



**REPORT  
ON THE LINGUISTIC RIGHTS OF  
PERSONS BELONGING TO  
NATIONAL MINORITIES  
IN THE OSCE AREA**

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Organization for Security and Co-operation in Europe  
**High Commissioner on National Minorities**

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## I. Introduction

Under the terms of the 1992 Helsinki Document of the Conference on Security and Cooperation in Europe, the High Commissioner on National Minorities is "an instrument of conflict prevention at the earliest possible stage." His specific mandate is to serve as a mechanism of early warning as well as early action for those "national minority issues which . . . have the potential to develop into a conflict" within the CSCE (now-OSCE) area. Through sustained consultations with and recommendations to governments of OSCE participating states and in coordination with the Chairman-in-Office and other mechanisms of the OSCE, the High Commissioner attempts to resolve minorities problems in a number of countries.

Since the entry into office of the current High Commissioner in January 1993, he has found that the issue of linguistic rights for persons belonging to national minorities has assumed great importance in many OSCE states. This stems from the centrality to the identity of many persons belonging to national minorities of their ability to use their own language freely. For most minorities, language, as much as if not more than any other attribute of identity (such as common religion or history), serves as a means of unity of the group and source of self-identification of the individual. The enjoyment and preservation of the minority culture turns upon the freedom to transmit ideas, customs, and other indicia of culture in the original language of the minority. Their ability to speak that language generally distinguishes them from the majority group in OSCE states.

Each state within the OSCE faces a different set of issues concerning linguistic rights, and no two states have adopted the exact same set of policies. Governments within the OSCE have recognized in a number of ways the importance of linguistic rights for the enjoyment of minority rights. Some have taken special measures to protect and promote minority languages used in their territories. Problems have arisen, however, where governments have sought to limit the possibility of persons belonging to minorities to speak their own language through national legislation or other practices, or have tolerated actions by others with such an effect.

The tensions created by situations in which persons belonging to national minorities are not afforded sufficient rights have prompted the High Commissioner to involve his office in a number of linguistic-related issues as part of his conflict-prevention mandate. Governments that enact or tolerate such policies and practices generally justify them based on the view that the majority language, often adopted as the official or state language, is an important unifying factor in the state and use of competing languages would prevent or disrupt national unity. This argument is especially used when the national minorities, together or separately, constitute a significant proportion of the overall population. Yet international law does provide a variety of rights to national minorities to use their language without interference. The OSCE has itself articulated, reiterated, and elaborated upon these rights in a number of important documents, most notably in the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension. States may protect those rights through numerous different approaches.

As part of the High Commissioner's mandate for conflict prevention and at the suggestion of some states, it was determined in 1996 that a comprehensive approach to the issue of linguistic rights would be useful. An analysis and comparison of the laws and policies of all the participating states, along with consideration of the applicable legal standards, would, it was hoped, provide governments with a sense of the numerous options for fulfilling their commitments in this area as well as an understanding of those policies that fall short of those standards. Such a study could heighten awareness among governments of the importance of this issue and the possibilities for protection of linguistic rights as a means of ensuring domestic tranquility and human rights. The result was a decision to conduct a survey of OSCE state policies regarding linguistic rights and compile the results in a public report of the High Commissioner.

## II. The Process of Gathering Information

The High Commissioner's mandate (paragraph 23) authorizes him to collect and receive information regarding the situation of national minorities from any source, other than those that practice or publicly condone terrorism or violence. After consultation with experts in the area of linguistic rights, it was determined that a series of nine questions would be posed to OSCE participating states.<sup>1</sup> These questions appear in the Appendix

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<sup>1</sup> The government of the Federal Republic of Yugoslavia (Serbia-Montenegro) was not surveyed because of the suspension of its membership in the Organization; the Holy See was not sent the questionnaire because of its unique political status and the extraordinarily small number of permanent residents.

to this report and are also repeated before the analytical summary of responses that appears in Part IV of this report. The questions seek information on four fundamental aspects of linguistic rights:

- the status of particular languages in the state;
- the extent of the rights of and possibilities for persons belonging to national minorities to use their language with administrative and judicial authorities of the state;
- the role of minority languages in the educational curriculum, in particular the extent to which students have the opportunity to learn minority languages and cultures and the extent to which they may receive their education in their minority language; and
- the access for persons belonging to national minorities to public media in their language.

By letter dated 10 December 1996, the High Commissioner sent the questionnaire to the Ministers of Foreign Affairs of the OSCE participating states. Most replies were received in the first half of 1997, with a smaller number arriving in the fall of 1997. In some situations, the High Commissioner sent reminders to governments that had not responded. All governments to which the questionnaire was directed have replied to it, with the exception of two states, Albania and Belgium. In addition, three states – Iceland, Liechtenstein, and Luxembourg – having stated that they did not have any national minorities, did not provide answers to the questions. (Other states asserting that they lacked national minorities chose to answer some or all of the questions nonetheless.) The full text of the replies of the 51 responding states are reproduced in the Annex to this report, which is published as a separate volume.

The analysis and comparisons that follow are based solely upon the responses of governments to this survey. Non-governmental sources were not consulted, and official governmental sources were not examined unless they were included as annexes to the responses provided by governments. As a result of this methodological decision, the High Commissioner has had to take account of five factors inherent in the form of information-gathering used here:

1. The demographic aspects of each state with respect to the presence of minorities varies significantly across OSCE participating states, including with respect to the number of persons belonging to national minorities, the number of minority groups, and their geographic concentration. One confronts a range of situations, from multilingual states whose linguistic groups are not regarded as minorities, to states with only a small number of persons belonging to national minorities, to those with many such persons and minority groups. In addition, states face different economic situations which can affect their policies in this area. The questions were worded broadly enough to cover all OSCE participating states, although the answers reflect the range of their situations.

2. Different states provided significantly varying levels of responsiveness and detail in their replies to the questionnaire. These ranged from the three states noted above that stated only that they lacked any national minorities or national minority languages, to substantial responses describing laws, policies, and practices in great detail, sometimes with accompanying documentation.<sup>2</sup> Some states chose to combine their answers to several questions; some chose to answer some but not all questions. Obviously, the description of a government's policies is only as complete and accurate as that provided in its official response. As a result, perfect comparisons are impossible.

3. Apart from the varying level of detail, the range of options and practices undertaken by states necessitates some generalizations and groupings for comparative purposes. Such groupings do not always reflect differences among states, but they are necessary in order to provide some useful form of comparative analysis. To gain a complete picture of the responses of the states, readers are thus encouraged to refer to the full text responses published in the Annex to this report.

4. The analysis is limited to the laws, policies, and practices of the state as reported by its government. It does not provide an independent examination of the actual practices within the state, nor an evaluation of the specific context within which laws and policies have been adopted and are applied in each state. Although the

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<sup>2</sup> In this context, it should be noted that two states did not answer the questions specifically, but rather attached reports they had previously prepared for other purposes: Luxembourg, which attached its 1996 report to the UN Committee on the Elimination of Racial Discrimination, and United States of America, which attached its 1994 report to the UN Human Rights Committee. These reports have been examined and in some cases provide answers to the questions in the questionnaire.

High Commissioner has focussed on such issues in particular states within the OSCE as part of his conflict-prevention function, it is not the purpose of this study to assess the compatibility of each state's domestic law and practice with international standards. (Indeed, although OSCE commitments are shared by all OSCE participating states, specific legal obligations may vary according to the treaties to which each state is party.) Rather, as noted, the aim of this study is to reveal the range of existing practice among OSCE participating states and offer general commentary on it.

5. The results discussed in this report are current as of the date of the reply received, in most cases the first half of 1997. Because of the constraints of time and the desire to avoid another round of requests to capitals, no updates were sought from governments. It is thus recognized that certain of the practices as described in this report may no longer reflect governmental policy. The High Commissioner is, of course, aware of legislative reforms under way in a number of states.

### III. Overview of International Standards Regarding Linguistic Rights

The linguistic rights of persons belonging to national minorities are the subject of a variety of international instruments. This section of the report describes those instruments in general insofar as they concern linguistic rights. These provisions will be examined in more detail in the context of the discussion of the individual questions.

#### A. OSCE Instruments

The most significant attempt to create standards for the protection of persons belonging to national minorities that also involve linguistic rights is the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension. As examined further below, the Copenhagen Document addresses a number of issues, including non-discrimination, use of the mother tongue, and education of and in the mother tongue. Although not a treaty, the Copenhagen Document has both political and legal significance due to its adoption by consensus by the OSCE participating states. Its political significance lies in the willingness of OSCE states to accept that the protections afforded to national minorities – including those pertaining to linguistic rights – are worthy policy that contribute to the goals of the Organization in the human dimension: "human rights, fundamental freedoms, democracy and the rule of law."<sup>3</sup> The OSCE has long held that violation of political commitments is as unacceptable as any violation of international law, and the OSCE is as concerned with violations of these instruments as with those of a legally binding nature. The importance of adherence to the Copenhagen Document has been repeatedly invoked in subsequent documents of the OSCE. The Helsinki Final Act also includes a duty to uphold international law.

#### B. Treaties

In addition to the standards declared by the OSCE, OSCE participating states may be parties to one or more of three distinct groups of treaties, with legally binding obligations: universal agreements; European agreements; and special agreements, usually at the subregional and bilateral levels, that address minority issues. The principal universal agreements are the International Covenant on Civil and Political Rights ("ICCPR")<sup>4</sup> and the International Covenant on Economic, Social and Cultural Rights ("ICESCR"),<sup>5</sup> both concluded in New York in 1966. While their focus is not upon minority rights in particular, a number of their provisions have special relevance for linguistic rights of persons belonging to national minorities. Fifty-one OSCE states are parties to the ICCPR; the same 51 are also parties to the ICESCR.<sup>6</sup>

The principal European agreements are the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR")<sup>7</sup> and the 1995 Framework Convention for the Protection of National Minorities ("Framework Convention"), both concluded under the auspices of the Council of Europe.<sup>8</sup> The

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<sup>3</sup> 1991 Document of the Moscow Meeting of the Conference on the Human Dimension, para. 1.

<sup>4</sup> 999 UNTS 171.

<sup>5</sup> 993 UNTS 3.

<sup>6</sup> All states except Andorra, Holy See, Kazakstan, and Turkey.

<sup>7</sup> ETS No. 5, 213 UNTS 221.

<sup>8</sup> ETS No. 157. Also of significance is the 1992 European Charter for Regional or Minority Languages. It is

former parallels in many respects the ICCPR, while the latter is the first modern pan-European convention aimed specifically at the protection of persons belonging to national minorities and contains a number of articles related to linguistic rights. Forty OSCE states are parties to the ECHR;<sup>9</sup> 23 OSCE states are parties to the Framework Convention.<sup>10</sup>

The third set of agreements are special agreements between European states that are not meant to be adopted at a pan-European or universal level. These include those post-World War I and II treaties still in force that address national minorities, such as the 1923 Treaty of Lausanne between Greece and Turkey<sup>11</sup> and the 1947 Treaty of Peace with Italy.<sup>12</sup> Equally significant are recent treaties between various neighboring states in the OSCE that contain provisions on minorities.<sup>13</sup> Some of these treaties, e.g., Romania-Hungary and Slovakia-Hungary, include by incorporation Council of Europe Recommendation 1201 on an Additional Protocol to the ECHR on the Rights of National Minorities (although the Recommendation itself was rejected by the Council of Europe Committee of Ministers). Also of note is the Agreement Establishing the Commonwealth of Independent States<sup>14</sup> and the 1994 CIS Convention Guaranteeing the Rights of Persons Belonging to National Minorities.

