



HCNM Discussion Paper

On Strengthening the Institutional Framework Related to Inter-ethnic Relations in Ukraine in the Context of Decentralization

Introduction

Ukraine is a deeply diverse society in which a wide range of ethnic, linguistic, religious and cultural identities have historically developed over many centuries. In the last census of 2001, 22.2% of Ukraine's 48.5 million citizens identified themselves as ethnically different from the majority population.¹ As with other multi-ethnic societies, this diversity both enriches Ukraine and poses a significant challenge for policy-makers, as accommodating diversity, protecting minority rights and promoting social cohesion requires prudent policies and substantial resources. This is all the more pressing in light of the ongoing structural reforms in Ukraine.

Ukraine has recognized the need to strengthen its institutional framework for the promotion of constructive inter-ethnic relations and the protection of minority rights. This is one of the strategic objectives set by the National Strategy in the Area of Human Rights for 2016-2020 and the accompanying Action Plan² as well as one of the conclusions of the parliamentary hearings on "Role, Importance, and Influence of Civil Society on the Formation of an Ethno-national Policy of Integrity in Ukraine" endorsed by the Verkhovna Rada on 25 November 2015.³ The OSCE High Commissioner on National Minorities (HCNM), together with other international actors, has long recommended the Ukrainian authorities to take steps in this direction. In her latest address to the OSCE Permanent Council she reiterated her call to the Ukrainian authorities to modernize its institutional architecture and to establish a designated executive body that would be a main governmental interlocutor for national minorities in Ukraine.⁴

¹ According to the 2001 National Census, the population of Ukraine is 48.5 million; of this, 77.8 per cent are ethnic Ukrainian, 17.3 per cent are ethnic Russians and 4.9 per cent belong to other ethnicities. Available in Ukrainian at: <http://2001.ukrcensus.gov.ua/rus/results/general/nationality/>. The next national census is planned for 2020. See in Ukrainian: Кабінет міністрів України, Розпорядження від 16 грудня 2015 р. № 1323-р "Про внесення змін до розпорядження Кабінету Міністрів України від 9 квітня 2008 р. № 581." Available at: <http://zakon3.rada.gov.ua/laws/show/1323-2015-%D1%80>.

² See in Ukrainian: розділ 4 Указа Президента України від 25 серпня 2015 року № 501/2015 "Про затвердження Національної стратегії у сфері прав людини." Available at: <http://www.president.gov.ua/documents/5012015-19364>; Кабінет міністрів України, пункт 112 Розпорядження від 23 листопада 2015 р. № 1393-р "Про затвердження плану дій з реалізації Національної стратегії у сфері прав людини на період до 2020 року." Available at: <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>.

³ See in Ukrainian: Постанова Верховної Ради України від 25 листопада 2015 року № 824-VIII, "Про Рекомендації парламентських слухань на тему: "Роль, значення та вплив громадянського суспільства на формування етнонаціональної політики єдності в Україні". Available at: <http://zakon5.rada.gov.ua/laws/show/824-19>.

⁴ See Address by Astrid Thors, OSCE High Commissioner on National Minorities

Establishing or designating such a Governmental body would achieve three main objectives:

- First, it would strengthen the stability of the Ukrainian State at a time of profound challenge. National minority issues and questions of identity and language have often been used and abused for political purposes. Establishing a sound institutional framework would make it easier for the State to engage in a regular dialogue with minorities and to address long-held grievances. This, in turn, would prevent tensions and misunderstandings between communities and would make it harder for other internal and external actors to destabilize the country.
- Second, would bring Ukraine closer to compliance with relevant European and international standards. Ukraine is a party to the Council of Europe Framework Convention for the Protection of National Minorities (Framework Convention) and the European Charter for Regional or Minority Languages. Ukraine has also accepted EU conditionality, which includes respect for minority rights as part of the implementation of the EU Neighbourhood Policy. By choosing this path, Ukraine has demonstrated its intention to embrace European standards of minority rights protection, *inter alia*, by creating the necessary mechanisms for their implementation. The latter cannot be achieved without closing the existing gaps in Ukraine's institutional framework for inter-ethnic relations.
- And finally, Ukraine is in the process of structural reforms that would significantly change the manner in which the country is governed. The most significant of these changes is the decentralization process, which will have a profound impact on national minority communities. It is essential that the State has appropriate institutional arrangements at the national, regional and local levels to ensure the regime of minority rights protection is upheld and minority communities are fully involved in the process.⁵

