

# Submission to the UN Special Rapporteur on Minority Issues on ‘The Place of the Human Rights of Minorities in the Institutions, Structures and Initiatives of the United Nations’

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1. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDRM) develops a positive vision of minority rights, that extends beyond the negative formulation of Article 27 of the International Covenant on Civil and Political Rights (ICCPR). Beyond mere non-interference, the UNDRM requires that States not only adopt measures to facilitate and promote minority identities but also create the societal conditions for minorities to flourish.

2. This submission focuses on how standards in the UNDRM have subsequently been reflected and mainstreamed in the practice of UN treaty bodies, specifically in the Concluding Observations of the Human Rights Committee (HRC), Committee on Economic, Social and Cultural Rights (CESCR) and Committee on the Elimination of Racial Discrimination (CERD). Section 1 starts with some general observations on the visibility of minority rights within the work of the relevant monitoring bodies and Sections 2 and 3 then proceed to provide more specific observations and examples relating to the preservation and promotion of minority identity and to the creation of wider societal conditions required for the flourishing of minorities and of their rights. Section 4 concludes the submission with some specific recommendations for more visibility and better mainstreaming and integration of minority rights within the work of UN treaty monitoring bodies.

## Section 1: General Observations

3. There are rarely any references made in Concluding Observations to the UNDRM or to regional treaties such as the Council of Europe’s Framework Convention for the Protection of National Minorities (although other regional human rights treaties focused on other issues are referred to). It appears that this is indicative of a general tendency to avoid framing issues with specific reference to minority rights. Whilst it is common to see separate headings in Concluding Observations focused on Roma, refugees, asylum-seekers, those who are stateless and the internally displaced, the inclusion of separate ‘minority’ headings is inconsistent. It would be expected that the HRC would provide an exception here, due to the specific reference to the rights of those belonging to minorities in Article 27 of the ICCPR, but even here there is a notable lack of consistency. Indeed, some of the HRC’s Concluding Observations do not specifically address Article 27 or use the phrase ‘minority rights’ at all, including situations where this might be expected.<sup>1</sup> It is therefore important to take a more holistic approach when looking at the work of the treaty-monitoring bodies in aligning with the both the letter and the spirit of the UNDRM.

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<sup>1</sup> E.g. HRC, ‘Concluding observations on the eighth period report of Ukraine’ (9 February 2022) UN Doc CCPR/C/UKR/CO/8 where Article 27 is not mentioned at all, although there is a passing reference to the rights of the ‘Roma national minority’ in para 3(f) in the section ‘Positive Aspects’ and to minority groups in the section on Hate Speech and Hate Crimes (paras 15-16). See also HRC, ‘Concluding observations on the fifth periodic report of Israel’ (5 May 2022) UN Doc CCPR/C/ISR/CO/5 where Article 27 is listed amongst six other articles in para 42 as being relevant to comments on demolitions and forced evictions in the West Bank but otherwise not mentioned, and the term ‘minority group’ only appears in the section on Participation in Public Affairs (paras 50-51).

## Section 2: Preservation and Promotion of Minority Identity

### *(a) Looking Beyond Article 27 of the ICCPR*

4. Article 2(1) of the UNDRM establishes that '[p]ersons belonging to national or ethnic, religious and linguistic minorities (...) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination'. Whilst the consideration of these minority specific issues is often presumed to be limited to the scope of Article 27 ICCPR within the practice of UN treaty bodies, the CESCR and HRC have utilised the right to education,<sup>2</sup> the right to culture<sup>3</sup> and the right to freedom of religion or belief,<sup>4</sup> to address these issues in their Concluding Observations. For example, the CESCR has expressed its concerns regarding the challenges faced by persons belonging to minorities in maintaining their culture, language and religion under Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has urged States to adopt measures to promote these components of their minority identity.<sup>5</sup> Similarly, the HRC has recognised the importance of maintaining religious identity for persons belonging to minorities within the scope of Article 18 ICCPR, and has required that States take steps to protect practices that are integral to the preservation of this identity such as construction of burial grounds, wearing religious clothing.<sup>6</sup> Additionally, as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) establishes protection against discrimination occurring in the exercise of the right to culture,<sup>7</sup> the right to education<sup>8</sup> and the right to freedom of religion or belief,<sup>9</sup> these rights have been interpreted by the CERD to allow persons belonging to minorities to maintain the markers of their minority identities.<sup>10</sup>

5. An interpretation such as this, which allows persons belonging to minorities to preserve their minority identity, is a welcome practice. However, there is a tendency for the HRC to focus on the obligation not to interfere with the rights, rather than the positive obligations required by the UNDRM. As is stated in the Commentary on the UNDRM<sup>11</sup> and elaborated in Article 4(2), States are required to take positive actions 'to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs'. This has also been referred to in the HRC's General Comment No 23 on 'Rights of Minorities' as it provides that 'positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group'.<sup>12</sup> Despite the explicit statements of

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<sup>2</sup> Article 13 ICESCR.