These three groups of international agreements do not exhaust the applicable treaty law on linguistic rights. A number of other conventions contain general provisions on minority rights, including the 1960 UNESCO Convention Against Discrimination in Education,<sup>15</sup> the 1958 International Labor Organization Convention (No. 111) concerning Discrimination in respect of Employment and Occupation,<sup>16</sup> the 1965 International Convention on the Elimination of All Forms of Racial Discrimination,<sup>17</sup> and the 1989 Convention on the Rights of the Child.<sup>18</sup>

### C. Customary International Law

Equally binding upon states is customary international law, which is relevant insofar as it pertains to protection of persons belonging to national minorities. Customary law refers to those rules backed by the consistent practice of states with the requisite understanding by them that the behavior is legally required (opinio juris).<sup>19</sup> In the area of human rights, a number of norms, including some that affect minorities, are

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to be noted that "the Charter's overriding purpose is cultural [and it] sets out to protect and promote regional or minority languages, not linguistic minorities." Council of Europe, European Charter for Regional or Minority Languages, Explanatory Report, paras. 10-11.

<sup>9</sup> Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, and United Kingdom.

<sup>10</sup> Armenia, Austria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Liechtenstein, Malta, Moldova, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Spain, the former Yugoslav Republic of Macedonia, Ukraine, and United Kingdom.

<sup>11</sup> 28 LNTS 11.

<sup>12</sup> 49 UNTS 3.

<sup>13</sup> A representative sample may be found in Fernand de Vareennes, Language, Minorities and Human Rights 352-80 (1996).

<sup>14</sup> 8 December 1991, 31 ILM 138 (1992). See especially art. 3.

<sup>15</sup> 429 UNTS 93.

<sup>16</sup> 362 UNTS 31.

<sup>17</sup> 660 UNTS 195.

<sup>18</sup> G.A. Res. 44/25, 20 November 1989, UN GAOR, 44th Sess., Supp. No. 49, at 166, UN Doc. A/44/49 (1989).

<sup>19</sup> North Sea Continental Shelf (FRG/Den., FRG/Neth.), 1969 ICJ 3, 45.

regarded as customary international law. It is worth noting, for instance, that the UN Human Rights Committee established under the ICCPR has stated that the right of minorities to enjoy their own culture, profess their own religion, or use their own language represents customary international law.<sup>20</sup> It is less clear, however, whether any of the more detailed OSCE standards or regional practices represent custom as well.

#### D. Other Documents

Alongside the standards noted above are other significant documents that seek to protect linguistic rights, though without creating any binding legal obligations upon states. At the universal level, the UN General Assembly adopted in 1992 the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities ("1992 UN Declaration"), which sets forth some detailed provisions that attempt to address many issues related to minorities that are not covered by the ICCPR or ICESCR.<sup>21</sup> Within Europe, at the subregional level, the 16 states of the Central European Initiative have elaborated an Instrument for the Protection of Minority Rights.<sup>22</sup>

At the European level, the High Commissioner has attempted to provide guidance to states on desirable policy through the convening of two conferences of independent experts on minority rights who provided a series of recommendations. The 1996 Hague Recommendations Regarding the Education Rights of National Minorities and the 1998 Oslo Recommendations Regarding the Linguistic Rights of National Minorities attempt to elaborate upon the various existing legal and other documents to provide clear guidance to states on how to implement OSCE minority commitments.<sup>23</sup> Although these Recommendations are formally non-governmental in origin and have not been accepted by states through the mechanisms of the OSCE, they nonetheless have been presented to participating states by the High Commissioner as a point of reference and have generally been received positively by them.

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<sup>20</sup> UN Human Rights Committee, General Comment No. 24, Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, 4 November 1994, para. 8, in Report of the Human Rights Committee, UN GAOR, 50th Sess., Supp. No 40, Annex V, at 124, UN Doc. A/50/40 (1995).

<sup>21</sup> UNGA Res. 47/135, 18 December 1992, UN GAOR, 47th Sess., Supp. No. 49, at 210, UN Doc. A/47/49 (1992).

<sup>22</sup> Albania, Austria, Bosnia and Herzegovina, Bulgaria, Belarus, Croatia, Czech Republic, Hungary, Italy, the former Yugoslav Republic of Macedonia, Moldova, Poland, Romania, Slovakia, Slovenia, and Ukraine.

<sup>23</sup> Foundation on Inter-Ethnic Relations, The Hague Recommendations Regarding the Education Rights of National Minorities & Explanatory Note (1996); Foundation on Inter-Ethnic Relations, The Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note (1998). Both documents are available in a number of different languages from the Foundation's office in The Hague. For a history of The Hague Recommendations and further views on the relevant standards, see 4(2) International Journal of Group & Minority Rights (1996/97).

## E. Basic Purposes of Protection of Linguistic Rights

The protection of linguistic rights for persons belonging to national minorities is based on the two pillars of protection for national minorities found in the international instruments above: the right to non-discriminatory treatment in the enjoyment of all human rights; and the right to the maintenance and development of identity through the freedom to practice or use those special and unique aspects of their minority life – typically culture, religion, and language.

The first protection can be found, for instance, in paragraph 31 of the Copenhagen Document, Articles 2(1) and 26 of the ICCPR, Article 14 of the ECHR, Article 4 of the Framework Convention, and Article 3(1) of the 1992 UN Declaration. It ensures that minorities receive all of the other protections without regard to their ethnic, national, or religious status;<sup>24</sup> they thus enjoy a number of linguistic rights that all persons in the state enjoy, such as freedom of expression and the right in criminal proceedings to be informed of the charges against them in a language they understand, if necessary through an interpreter provided free of charge.

The second pillar, encompassing affirmative obligations beyond non-discrimination, appears, for example, in paragraph 32 of the Copenhagen Document, Article 27 of the ICCPR, Article 5 of the Framework Convention, and Article 2(1) of the 1992 UN Declaration. It includes a number of rights pertinent to minorities simply by virtue of their minority status, such as the right to use their language.<sup>25</sup> This pillar is necessary because a pure non-discrimination norm could have the effect of forcing persons belonging to minorities to adhere to a majority language, effectively denying them their rights to identity by treating them just like any member of the majority.<sup>26</sup>

Both the rights of non-discrimination and of the maintenance and development of identity serve to advance the primary function of human rights law, respect for human dignity. As most clearly stated in the first article of the Framework Convention, "The protection of national minorities and of the rights and freedoms of persons belonging to national minorities forms an integral part of the international protection of human rights . . ." <sup>27</sup> Linguistic rights, and minority rights in general, help ensure that minorities are able to realize and enjoy rights that the majority might be able to enjoy on its own, or subject only to the protection of the general human rights instruments.<sup>28</sup>

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<sup>24</sup> Paragraph 31 of the Copenhagen Document states:

Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

Article 2(1) of the ICCPR states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.

<sup>25</sup> For instance, Article 27 of the ICCPR states:

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 other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

<sup>26</sup> See Patrick Thornberry, International Law and the Rights of Minorities 394 (1991).

<sup>27</sup> See also Framework Convention, arts. 22-23 (noting that nothing in the Framework Convention shall limit the human rights ensured under domestic law or, for parties to the European Convention on Human Rights, under that treaty).

<sup>28</sup> See Francesco Capotorti, Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities (1991), at 40-41; John Packer, "On the Content of Minority Rights," in Do We Need Minority Rights? 121, 146-49 (J. Rääkkä ed. 1996).



The right to maintain and develop one's identity does not come without certain responsibilities upon persons belonging to minority groups. One important duty, expressed in Article 20 of the Framework Convention and Article 8(2) of the 1992 UN Declaration, is that persons belonging to minorities are not entitled to exercise their special rights, including linguistic rights, in a way that impedes the human rights of others, whether of the majority or of other minorities (or even members of their own minority). Second, the extent to which the government is obligated to take affirmative steps to foster minority identity is the subject of some uncertainty. Certainly governments are obligated to take affirmative steps to eliminate discrimination against minorities in the enjoyment of fundamental human rights.<sup>29</sup> But the legal standards also take into account other factors that might affect a state's ability to assist minority groups. Financial constraints may, for instance, limit a government's ability to offer education in a minority language to all persons belonging to minorities. The details of this issue are discussed further below.

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<sup>29</sup> See UN Human Rights Committee, General Comment No. 23, Article 27 of the International Covenant on Civil and Political Rights, para. 6.2, 8 April 1994, in Report of the Human Rights Committee, UN GAOR, 49th Sess., Supp. No. 40, Annex V, at 107, UN Doc. A/49/40 (1994).

## IV. Analysis of the Responses of Governments to the Questionnaire

### A. Presence of State and Official Languages and Languages with Special Status

Question 1: WHICH LANGUAGES HAVE "STATE" OR "OFFICIAL" STATUS IN YOUR COUNTRY? PLEASE ALSO PROVIDE RELEVANT INFORMATION ON ANY OTHER LANGUAGES WHICH MAY HAVE SPECIAL STATUS IN YOUR COUNTRY.

#### 1. International Standards

None of the universal or regional instruments discussed above contains any authoritative definition of "state" or "official" language.<sup>30</sup> Indeed, the terms are sometimes used interchangeably by states. States may also use the former term to refer to the historic, national language (often originating in or unique to the country) and the latter term to refer to a language from another state that has been so utilized in every day life that it is now accepted as a formal means of communication by the government with its citizens. Moreover, there are no international standards on whether states must adopt more than one official language to respond to the needs of persons belonging to national minorities (and indeed there is no obligation to have an official language), and there is no internationally accepted definition of languages with special status. Rather, the standards address particular needs of the national minority to communicate with others in their group and with those outside their group.

#### 2. Questionnaire Results

Of the 51 states returning the questionnaire, three (Hungary, Sweden, and United States of America) responded that they had no official or state languages; while the Czech Republic said the term was not defined, although the status of Czech as the official language was implicit in some laws.<sup>31</sup> Three states (Greece, Liechtenstein, and Luxembourg) did not answer the question. Of the remaining states, 34 stated that they had only one official language; eight stated that they had two languages,<sup>32</sup> and two states (Switzerland and Bosnia and Herzegovina) stated that they had three or more official languages. At the same time, it may be underlined that 22 of the 34 states noting that they have only one official language give special status for languages other than the official one. And in some of those cases, the governments specifically indicated that the other language was an "official" language in a particular region of the country.<sup>33</sup> Two states with two official languages also indicated that they give special status to others.<sup>34</sup> As a result, only 12 states responding to the question have stated that they have one language without granting special status for others.<sup>35</sup>

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<sup>30</sup> The European Charter for Regional or Minority Languages does not define these terms, though it does define in Article 1(a) "regional or minority languages" as languages

- i. traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and
- ii. different from the official language(s) of that State.