To discuss these questions, on 10 March 2016, a round table “On Strengthening the Institutional Framework Related to Inter-ethnic Relations in Ukraine in the Context of Decentralization” will take place in Kyiv, Ukraine. The event is jointly organized by the Committee of the Verkhovna Rada on Human Rights, National Minorities and Interethnic Relations and the OSCE High Commissioner on National Minorities. This discussion paper explores possible approaches to strengthening the institutional framework for the protection of national minorities and building a solid foundation for the integration of Ukrainian society in the ongoing process of decentralization.

to the 1078th Plenary Meeting of the OSCE Permanent Council, p.11. Available at: <http://www.osce.org/pc/201961?download=true>. See also “Ukraine, Human Rights Assessment Mission: Report on the Human Rights and Minority Rights Situation, March-April”, HCNM/ODIHR, 12 May 2014. Available at: <http://www.osce.org/odihr/118476?download=true>.

⁵ See, generally, The HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life. Available at: <http://www.osce.org/hcnm/32240>.

International standards

The need to establish effective executive structures for minority protection is stressed by the United Nations, the Council of Europe and the OSCE. In 2012, the UN Independent Expert on Minority Rights noted that implementation of The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,⁶ *inter alia*, depends on the member-states taking action to establish dedicated departments, sections or focal points within existing institutions. Member-states might also consider the establishment of specialized national institutions or agencies to address the rights of persons belonging to national or ethnic, religious and linguistic minorities.⁷

A strong institutional framework in the sphere of inter-ethnic relations contributes to effective implementation of Article 15 of Framework Convention which provides that the State Parties “shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”. The Advisory Committee on the Framework Convention has encouraged States to establish governmental structures dealing with national minorities. Such arrangements can help ensure that minority concerns are prioritised in governmental policies.⁸

While specialised governmental bodies should not substitute the work of mainstream government institutions on minority-related issues, they are seen as important channels of communication between the Government and minorities.⁹ It is essential that the relevant governmental institutions be aware of the needs of persons belonging to national minorities and minority issues be mainstreamed in the work of other governmental services.¹⁰

Finally, a link between effective participation and specialized government bodies is also made in different thematic recommendations issued by the OSCE High Commissioner on National Minorities. In the Lund Recommendations on the Effective Participation of National Minorities, the role of specialized bodies is noted as allowing for minorities to have an effective voice at the level of the central

⁶ Resolution adopted by the General Assembly on 18 December 1992 (A/RES/47/135). Available at: <http://www.un.org/documents/ga/res/47/a47r135.htm>.

⁷ Resolution adopted by the General Assembly on 18 December 2013 [on the report of the Third Committee (A/68/456/Add.2)] 68/172. Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (further referred to as Declaration), p.4. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/172.

⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, adopted on 27 February, para 103. Available at: https://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_CommentaryParticipation_en.pdf

⁹ Specialised bodies should not substitute but complement national minorities' consultative mechanisms. Their effectiveness depends to a great extent on the level of coordination and complementarity with consultation bodies. The recruitment and retention of staff with national minority background and/or minority language skills in these specialised bodies can contribute to their effective functioning, *Ibid*, para 104.

