

## Effective participation of persons belonging to minorities in law enforcement: Building an inclusive and responsive police force and judiciary

### Regional Expert Workshop

Bishkek, Kyrgyzstan, 18-19 October 2012

#### - concept note -

#### Background and normative framework

This year marks the 20<sup>th</sup> anniversary of the adoption in 1992 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Minorities Declaration), the document which sets essential standards and offers guidance for securing the rights of persons belonging to minorities. In order to commemorate the anniversary, the Office of the High Commissioner for Human Rights (OHCHR) is organising, throughout the year, events aimed at raising awareness both of the Minorities Declaration and of the rights of persons belonging to minorities worldwide. One of such events is the regional expert workshop on minorities and law enforcement and the judiciary in the Eurasian region<sup>1</sup>, which will take place in Bishkek, Kyrgyzstan in October 2012.

The expert workshop will build on the regional conference entitled “Advancing the Rights of Minorities in Central Asia - effective participation in public life” organised by OHCHR in Bishkek in June 2011, at which the participants from Central Asia explicitly identified the need to build the capacity of relevant stakeholders in the area of law enforcement and the judiciary. In the concluding statement by the participants of the conference, they welcomed further assistance of the international community in advancing minority rights in the region. Also feeding into the expert workshop will be good practices and guidance gathered by OHCHR through a series of regional consultations on effective practices in policing and minority communities, organised in the period ranging from 2008-2011. The outcome of these consultations is a booklet entitled *Effective Practices on Policing and Minorities*, which will be published soon.

The focus of the expert workshop was selected not only at the request of the participants of the 2011 regional conference<sup>2</sup>, but also as a priority area of work, identified by the OHCHR Regional Office for Central Asia. OHCHR has been increasing its work on minority issues in the region, bringing in minority rights experts and closely monitoring developments, while also following a sub-regional focus on promoting judicial reforms and capacity-building for the judiciary and/or law-enforcement agencies and civil society actors. The expert workshop also ties in with the OHCHR aim for the 2012-2013 biennium of advocating for institutional changes and the improvement of policy and practice of the governments of Kyrgyzstan, Kazakhstan and Tajikistan in their management of multi-ethnic societies and addressing issues of discrimination.

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<sup>1</sup> For the purposes of the regional expert workshop, the Eurasian region encompasses countries that share not only geographical proximity, but more importantly also the experience of transition and on-going efforts at reforming the law enforcement. Countries of the Eurasian region thus defined are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

<sup>2</sup> The conference brought together representatives of Governments, national human rights institutions, minorities, and civil society organizations (organisers invited participants from Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) and international experts to discuss possible ways of improving the effective participation of minorities in the Central Asia region in different spheres of life, with particular emphasis on their participation in public life.

With support from the EU Instrument for Stability, OHCHR plans to carry out comprehensive mapping and analysis of, inter alia, the representation of minorities in the judiciary and law enforcement bodies in Kazakhstan, Kyrgyzstan and Tajikistan and develop follow-up monitoring and advocacy initiatives. This data, if available at the time of the workshop, would be extremely instrumental not only in providing an overview of the situation, but in particular also as a starting point for discussions on developing concrete strategies and policies that will effectively address participation of minorities in law enforcement.

The expert workshop will focus on policing and the judiciary as regards a wider regional grouping, encompassing the following twelve countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. This approach will enable the participants to share a wider array of relevant experience and practices, while working together to identify ways forward to creating and maintaining a representative and effective police force and judiciary, inclusive of minorities and engaged in the protection of their rights.