<sup>3</sup> Article 15 ICESCR.

<sup>4</sup> Article 18 ICCPR.

<sup>5</sup> CESCR, 'Concluding observations on the third periodic report of Bosnia and Herzegovina' (11 November 2021) UN doc E/C.12/BIH/CO/3 para 52; CESCR 'Concluding observations on the fourth periodic report of Azerbaijan' (2 November 2021) UN doc E/C.12/AZE/CO/4 para 56; CESCR 'Concluding observations on the seventh periodic report of Finland' (30 March 2021) UN Doc E/C.12/FIN/CO/7 para 50.

<sup>6</sup> HRC, 'Concluding Observations on the fifth periodic report of Romania' (11 December 2017) UN Doc CCPR/C/ROU/CO/5 para 43; HRC, 'General Comment No 22' on 'The Right to Freedom of Thought, Conscience and Religion (Art. 18)' (1993) UN Doc CCPR/C/21/Rev.1/Add.4 para 4.

<sup>7</sup> Article 5(e)(vi) ICERD.

<sup>8</sup> Article 5(e)(v) ICERD.

<sup>9</sup> Article 5(d)(vii) ICERD.

<sup>10</sup> CERD, 'Concluding observations on the sixth to seventh periodic reports of Turkmenistan' (13 April 2012) UN Doc CERD/C/TKM/CO/6-7 para 21; CERD, 'Concluding observations on the combined nineteenth to twenty-first periodic reports of the Netherlands' (24 September 2015) UN Doc CERD/C/NLD/CO/19-21 para 31; CERD, 'Concluding observations on the seventeenth and eighteenth periodic reports of Ukraine' (8 February 2007) CERD/C/UKR/CO/18 para 18.

<sup>11</sup> Commission on Human Rights, 'Commentary of the Working Group on Minorities to United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities' (4 April 2005) UN Doc E/CN.4/Sub.2/AC.5/2005/2 para 33.

<sup>12</sup> HRC, 'General Comments No 23' on 'Article 27 (Rights of Minorities)' (8 April 1994) UN Doc CCPR/C/21/Rev.1/Add.5 para 6.2.

this requirement, the HRC seems to be hesitant to urge States to take positive measures. After highlighting its concern with respect to obstacles facing persons belonging to minorities when enjoying their rights under Article 27, the HRC often urges States to simply remove these obstacles<sup>13</sup> or ensure that these individuals are able, in practice, to enjoy their own culture and use their own language in its Concluding Observations.<sup>14</sup>

6. The recommendations of the CERD and CECSR, in contrast to those made by the HRC, lean more heavily towards imposing positive obligations on States. For example, the CESCR has required that Azerbaijan ‘take legislative measures and create mechanisms to foster an enabling environment for the preservation, development, promotion and expression of the identity, history, culture, language, traditions and customs of the minorities composing the State party’s population’.<sup>15</sup> Similarly, it has recommended that the Republic of Moldova ‘adopt[s] concrete and effective measures of a legislative and other nature, such as public policies to guarantee the recognition of the rights of ethnic minorities to express their own culture and identity’.<sup>16</sup> The CERD has urged Turkmenistan ‘to take specific measures for the preservation and development of cultures of minority groups so that they may be enabled to maintain their cultural identity’.<sup>17</sup>

7. When UN treaty bodies urge States to take positive measures to address these minority specific issues, not only is there a lack of depth in their analysis of the issues, but there is also a lack of clear direction in relation to the steps States can take to grapple with these issues. For example, when the HRC has identified obstacles that prevent persons belonging to minorities from enjoying their minority identity, it has rarely elaborated the nature of these obstacles, nor has it provided a more detailed set of recommendations. It has merely urged States to take measures to ensure that ‘members of these communities can enjoy their own culture and use their own language, in accordance with article 27 of the Covenant’.<sup>18</sup> Similarly, when the issue relates to the enjoyment of the right to culture, the CESCR has only occasionally gone beyond simply stating that persons belonging to minorities face impediments.<sup>19</sup> Furthermore, it has formulated its recommendations generically as it has simply asked

