

Pamphlet No. 3

MINORITIES AND THE UNITED NATIONS: THE CHARTER-BASED SYSTEM OF THE UN AND HOW TO USE IT

Summary: The most important UN bodies for minorities are the Sub-Commission on the Promotion and Protection of Human Rights and the Commission on Human Rights. (The Working Group on Minorities of the Sub-Commission is discussed in Pamphlet No. 2). Each of these bodies has a number of avenues through which minority concerns may be made known to UN experts and government representatives. In addition, communications alleging gross violations of the human rights of minorities may be filed under the 1503 procedure.

Introduction

The authority and competence of UN bodies to consider human rights issues generally, and their status in particular countries, are derived either from multilateral treaties to which a State may be a party or from the constitutional authority of the United Nations itself. Treaty-based procedures are discussed in Pamphlet No. 4; this pamphlet outlines ways of addressing the human rights situation in any member State of the United Nations through mechanisms created by UN organs. These mechanisms are normally referred to as "Charter-based", since the authority to create them stems from the UN Charter.

The United Nations is a political body that, at most levels, is made up of government representatives. Unlike the treaty-based bodies, which are composed of independent experts, members of the Charter-based bodies receive instructions from their governments and take positions accordingly. The one exception to this practice is the Sub-Commission on the Promotion and Protection of Human Rights (Sub-Commission), which is discussed below. In addition, non-governmental organizations (NGOs) have access to many of these bodies and, although they do not enjoy the right to vote, they may participate in public discussions about human rights in a variety of ways.

The UN bodies responsible for human rights matters are arranged in a hierarchy, from the UN General Assembly through to individual rapporteurs and small working groups. (The overall structure of the UN is described in Pamphlet No. 1.) Below the General Assembly and its constituent committees is the Economic and Social Council (ECOSOC). Subsidiary to that are the Commission on Human Rights (Commission), the Commission on the Status of Women (Women's Commission), and the newly created Permanent Forum on Indigenous Issues. The Sub-Commission is below the Commission. The Sub-Commission meets for three weeks annually in August and reports to the Commission, which meets for six weeks in March-April. The Commission reports to ECOSOC, which usually meets in June. Annual sessions of the General Assembly are normally held in New York, September through December. The Commission and Sub-commission meet in Geneva, Switzerland, which is also home to the Office of the High Commissioner for Human Rights. The Office is the branch of the UN Secretariat that is primarily responsible for human rights matters.

This leaflet provides information on each of these UN human rights bodies and offers advice on how minorities can participate in their meetings to raise awareness of issues of particular concern to minorities.

Sub-Commission on the Promotion and Protection of Human Rights

The Sub-Commission, as it is universally known, is composed of 26 individual experts, nominated by their governments and elected by the Commission. Individual Sub-Commission members may serve as “rapporteurs” who prepare studies for the Sub-Commission on particular topics. The Sub-Commission has working groups on minorities, communications (discussed further below), indigenous populations, and contemporary forms of slavery.

The Sub-Commission was conceived of as a kind of “think tank” for the Commission. Its tasks are to identify, initiate, carry out, and debate studies on human rights topics. Until 1999, it was named the Sub-Commission on Prevention of Discrimination and Protection of Minorities, but its current name more accurately reflects the broad range of its competence. The Sub-Commission’s annual agenda always includes an item on the protection of minorities, and it receives a report each year from its Working Group on Minorities, which normally meets every year for one week in May. You should consult Pamphlet No. 2 in this series, which discusses the Working Group in detail. It is through the Working Group that many minority issues are brought to the attention of the Sub-Commission, although new issues can also be raised during the Sub-Commission’s sessions each August.

The Sub-Commission’s activities include general debates - mainly thematic, recommendations for action forwarded to the Commission on Human Rights, and the adoption of resolutions. The Sub-Commission is viewed by many NGOs as *their* forum, as NGOs with consultative status can participate in the discussions and use attendance at the Sub-Commission as an opportunity to speak to a wide range of people on matters of concern. Many Sub-Commission members are interested in issues relating to minorities; and NGOs that are not focused on minorities may also be prepared to take up the cause of minorities. However, the open approach to accreditation that exists at the Working Group on Minorities does not apply to the Sub-Commission. Only those NGOs that have formal “consultative status” with ECOSOC are allowed to submit documents and give oral presentations at Sub-Commission sessions.