<sup>31</sup> United States of America responded that certain of its states had laws mandating an official language, some of which were being challenged in court.

<sup>32</sup> Belarus (Belarussian and Russian); Canada (English and French); Cyprus (Greek and Turkish); Finland (Finnish and Swedish); Ireland (Irish as first official language, English as second official language); Kazakstan (Kazak as the state language, Russian as an official language); Malta (Maltese as national language, English as an official language); and Norway (Norwegian and Sami).

<sup>33</sup> Croatia (other, unspecified languages in certain local units); Denmark (Greenlandish and Faroese official on those islands); Georgia (Abkhazian official in Abkhazia); Italy (French, German, and Slovenian official in three different regions); Moldova (Gagauzian and Russian official in Gaguzia); Russian Federation (national languages official in seven republics); Slovenia (Italian and Hungarian official in certain areas); Spain (Catalan, Gallego, Euskera, Valenciano official in each of four Autonomous Communities). A number of other states noted that second languages have de jure special status in certain regions without calling them "official."

<sup>34</sup> Canada (Aboriginal) and Finland (Sami).

<sup>35</sup> Andorra, Bulgaria, Estonia, France, Iceland, Monaco, Poland, Portugal, Romania, San Marino, Turkey, and Uzbekistan.

### 3. Analysis of Results

The lack of international standards in this area makes finding a benchmark for comparisons difficult. It would seem commendable that relatively few states with one official language do not grant a special status for others. In some cases, this may reflect a genuine lack of persons speaking other languages; in others, it may represent a governmental policy to channel all official communication through the official language(s), even though this might potentially interfere with the linguistic rights of persons belonging to national minorities. To the extent that states have decided to adopt more than one official language, or to give special status to other languages, in the whole country or in particular regions, this will certainly contribute to the protection of the linguistic rights of persons speaking those languages. In such states, the persons will likely be more able to freely communicate with governmental officials, understand official documents, see their children educated in the minority language, and obtain access to the media in their language. The consequence may well be greater protection against discrimination. In any case, it is clear that most states give (in various ways and to varying degrees) official status to more than one language.

## B. Use of Minority Languages in Official Communications

QUESTION 2: MAY PERSONS BELONGING TO NATIONAL MINORITIES USE THEIR OWN LANGUAGE IN THEIR CONTACTS WITH ADMINISTRATIVE AUTHORITIES AND PUBLIC SERVICES THROUGHOUT YOUR COUNTRY? IS THIS A MATTER OF RIGHT UNDER NATIONAL LAW IN TERRITORIES IN WHICH THE MINORITY LANGUAGE IS TRADITIONALLY USED BY A SUBSTANTIAL PART OF THE LOCAL POPULATION?

QUESTION 3: MAY PERSONS BELONGING TO NATIONAL MINORITIES USE THEIR OWN LANGUAGE IN JUDICIAL PROCEEDINGS AND OTHER CONTACTS WITH JUDICIAL AUTHORITIES THROUGHOUT YOUR COUNTRY? IS THIS A MATTER OF RIGHT UNDER NATIONAL LAW IN TERRITORIES IN WHICH THE MINORITY LANGUAGE IS TRADITIONALLY USED BY A SUBSTANTIAL PART OF THE LOCAL POPULATION?

### 1. International Standards

The ability of persons belonging to national minorities to communicate with governmental officials and bodies in their own language is an essential linguistic right. It both ensures that they will be able to understand governmental policies that affect them and express their views to appropriate governmental instrumentalities. It also permits such persons to become actively involved in the civil life of the country in order to create a pluralistic and open society, where members of minority groups feel integrated without having to sacrifice their identity.<sup>36</sup> The questions posed to governments focus on administrative bodies as well as judicial authorities; moreover, governments were specifically asked whether this possibility is a matter of right (i.e. legal entitlement) under national law in areas where the language is traditionally used by a substantial part of the local population.

The international standards derive from a number of instruments. As a starting point, paragraph 34 of the Copenhagen Document expresses a clear standard that all OSCE states have accepted:

The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the state concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

With respect to communication with administrative authorities, the 23 OSCE states that are parties to the Framework Convention<sup>37</sup> have a legal obligation under Article 10(2) thereof:

In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

In addition, some states have obligations in this area under bilateral treaties with neighbors.<sup>38</sup>

Both the Copenhagen Document and the Framework Convention express the same idea: where national minorities need to communicate with governmental institutions in their own language, typically though not exclusively in those regions where they are concentrated or have lived traditionally, the government should

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<sup>36</sup> See, e.g., de Varennes, *supra* note 13, at 176-78.

<sup>37</sup> See *supra* note 10.

<sup>38</sup> See, e.g., Treaty on Good Neighbourliness and Friendly Cooperation between the Slovak Republic and the Republic of Hungary [hereinafter Slovakia-Hungary Treaty], 19 March 1995, art. 15(2)(g):

persons belonging to the Hungarian minority in the Slovak Republic and those belonging to the Slovak minority in the Republic of Hungary shall . . . have the right, in conformity with the domestic legislation and with the international commitments undertaken by the two parties, to use their minority language in contacts with administrative authorities, including public administration, and in court proceedings . . .

make every effort to make this possible. Both instruments recognize that the government might well not be able to accommodate every such person in every situation, and that financial constraints may come into play.<sup>39</sup> It would also seem that, where such constraints exist, the government should focus on those institutions of most importance to the local populations, e.g., taxing authorities, police, health and safety officials, and emergency services.

With regard to communication with judicial authorities, the international instruments are more sweeping in their provisions. Most notably, states parties to the ICCPR, ECHR, and Framework Convention are legally obligated to ensure that individuals facing criminal charges – whether or not members of national minorities – are informed of the charges against them in their own language and are provided with an interpreter at no cost if they cannot understand the language used in court.<sup>40</sup> This important right is closely linked with the special concern of human rights law for persons deprived of their liberty. With respect to non-criminal court proceedings, the OSCE has not itself promulgated standards to this effect, although bilateral treaties incorporating Council of Europe Recommendation 1201 provide for the right to use the mother tongue in all court proceedings,<sup>41</sup> while the Oslo Recommendations support such an entitlement.<sup>42</sup>

## 2. Questionnaire Results

With respect to communications before administrative authorities, the questionnaire reveals a wide variety of stated policies, ranging from total insistence upon use of one official language through legally guaranteed free interpretive services for persons using minority languages. Analysis of the results is encumbered by the variety of completeness to the answers. Most states, for example, in discussing the ability to "communicate" did not explain whether this included the possibility to receive responses from the government in the minority language, or interpreted or translated into the minority language. The answers may nonetheless be grouped into six categories.

In the first category is one state that stated that it does not allow such communication: France. A second category encompasses those states that did not indicate whether or not they allow such communication: Armenia, Belarus, Bulgaria, Kyrgyzstan, Poland, Tajikistan, and Turkey. (This group might also include those states that responded that they have no national minorities – Cyprus, Iceland, Liechtenstein, Luxembourg, and San Marino.)

A third group said that they allow communications, but only in those languages that have been designated official languages for the state as a whole: Canada (right to communicate in either English or French "wherever there is significant demand," with variations among different provinces); Ireland (right to communicate in English or Irish); Malta (Maltese and English); Norway (Sami in administrative areas of the Sami language); and Switzerland (right to communicate in any official language with federal authorities, but only in the official language(s) of the canton or the commune with cantonal or communal authorities, respectively).

A fourth group said that they allow communications, but only in certain designated minority languages and/or in certain designated regions of the country: Austria (Slovene and Croat in regions with mixed populations); Finland (Sami in the Sami homeland); Germany (Sorbian in Sorbian areas); Greece (Turkish); Italy (French in Valle d'Aosta, German in Alto Adige, and Slovene in parts of Friuli-Venezia Giulia); Latvia (Russian); Netherlands (Frisian in Friesland); Russian Federation (the official language of the particular constituent republic of the administrative authorities); Slovenia (Italian and Hungarian in regions with "original" minorities of those nationalities); Spain (regional language in each of four Autonomous Communities); United Kingdom (Welsh in Wales, Gaelic in Scotland, and Irish in Northern Ireland); and United States (Native American languages).

A fifth group of states responded that they permitted such communications without limiting it to designated languages but constraining it by proportion of the population: Croatia (in municipalities where

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<sup>39</sup> See Council of Europe, Explanatory Report on the Framework Convention for the Protection of National Minorities, paras. 64-66; Oslo Recommendations, Explanatory Note, at 29.

<sup>40</sup> See ICCPR, art. 14(3); ECHR, arts. 5(2), 6(3); Framework Convention, art. 10(3).

<sup>41</sup> See Slovakia-Hungary Treaty, art. 15(2)(g).

<sup>42</sup> Oslo Recommendations, paras. 18-19 (recommending free interpretation and consideration of all judicial proceedings in the minority language in regions where minorities live in significant numbers and wish it).

minorities are a majority of the population); Estonia (in localities where half the permanent population belongs to a minority); Lithuania (in regions "densely populated" by minority); Moldova (in localities with "compact" population);<sup>43</sup> the former Yugoslav Republic of Macedonia (in localities where a minority constitutes the majority or is present "in considerable numbers"); and Turkmenistan ("where the majority of the population is of another ethnic group").

A sixth group simply responded affirmatively to the question without noting any restrictions to certain languages, regions, or proportions. Those states were: Andorra (which noted that replies will only be in Catalan), Bosnia and Herzegovina, Czech Republic, Denmark, Georgia, Greece, Hungary, Kazakstan, Monaco (noting foreign nationals can "very often" use their own language), Portugal ("possibility of requesting" an interpreter), Romania, Slovakia, Sweden, Ukraine, and Uzbekistan. Except for the special federal provisions regarding Native American languages, the United States of America's reply indicated that its policy varies by states.

Beyond these six categories, some states noted that administrative authorities are obligated to reply to persons wishing to use the minority language in that language: Estonia; Italy (requirement of bilingual civil servants in Alto Adige and Valle d'Aosta); Norway (Sami only); Malta; and United Kingdom (Welsh only). Other states (e.g., Finland for the Sami language) stated that public notices must be published in the minority language; or stated that the minority language might be used for local self-government (Russian Federation and the former Yugoslav Republic of Macedonia).

As for whether those states that provide such rights do so by law, the answer seems to be yes in most states. Some states made reference to provisions of their constitution (Austria, Croatia, Estonia, Finland, Slovakia, and Switzerland); while many mentioned specific statutes (Canada, Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Moldova, Netherlands, Norway, Romania, Russian Federation, Slovenia, Spain, the former Yugoslav Republic of Macedonia, Ukraine, and Uzbekistan).

With respect to the possibility to communicate with judicial authorities in the national minority language, responses were far more consistent; each state that answered the question stated that it provided some possibility to communicate. Again, however, the answers are not complete in that they do not usually indicate whether the person may simply speak his or her language; whether the proceedings will be interpreted into that language, or documents translated; or whether the full proceedings will be conducted in the language. In addition, Armenia, Cyprus, Iceland, Kyrgyzstan, Liechtenstein, Luxembourg, and San Marino did not answer this question.