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<sup>13</sup> HRC, ‘Concluding observations on the second periodic report by Latvia’ (1 December 2003) UN Doc CCPR/CO/79/LVA para 21; HRC, ‘Concluding observations on the fifth periodic report by Finland’ (2 December 2004) CCPR/CO/82/FIN para 15.

<sup>14</sup> HRC, ‘Concluding observations of the second periodic report by Estonia’ (15 April 2003) UN Doc CCPR/CO/77/EST para 16; Concluding observations of the second periodic report of Georgia (19 April 2002) UN Doc CCPR/CO/74/GEO paras 19, 20; Concluding observations of the initial report of Albania (2 December 2004) UN Doc CCPR/CO/82/ALB 2 December 2004 para 22.

<sup>15</sup> CESCR, ‘Concluding observations on the fourth periodic report of Azerbaijan’ (2 November 2021) UN Doc E/C.12/AZE/CO/4 para 47. For further examples, see also CESCR, ‘Concluding observations on the second periodic report of Serbia’ (10 July 2014) UN Doc E/C.12/SRB/CO/2 para 36; CESCR, ‘Concluding observations on the fourth periodic report of Switzerland’ (18 November 2019) UN Doc E/C.12/CHE/CO/4 para 56; CESCR, ‘Concluding observations on the third periodic report of Bosnia and Herzegovina’ (11 November 2021) UN Doc E/C.12/BIH/CO/3 para 53; CESCR, ‘Concluding observations of the second periodic report of the Republic of Moldova’ (12 July 2011) UN Doc E/C.12/MDA/CO/2 para 30.

<sup>16</sup> CESCR Concluding observations on second periodic report of the Republic of Moldova (12 July 2011) UN Doc E/C.12/MDA/CO/2 para 30.

<sup>17</sup> CERD, ‘Concluding observations on the sixth to seventh periodic reports of Turkmenistan’ (13 April 2012) UN Doc CERD/C/TKM/CO/6-7 para 21. See also, CERD ‘Concluding observations of the fourth periodic report of Azerbaijan’ UN Doc CERD/C/AZE/CO/4 14 April 2005 para 14.

<sup>18</sup> HRC, ‘Concluding observations on the fifth periodic report of Ukraine’ (12 November 2001) UN Doc CCPR/CO/73/UKR para 23; HRC, ‘Concluding observations on the initial report of Croatia’ (30 April 2001) UN Doc CCPR/CO/71/HRV para 22; HRC, ‘Concluding observations on the second periodic report of Estonia’ (15 April 2003) UN Doc CCPR/CO/77/EST para 16; HRC, ‘Concluding observations on the second periodic report of Georgia’ (19 April 2002) UN Doc CCPR/CO/74/GEO paras 19, 20; HRC, ‘Concluding observations on the fifth periodic report of Finland’ (2 December 2004) UN Doc CCPR/CO/82/FIN para 15.

<sup>19</sup> CESCR, ‘Concluding observations of initial report of Turkmenistan’ (13 December 2011) UN Doc E/C.12/TKM/CO/1 para 28. The CESCR, in its Concluding Observations on Moldova, has explicitly stated the issue it has noted that ‘State party legislation does not adequately address the ethnic minorities and groups within its territory, and that these groups lack recognition which would allow them to exercise their rights and express

the State party to take necessary measures to allow those minorities to preserve their cultural identity.<sup>20</sup> The fact that these recommendations do not go beyond simply urging States to take measures signifies a gap in UN practice, as it is evident that UN treaty bodies could do more to provide clearer guidance and, in turn, better protect and promote the rights of minorities.