Finally, the expert workshop will also benefit from the inputs provided by the OSCE High Commissioner on National Minorities (OSCE HCNM), OSCE Strategic Police Matters Unit, and the OSCE Office for Democratic Institutions and Human Rights (ODHIR). In this context the contribution of ODHIR is important in light of its experience in developing guidance for policing in multi-ethnic societies and implementing various capacity-building and training programmes in the region, including on administration of justice, such as the OSCE/ODIHR criminal justice forum for Central Asia<sup>3</sup>. Another contributor to the event is the UN Office on Drugs and Crime, a member of the UN Network on Racial Discrimination and Protection of Minorities, including through their work on the Handbook on police oversight, accountability and integrity<sup>4</sup> and Criminal justice assessment toolkit.<sup>5</sup>

### **Normative framework**

Protection of the rights of persons belonging to minorities is provided for under Article 27 of the International Covenant on Civil and Political Rights (ICCPR)<sup>6</sup> and Article 30 of the Convention on the Rights of the Child (CRC)<sup>7</sup>, which constitute the most important legally binding provisions on minorities. Inspired by these provisions and building on them, the Minorities Declaration sets essential standards and offers guidance for securing the rights of persons belonging to minorities, with particular focus on the four pillars of minority protection, namely protecting and promoting (i) existence, (ii) identity, (iii) effective participation of persons belonging to minorities and ensuring (iv) equality and non-discrimination.

With respect to effective participation, the Commentary to the Minorities Declaration<sup>8</sup> highlights that minorities should be involved (from the initial stages of decision-making) at the local, national and international levels in the formulation, adoption, implementation and monitoring of standards and policies affecting them. They must as a minimum have the right to have their opinions heard and fully taken into account before decisions which concern them are adopted. The Commentary notes that effective participation requires representation in legislative, administrative and advisory bodies and more generally in public life. It also refers to the Lund Recommendations on the Effective Participation of National Minorities in Public Life of the OSCE HCNM.

<sup>3</sup> OSCE/ODIHR criminal justice forum for Central Asia charts directions for reform (17. 6. 2010) URL: <http://www.osce.org/odihr/69446>

<sup>4</sup> Available at [http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability\\_Oversight\\_and\\_Integrity\\_10-57991\\_Ebook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf)

<sup>5</sup> You can find more information on the toolkit, most of which is available also in Russian at the URL: <http://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html>

<sup>6</sup> ICCPR Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

<sup>7</sup> CRC Article 30: In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

<sup>8</sup> Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. UN document E/CN.4/Sub.2/AC.5/2005/2

The process towards establishing a system of law enforcement that is both more effective and legitimate and representative of and responsive to the community as a whole (including minorities), and characterised by constant (monitored) efforts aimed at eliminating discrimination and combating exclusion, requires that several crucial elements be put into place:

- effective participation of minorities in decisions on all aspects of law enforcement
- a system of law enforcement that is representative of the society (recruiting and retaining personnel from minority communities)
- effective independent structures for supervision and accountability
- law enforcement reform needs to be part of a wider societal reform and efforts to ensure that minority rights are protected and promoted and which involves all stakeholders, including the civil society

In the Eurasian region, OHCHR has been highlighting the presence of problems such as minority participation, corruption, impunity, and accountability. The societal transition, experienced by the countries makes for a complex environment, in which addressing such issues is very challenging.

Most countries of the region also have experience with the reform of the police force, which could benefit from a new impetus and a re-focusing of the efforts also on the issue of minority participation within law enforcement and judiciary. As noted by the High Commissioner following her visit to Kyrgyzstan in July 2012, “discrimination, especially on ethnic, religious and gender grounds, remains a deeply problematic issue with ethnic and national minorities significantly underrepresented in the executive government and bureaucracy, law enforcement bodies and judiciary.” This assessment is valid for the countries of the Eurasian region. Looking at available data regarding minority participation, we can see that effective participation of minorities in law enforcement and the judiciary is yet to be achieved. Very few official statistics regarding the participation of minorities in law enforcement in the Eurasian region exist. However, available estimates show that effective participation of minorities is a crucial issue for the region.