A first group gave affirmative answers without qualification in terms of the particular language, region, or court at issue: Azerbaijan, Belarus, Bosnia and Herzegovina, Czech Republic, Georgia, Greece, Hungary, Kazakstan, Latvia, Lithuania, Malta, Moldova, Poland, Romania, Russian Federation, Slovakia, Slovenia, Sweden, Tajikistan, the former Yugoslav Republic of Macedonia, Turkmenistan, United Kingdom, and Uzbekistan. A second group, comprised of Canada, Ireland, and Switzerland, noted that proceedings can take place only in an official language.

A third group stated that they limited the possibility to communicate in judicial proceedings in the minority language to certain minorities or regions: Austria (Slovene and Croat in regions with mixed populations); Germany (Sorbian in Sorbian regions); Italy (French in Valle d'Aosta, German in Alto Adige, and Slovene in parts of Friuli-Venezia Giulia); Netherlands (Frisian in Friesland); Norway (Sami administrative areas); Slovenia (Italian and Hungarian in regions with "original" minorities of those nationalities); Spain (four regional languages in their respective Autonomous Communities); and Ukraine (where the minority language is "traditionally used by a substantial part of the local population"). In addition, some of the states in the previous two groups stated that they also provide interpretive services for any person not speaking the language of the court, at least for criminal cases (e.g., Germany and Netherlands).

A fourth group specified that the rights applied in only certain types of proceedings, such as criminal proceedings or those at the federal level: Bulgaria (criminal only), Canada (at the discretion of the provinces for provincial civil proceedings); Denmark (civil proceedings or some criminal cases only if the court has knowledge of the language); Estonia (only criminal cases); Finland ("general administrative courts"); Norway (national courts only);<sup>44</sup> and United States of America (federal and state criminal courts).

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<sup>43</sup> Moldova noted that it also allows such communication in Gagauzia.

<sup>44</sup> As noted above, Norway also allows for use of Sami in Sami courts.

Beyond these four categories, some states replied specifically that proceedings themselves might be held in a minority language: Belarus (where "spoken by a substantial part of the location population of a region"); Latvia (if accepted by the parties, their lawyers, and the prosecutor); Russian Federation (in the language of a constituent republic or of a minority "compactly residing in some locality"); Slovenia (in Italian and Hungarian "if the party uses the Italian or Hungarian language"); Spain (in the four Autonomous Communities "provided that none of the parties objects" because it does not understand the language); Tajikistan ("the language of the majority of the population of the particular locality"); United Kingdom (in Welsh in Wales); and Uzbekistan (also noting that proceedings themselves are held in Uzbek, Karakalpak, or the "language of the majorities of that territory").

As with the question of access to administrative authorities, most states provided for access to judicial authorities by law. Some states made reference to their constitution (Austria, Azerbaijan, Estonia, Georgia, Lithuania, Romania, Tajikistan, the former Yugoslav Republic of Macedonia, and Uzbekistan). Most states mentioning specific laws noted that it was required in their codes of criminal or civil procedure (Bulgaria, Canada, Czech Republic, Denmark, Estonia, Finland, Hungary, Lithuania, Norway, Slovakia, Slovenia, the former Yugoslav Republic of Macedonia, and Uzbekistan); while a handful referred to language laws (Belarus, Lithuania, Moldova, Netherlands, Russian Federation, Turkmenistan, and Uzbekistan). Two states made reference to special treaties governing this issue: Germany to the 1990 Unification Treaty, and Turkey to the 1923 Treaty of Lausanne. In addition, Germany, Malta, and Switzerland made reference to the requirements of the European Convention on Human Rights (see above).

### 3. Analysis of Results

With respect to the question of administrative authorities, the responses of nearly all those states answering the question suggest that their stated policies do conform to the standards in the Copenhagen Document – that minorities must "have adequate opportunities [to use their mother tongue] . . . wherever possible and necessary . . . in conformity with applicable national legislation." The exceptions would be states that do not allow communication in the minority language; and any of the numerous states limiting the right to communicate in the minority language to certain persons (designated by language, minority, location, or proportion of the population – the third, fourth, and fifth groups above) if, in those states, it was "possible and necessary" to provide "adequate opportunities" beyond those they have provided. Nevertheless, in a great many states, minority languages may be used for contacts with administrative authorities where the minority has resided traditionally or constitutes a substantial part of the local population.

Of the 23 states that are parties to the Framework Convention,<sup>45</sup> all 20 that answered the question<sup>46</sup> provided responses that, if matched in practice, suggest a high degree of consistency with Article 10(2) of the Convention quoted above. The critical language in the Convention is that states "shall endeavour to ensure, as far as possible," conditions for use of the language "[i]n areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need." Some of the 20 states would appear to have implemented this provision in a way that it applies to specific languages or regions (e.g., Germany, Italy, and United Kingdom). Others have used a proportional threshold that resembles the Convention language (Estonia, Moldova, and the former Yugoslav Republic of Macedonia). It should be pointed out that, whatever groups or thresholds these states may have chosen, their obligation is a broad one, concerning any regions inhabited by minorities "traditionally or in substantial numbers" where there is a "real need."

Although neither the Copenhagen Document, Framework Convention, nor other OSCE standards specify that the ability to communicate with administrative authorities must be guaranteed by law, it is to be noted that fewer than half the OSCE states responded that their laws provide for such an ability. It is to be hoped that legislation will be forthcoming to provide these rights in all OSCE participating states.

The practice described by governments for the possibility to communicate with judicial authorities seems more consistent with that envisaged by the relevant international standards than that for the ability to communicate with administrative authorities. The overwhelmingly positive answers to the question regarding judicial authorities seems related to the clear obligations upon states under the ICCPR and the ECHR regarding interpretation in criminal trials for defendants who do not "understand or speak the language used in court." It is to be hoped that the many states responding without further elaboration that they permit communication with

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<sup>45</sup> See *supra* note 10.

<sup>46</sup> Armenia, Cyprus, and San Marino did not answer the question.

judicial authorities in the minority language in fact provide the interpretation in both directions required by the ICCPR and the ECHR.

As noted above, the question posed to governments concerns not simply the right to interpretation in the case where a criminal defendant cannot understand or speak the language, but two broader categories: (a) in all judicial proceedings; and (b) even where the person understands the official language but wishes to use the national minority language. If the affirmative responses to the question posed mean that persons belonging to national minorities may use their language in regions where they represent a significant portion of the local population, and may do so in all judicial proceedings, then this would be along the lines of that proposed in the Oslo Recommendations. Some of the states effectively stated that they have gone beyond these Recommendations, towards the conduct of proceedings in minority languages mentioned in the European Charter for Regional or Minority Languages.<sup>47</sup> Finally, some states specifically mentioned the ways they are making possible the use of minority languages with administrative and judicial authorities, e.g., Italy's use of bilingual civil servants in some regions.

### C. Teaching of and in Minority Languages

QUESTION 4: WHICH MINORITY LANGUAGES ARE TAUGHT IN YOUR COUNTRY? AT WHICH LEVELS OF EDUCATION ARE THEY TAUGHT (I.E. PRIMARY, SECONDARY, VOCATIONAL, TEACHER TRAINING, UNIVERSITY)? ARE THESE TAUGHT ONLY IN SOME LOCALITIES? IF SO LIMITED, BY WHAT CRITERIA ARE THE LOCALITIES DEFINED IN WHICH SUCH EDUCATION IS AVAILABLE?

QUESTION 5: DO PERSONS BELONGING TO NATIONAL MINORITIES ENJOY THE RIGHT TO EDUCATION IN THEIR LANGUAGE, I.E. THE WHOLE OR SIGNIFICANT PARTS OF THEIR EDUCATION IN THEIR OWN LANGUAGE? IF IT IS LIMITED, PLEASE INDICATE WHICH SUBJECTS ARE TAUGHT IN THE MINORITY LANGUAGES AND WHICH SUBJECTS ARE REQUIRED TO BE TAUGHT IN THE STATE OR OFFICIAL LANGUAGE(S) AT EACH LEVEL OF EDUCATION. PLEASE ALSO INDICATE WHETHER THE RIGHT IS ENJOYED THROUGHOUT YOUR COUNTRY. IF IT IS ENJOYED IN ONLY SOME LOCALITIES, BY WHAT CRITERIA ARE THE LOCALITIES DEFINED IN WHICH SUCH EDUCATION IS AVAILABLE?

#### 1. International Standards

Questions 4 and 5 address two important issues: (1) the teaching of minority languages to members of the national minority and others wishing to learn it; and (2) the teaching in minority languages of the educational curriculum to members of the national minority. The willingness of states to provide these two opportunities is important to the protection of minority rights in a number of senses.

First, the fulfilment of the basic human right of persons belonging to national minorities to "use their language" (ICCPR, art. 27) naturally depends upon their ability to know the language. As stated in The Hague Recommendations, "the right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process."<sup>48</sup> Although the oral aspect of the language may be passed on within a family, the written and literary aspects require the active commitment of educational institutions. Adults, moreover, may need to learn through adult education.

Second, the teaching of the minority language to persons who are not members of the minority can contribute to greater communication, and thus understanding, between the majority and the minorities. For example, if the various rights discussed above concerning the possibility to communicate with administrative and judicial authorities in the national minority language are to be fully realized, then the language will need to be taught outside the minority group. The Council of Europe has recently recognized the importance of knowledge of more than one language as a means of inter-cultural communication, understanding, and tolerance.<sup>49</sup>

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<sup>47</sup> The European Charter lists among its menu of options (art. 9) the obligation to ensure that persons involved in any judicial proceedings have the possibility to use their minority language even if they are able to communicate in the majority language.

<sup>48</sup> The Hague Recommendations, para. 1.

<sup>49</sup> Council of Europe Committee of Ministers, Recommendation No. R (98) 6 Concerning Modern



Third, although language courses provide a necessary component for learning the language and maintaining identity as a person belonging to a national minority, the language can often be fully learned only if a broader part of the curriculum is taught in the national language. Fourth, for those persons who have learned the national minority language at home and have not yet learned the majority or official language, some component of the education in the minority language has been shown by research to assist in education.

The international standards with respect to education derive from a variety of documents addressing different facets of the educational process. The Copenhagen Document states in paragraph 34: "The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue. . . ." More broadly, the Framework Convention states in Article 14 that every person belonging to a national minority "has the right to learn his or her minority language," further specifying:

In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their educational systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

These terms also appear in the 1992 UN Declaration and certain bilateral treaties.<sup>50</sup> Detailed recommendations for implementing these standards are found in the 1996 Hague Recommendations, which specify the need for education in minority languages at the primary, secondary, vocational, and tertiary levels. Beyond these standards, other standards apply to the establishment of private schools, an issue considered in Question 7 below.

These instruments, and in particular the Framework Convention, suggest certain affirmative steps that the state must take in the area of minority language education. At the same time, the phrase "endeavour to ensure as far as possible . . . adequate opportunities" provides states with flexibility over this issue. In particular, the drafters took cognizance of the financial and administrative difficulties involved in such education.<sup>51</sup> Thus, there are no detailed requirements regarding the levels at which such instruction must take place or, in the case of instruction in the language, the courses in which it should be used, although The Hague Recommendations elaborate upon desirable policies for implementing the commitments in the Copenhagen Document and the Framework Convention. Moreover, states are not specifically required to provide both education of the language and education in it; nevertheless, the two terms are not, as noted above, mutually exclusive.<sup>52</sup>

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Languages, 17 March 1998.