**8.** In divided and post-conflict societies, minority rights are particularly important for smaller groups.<sup>21</sup> However, here the approach of the HRC has varied quite considerably. For example, whilst the HRC focused in its latest Concluding Observation on the UK a lot on the situation in Northern Ireland, there were no references to minority rights at all.<sup>22</sup> In comparison in the same year the HRC included a separate section on Minority Rights in the Concluding Observations on Cyprus, ‘welcoming the measure taken by the State party to remove economic, linguistic and cultural barriers faced by ethnic minorities, including Turkish Cypriots’ as well as expressing specific concerns about the number of Turkish Cypriots in the civil service and the need to ease language requirements.<sup>23</sup> The Committee also criticised the lack of progress in relation to the establishment of Turkish school in Limassol<sup>24</sup> and included specific references also to the principle of self-identification,<sup>25</sup> a particularly important principle in the context of discussions about minority rights.<sup>26</sup> Differences of approach are also evident within particular regions. For example, the HRC has asked for detailed information on minority and community rights to be provided by the Republic of North Macedonia ahead of the next reporting cycle,<sup>27</sup> but in the latest Concluding Observations on Bosnia and Herzegovina the focus was exclusively on Roma.<sup>28</sup>

**9.** A similar variation in approach is found in the work of CERD. For example, the latest Concluding Observation on Iraq included a separate section on the ‘situation of ethnic and ethno-religious groups in the context of the armed conflict’ and made specific reference to ‘Armenians, Assyrians, Chaldeans, Kaka’e, Sabeen Mandaeans, Shabaks, Syriacs, Turkmen, Yazidis, and other ethnic and ethno-religious groups’.<sup>29</sup> There were also separate sections on minorities in disputed territories, the protection of minority languages, minority women and minorities in public and political life.<sup>30</sup> Meanwhile in the latest Concluding Observations on Israel there are sections on the situation of specific groups (the Domari people and Bedouin people),<sup>31</sup> as well as the situation of minority women and minorities within

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their identity and culture’. CESCR, ‘Concluding observations of the second periodic report of the Republic of Moldova (12 July 2011) UN Doc E/C.12/MDA/CO/2 para 30.

<sup>20</sup> CESCR, ‘Concluding observations of initial report of Turkmenistan’ (13 December 2011) UN Doc E/C.12/TKM/CO/1 para 28.

<sup>21</sup> See, e.g., E Craig, ‘The Framework Convention for the Protection of National Minorities and Internalisation: Lessons from the Western Balkans’ (2021) 46(1) *Review of Central and East European Law*, 1-40.

<sup>22</sup> HRC, ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ (17 August 2015) UN Doc CCPR/C/GBR/CO/7.

<sup>23</sup> HRC, ‘Concluding observations on the fourth periodic report of Cyprus’ (30 April 2015) UN Doc CCPR/C/CYP/CO/4 para 23.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, para 24 with specific reference to religious groups and the 1960 Constitution, as well as to the 2011 census. Such references by the HRC are unusual, although the principle is commonly invoked by CERD, which has stressed the need for data collection to be ‘in accordance with the principles of confidentiality, informed consent and self-identification.’ CERD, ‘Concluding observations on the combined eighth to tenth periodic report of the former Yugoslav Republic of Macedonia’ (21 Sept 2015) UN Doc CERD/C/MKD/CO/8-10, para 7.

<sup>26</sup> E. Craig ‘Who are the Minorities? The Role of the Right to Self-Identify within the European Minority Rights Framework’ (2016) 15(2) *Journal on Ethnopolitics and Minority Issues in Europe*, 6-30.

<sup>27</sup> HRC, ‘List of issues prior to submission of the fourth periodic report of North Macedonia’ (6 December 2021) UN Doc CCPR/C/MKD/QPR/4 para. 26.

<sup>28</sup> HRC, ‘Concluding observations on the third periodic report of Bosnia and Herzegovina’ (13 April 2017) UN Doc CCPR/C/BIH/CO/3, paras 39-40.

<sup>29</sup> CERD, ‘Concluding observations on the combined twenty-second to twenty-fifth periodic reports of Iraq’ (11 January 2019) UN Doc CERD/C/IRQ/CO/22-25, paras 17-19 (with the list found para 17(d)).

<sup>30</sup> *Ibid.*, paras 19-20, 21-22, 23-24 and 25-26 respectively.

<sup>31</sup> CERD, ‘Concluding observations on the combined seventeenth to nineteenth periodic reports of Israel’ (27 January 2020) UN Doc CERD/C/ISR/CO/17-19 paras 28-31.

the Jewish population.<sup>32</sup> This specific recognition is important and should be included on a more consistent basis to improve the visibility of these groups as minorities and of their rights.