Looking at the minority rights issues with respect to law enforcement and judiciary, as highlighted by the UN human rights bodies, we can also identify some of the most pressing issues in the Eurasian region, which the expert workshop will try to address:

- the need for human rights training of law enforcement officials (including the judiciary) (CERD in the consideration of Azerbaijan, Armenia, Belarus, Kazakhstan, Russian Federation, HRC and CERD in the consideration of Ukraine; CRC in the consideration of Turkmenistan; UPR Kazakhstan; CEDAW in the consideration of Armenia)
- the issue of (under)representation of minorities in law enforcement and temporary special measures to remedy this (CERD in the consideration of Moldova, CAT in the consideration of Ukraine; CERD in the consideration of Uzbekistan, SR Independence of Judges on Kyrgyzstan)
- the issue of arbitrary or disproportionately frequent identity checks, arrests, detentions, harassment of persons belonging to minorities, destruction of their identity papers, or searches of minority businesses by law enforcement authorities (CERD in the consideration of Moldova, the Russian Federation, Ukraine)
- the need to assess reasons for low number of complaints relating to racial discrimination, including whether it may be due to victims’ lack of awareness of their rights, fear of reprisals, limited access to available mechanisms, lack of confidence in the police and the judiciary, or the authorities’ lack of attention or sensitivity to cases of racial discrimination (CERD in the consideration of Azerbaijan, Moldova, Turkmenistan, Uzbekistan)
- the need for comprehensive and disaggregated data with respect to minorities - their participation in law enforcement or of minorities as victims or perpetrators of crimes (UPR Uzbekistan)
- the need for comprehensive anti-discrimination legislation (CERD in the consideration of Kazakhstan, CEDAW in the consideration of the Russian Federation, CRC in the consideration of Turkmenistan)

The participants will engage in a dialogue on how to tackle these and similar issues and share effective practices, they will try to identify ways in which they can further support the reform of law enforcement and judicial structures in their countries, making them representative, transparent and accountable, including through human rights training and gathering disaggregated data with respect to minorities. In addition, the participants will also be made aware of the work and more specifically of the recommendations of the Forum on Minority Issues, in particular as they refer to effective political participation (2<sup>nd</sup> session of the Forum), as well as the work of the Independent Expert on Minority Issues.<sup>9</sup>

### **Objectives and outcome**

The expert workshop will strengthen the knowledge of the participants in the area of minority rights protection while paying particular attention to minorities and law enforcement and the judiciary. They will share and discuss good practices and guidance in this area.

The outcome of the workshop will be a report reflecting the discussions and suggestions made at the workshop. The report will be made available to the relevant human rights mechanisms as well as to NHRIs, CSOs and other stakeholders in the region.

OHCHR will report on the workshop to the fifth session of the Forum on Minority Issues in November 2012 as well as to the recently established UN Network on Racial Discrimination and Protection of Minorities. OHCHR will also consider designing follow-up activities in light of the suggestions made and cooperation and capacity-building needs identified at the expert workshop.

### **Location, participants and methodology**

The workshop, organised by OHCHR in cooperation with the OSCE Office of the High Commissioner for National Minorities, will take place in Bishkek, Kyrgyzstan on 18 and 19 October 2012.

Participants, invited to attend the workshop, will be senior police officials, representatives of the ministries of the interior and justice, representatives of national human rights institutions, representative bodies for minorities, civil society of the participant states, representatives of international organisations, and internationally renowned experts on law enforcement, judiciary and minority rights.

The two-day workshop will consist of several thematic segments. The participants will learn about the human rights legal standards of minority protection and discuss good practices, they will engage in interactive discussions aimed at facilitating a free-flowing exchange of information on minority representation in law enforcement and the judiciary. The meeting will be facilitated by a chair, guiding the discussions and making sure the focus of the meeting will be kept throughout.

The workshop will be conducted in English and Russian with simultaneous interpretation for these two languages.

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<sup>9</sup> One of the recommendations aimed at Governments to come from the 2<sup>nd</sup> session of the Forum on Minority Issues is “Governments should adopt a policy statement that recognizes the diversity within their respective societies with respect to race, ethnicity, religion and language, and that highlights the importance of ensuring that this diversity is indeed reflected as widely as practicable in public institutions and bodies, including national parliaments, the civil service, the police and the judiciary.” (A/HRC/13/25, para.10) Available in the OHCHR publication *UN Forum on Minority Issues Compilation of recommendations of the first four sessions 2008 to 2011*.