<sup>50</sup> 1992 UN Declaration, art. 4(3); Slovakia-Hungary Treaty, art. 15(2)(g).

<sup>51</sup> Framework Convention, Explanatory Report, paras. 75-76.

<sup>52</sup> Id. para. 77.

## 2. Questionnaire Results

As a methodological matter, it should be noted that the responses of states are often difficult to compare for these two questions, as many states, in answering both questions, did not distinguish between education of and education in the language. Some referred to only one or the other. The matter is further confused because, in many situations, teaching in the national minority language will include teaching of the minority language. However, the former will not include the latter with respect to persons who wish to be taught the minority language but are not placed in classes in the minority language, typically persons who are not members of the national minority (e.g., a non-Frisian citizen of the Netherlands seeking to learn Frisian). In addition, and quite significantly, many did not specify whether the opportunities they said they were providing for education were within the public schools, or rather through private schools. Finally, some states did not distinguish between languages of national minorities and foreign languages, i.e. languages not traditionally spoken within the country, instead grouping them together as all languages different from the majority language.

With regard to education of the minority language, all states responding to this question seem to allow the teaching of languages of national minorities.<sup>53</sup> The number of such languages taught varied significantly, apparently depending on the number of national minorities in the state and the number of persons using the language. In many states, at least several languages are taught, for example: Armenia (Russian, Kurdish, Jewish,<sup>54</sup> Greek, and Polish); Austria (Slovene, Croat, Czech, and Slovak); Bulgaria (Hebrew, Armenian, Romani, and Turkish); Czech Republic (Slovak, Polish, German, Romani, Hungarian, and Ukrainian); France (Breton, Basque, Occitan, Corsican, and Catalan); Germany (Danish, Sorbian, Frisian, and Romani); Slovakia (Hungarian, Ukrainian, German, and Ruthenian); and Spain (Euskera, Galician, Valencian, and Catalan). In some states the number of languages taught was quite large: eight in Belarus, Latvia, and Moldova; 11 in Lithuania; 12 in Croatia and Hungary; 14 in Kazakstan; 15 in Romania; and 18 in Ukraine. A small group of states taught only official languages of the state (along with key foreign languages) due to the way in which their politics address the question of national minorities: Canada, Ireland, and Switzerland.

In terms of the levels of education, it is difficult to discern many patterns among the responses. Many states responded that they teach a variety of languages at the primary level, but fewer at the secondary or university level. In some cases, however, it is unclear whether they are referring to education in the minority language (e.g., transition classes for students who have only spoken the minority language at home) or the teaching of the minority language as a separate course. A number of states seemed to provide for greater levels of education for one or more national minority languages than for others: Russian in Armenia; German in Denmark; Russian in Estonia; Russian, Polish, Belarussian, and Ukrainian in Lithuania; Hungarian and German in Romania; Hungarian and Ukrainian in Slovakia; and Welsh and Gaelic in United Kingdom.

With respect to the locations in which minority languages are taught, most states did not provide detailed answers on this issue, and many of the answers seem to refer to teaching in minority languages, rather than teaching of minority languages. Some states limit the teaching of some or all minority languages to particular regions where minorities live, e.g.: Austria (Slovene in Carinthia, and Croatian and Hungarian in Burgenland); Finland (Sami in their homeland); Georgia (Abkhaz in Abkhazia); Germany (Sorbian in Free State of Saxony and Land Brandenburg); Greece (Turkish in Thrace); Italy (Slovenian in Slovenian regions of Friuli-Venezia Giulia); Netherlands (Frisian in Friesland); Russian Federation (in autonomous republics and "localities of compact residence of minorities"); Slovenia (areas of "traditional settlement and autochthonous origin of national minorities" defined by statute); and Spain (four languages of Autonomous Communities in those regions). Others set more general limitations: Poland (at the request of parents in primary schools, at the request of students in secondary schools, as well as "regions inhabited by dense concentrations of a given minority for generations or as a result of the latest political events and contemporary historical processes (displacements in the post-war period)"); and Romania ("where there is a significant number of pupils" belonging to national minorities).

As for teaching in minority languages, it appears again that every state responding to the question grants the right for some teaching in the minority language, although whether these take place in public or private schools is unclear from most responses.<sup>55</sup> A few patterns nonetheless emerge. First, all 14 states of the

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<sup>53</sup> States not responding to this question were: Cyprus, Iceland, Liechtenstein, Luxembourg, Portugal, San Marino, and United States of America.

<sup>54</sup> A number of states used the term "Jewish" without specifying whether it referred to Hebrew or Yiddish.

<sup>55</sup> The same states that did not respond to Question 4 did not respond to Question 5, with the exception of United States of America, which made some reference to the issue in its 1994 report to the UN Human Rights Committee provided as its response.

former Soviet Union (in addition to Russia) provide for significant teaching in Russian. Some of these states' responses suggest that Russian is the second language of instruction for students (e.g., Kazakhstan, Kyrgyzstan, and Turkmenistan); other responses suggest that students have the option to go to a Russian language school or a mixed-language school (e.g., Estonia, Georgia, Latvia, and Lithuania). Second, most other states provide opportunities to learn in more than one minority language, although in many cases the number of languages in which students may learn appears smaller than the number of languages students may learn as separate subjects.

The geographic regions in which students may learn in these languages generally correspond to the regions where they may learn the language themselves, usually the regions in which minorities are most concentrated, though in some cases it is more confined. Some states specified that the establishment of classes depended upon demand and the number of pupils needed for a class (e.g., the former Yugoslav Republic of Macedonia and United Kingdom); others stated that they put more emphasis on the right of the parents to decide the language in which their children will be educated (Slovakia). The three countries that stated that they offered curricula only in the official language(s) (Canada, Ireland, and Switzerland) had different approaches to the issue, each taking account of the demographic patterns of people speaking the various languages.

Finally, the range of subjects available in the national minority language varied considerably. In some cases, the entire curriculum was in the minority language through separate classes or schools (Czech Republic, Estonia, Latvia, and Lithuania); in some it was only part of the curriculum (Sorbian and Frisian alongside German in parts of Germany; German and French alongside Italian in Italy; equal numbers of Polish and minority language classes in Poland); and in some it was a small amount of class time (three to five lessons per week in the mother tongue in Denmark). United States of America stated that non-English-speaking students had the right to equal educational opportunities and that the government provided grants for bilingual instruction.

Some states specified particular courses or types of courses to be taught in the official language: Latvia replied that it requires at least two subjects from first to ninth grade, and three from 10th to 12th grade, be taught in Latvian "in humanitarian or exact sciences;" and Romania replied that Romanian history, literature, and geography must be taught in Romanian. At least one state, Croatia, stated that it combined several options: some schools all in the minority language, some in which the natural sciences are taught in Croatian and the arts and social studies in the minority language, and some with the basic curriculum in Croatian and additional classes in the minority language. Austrian law guarantees members of the Slovene, Croat, and Hungarian minorities in Carinthia and Burgenland the individual right to use their language as the language of instruction or learn it as a compulsory subject, and also offers possibilities for such instruction in other areas of the country based on demand.

### 3. Analysis of Results

The most immediate conclusion to be drawn from the results is simply to point out the numerous approaches of OSCE states to the issue of education of and in minority languages. Whether with respect to the number of languages or the places, levels, or subjects taught, states have adopted a wide variety of approaches, sometimes offering different possibilities within the same state. Certainly the responses indicate a level of sensitivity to the needs of persons belonging to national minorities with respect to their language. Most states provided extensive lists of languages offered as an indication of their concern over this issue. However, the data alone do not indicate whether the governments are adequately responding to the desires of minorities.

Beyond this general point, several other conclusions are possible. First, the answers suggest that states need to consider the differences between teaching of minority languages and teaching in minority languages more explicitly in their educational policy. Although the OSCE standards only require that one of these forms of education be provided, the overarching goal remains the creation of conditions favorable to the maintenance and development of the identity of persons belonging to national minorities. Education in the minority language may go far in accomplishing this goal. However, education of the minority language also for persons not belonging to the minority has, as noted above, the important beneficial result of fostering tolerance and communication.

Second, the experiences of some states show that it is possible to provide the teaching in minority languages even when the number of persons belonging to national minorities is small.

Third, the answers suggest that states need to carefully consider the range of options available to them to balance the teaching of the minority languages with that of the main or official languages. The range of answers shows that it may be unwise to make a priori conclusions about which courses must be taught in one language and which in the other. Much should depend on the views of the persons belonging to minorities

themselves, although obviously the state has an interest in fostering understanding by all its citizens of the main or official languages.

Fourth, the answers suggest that some states might wish to consider the differences between the language of national minorities and truly foreign languages. Although the latter may be taught as a means of integration between the state and its neighbors or important economic partners, teaching the former is aimed at fostering understanding within the state.

#### D. Inclusion of National Minority Perspectives in the General School Curriculum

##### QUESTION 6: TO WHAT EXTENT IS THE CULTURE, HISTORY, RELIGION, AND BELIEF OF NATIONAL MINORITIES TAUGHT IN THE GENERAL CURRICULUM?

###### 1. International Standards

The teaching of the culture, history, religion, and beliefs of persons belonging to national minorities in the general curriculum has two facets: first, it ensures that minority students will be exposed to formal education that takes into account their own experiences and perspectives, just as the students of the majority are. But second and more important, it entails the teaching of these subjects to the student population at large, in particular students who are not members of the minority and would thus have no other obvious place in which to learn about them. Such knowledge is critical for building a tolerant, multi-ethnic society – one resistant to strains of ethnic hatred that so often stem from ignorance of, or misinformation propagated about, minority cultures.<sup>56</sup> Knowledge and understanding are thus prerequisites to internal stability and social harmony.

The pertinent international standards in this area are fairly recent. As a general matter, Article 29(1) of the UN Convention on the Rights of the Child stipulates that "the education of the child shall be directed to . . . (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin." Paragraph 34 of the Copenhagen Document states: "In the context of the teaching of history and culture in educational establishments, they [the participating States] will also take account of the history and culture of national minorities." Article 12 of the Framework Convention obligates states to, "where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority." Article 4(4) of the 1992 UN Declaration states: "States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole." Finally, The Hague Recommendations spell out the details of these obligations by urging "[s]tate educational authorities [to] ensure that the general compulsory curriculum includes the teaching of the histories, cultures and traditions of their respective national minorities."<sup>57</sup>

These international standards thus envisage a two-way process of learning – with persons in the majority learning about minorities, and persons in the minority learning about the majority. Because the latter is generally easier to ensure, as persons in the minority will be exposed in many contexts to the culture of the majority, the question focuses on the extent to which the participating states are fostering the learning about minorities by persons in the majority. It is to be noted that the question refers to "culture, history, religion, and belief of national minorities." The question was meant to be inclusive and encourage states to report all measures taken to teach about their national minorities to the student body at large through the general curriculum.

###### 2. Questionnaire Results

The replies to the questionnaire reveal some clear patterns. First, the vast majority of states responding to this question asserted that they do teach about one or more of their national minorities in the curriculum.<sup>58</sup>

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<sup>56</sup> See Framework Convention, Explanatory Report, para. 71.