***(b) Right to Mother Tongue Education***

**10.** Article 4(3) UNDRM and its aim of providing adequate opportunities to persons belonging to minorities “to learn their mother tongue or to have instruction in their mother tongue” confirms the Declaration’s emphasis on the central importance of mother tongue education for persons belonging to minorities to maintain their distinct minority identity.

**11.** Both the CESCR and CERD have explicitly recognised this connection between mother tongue education and the preservation and promotion of minority identity, and urged State parties to deliver mother tongue education for minority children in its Concluding Observations. For example, with regard to the provision of Romany language teaching only as an elective subject and the closure of small schools that provided teaching in minority languages in Slovakia, the CESCR used both Article 13 and 15 to recommend that the State party should introduce the teaching of and in Romany as a minority language.<sup>33</sup> In relation to the obstacles faced by ethnic minorities when receiving mother tongue education in Turkmenistan, the CESCR has again analysed the issue under both Articles and noted that the State party should ‘take necessary steps to promote education in ethnic languages’.<sup>34</sup> Similarly, the CERD, after expressing its concerns relating to difficulties facing minority groups in preserving, using and developing their languages, it has urged the Austrian government to ‘take effective measures to preserve minorities’ languages and culture by, inter alia, encouraging and promoting the use of their mother tongues in the fields of *education*, public administration and legal proceedings (..).<sup>35</sup> It has also acknowledged that the lack of education in the minority language may result in the loss of the use of that language by minority groups.<sup>36</sup> Such recognition is significant as it highlights that the right to mother tongue education as a minority right is visible and integrated within UN treaty bodies’ practice.

**12.** As Article 27 ICCPR is a minority rights provision, the HRC has also recognised the central importance of mother tongue education to the preservation of minority identity. In relation to Uzbekistan, the HRC welcomed Uzbekistan’s language policy that provides education in minority languages.<sup>37</sup> After expressing its concern about the lack of instruction in the language of Roma children, it recommended that the United Nations Interim Administration Mission in Kosovo ensures that minority children have adequate opportunities to receive instruction in, and of, their language.<sup>38</sup> Similarly, in relation to Roma children in the Former Yugoslav Republic of Macedonia (now the Republic of North Macedonia), the HRC recommended that the State party continues to strengthen its efforts to provide children of minorities with adequate opportunities to receive education in their own language.<sup>39</sup> However, the HRC has not often raised this issue in its Concluding Observations. Given

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<sup>32</sup> Ibid, paras 32-33 and 34-35 respectively.

<sup>33</sup> CESCR, ‘Concluding Observations on the third periodic report of Slovakia’ (14 November 2019) UN Doc E/C.12/SVK/CO/3 paras 58-59; CESCR, ‘Concluding Observations on the sixth period report of Finland’ (17 December 2014) UN Doc E/C.12/FIN/CO/6 para 29.

<sup>34</sup> CESCR, ‘Concluding Observations on the second periodic report of Turkmenistan’ (31 October 2018) UN Doc E/C.12/TKM/CO/2 paras 42-43.

<sup>35</sup> CERD, Concluding Observations on the fifteenth, sixteenth and seventeenth periodic reports Austria (22 September 2008) UN Doc CERD/C/AUT/CO/17 para 22 (emphasis added)

<sup>36</sup> CERD, ‘Concluding Observation on the combined tenth to twelfth periodic reports of Uzbekistan’ (27 January 2020) UN Doc CERD/C/UZB/CO/10-12 para 16.

<sup>37</sup> HRC, ‘Concluding Observations on the initial report of Uzbekistan’ (26 April 2001) UN Doc CCPR/CO/71/UZB para 5.

<sup>38</sup> HRC, ‘Concluding Observations on the report of the United Nations Interim Administration Mission in Kosovo’ (14 August 2006) UN Doc CCPR/C/UNK/CO/1 para 22.

<sup>39</sup> HRC, ‘Concluding Observations on the second periodic report of the former Yugoslav Republic of Macedonia’ (17 April 2008) UN Doc CCPR/C/MKD/CO/2 para 19.

that Article 27 ICCPR is a specific minority right, the HRC would have been expected to make more reference to the right to mother tongue education to render this right more visible and emphasise its importance for persons belonging to minorities.

