hopefully their participation in the Forum will become more institutionalized, and that the Forum will become a vehicle for engaging regional human rights protection systems, possibly through convening a meeting each year in a region on a rotating basis.