<sup>57</sup> The Hague Recommendations, para. 19. They also recommend other measures to promote dialogue: encouragement of members of the majority to learn minority languages, involvement of minority groups in preparation of curricula, and establishment of centers of minority language education. Id. paras. 19-21.

<sup>58</sup> States not responding to the question were Cyprus, France, Greece, Iceland, Liechtenstein, Portugal, San Marino, Tajikistan, and United States of America. In addition, Canada responded that this was a matter for

The only exceptions were: Armenia, which said it taught about them only at the university level and in Sunday schools; Georgia, which said it taught about them only in special societies; and Malta, which said its schools "concentrate on Maltese culture."

Second, and somewhat militating against the promising results suggested by the first pattern, a significant number of states – 15 – responded in a way that indicates that the minority cultures are not taught in the general curriculum as that term is usually understood, i.e. the curriculum or curricula for all students, both members of the majority and minorities. Instead, for these states, the minority cultures were taught only to the members of the minorities (or only to students attending the schools where the teaching is done in the minority language). States responding in this way were: Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Germany (Danish and Sorbian traditions only in specific Lander, though Roma culture taught throughout the country), Italy, Kazakhstan, Moldova, Netherlands, Romania, the former Yugoslav Republic of Macedonia, Ukraine, United Kingdom, and Uzbekistan. The same result – teaching about minority cultures only in certain areas and not in the general curriculum – would appear to apply for those states responding that they had a national educational curriculum (without stating that it included study of minority cultures) but noting that different regions could devote a proportion of class hours to local issues, including local minorities: Finland, Ireland, Latvia, and Spain. The total number of states whose responses to the question suggest lack of teaching in the national curriculum is thus 21 (if Germany is not included as it does teach about the Roma in the general curriculum).

Third, 16 states offered answers suggesting the presence of a program of teaching about their own national minorities in the general curriculum: Austria, Czech Republic, Denmark, Estonia, Germany (Roma only), Hungary, Kyrgyzstan, Lithuania, Norway, Poland, Slovakia, Slovenia, Sweden, Switzerland, Turkey, and Turkmenistan. Some of these states mentioned particular minorities that were studied in these classes: Estonia (Baltic Germans), Lithuania (Jews, Tatars, and Karaites), and Sweden (Sami).

Fourth, a number of states mentioned that they offered courses teaching tolerance and inter-cultural understanding generally. In some states, these appeared to be instead of courses about their national minorities, and in others in addition to such courses: Austria, Czech Republic, Luxembourg, Netherlands, and United Kingdom.

Fifth, states had differing approaches to the teaching of minority religion, with certain states pointing out that they did not teach it and others that they did. Belarus and the former Yugoslav Republic of Macedonia indicated that religious study was not included in the public school curriculum; and Hungary, Kyrgyzstan, Sweden, and Switzerland noted that they taught history and culture of national minorities, but did not mention minority religion. Croatia, Denmark, Finland, Latvia, Poland, Romania, Slovakia, and Uzbekistan stated that minority religion was taught, although, as noted above, many of these states taught these religions only to members of the minority group (often as religious instruction per se at the wish of the parents) and not in the general curriculum as instruction about the religion(s) of the national minorities.

Finally, the responses from the relatively few states describing the levels at which minority cultures are taught reveal different methods. Some stated that such studies begin at the primary level (Czech Republic, Kyrgyzstan, and Slovenia); others noted these issues were taught in secondary schools (Austria, Denmark, Turkmenistan, and Uzbekistan).

### 3. Analysis of Results

The results of the questionnaire are thus somewhat disappointing in terms of the reported practices of states. Fewer than one-third of the states responded affirmatively that they teach about minority cultures in the general curriculum (although, as noted, some states did not answer the question). This suggests that, although states are providing minorities with opportunities to learn about their own culture, most are not instructing the student body at large about the minorities in a way that will help foster a spirit of understanding, tolerance, and national unity. Failure to follow through on teaching about national minorities to the broader student body may undercut the efforts to provide minorities with education about their own culture, in that a heightened sense of minority identity by these persons will be met only by continued ignorance or misunderstanding by the majority culture. The practice by some states in teaching tolerance is welcome.

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provincial authorities; Monaco responded that it followed the French curriculum with the addition of materials on Monagesque culture; and Russian Federation noted that protection and development of national and regional cultures is part of the state education policy, but did not provide further details about its curricula.

The cause of this problem is likely complex. The responses of states to the question suggest that some are unaware that the standards discussed above concern education in the general curriculum, and not just education for the minority students. They may thus be assuming that they have fulfilled their OSCE and other commitments in the area of minority rights by adding minority cultural studies to the curricula of minority schools or of schools in regions with significant numbers of persons belonging to national minorities. Beyond this, some may be addressing other priorities within their educational system. It is nonetheless to be hoped that states view inter-cultural understanding and dialogue as a priority in and of itself and devote the necessary resources to this goal.

As for the levels at which such courses should be taught, there is no specification in the international standards, and the number of states responding to this question is too small to reveal any clear patterns. Nonetheless, the process of creating understanding between persons belonging to minority and majority cultures is one that should begin at a young age. Just as it is assumed that persons belonging to the minority population will be learning the culture of the majority from an early age, so it is to be hoped that persons belonging to the majority can begin to learn about the cultures of national minorities at a young age and create the potential for greater tolerance.

Finally, as for teaching about the religion of national minorities in the general curriculum, the standards do not require that students be given any formal lessons about the religion of the minority. They are not, moreover, meant to override any policies separating church and state and certainly not to override the rights of students to practice their own religion without coercion from other faiths. Rather, religion is included only as a facet of creating an understanding of minority cultures. Thus, to give one obvious example, the Croatian majority in Croatia would need to have some understanding of the Eastern Orthodox religion in order generally to understand the culture of the Serb minority in Croatia. Where the national minority is not religiously distinct, for instance the French minority in Italy, then teaching about the religion would presumably be unnecessary.

#### E. Implementation of the Right to Establish Private Schools

QUESTION 7: IN WHICH WAYS HAS YOUR COUNTRY IMPLEMENTED THE RIGHT TO ESTABLISH PRIVATELY ADMINISTERED EDUCATIONAL INSTITUTIONS FOR PERSONS BELONGING TO NATIONAL MINORITIES? ARE SUCH INSTITUTIONS ENTITLED TO RECEIVE PUBLIC FUNDING?

##### 1. International Standards

The ability of persons belonging to national minorities to establish private schools is another important component of the realization of linguistic and other rights of national minorities. Such schools either represent a substitute for the public schools or serve as important supplements to the public schools for additional education in minority languages and culture. The ability of persons belonging to national minorities to establish private schools is not meant to challenge the legitimacy of the public school system, but to create additional options for them to learn their culture and language while still satisfying the basic educational requirements of the state.

The international standards in this regard reflect the balance between the needs of minorities and the legitimate policies of the state regarding educational standards and the use of public funding. Thus, paragraph 32.2 of the Copenhagen Document states that minorities have the right "to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation." Article 13(3) of the International Covenant on Economic, Social and Cultural Rights provides:

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

Article 13(1) of the Framework Convention states: "Within the framework of their educational systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments." In addition, certain bilateral agreements provide for these rights as well.<sup>59</sup>

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<sup>59</sup> See, e.g., Slovakia-Hungary Treaty, art. 15(2)(e).

Thus, the international standards provide minorities with the right to establish private schools, but not the right to exemption from national standards of education nor the right to public funding. Nevertheless, as noted in The Hague Recommendations, the state may not, in the name of educational standards, impose unduly burdensome legal and administrative requirements on minority private schools (para. 9). Nor may it interfere with these schools' ability to receive funding from private sources at home and abroad (para. 10).

## 2. Questionnaire Results

Every state answering this question noted that national minorities have the right to establish private schools.<sup>60</sup> Seven noted that this right was written in or derived from their constitution (Andorra, Armenia, Austria, Germany, Netherlands, Switzerland, and United States of America); while six noted that the right was specifically guaranteed in law (Andorra, Croatia, Estonia, Latvia, the former Yugoslav Republic of Macedonia, and United Kingdom). Armenia, Austria, and Turkey noted that such schools were guaranteed under special treaties to which they were parties – the CIS Convention Guaranteeing the Rights of Persons Belonging to National Minorities, the Treaty of St. Germain, and the Treaty of Lausanne, respectively. Nevertheless, some states replied that they had no private schools especially for minorities (Armenia, Hungary, Malta, Norway, Poland, and Turkmenistan); and others replied that such schools were quite uncommon, often due to the prevalence of attendance at public schools (Belarus, Finland, Moldova, and the former Yugoslav Republic of Macedonia). Some also said minority schools only existed at certain levels: Azerbaijan (university level); Denmark (elementary level); Moldova (secondary and college); Tajikistan (elementary level); the former Yugoslav Republic of Macedonia (secondary level); and Uzbekistan (elementary level).

Many states responding to the question noted that minority schools would have to meet certain standards set by the state and would then receive a license or other form of accreditation. Some noted specific requirements for receipt of such a license, e.g., teaching on the level of or equivalent to that in the state schools (Denmark, Sweden). Switzerland stated that such schools might be required to use the official language. It is unclear, however, whether these standards apply to all private schools established by minorities or just those that are meant to serve as substitutes for, rather than supplements to, the public schools.

With regard to funding, answers were somewhat less uniform. The following states said such schools were entitled to public funding: Austria, Canada, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Kazakstan, Latvia, Lithuania, Moldova, Netherlands, Norway, Poland, Romania, Russian Federation, Slovakia, Slovenia, Sweden, Switzerland (except primary schools), Turkey, and United Kingdom. Monaco and Spain stated private schools do not receive public funding, and United States of America said that its constitutional separation of church and state set strict limits on such funding. Of those states that did provide funding, some stated that funding depended on attendance thresholds (Denmark, Ireland, and Slovakia); others said it was contingent upon meeting certain educational standards (Czech Republic, Lithuania, Netherlands, Norway, Romania, and Russian Federation). Latvia stated that it would provide public funding only if school courses were in Latvian, with exceptions possible for bilingual preschools and elementary schools. (Other states may well contain similar requirements in their standards without mentioning them in the response to the questionnaire.) Finally, a number of states noted certain limits on public funding of private schools: Denmark (75 percent of costs); Latvia (80 percent of employees' wages and benefits); Poland (50 percent of costs); while others noted that funding was unrestricted (Lithuania, Slovakia).

## 3. Analysis of Results

It appears that every OSCE participating state responding to the question has acknowledged the right of minorities to establish private schools, and in most states such schools exist, although the questionnaire results do not make clear whether these are regular day schools or supplementary schools. While only a minority of states responded that such a right was enshrined in their constitution or law, it might well be the case that the number is significantly higher. In either case, it would seem a positive step for those states that do not yet have legal provisions guaranteeing the right of minorities (and others) to establish private schools to codify this right as soon as possible.