***(c) Mainstreaming***

13. Article 3 of the UNDRM states that '[p]ersons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination'. To achieve this, Article 4(1) requires that 'States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.' This has been reflected in the practice of the HRC and CESCR. In addition to Article 27 ICCPR and Article 15 ICESCR, they have also specifically mentioned persons belonging to minorities in relation to the other rights contained within their respective covenants. These references made by both the HRC and CESCR suggest that the rights of persons belonging to minorities have been mainstreamed in UN practice and the impact of minority status on the enjoyment of these rights has been acknowledged. However, a close analysis of the relevant Concluding Observations demonstrates that these UN bodies have mentioned persons belonging to minorities in passing and have rarely elaborated upon the intricacies of precisely how their minority status has impacted the enjoyment of these rights.<sup>40</sup>

14. It is acknowledged that the UN bodies discussed within this submission are not obliged to further elaborate on precisely how minority identity can impair access to fundamental rights. Nevertheless, given that they hold the objective of protecting the human rights of individuals, including persons belonging to minorities, and that such further elaboration could lead to a more fully realised appreciation of how the rights of persons belonging to minorities can be better protected, it is disappointing that opportunities to do so have not been seized.

**Section 3: Creating conditions conducive to Preservation of Identity.**

15. The UNDRM not only elaborates the rights of persons belonging to minorities, but it also recognises that the realisation of these rights in practice is contingent upon States creating facilitative societal conditions. To this end, Article 1(1) establishes that 'States ...shall encourage conditions for the promotion of that identity'; whereas Article 4(2) elaborates that 'States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics...'.<sup>41</sup>

16. This holistic approach, that requires efforts on the part of the majority in addition to minorities, is reflected in the recognition that State obligations extend past legislative measures.<sup>41</sup> Most notably, Article 4(4) on intercultural education is key to reducing intolerance on both sides and providing space in society for minority cultures to flourish.<sup>42</sup> Similarly Articles 2(2) and 4(5) facilitate intercultural interaction, which, in turn, has the potential to reduce threat perception on both sides.<sup>43</sup> The reduction

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<sup>40</sup> HRC, 'Concluding observations on the third periodic report of Armenia' (25 November 2021) UN Doc CCPR/C/ARM/CO/3 paras 17 (b), 18(b); HRC, 'Concluding observations on the third periodic report of Switzerland' (3 November 2009) UN Doc CCPR/C/CHE/CO/3 para 14; CESCR, 'Concluding observations on the third periodic report of France' (9 June 2008) UN Doc E/C.12/FRA/CO/3 para 21.

<sup>41</sup> Article 1(2) UNDRM.

<sup>42</sup> L. Bekemans, 'Educational Challenges and Perspectives in Multiculturalism vs. Interculturalism: Citizenship Education for Intercultural Realities' in Diversity in M. Barrett (ed.), *Interculturalism and multiculturalism: similarities and differences* (2013) at 177, 183

<sup>43</sup> See generally, Gordon W Allport, *The Nature of Prejudice* (Addison-Wesley 1954); Thomas Fraser Pettigrew and Linda R. Tropp, 'How does intergroup contact reduce prejudice? Meta-analytic tests of three mediators' (2008) 38 *European Journal of Social Psychology* 922.

of the majority's threat perception has the potential to reduce demands that minorities assimilate as well as opposition to minority rights more broadly.<sup>44</sup>

**17.** The HRC and CERD have recognised the link between forms of hate speech and violence against persons belonging to minorities.<sup>45</sup> However, they rarely identify societal intolerance as a root cause of other violations of the rights of minorities.<sup>46</sup> Occasionally, this link is noted implicitly, insofar as intolerance towards a minority is mentioned in the same paragraph as other rights violations impacting that minority specifically.<sup>47</sup> However, the CERD and HRC have also failed to recognise how intolerance at a societal level has led to the adoption of laws that directly restrict the ability of minorities to preserve their identity.<sup>48</sup> They also struggle to identify intolerance as a cause of rights violations, if it is not expressly articulated.<sup>49</sup> This omission from the practice of the treaty bodies is significant as, without it, they do not recommend that States adopt positive measures to address societal intolerance as a cause of minority rights violations.<sup>50</sup>

**18.** There is perhaps more potential within CERD to focus on wider societal conditions in relation to post-conflict and deeply divided societies. For example, there are two paragraphs on racism and sectarianism in Northern Ireland in the latest Concluding Observations on the UK with a specific reference here to the 'intersectionality between ethnic origin, religion and other forms of discrimination' and on the impact of government strategy 'in addressing discrimination experienced by ethnic minority groups.'<sup>51</sup> Meanwhile in the latest Concluding Observations on Bosnia and Herzegovina, the Committee addressed 'persisting ethnic tensions, ethno-religious divisions and need for reconciliation'<sup>52</sup> and in relation to Cyprus there is a specific section on the 'peace process and intercommunal relations'<sup>53</sup> on first of list of concerns in both instances.