Information about how to obtain formal NGO status with ECOSOC is available from the Non-Governmental Organizations Section, Department of Economic and Social Affairs, Room DC1-1480, United Nations, New York, NY 10017, USA; Tel: +1 212-963-4842; Fax: +1 212-963-9248. In Geneva, you may wish to contact the NGO Liaison Office, Tel: +41 22-917-21-27; Fax: +41 22-917-05-83. Organizations applying for consultative status must fill in a questionnaire, which, when completed, is submitted to the Committee on Non-Governmental Organizations. This Committee makes its recommendations to ECOSOC, which takes the final decision. Please consult the web site www.unog.ch (UN and NGOs) for more information.

A lack of consultative status can be a serious impediment for those wishing to work within the United Nations system, but it is usually relatively easy to consult with accredited NGOs and provide them with information. Some NGOs may even be willing to use their speaking

slot under the relevant agenda item to present your information. Perhaps the best known NGO concerned with minority issues is the London-based Minority Rights Group, which frequently participates in sessions of both the Sub-Commission and its Working Group on Minorities. The Geneva-based International Service for Human Rights also is prepared to assist those unfamiliar with the UN but who wish to participate in meetings in Geneva or New York. Other non-governmental organizations that may assist in providing advice and support to representatives of minorities are: the International Centre for Ethnic Studies (Colombo, Sri Lanka) and the International Movement Against All Forms of Discrimination and Racism (Geneva).

Statements are made in the order in which people ask to speak, but priority is always given to members of the Sub-Commission. Thus, you should put your name down on the speaker's list under the relevant item as soon as possible. You should plan to be available for several hours before and after your scheduled speaking time to make sure that you are in the room when you are called to speak. If you are not present, you may lose your turn and not have a chance to make your statement. If you leave the meeting for a short period, try to have someone else there to read your speech in case you are called unexpectedly.

Clearly, the main benefit of attending the Sub-Commission is the opportunity to convey your concerns on minority issues to a wide range of human rights activists. This opportunity exists not only in the formal context of speaking or submitting documents to the Sub-Commission itself, but also by contacting NGO representatives and other interested representatives and organizations outside the formal meetings. Many alliances are formed over coffee or lunch, and Geneva is an excellent venue in which to exchange experiences with other NGOs and individuals with whom you may share common concerns.

Participation in Sub-Commission sessions is governed by a number of rules (related to length of oral and written submissions, agenda items, etc.), of which any NGO in consultative status should be aware. Both country-specific and issue-specific submissions are permissible, and it is often a good idea to try to coordinate strategies with other NGOs to avoid duplication of efforts. However, personal participation in Sub-Commission sessions is a time-consuming, expensive, and relatively demanding effort, and you should undertake it only after seeking the advice of those with experience in such matters and determining that the potential benefits outweigh the costs.

Commission on Human Rights

The Commission on Human Rights is the largest and most important UN human rights forum. More than 3,000 people generally participate in the Commission's work during its six-week sessions, which are held in Geneva in March and April. The Commission is composed of 53 member States, each represented by a government delegation. Most of the remaining UN member States attend the Commission as observers; they also have the right to speak. A large number of NGOs, representing virtually every human rights cause on the globe, also participates in Commission sessions.

(The Commission should not be confused with the Human Rights Committee, an entirely different body that was created under the International Covenant on Civil and Political Rights. The latter is composed of independent experts whose task is to monitor compliance with the provisions of the Covenant. It is described in Pamphlet No. 4.)

The agenda of the Commission includes just about every human rights issue imaginable, and the Commission adopts approximately 100 resolutions and decisions each year. Those resolutions that express concern over or even condemnation of the human rights situation in a particular country are usually the subject of intense lobbying by governments. The atmosphere is much more like that of the General Assembly than the more low-key human rights bodies established by the various human rights treaties (see Pamphlet No. 4). The Commission's deliberations include hours of formal speeches, and thousands of pages of documentation are distributed.