As for accreditation, none of the responses provided by states suggested requirements that would be unduly burdensome or discriminate against minority schools, although most states did not provide the detailed contents of their accreditation standards. It bears repeating that such standards must not discriminate against minority schools or constitute de facto barriers to their operation. It would seem in this context that the standards, if any, required for schools supplementing the regular schools (e.g., after-school and weekends)

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<sup>60</sup> Bulgaria, Cyprus, France, Greece, Iceland, Kyrgyzstan, Liechtenstein, Luxembourg, Portugal, and San Marino did not respond to the question.

should not be nearly as high as those for private schools that will be the main educational institution for the student.

Regarding funding, it is to be welcomed that so many states do provide some funding for such schools. Such funding can help minority schools meet the standards that states have set for their educational quality and thus, in effect, help ensure the continued operation of the schools. Conditioning funding upon a minority school's previously attaining the state schools' standards may thus, as a de facto matter, amount to a denial of funding. Funding initially conditioned upon attendance would seem a better way of linking it to minority interest; future funding could be conditioned on meeting the educational standards.

#### F. Access to Public Media

QUESTION 8: IN WHICH WAYS, AND TO WHAT EXTENT, DO PERSONS BELONGING TO NATIONAL MINORITIES HAVE ACCESS TO PUBLIC MEDIA IN THEIR LANGUAGE? FOR EXAMPLE, DO THEY ENJOY ACCESS TO AND TIME ON PUBLIC ELECTRONIC MEDIA CHANNELS (TELEVISION AND RADIO) TO PRODUCE AND TRANSMIT PROGRAMMES IN THEIR LANGUAGE?

##### 1. International Standards

The right of persons belonging to minorities to receive and impart information to each other depends in great part on access to media outlets. This right derives from the basic human right to seek, receive, and impart information specified in Article 19 of the ICCPR and Article 10 of the ECHR. Under these conventions, the choice of language employed cannot per se be a legitimate basis for any governmental restrictions on communication. Minority language newspapers, radio and television broadcasts, and, increasingly, electronic fora (e.g., worldwide web sites) are all possible avenues for communication. These media are especially important when minorities are scattered across large regions. International standards dealing specifically with access to the media for minorities are somewhat limited in nature. The only multilateral instrument addressing the issue expressly is the Framework Convention, which states in Article 9(3):

The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1 [regarding the right to receive and impart information without discrimination], that persons belonging to national minorities are granted the possibility of creating and using their own media.

In addition to this provision, bilateral treaties contain similar requirements.<sup>61</sup>

Several aspects of this provision should be noted. First, the Framework Convention prohibits states from hindering the creation and use of media. Second, it requires states to grant minorities the possibility to use their own media, though subject to two limitations – (a) that states may provide that such use be undertaken within the legal framework of their broadcasting laws; and (b) that states ensure this opportunity "as far as possible." The second clause recognizes that there are technical factors affecting the ability of a state to grant members of minority groups the possibility to create and use certain media, notably radio and TV, where frequencies might be limited.<sup>62</sup>

Third, the reference to paragraph one of Article 9 and its standards of non-discrimination suggests that, in addition to the positive obligation to provide access, any access should not discriminate among languages and thus not restrict the enjoyment of minority rights.<sup>63</sup> This means that any distinctions among programming for different languages should be based on objective factors such as demand and technical limitations, and not

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<sup>61</sup> See, e.g., Slovakia-Hungary Treaty, art. 15(2)(g).

<sup>62</sup> See Framework Convention, Explanatory Report, para. 61.

<sup>63</sup> See Oslo Recommendations, para. 8.



prejudice against a linguistic group. It would also imply that governments should not restrict or censor the content of minority programming except to the limited extent permissible for the media generally (e.g., incitement to racial hatred, obscenity, etc.).<sup>64</sup>

The Framework Convention does not address public funding of media, either through access to state radio or television or government grants to minority media. The Oslo Recommendations, however, suggest that minorities should have access to broadcast time on publicly funded media and not merely the right to establish private stations. At the same time, the Recommendations recognize that access must be commensurate with the size and concentration of the group.<sup>65</sup>

The Framework Convention also does not directly address access by minority groups to broadcasts from other states in the minority language. Paragraph 32.4 of the Copenhagen Document and Article 17(1) of the Framework Convention require states to respect the rights of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers. It may be especially important for the maintenance and development of identity for such persons to have access to the usually more developed and fuller programming available from the kin state. In any event, consistent with the principle of non-discrimination, such access should not be denied based solely upon the language of the communication, a principle also reflected in the Oslo Recommendations.<sup>66</sup>

## 2. Questionnaire Results

Most states responding to the question addressed both print media and electronic media, although some focussed exclusively on the latter.<sup>67</sup> Ten states discussing newspapers noted that a wide variety of national minorities had their own newspapers or periodicals, in most cases in their own languages:<sup>68</sup> Armenia (Russian, Ukrainian, Kurdish, and Jewish); Azerbaijan (Kurdish, Lezgi, Talysh, Russian, and Georgian); Belarus (Tatar, Jewish, Ukrainian, and Polish); Bulgaria (Turkish, Russian, Armenian, Wallachian, and Jewish); Croatia (Italian, Czech, Slovak, Hungarian, Ruthenian, Ukrainian, Serb, German, Austrian, Jewish, Albanian, Roma, Montenegrin, and Macedonian); Kazakstan (Russian, German, Uighur, Korean, Ukrainian, Kurdish, and Uzbek); Latvia (Russian, Belarussian, Lithuanian, Liv, Jewish, and Estonian); Lithuania (Russian, Polish, Belarussian, Ukrainian, German, Yiddish, English, and French); Ukraine (Russian, Armenian, Romanian, Jewish, Bulgarian, Polish, and Tatar); and Uzbekistan (Russian, Tajik, Kazak, Tatar, Kyrgyz, and Turkmen). Some states noted the presence of many newspapers or magazines in a small number of languages: Azerbaijan (20 in Russian); Estonia (12 in Russian); Greece (10 in Turkish); and Turkey (eight in Armenian). And nine states added that they provide state subsidies to newspapers or magazines: Germany, Hungary, Norway, Poland, Romania, Sweden, the former Yugoslav Republic of Macedonia, Ukraine, and United Kingdom.

As for broadcast media, all responding states noted that they provided access to such media for minorities, with the exception of Andorra, which stated that the only public media programming was the national news. The number of languages broadcast was, not surprisingly, somewhat smaller than the number of languages for printed media, but 16 states nonetheless reported offering radio or TV broadcasting in at least several minority languages: Azerbaijan, Croatia, Czech Republic, France, Germany, Italy, Kazakstan, Kyrgyzstan, Lithuania, Moldova, Poland, Romania, Slovakia, Sweden, the former Yugoslav Republic of Macedonia, and Uzbekistan. In addition, many states noted that they freely allowed broadcasts from neighboring countries where the language is the majority language (e.g., the Baltic states from Russian Federation, Sweden from Finland, Greece from Turkey).

Nevertheless, the responses revealed certain differences and patterns. First were large differences with respect to the number of hours or programs offered in the minority language, although many states did not specify the amount of programming. States whose responses noted a relatively high amount of minority language programming – greater than two hours per day per language – were: Estonia (Russian); Slovenia (Italian and Hungarian); the former Yugoslav Republic of Macedonia (Albanian and Turkish); and United Kingdom (Welsh); although other states may meet this threshold as well. Some reported a rather small amount

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<sup>64</sup> Id. para. 10.

<sup>65</sup> Id. para. 9.

<sup>66</sup> Id. para. 11.

<sup>67</sup> Cyprus, Iceland, Liechtenstein, Luxembourg, Portugal, and San Marino did not answer the question.

<sup>68</sup> Some states listed the languages, while others listed the minority groups.

of programming, e.g., Moldova (30-45 minutes per month, with more for Ukrainian). In addition, Canada and Switzerland provide a full range of radio and television programming in the official languages (although Switzerland has more limited programming for Romansch).

Second, states differed in terms of their provision of access through public media versus private media (though some did not distinguish between the two in their answers). Some states with official stations mentioned that they have laws specifying that broadcasts should address the concerns of national minorities or that minorities should have access to state media: Croatia, Hungary, Latvia, Lithuania, Poland, and Russian Federation (although the Croatian and Latvian laws also restrict the amount of broadcast time in minority languages to a certain percentage of air time). Many noted that they provided access to state TV and radio for some programming and noted that private stations could also broadcast or were broadcasting in minority languages: Canada, Estonia, Hungary, Italy, Latvia, Lithuania, Russian Federation, Slovakia, the former Yugoslav Republic of Macedonia, and United Kingdom. Others noted that the stations were government stations, though they included both national and regional stations: Austria, Croatia, Czech Republic, Finland, Moldova, Norway, Romania, and Ukraine. (It would appear that some stations mentioned by other states are also public stations.) Several states mentioned that the media was private, though it broadcast minority language programming in any case: Germany, Sweden, Switzerland. These three states also have press laws or contracts with the private companies mandating that programming take account of the different language groups in the country. United States of America has a law allowing for the provision of grants to organizations producing radio and TV programs in Native American languages.

Third, and relatedly, is the question of editorial control over the content of minority language broadcasts on government channels. While a small number of states suggested that the broadcast units were independent of government control (Finland for Sami and Swedish broadcasts; Czech Republic; the three states noted above which have exclusively private broadcasters; and United States of America), a large number did not specify, leaving the impression that the government might restrict the amount and determine or censor the content of such broadcasts. A small number noted that a member of the minority has the right to sit on a broadcast regulation board which might or might not have the power to regulate content (Croatia, Germany, and Hungary), although it is possible that other states might utilize this method as well.

Fourth, and also related to the question of independence and content of broadcasts, is the question of broadcasts about minorities versus broadcasts by minorities in their own language. Several states noted that they provide a periodically scheduled official broadcast about minorities in their country or otherwise provided news about minority groups (Croatia, Kyrgyzstan, and Poland) and it seems likely that other states provide this type of programming as well.

### 3. Analysis of Results

The results of the questionnaire provide some welcome results with respect to access by minorities to media in their own language. As an initial matter, the results suggest that printed media is flourishing in the OSCE region. Although only nine states responded that they provided subsidies to the printed media, it is our sense that the number is larger, a trend which is to be encouraged.

The great variety in broadcast programming opportunities across OSCE states is welcome, with many states providing access to government channels and some even guaranteeing it in legislation. As for those states providing relatively few hours of programming in minority languages, the issue for them regarding the international standards is whether they are adequately responding to a real demand by minority groups in light of the technical limitations on the state. It would seem that those states providing only a short broadcast each day in a minority language may well be in a position to expand the number of hours, especially if the production is left to members of minority groups rather than through hiring of new professionals for state TV or radio. Permitting a minority group to establish its own private TV or radio station, as many states have done, is in many cases not a substitute for access to state TV or radio, which is likely to have more sophisticated broadcasting mechanisms and be received by a greater number of residents of the state. It is to be welcomed that the three states with exclusively private stations that responded to this question have legal guarantees that programs will be made for minority communities.

Regarding editorial control, the responses from governments suggest that much of the minority language programming is provided on government stations. Although most states did not directly address the question of editorial control, it is important that such control be left with the minority groups. Any other policy would undermine not only the OSCE standards with respect to access to the media but other important international legal principles regarding freedom of expression. The presence of minorities on oversight bodies is a welcome trend in this direction, in that it helps stations remain aware of the need for minority language programming, but it should not be viewed as interchangeable with editorial freedom. Finally, as for

programming about minorities, such programs, if they accurately reflect minority (rather than simply government) perspectives, may enhance awareness of minority cultures and concerns throughout the country; yet they should not be viewed as a replacement for programs prepared by minority groups and broadcast in their own language.