**19.** When the link between societal intolerance and interferences with the rights of minorities has been recognised, both the CERD and HRC have recommend that States adopt measures to reduce intolerance

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<sup>44</sup> SE Berry and I Taban, 'The right of minority-refugees to preserve their cultural identity: An intersectional analysis' (2021) 39 Netherlands Quarterly of Human Rights 198, 215-17.

<sup>45</sup> SE Berry, 'A Positive State Obligation to Counter Dehumanisation under International Human Rights Law' [2020] Erasmus Law Review 5, 12-13.

<sup>46</sup> *Ibid.*, 13. A rare example of good practice is the HRC, which has connected patterns of societal exclusion, in the form of 'rejection, exclusion and violence' faced by Roma in France, to broader rights violations in the form of discrimination in relation to 'access to health care, social benefits, education and housing which is compounded by forced evictions from settlements and a frequent lack of resettlement solutions'. HRC, 'Concluding observations on the fifth periodic report of France' (17 August 2015) UN Doc CCPR/C/FRA/CO/5 para 13.

<sup>47</sup> CERD, 'Concluding observations on the combined twenty-second and twenty-third periodic reports of Sweden' (6 June 2018) UN doc CERD/C/SWE/CO/22-23 para 18.

<sup>48</sup> HRC, 'Concluding observations on the fourth periodic report of Switzerland' (22 August 2017) UN Doc CCPR/C/CHE/CO/4 para 42; HRC, 'Concluding observations on the fifth periodic report of France' (17 August 2015) UN Doc CCPR/C/FRA/CO/5 para 22.

<sup>49</sup> For example, the CERD has singled out the forced sterilisation of Roma women in the Czech Republic and Slovakia to be of particular concern,<sup>49</sup> it has not explicitly linked this to intolerance towards the Roma in these societies. CERD, 'Concluding observations on the combined eleventh and twelfth periodic reports of Slovakia' (12 January 2018) UN Doc CERD/C/SVK/CO/11-12 para 23; CERD, 'Concluding observations on the combined tenth and eleventh periodic reports of the Czech Republic' (25 September 2015) UN Doc CERD/C/CZE/CO/10-11 (2015) para 22; CERD, 'Concluding observations on the combined twelfth and thirteenth periodic reports of Czechia' (19 September 2019) UN Doc CERD/C/CZE/CO/12-13 para 19.

<sup>50</sup> SE Berry, 'A Positive State Obligation to Counter Dehumanisation under International Human Rights Law' [2020] Erasmus Law Review 5, 13.

<sup>51</sup> CERD, 'Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland' (3 October 2016) UN Doc CERD/C/GBR/CO/21-23 paras. 36-37.

<sup>52</sup> CERD, 'Concluding observations on the combined twelfth and thirteenth periodic reports of Bosnia and Herzegovina' (10 September 2018) UN Doc CERD/C/BIH/CO/12-13 paras 5-6.

<sup>53</sup> CERD, 'Concluding observations on the combined twenty third and twenty-fourth periodic reports of Cyprus' (2 June 2017) UN Doc CERD/C/CYP/CO/22-24 paras 6-7.

in society. Specifically, they have adopted rather vague recommendations that States ‘promote tolerance and understanding’ and introduce ‘awareness-raising campaigns’.<sup>54</sup> Notably, there are some examples of good practice from the CERD. For example, the CERD has required that Italy ‘ensure that the school curriculum includes the history of the State party’s colonial past in order to convey the consequences and the continued impact of racially discriminatory policies’.<sup>55</sup> It has occasionally highlighted the need for States to facilitate interactions between different groups in society<sup>56</sup> and for public authorities create a ‘positive political culture’.<sup>57</sup>

20. Thus, the recommendations adopted by the HRC in relation to States’ positive obligation to create the societal conditions needed for the realisation of the rights of minorities have been extremely vague. The interventions of the CERD in this respect is better but infrequent. More specific guidance for States is needed moving forwards.