As in the Sub-Commission, statements are made in the order in which people ask to speak, but priority is always given to members of the Commission, observer States and organizations, and lastly to NGOs with ECOSOC status. Thus, you should put your name on the speaker's list under the relevant item and pay the same amount of attention to the speaking order as at the Sub-Commission, described above. Formal participation in the Commission is limited to governments and those NGOs that have consultative status with the United Nations. While NGOs are essential in providing information and applying political and moral pressure, their influence is generally less significant at the Commission than at the Sub-Commission. At the same time, however, many of the procedural innovations and substantive issues addressed by the Commission over the years have been influenced by NGO initiatives and lobbying. The NGOs that are most knowledgeable about the way the Commission works tend to be larger organizations, such as Amnesty International, Fédération Internationale des Droits de l'Homme, Human Rights Watch, and the International Commission of Jurists. But NGOs that focus on a single issue or country may also have an impact on the Commission if the work of those NGOs is carefully prepared.

Since the Commission addresses a wide range of human rights issues, minority rights are rarely at the forefront of its debates. Minority issues are a sub-item of the Commission's agenda, sharing time with matters relating to internally displaced persons, migrants, disabled persons, contemporary forms of slavery, and other issues concerning vulnerable groups. Issues pertaining to minorities are often raised under other agenda items, such as those relating to racial discrimination, religious intolerance, and development, so there are ample opportunities for minority representatives to contribute to the Commission's work.

Governments decide all the business of the Commission. You may wish to use the Commission as a venue in which to initiate a dialogue with your government that could be continued at home. Of course, you don't need to go to Geneva to influence your government in this way, though you do need to follow the issues closely. Given that government delegations operate on instructions from their capital, lobbying the foreign ministry is often as effective as appearing in Geneva. On the other hand, only your actual presence will enable you to respond to last-minute developments or unexpected resistance to an action you might favour.

Speaking formally to the Commission may attract attention because of the Commission's position as the most important UN human rights forum. At the same time, however, yours will be competing with a great number of other issues for the attention of governments and the media. As at the Sub-Commission, the Commission is a great place to meet and network with other NGOs, and it offers a good opportunity to make your concerns known to a much wider constituency, although progress is often slow and difficult to measure. Few, however, can afford to attend the full six-week session unless they are based in Geneva.

Many proposals for studies to be conducted by the Sub-Commission, including those on minorities' issues, may require the endorsement of the Commission on Human Rights, so NGOs may find it useful to follow the decision-making work of the Commission.

Rapporteurs and Working Groups

The work of the Commission on Human Rights is not limited to its annual meeting in Geneva. The Commission has a host of working groups that meet to draft new standards, such as the one that drafted the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and another that is now drafting a declaration on the rights of indigenous peoples. These may meet in conjunction with Commission sessions or at different times. The web site of the Office of the High Commissioner for Human Rights (www.unhchr.ch) provides a calendar of meetings. NGO participation in working groups is often easier and less formal than participation in plenary sessions of the Commission.

In addition to standard setting, an important element of the Commission's work is the "thematic and country mechanisms" it has created to investigate and report on human rights problems and to offer recommendations for measures to be taken, including through technical assistance, to address those problems.

Among the possible outcomes of the Commission's consideration of the human rights situation in specific countries are:

- appointment of a Special Rapporteur on the country, who will prepare a public report that will be submitted to the Commission the following year
- discussion and/or adoption of a resolution on the country
- adoption of a "president's statement" on the country
- engaging in a serious debate about the human rights situation in a country, during which the country's representative may exercise a right of reply, but stopping short of considering a formal resolution.

The thematic or country mechanisms usually consist of either an individual expert or a working group of five members (apportioned geographically). The individual experts are known by a variety of names, the most common of which is "Special Rapporteur". Whatever their title, they perform similar functions. Some of these mechanisms deal with particular countries while others are concerned with particular thematic issues, such as human rights defenders, freedom of expression, migrants, religious intolerance, internally displaced persons, housing, food, education, the right to development, summary and arbitrary executions, torture, enforced disappearance, or violence against women.

Each of the Special Rapporteurs gathers information, either from NGOs or pursuant to specific requests from governments. This information is incorporated into a report that is transmitted each year to the Commission. These reports often include a fairly comprehensive summary of the allegations made to the Special Rapporteur about violations relating to the issue or country for which the Special Rapporteur is responsible. At times, the Special Rapporteur may visit a country—with its government's consent—to look at a

situation in more depth. The reports may contain comments and recommendations on a government's human rights performance.