None of the states addressed the question of computer-related media. It is to be hoped that all states in the OSCE respect the right of minority groups to establish worldwide web sites free of government restrictions (except those permitted by international human rights standards).

#### G. Other Protections for Minorities

QUESTION 9: IN RELATION TO THE USE AND DEVELOPMENT OF THEIR LANGUAGE(S), WHAT ADDITIONAL RIGHTS, IF ANY, ARE ENJOYED IN YOUR COUNTRY BY PERSONS BELONGING TO NATIONAL MINORITIES?

##### 1. Questionnaire Results

Most states provided a response to this question, although a number of them referred to minority rights generally rather than the use and development of language. Some noted the presence of special associations, schools, institutes, cultural centers, theaters, festivals, and other activities by and for minorities, some of which receive government funding; some also noted the presence of various autonomy regimes.

Four groups of responses are of particular note. First, regarding the right to use names, Italy stated that regional statutes allow for place name identification in minority languages; Slovakia stated that persons belonging to national minorities have the legal right to use minority languages for personal and place names; and the former Yugoslav Republic of Macedonia noted that such persons have the right to use their languages for identification cards and birth/death/marriage registries.<sup>69</sup>

Second, two states address the rights of civil servants to use and speak minority languages: Canada, which stated that federal employees have the right to work and be supervised in their own language, coupled with a formal complaint mechanism in the event of violations; and Lithuania, which noted that the amount of Lithuanian required of civil servants varied with their level of responsibility, and that only new employees must pass language examinations immediately, whereas there is no fixed deadline for incumbents.

Third, a few states highlighted the existence of government bodies or advisory groups that protect the rights of minorities to use their languages: Austria has established Ethnic Advisory Councils; Lithuania noted several special governmental structures to protect minorities; Switzerland noted that the Chamber of Cantons provided representation for different language groups, that the composition of the Federal Council strove to include representation of all four language groups, and that the Federal Court included persons who spoke all four languages; and United Kingdom noted various government bodies to hear minority views.

Fourth, Croatia and Moldova added that they had central libraries for national minorities financed by the state.

##### 2. Analysis of Results

All of the additional rights noted by states are welcome additions to those in the responses to the other questions. The use of minority languages for identification cards, government registries, and place names is welcome and conforms to the requirements of Article 11 of the Framework Convention, which gives persons belonging to national minorities the right to official recognition of their name in the minority language and commits governments to endeavor to display names in the minority language in regions traditionally inhabited by substantial numbers of minorities.<sup>70</sup> It is hoped that all OSCE participating states – in particular those parties to the Framework Convention – are similarly offering such opportunities for use of names in minority languages. The flexibility shown by a number of states regarding language requirements for public employees is also noteworthy. The Canadian plan, with its rights for persons to speak and use their own language (i.e. choosing one of the two official languages), goes very far and follows that state's commitment to official

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<sup>69</sup> Czech Republic noted the presence of bilingual signs in regions of high minority concentration, although not provided by law.

<sup>70</sup> See also Oslo Recommendations, paras. 1-3.

bilingualism; the Lithuanian plan, while more modest, is a creative way of accommodating civil servants who speak only a minority language while working towards the state's goal of knowledge of Lithuanian for new civil servants with significant levels of responsibility.

The creation of institutions within states to address minority concerns directly is also important. Such bodies can act as a check on majoritarian trends within the government and help prevent discrimination against minorities. Such bodies must have significant independent authority guaranteed by law to ensure that they will be more than merely symbolic. In addition, the creation of libraries dedicated to minority culture and literature can be an important method of maintaining group consciousness and identity. It is obviously important that such libraries receive adequate funding.

## V. Conclusions

As might be expected, the survey results reveal a broad range of practices by states with respect to the linguistic rights of persons belonging to national minorities. Indeed, in addition to a first set of differences – those between states' responses to a particular question – one confronts a second set of differences – those between a state's response to one question (e.g., use of language with governmental authorities) and the same state's response to another question (e.g., teaching of minority cultures). Many of these differences are due to basic demographic facts: states with large numbers of persons speaking minority languages or a large number of minority languages, or both, will usually have a broader range of programs to protect linguistic rights than those with only small pockets of minorities. The differences may also be traced, however, to other factors, such as the economic development of the country and consequently the resources available for minority programs; and the degree of rootedness of concepts of democracy and human rights, including minority rights. These factors are more changeable and suggest the possibility of real improvement regarding the enjoyment of linguistic rights in those areas where states are currently not meeting OSCE and other international standards. Nevertheless, many of these states are already making positive efforts to improve the enjoyment of linguistic rights.

The results suggest several general conclusions as well as more specific recommendations. First, it would seem that some states need to be better aware of the content of the international standards in these various areas. Although foreign ministries may be cognizant of relevant international standards, lawmakers and those in law-implementing agencies may well be unfamiliar with them, including with their flexibility in many respects. The standards themselves are the result of compromise and aim to protect the linguistic rights of persons belonging to national minorities while respecting certain objective limits upon the state, e.g., financial and infrastructural.

Second, the results suggest that many states would be well served by setting their policies in this area through more official and legal methods, i.e. legislation. A legal framework for protection of linguistic rights is a crucial first step to overcoming arbitrary interference with minority rights and full implementation of international standards. This is not to say that an all-encompassing law on languages is necessary or even desirable; indeed, many states appear to have good track records regarding respect for the international standards without such language laws, and the existence of such a law is certainly not sufficient to protect linguistic rights.

Third, and especially important, the responses highlight the need for governments to maintain close channels of communication with persons belonging to national minorities. Many of the international standards turn on an assessment of the genuine needs of minorities, to which governments must respond. In some states, mechanisms are well established for ascertaining those needs. But in many others, members of national minorities may be sufficiently isolated from channels of authority – sometimes due to the very language differences at issue here – that the government is not aware of what schools, media, access to interpreters, or other needs they have. A prerequisite to successful implementation of the standards is thus efficient lines of communication between minorities and decisionmakers. This requires a willingness on both sides to cooperate, even if ultimately the burden will fall upon governments to meet the standards.

Beyond these general points, the answers of states to the individual questions suggest a number of specific recommendations, some of which appear earlier in this report:

1. States with official languages should endeavor to extend some form of status or recognition to non-official languages where those languages are spoken by large numbers of people. Most states have already done this in some form, although the practical implications of such status for minorities vary significantly across states. It is important that such status will result in the enjoyment of linguistic rights.

2. With respect to access to administrative and judicial authorities, many states should consider more legal protections in this area. Many members of minority groups may not speak the official language well, and, even if they do, may consider it an important part of their minority identity to be able to use the minority language in communication with governmental authorities. Those states that limit such communications by region or proportion should consider that, in so doing, they may well be failing to address adequately the rights of minorities throughout the country. States should make available adequate resources (e.g., interpreters, translators, bilingual civil servants) to ensure that persons belonging to national minorities are adequately understood and may receive a reply in their own language.

3. States should give closer attention to the teaching of and in minority languages. It is often unclear how much minority languages are taught outside the regions where minority populations are most concentrated. States should create a flexible policy that responds to the different needs of persons belonging to national minorities and local conditions. Moreover, states need to ensure that minorities are closely involved in the decisions to set up classes taught in those languages, so that the needs of the pupils and their parents are reflected in the curricula.

4. Similarly, there is clearly a sense from the responses that most states are not teaching about minority cultures in the general curriculum. As noted earlier, states need to include such teaching in order to increase inter-ethnic understanding and dialogue, key ingredients for a democratic and tolerant society. Special courses that teach tolerance, already included in the curricula in some states, are also useful. They can serve as a form of transition to full teaching about their minority cultures and also advance the important goal of sensitizing students to foreign cultures that do not qualify as national minorities, e.g., recent immigrants or refugees resident in the country.<sup>71</sup> The Council of Europe is now taking a proactive role in providing ideas for curricula in these areas.<sup>72</sup>

5. Although private schools appear to be flourishing in the OSCE region, it is important that states ensure that no discriminatory treatment is given with respect to establishment or accreditation of such schools. In particular, when such schools are to serve as substitutes for regular schools, states should ensure that the conditions for their operation are impartial.

6. Finally, with respect to access to the media, states should consider all available options for increasing the amount of programming in minority languages to match the needs of the minority population. New technologies, allowing minorities to produce their own broadcasts, the broadcasting of foreign programs, and other methods can be used to expand the hours devoted to minority programming.

Because of the centrality of language to ethnic identity, the process of ensuring the linguistic rights of minorities is critical to the advancement of minority rights overall and human rights generally. The OSCE documents set important and reasonable standards for states to meet. Additional bilateral and multilateral treaties set higher legally binding obligations for some states. All deserve respect and compliance in order to create pluralistic and democratic societies throughout the OSCE region.

It is hoped that, in their policy- and law-making, OSCE participating States will draw from the variety of options and the best practices known in this field and apply these in their specific situations as may be appropriate.

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<sup>71</sup> See Copenhagen Document, para. 36 ("Each participating state will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion. . . .").

<sup>72</sup> See Michael Byram & Geneviève Zarate, Young people facing difference: Some proposals for teachers, Council of Europe Council for Cultural Cooperation Education Committee, 1995

## Appendix

### Questionnaire Sent to Governments

**Question 1:** Which languages have "state" or "official" status in your country? Please also provide relevant information on any other languages which may have special status in your country.

**Question 2:** May persons belonging to national minorities use their own language in their contacts with administrative authorities and public services throughout your country? Is this a matter of right under national law in territories in which the minority language is traditionally used by a substantial part of the local population?

**Question 3:** May persons belonging to national minorities use their own language in judicial proceedings and other contacts with judicial authorities throughout your country? Is this a matter of right under national law in territories in which the minority language is traditionally used by a substantial part of the local population?

**Question 4:** Which minority languages are taught in your country? At which levels of education are they taught (i.e. primary, secondary, vocational, teacher training, university)? Are these taught only in some localities? If so limited, by what criteria are the localities defined in which such education is available?

**Question 5:** Do persons belonging to national minorities enjoy the right to education in their language, i.e. the whole or significant parts of their education in their own language? If it is limited, please indicate which subjects are taught in the minority languages and which subjects are required to be taught in the state or official language(s) at each level of education. Please also indicate whether the right is enjoyed throughout your country. If it is enjoyed in only some localities, by what criteria are the localities defined in which such education is available?

**Question 6:** To what extent is the culture, history, religion, and belief of national minorities taught in the general curriculum?

**Question 7:** In which ways has your country implemented the right to establish privately administered educational institutions for persons belonging to national minorities? Are such institutions entitled to receive public funding?

**Question 8:** In which ways, and to what extent, do persons belonging to national minorities have access to public media in their language? For example, do they enjoy access to and time on public electronic media channels (television and radio) to produce and transmit programmes in their language?

**Question 9:** In relation to the use and development of their language(s), what additional rights, if any, are enjoyed in your country by persons belonging to national minorities?

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