¹⁰ *Ibid*, para 105.

government.¹¹ In the Ljubljana Guidelines on Integration of Diverse Societies, the HCNM stresses that effective participation requires, *inter alia*, that minority representatives are able to exert substantial influence on the policy-development process, thereby facilitating shared ownership of the outcomes. Simply permitting formal involvement is not sufficient. Examples of means and instruments that facilitate effective participation include, *inter alia*, specialized governmental bodies, consultative mechanisms and participatory decision-making procedures.¹²

According to the UN Independent Expert on Minority Rights, dedicated governmental bodies (including ministries or Government departments) on minority issues should not only have primary responsibility for designing, directing and leading government policy on minority issues, but can be most effective when working closely with other line ministries on minority issues and coordinating mainstreaming across ministries. Such dedicated institutional attention gives a strong signal to minorities and wider society that government recognizes minority issues and takes them seriously. Some Government bodies or initiatives are given a particularly high public profile and status by placing them under high-level political leadership.¹³

An important consideration in creating national institutions dealing with minority issues is that they should exist alongside with independent human rights institutions that also focus attention on minority issues.¹⁴

Current situation

Since independence, Ukraine has significantly changed and reduced the institutional arrangements for the protection of minority rights. From 1993-1995, the country had a specialized Ministry for Nationalities and Minorities that was later downgraded to a State Committee and eventually dissolved in 2010 by the Government of then President Yanukovich. This gradual erosion was noted critically by international monitoring bodies. The Advisory Committee on the FCNM in 2012 noted in its Opinion on Ukraine that the “the government agency responsible for dealing with all issues pertaining to minority protection issues was dissolved at the end of 2010 and responsibilities entrusted to a small sub-division within the Ministry of Culture. Minority representatives deplore that access to higher-level officials in all ministries has since become much harder and overall, consultation on and effective participation in decision-making processes on issues of their concern has diminished

¹¹ See Point 6 of The HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life and Explanatory Note to it that “special bodies may also be established to accommodate minority concerns.” Available at: <http://www.osce.org/hcnm/32240>.

¹² Governments should promote effective participation of all relevant segments of society, including persons belonging to minorities, when elaborating, implementing and monitoring integration policies (Guideline 14). Effective participation requires, *inter alia*, that minority representatives are able to exert substantial influence on the policy-development process, thereby facilitating shared ownership of the outcomes. Simply permitting formal involvement is not sufficient. Examples of means and instruments that facilitate effective participation include electoral arrangements, **specialized governmental bodies**, consultative mechanisms, participatory decision-making procedures and awareness-raising campaigns (Explanatory note to Guideline 14). See: The Ljubljana Guidelines on Integration of Diverse Societies and Explanatory Note, November 2012. Available at: <http://www.osce.org/hcnm/96883?download=true>.

¹³ Declaration, para. 56.

¹⁴ Ibid, para. 57.

significantly”.¹⁵ As a matter of immediate action, the Advisory Committee called on Ukrainian authorities to “re-establish a specialised governmental body with sufficient financial and human resources to co-ordinate all issues relating to the protection of persons belonging to national minorities”.¹⁶

In order to further study the situation with the institutional framework in the sphere of inter-ethnic relations, the HCNM supported a review carried out by experts of the Ukrainian Centre for Independent Political Research (UCIPR). This review confirmed that the situation had not changed much by 2015 apart from a brief attempt in 2014 to introduce a coordination mechanism in the Government by establishing the post of the Government Plenipotentiary on Inter-ethnic Issues. The post was short-lived and abolished in 2015, without an alternative being created.

After the unlawful annexation of the Crimean peninsula by the Russian Federation, Ukraine took a number of positive measures specifically towards the Crimean Tatar population. On 20 March 2014, the Verkhovna Rada adopted a resolution recognizing the Crimean Tatars as an indigenous people. And in the same year the President of Ukraine appointed Mustafa Dzhemilev as Plenipotentiary on Crimean Tatar People.

In 2015, the newly created State Service on Crimea and City of Sevastopol was given an explicit mandate to deal with minority issues on the Crimean peninsula, including the Crimean Tatar people.¹⁷

In 2015, the Government established an inter-departmental working group on Roma to coordinate implementation of the Strategy for the protection and integration of Roma community in the Ukrainian society until 2020.¹⁸

In 2016, the Government of Ukraine also announced the resumption of bilateral commissions on the rights of national minorities (Hungarian-Ukrainian, Romanian-Ukrainian, and German-Ukrainian).