There are now approximately 15 "country mechanisms" and 20 "thematic mechanisms" dealing with a wide range of human rights issues. A list of them can be found on the OHCHR web site (www.unhchr.ch) under "OHCHR Programme, Extra-conventional mechanisms". Each of these Rapporteurs or working groups can be sent information c/o the High Commissioner's Office in Geneva, Switzerland. Several of the thematic mechanisms provide a particular format in which to submit information, including those whose mandates allow them to take "urgent actions". These include the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on violence against women; the Working Group on Arbitrary Detention; the Working Group on Enforced and Involuntary Disappearances; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative on Human Rights Defenders. To send information, use the following Fax numbers: +41 22-917-9006 or 9003.

Other mechanisms have no special format to follow when submitting information, though the information should be as reliable and convincing as possible. If your concern is with an individual victim, include basic information, such as the name of the victim (with identity number, if possible), date and place of the incident, and some indication of the suspected identity of the perpetrators or their official status. Send information via Fax number: +41 22-917-9006.

Information may be submitted at any time, but given that the Special Rapporteur would want to include any government response to the allegations and that reports must be submitted to the Commission during March-April, it is best to submit the information by October or November of the preceding year, at the latest. Information submitted after this time may not be addressed until the following session of the Commission, one year later.

Subsequent developments should always be brought to the attention of the Rapporteur or group, whether it tends to disprove the allegation or confirm it. This helps the mechanism to act more effectively and avoid mistakes.

Confidential Communications under the 1503 Procedure

It is possible for individuals and NGOs to make complaints to the United Nations about widespread human rights abuses in any country. The process now known simply as the "1503 procedure" (named for the number of the Economic and Social Council resolution that created it), was established in 1970 and revised in 2000 to enhance its effectiveness, although it is still likely to be useful to minorities in certain situations.

The procedure was created to consider only situations of a "consistent pattern of gross and reliably attested violations of human rights". It is *not* available to deal with a single violation or victim, nor with violations that are not sufficiently serious. The sort of violations most commonly considered are widespread acts of discrimination, unfair trial, torture, killings by government authorities, and arbitrary detention (although 1503 complaints are not limited to these violations).

As with other human rights communications, a 1503 complaint should be as comprehensive and factual as possible. The working groups that consider 1503 communications initially organize their work based on the Universal Declaration of Human Rights, so you should indicate which articles of the Declaration you believe have been violated. Most submissions consist of a cover letter summarizing the allegations, the detailed body of the communication, and annexes setting forth relevant documents, witness statements, etc.

Apart from the requirement of alleging a pattern of sufficiently serious violations, there are few procedural requirements that are difficult to overcome. If you decide to use the procedure, you can; it does not matter whether you are an individual or an NGO, a victim, or only someone with “reliable knowledge of the violations,” as long as the information is not based exclusively on media reports. There is no restriction on who may submit a communication, although well-known NGOs may be more likely to have their communications considered favourably. Communications should be submitted to the Office of the High Commissioner, Sub-Commission on the Promotion and Protection of Human Rights, c/o Support Services Branch, OHCHR-UNOG, 1211 Geneva 10, Switzerland.

The primary disadvantage of the 1503 procedure is that it is entirely confidential; in theory, the applicant is not even told what disposition is made of the communication. It can also be lengthy, as communications are initially considered by a five-person working group of the Sub-Commission, which meets annually after the August Sub-Commission session. Those communications that are accepted are then forwarded to a working group of the Commission that determines which are then forwarded to the Commission, normally with recommendations to be discussed by the full Commission. The entire process takes a minimum of several months.

The ultimate action available to the Commission is initiation of a thorough study of a situation or creation of an ad-hoc committee. However, the latter requires the consent of the government and has never been invoked. The more realistic possible outcomes of a 1503 complaint are:

- To discontinue consideration of the matter when further consideration or action is not warranted
- To keep the situation under review in the light of any further information received from the government concerned and any further information that may reach the Commission under the 1503 procedure
- To keep the situation under review and to appoint an independent expert
- To discontinue consideration of the matter under the confidential procedure governed by Council resolution 1503 (XLVIII) in order to consider the same matter under the public procedure of Council resolution 1235 (XLII)

Despite the relatively mild nature of most of these potential actions, governments try vigorously to avoid being placed under scrutiny under the 1503 procedure, perhaps because even a request for information suggests that there is some evidence of “gross violations”.