#### Section 4: Conclusions and Recommendations

21. The authors consider that there are various ways of increasing the visibility of minority rights, as well as the effectiveness in the work of the relevant treaty-monitoring bodies in ensuring, protecting and promoting their rights. The recommendations below are based both on the above findings and on the authors’ previous work on the mainstreaming (or otherwise) of minority rights within the UN.

- (a) The inclusion of references to the UNDRM and, where appropriate, regional minority treaties, such as the Council of Europe’s Framework Convention for the Protection of National Minorities, in Concluding Observations as a matter of course.
- (b) Greater consistency in the use of the term ‘minority’ and the framing of issues as ‘minority rights issues’, with all treaty monitoring bodies considering the role of minority rights and the status of minorities within their work, as well as how minority status impacts the realisation of the human rights of minorities.
- (c) Better cross-fertilization between UN treaty monitoring bodies and the work of the UN Special Rapporteur on Minority Issues, to help with mainstreaming and the gathering of a clearer picture in relation to the situations of persons belonging to minorities.<sup>58</sup>
- (d) Where appropriate, UN treaty bodies should cross-reference the UN Special Rapporteur’s reports to elaborate on the issues facing persons belonging to minorities as well as the main causes of these issues in their Concluding Observations. By clearly illustrating the underlying causes of such problems, UN treaty bodies can better encourage States to both root them out and consider alternative courses of action to prevent their recurrence in the future.
- (e) Treaty bodies should provide detailed, non-prescriptive, guidance for States, through the State reporting process, that draws on best practices and elaborates different types of activities to

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<sup>54</sup> CERD, ‘Concluding observations on the combined twelfth and thirteenth periodic reports of Czechia’ (19 September 2019) UN Doc CERD/C/CZE/CO/12-13 para 12(b); HRC, ‘Concluding observations on the fifth periodic report of the Netherlands’ (22 August 2019) UN Doc CCPR/C/NLD/CO/5 para 16; HRC, ‘Concluding observations on the sixth periodic report of Hungary’ (9 May 2018) UN Doc CCPR/C/HUN/CO/6 para 18.

<sup>55</sup> CERD, ‘Concluding observations on the combined nineteenth and twentieth periodic reports of Italy’ (17 February 2017) UN Doc CERD/C/ITA/CO/19-20 para 26(e).

<sup>56</sup> CERD, ‘Concluding observations on the combined twenty-third and twenty-fourth periodic reports of Norway’ (2 January 2019) UN Doc CERD/C/NOR/CO/23-24 (2019) para 24; CERD, ‘General recommendation No. 27 on discrimination against Roma’ (2000) UN Doc A/55/18, annex V para 9.

CERD, ‘General recommendation No. 27 on discrimination against Roma’ (2000) UN Doc A/55/18, annex V (2000) para 11.

<sup>58</sup> As suggested by the report prepared by the UN High Commissioner for Human Rights on treaty body reform, one possibility might be to facilitate requests for the Special Rapporteur on Minority Issues to undertake country visits to specific State parties if they persist in failing to implement recommendations and when the examination of communications over time reveals repeated violations in the country. UNGA, ‘A Report by the United Nations High Commissioner for Human Rights, Navanethem Pillay on United Nations Reform: Measures and Proposals’ (26 June 2012) UN Doc A/66/860, 81.



enhance societal cohesion and the prerequisites for their success.<sup>59</sup> The establishment of a system that facilitates the sharing of information and expertise in this way, has the potential to contribute to better guidance on ensuring stronger visibility and commitment to the promotion and protection of the rights of minorities in the UN.

- (f) In light of the above, it is our view that an updated General Comment on Article 27 of the ICCPR would be useful, building on the work done in elaborating on State's positive obligations in the Commentary to the UNDRM, the work of the Special Rapporteur and the work of regional bodies and with specific reference to the UNDRM and to the principle of self-identification.
- (g) Finally, all treaty monitoring bodies should elaborate on the scope of States' positive obligations in relation to the rights of minorities in their Concluding Observations, and also recognise the specific challenges faced by minorities in General Comments on more generic rights.

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<sup>59</sup> SE Berry, 'A Positive State Obligation to Counter Dehumanisation under International Human Rights Law' [2020] *Erasmus Law Review* 5, 15-20.