Existing public councils in Ukraine, where national minority representatives are included, appear not to be consulted regularly, nor do they have an effective impact on decisions of relevance to them. Three such main bodies exist currently in Ukraine: the Council of Inter-ethnic Accord presided by Vice Deputy Prime Minister, a commission under the Public Council of the Minister of Culture and the Expert

¹⁵ Opinion on Ukraine, ACFC/OP/III(2012)002, p.2. The Advisory Committee found that the institutional vacuum left by the dissolution of the State Committee for Nationalities and Religions (SCNR) at the end of 2010 was not been filled by the much smaller ‘Sub-department on national minorities and Ukrainian diasporas’ within the Ministry of Culture. A number of minority and government representatives were concerned that the lack of a coherent legislative and institutional framework related to minority rights prevented legal certainty and co-ordinated government responses on a complex issue that is of great significance to a large part of the population. Ibid. Para 24.

¹⁶ Ibid.

¹⁷ See in Ukrainian: Кабінет міністрів України, Постанова від 24 вересня 2015 р. № 736. <http://zakon0.rada.gov.ua/laws/show/736-2015-%D0%BF>. Available at:

¹⁸ See in Ukrainian: Кабінет міністрів України, “Про утворення Міжвідомчої робочої групи з питань виконання плану заходів щодо реалізації Стратегії захисту та інтеграції в українське суспільство ромської національної меншини на період до 2020 року” № 993 — редакція від 25.11.2015. Available at: <http://www.kmu.gov.ua/control/ru/cardnpd?docid=248677547>.

Council on curriculum development for minority schools (which is largely a technical expert body). Neither meets basic conditions for qualifying them as consulting bodies of minorities.¹⁹

Effective interaction of these bodies and structures, their enhancement in line with international standards and best practices requires a governmental mechanism of coordination. However, in the last 25 years, the Ukrainian authorities have not set as a priority the development of a state policy in the area of inter-ethnic relations based on European standards, thus resulting in a fragmented regime of protection of minorities, *ad hoc* institutional responses and the lack of sound integration policies.²⁰ These deficiencies can be traced to the legislative, policy-setting and institutional levels.

Main points for discussion

While Ukraine is traditionally a tolerant and multi-ethnic country, currently the social fabric of society is strained and exposed structural shortcomings in the institutional framework for inter-ethnic relations that date back to the country's independence and reflecting a generally low priority placed by successive Governments on both the protection of minority rights and the integration of Ukrainian society as a whole.

Throughout the last two decades, the existing institutional architecture has been further eroded through frequent institutional reorganizations and arbitrary redistribution of various competencies and responsibilities between designated governmental bodies and structures. This has had a negative impact on (1) the effectiveness and efficiency of these bodies; (2) design and implementation of policies; (3) accountability and follow up over time on the implementation of policies and programmes designed for national minorities; (4) coordination across various governmental bodies; and (5) development of communication, trust and cooperation between minorities and the authorities. As a result, the institutional framework for inter-ethnic relations in Ukrainian government institutions is underdeveloped, fragmented and ineffective.

In order to strengthen the Ukrainian State, to promote social cohesion and to meet their international obligations, the Ukrainian authorities should not only ensure the protection of minority rights beyond only cultural issues, but should also ensure appropriate government-level attention to minority and integration issues by strengthening the respective institutional frameworks. This can include the following elements:

A) An effective policy setting and implementing mechanism, involving close coordination of various governmental structures dealing with national minorities to

¹⁹ Committee of experts on issues related to the protection of national minorities ((DH-MIN), Handbook on minority consultative mechanisms. 20 October 2006. Doc. DH-MIN(2006)012. Available at: https://www.coe.int/t/dghl/monitoring/minorities/6_Resources/PDF_DH-MIN_Handbook_MinConMecanisms_en.pdf. See also Opinion on Ukraine, ACFC/OP/III(2012)002, p.2.