The Chairman of the Commission makes a public statement each year indicating which countries have been considered confidentially and which countries are no longer under consideration. Unfortunately, the substance of the communications is not divulged. The situations in 80 countries have been considered by the Commission since the procedure's inception, and, on average, the Commission spends two to three days in private session each year considering between five and ten different countries.

Putting together a communication that will be taken seriously requires significant time and energy, and the ultimate "reward" may be small. Minority situations have been considered under the procedure; it is another means of bringing quiet diplomatic pressure to bear on a government. Many NGOs believe that more can be accomplished by focusing on more public initiatives, but you should keep the 1503 procedure in mind, particularly since many minority issues constitute widespread or official discrimination against minority groups and not just individual human rights violations.

Other UN Bodies

The **Commission on the Status of Women** consists of 45 government representatives and meets annually in New York. Its primary functions are discussion, review of women's issues, and following-up on recommendations of the 1995 Fourth World Conference on Women.

The **Economic and Social Council** and the **General Assembly** are important policy-making bodies, although ECOSOC generally follows the lead of the Commission on Human Rights on both human rights issues, generally, and minority rights, in particular. The General Assembly and the Security Council are the highest bodies in the United Nations, but there is little that an individual or NGO can do directly at the General Assembly. NGOs have no right to participate in its debates or other activities. The best way to influence the General Assembly is by raising concerns with your own foreign ministry and encouraging your government to take supportive positions on issues of concern to minorities when the General Assembly meets.

High Commissioner for Human Rights

The Office of the High Commissioner for Human Rights, which is housed in a building separate from UN Headquarters in Geneva, is responsible for servicing and supporting nearly all of the UN's human rights activities. The UN Secretariat's job is to promote and protect human rights, as defined in the High Commissioner's mandate and other mandates. You should not hesitate to contact relevant Secretariat officials directly for advice.

Further Information and Contacts

All the UN bodies and special procedures described in this pamphlet may be contacted in care of the Office of the UN High Commissioner for Human Rights:

OHCHR-UNOG
Palais des Nations
1211 Geneva 10
Switzerland

The visiting address of the Office is Palais Wilson, 52 Rue des Pâquis, 1201 Geneva 1.

The UN “hot lines” for contacting rapporteurs about a situation that requires urgent action are:

Fax: +41 22-917-9006 and +41 22-917-9003

The High Commissioner’s Office maintains an excellent web site with information about upcoming meetings, lists of rapporteurs, and general information about both the Charter-based and treaty-based mechanisms serviced by the Office. The web site is a good place to begin if you would like an overview of the UN’s human rights activities. Its address is: www.unhchr.ch

Among NGOs that can be useful in facilitating your stay in Geneva and participation in sessions of the Commission or Sub-Commission are:

International Service for Human Rights (for information on coverage of minority issues at all United Nations meetings, training, and strategy) - Tel: +41 22-733-5123;

Fax: +41 22 -733-0826; e-mail: ishr@worldcom.ch ; web site: www.ishr.ch

Mandat International (for accommodation, word-processing, documentation centre, office space, fax and e-mail services, and photocopying) - Tel: +41 22-959-8855;

Fax: +41 22-959-8851; e-mail: info@mandint.org ; web site: www.mandint.org

Geneva International Welcome Centre (for accommodation and information on hospitals, doctors, banks, restaurants, and other services in Geneva) - Tel: +41 22-918-0270;

Fax: +41 22-918-02-79; web site: www.geneva.ch

There are several publications that describe the bodies and procedures discussed in this pamphlet in greater detail. These include International Service for Human Rights, *Info-Pack: Information on UN Human Rights Procedures* (Geneva, updated semi-annually); G. Alfredsson and E. Ferrer, *Minority Rights: A Guide to United Nations Procedures and Institutions* (Minority Rights Group and Raoul Wallenberg Institute, 1998); H. Hannum, *Guide to International Human Rights Practice* (Transnational, 1999).