²⁰ See among others, Advisory Committee on the Framework Convention for the Protection of National Minorities, third opinion on Ukraine, para.11; ODIHR-HCNM, Ukraine, Human Rights Assessment Mission: Report on the Human Rights and Minority Rights Situation, March-April 2014, pp.93-94. Available at: <http://www.osce.org/odihr/118476?download=true>

achieve greater continuity, effectiveness and consistency. Several options can be explored:

(1) The creation of a dedicated executive body or coordination mechanism responsible for national minority rights and integration of society. A Ministry for Minority Rights and Inter-ethnic Policy, with which Ukraine has had experience in the 1990s, could be one appropriate form of such an institution.²¹ The status of the ministry would enable it: (a) to have its own budget line from the State budget; (b) to have greater influence on the Government's agenda by being a part of the Government; (c) to develop and implement government policies and coordinate them across all governmental agencies; (d) to have influence on the allocation of financial resources for minority-related activities. Such a ministry may administer cultural programmes (if this function is not retained by Ministry of Culture) for minorities on the basis of transparent procedures. Minority representatives should participate in decision-making on distribution of funds.

(2) A State Committee or Bureau under the Cabinet of Ministers could be re-established drawing on the experience with the former State Committee on Nationalities and Religions. A separate body should deal with religious affairs as religion and ethnicity are two large policy areas.

(3) Significantly augment the competences of the current Department within the Ministry of Culture, making it a separate Committee that deals specifically with minority issues, covering issues not only confined to the cultural domain, such as integration policy and communication with minority communities.

(B) The Ukrainian authorities should consider the creation of a special independent institution that would have sufficient competencies and resources to act as an effective and independent redress mechanism for minority rights, including handling complaints and addressing violations and shortcomings at the national, regional and local levels. One option would be to establish the position of a deputy specialized in minority issues within the office of the Ukrainian Parliament Commissioner on Human Rights.

(C) The Ukrainian authorities should establish effective consultative mechanisms or strengthen existing ones to facilitate consultations with minority representatives to discuss and address the legitimate concerns of minorities. To ensure that these mechanisms can function regularly and properly it is important that the composition of consultative bodies is balanced and pluralistic, ensuring inclusive minority representation. Such bodies should have clear functions and competencies; their views should be always sought on issues of concern to minorities. In addition to a national consultative body, consideration should be given to establishing regional and local

²¹ For example, in Montenegro the Ministry for Minority Rights has a mandate to monitor, study and protect minority rights in accordance with the Constitution and international standards. Other ministries and government bodies are mandated to address issues of minority rights within their fields of responsibility, including the Ministries of Justice and Human Rights, Culture, Education and Sports, Internal Affairs, and Labour and Social Welfare. See: Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Report of the Independent Expert on Minority Issues. A/67/293. Para. 60.

structures, as appropriate. It is important that minority representatives are selected to these consultative bodies by their minority constituencies.

Such an institutional framework is vital for the proper functioning of a comprehensive minority rights system and the development of sound integration policies. This framework would also provide minorities with clear mechanisms to address their concerns and promote their rights, combatting the current perception that their needs are a low priority.

A functioning institutional framework in the sphere of inter-ethnic relations is a prerequisite for the development and implementation of coordinated minority protection and empowerment programmes and integration policies in a multi-ethnic society.²²

Finally, building a modern institutional framework for inter-ethnic relations in Ukraine can facilitate discussion of and adoption of new legislation and policy measures to accommodate ethnic and linguistic diversity in Ukraine in line with the international obligations of Ukraine, and the best practices of other countries.

²² In the opinion of UN Independent Expert on Minority Rights, “Dedicated Government institutions may elaborate valuable mission statements and objectives providing important political messages on minority inclusion and equality, which may explicitly reflect challenges facing minorities. Institutional approaches are particularly important that seek to ensure coordinated policy and programming initiatives incorporating all relevant ministries and other national stakeholders. They may develop and take the lead in implementing a national policy framework and devise cross-ministerial strategies and programmes in consultation with minorities and other stakeholders. Holistic, coordinated approaches recognize the interconnected nature of such issues and ministerial priorities such as health and housing, education and employment, and may facilitate policy and programming responses that comprehensively address problems facing minorities and their underlying causes. Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Report of the Independent Expert on Minority Issues. A/67/293. Paras 58 and 59.