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Beyond *adhocism* -advancing minority rights through the United Nation

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Abstract

Minority rights are widely seen as both a human rights imperative and as a key ingredient of conflict prevention and sustainable development. And yet, the attention paid to the protection of minority rights by the international community has been described as partial and sporadic. This research will analyze reasons for this limited traction of minority rights and explore ways to strengthen the impact of UN minority rights work from global to national levels. It will study legal, institutional and operational challenges that have hampered international minority rights work, and it will conclude with proposals for addressing them. It draws from both written materials and interviews with experts UN actors, experts, and representatives of minorities.

The paper demonstrate how, today, after some years of relatively limited attention, minority issues are again high on international and regional agendas, interest in them prompted by violent attacks and other manifestations of hatred against religious and other minorities, ranging from atrocity crimes committed against Yazidis in Iraq to manifestations of hatred towards Muslim minorities in Europe and the United States, fuelled by often-divisive discourse, on-line and off-line, on migration. This renewed attention does not however necessarily imply corresponding attention to human rights of persons belonging to minorities, let alone to specific minority rights. Indeed, in a number of contexts the opposite is happening, with minority rights being portrayed by several leading electoral candidates as a threat rather than a cure for fragmentation and division in societies.

The normative framework for minority rights has been developed gradually. The introduction of global and regional norms since 1960s related to minorities has been followed by important treaty body jurisprudence, notably by the Human Rights Committee. That being said, the case law under Article 27 remains limited in terms of number of communications decided on merits. The Committee has issued altogether 24 views with reference to Article 27. It has found a violation of Article 27 in five cases since the submission of the first individual communications in 1977. Bearing in mind that 115 States have ratified the Optional Protocol allowing individual communications, it is clear that many of the key human rights challenges that persons belonging to minorities face have not yet been examined in depth in light of Article 27. There are various reasons behind the modest number of cases decided on merits. In a number of other cases, the Human Rights Committee did not consider it necessary to examine the case at issue under Article 27 after having found a violation under other provisions of the Covenant. The Committee's views and concluding observations indeed illustrate the significance of freedom of expression under Article 19, non-discrimination guarantees under Article 26, and other non-minority specific provisions of the Covenant for minorities. In this way, the Committee has also been able to address certain minority concerns in situations where the State Party had rejected the applicability of Article 27.

The scarcity of cases under Article 27 also speaks to the need for increased awareness of the potential of Article 27 amongst NGOs and representatives of minorities. It is interesting to note that much of the jurisprudence under Article 27 has been developed on the basis of communications submitted by representatives of indigenous peoples (three out of five violations of Article 27 have concerned indigenous peoples), who have often been able to build capacity on international standards and develop international networks better than others falling within the scope of the article.

In their jurisprudence, treaty bodies have addressed a range of contested conceptual issues, and some of them are likely to affect the future uptake of minority rights. These include the issue of scope of application of minority rights and the interplay between integration and minority rights. The Human Rights Committee has been at the forefront in supporting an inclusive reading of the personal scope of application of minority rights, a reading that has gradually gained ground at both international and national levels in the absence of an agreed definition. At the same time, several States and scholars continue to argue that the application of minority rights should be limited to those groups that have long-standing presence in the country, arguing that the expansive reading of the scope of application leads to a watering down of the standards. Such statements overlook, however, that sharp delineations between groups and an all-or-nothing approach to the scope of application can be not only unfeasible in practical terms but also highly problematic from the point of view of non-discrimination standards. They also overlook the fact that while Article 27 and other standards can be invoked by a variety of right holders including those who have arrived in the State at issue relatively recently, it does not necessarily follow that the implementation measures required by the State Party are identical. Additional

communications from persons belonging to minorities decided on their merits under Article 27 would help to clarify further such nuances in the implementation of minority rights.

Furthermore, while the categories of ethnic, religious, and linguistic minorities clearly overlap in many cases, the specific implementation measures that duty bearers have to take, for example vis-à-vis linguistic minorities, are not necessarily identical with the obligations they have to protect the rights of persons belonging to religious minorities. In this respect, there is very little in the case-law of the Human Rights Committee that provides guidance on the specific implications of Article 27 for religious minorities. It remains to be seen whether the recent serious and widespread violations of the rights of persons belonging to religious minorities lead to additional case-law under Article 27 and thereby to further clarification of the obligations it carries in respect of religious minorities. There are already signs of the increasing visibility of the issue in other human rights mechanisms, including in connection with the Universal Period Review (UPR) of the Human Rights Council.

One of the challenges that the advancement of minority rights has faced has been the perceived dichotomy between integration and minority rights. On the one hand, it has been claimed that the promotion of minority rights increases distance between linguistic, religious, ethnic groups in societies, and, on the other hand, integration has at times been seen as a Trojan horse for forced assimilation, undercutting minority rights. Recently, however, minority rights bodies and scholarship have increasingly started to explore ways in which implementation of minority rights and integration efforts, instead of being opposing forces, can be mutually reinforcing processes and how integration, when properly defined and pursued, can indeed be an integral component of measures to advance minority rights. The significance of the topic has increased with the wider acceptance of the inclusive approach to minority rights. A consistent and coherent approach, facilitated by UN entities ranging from treaty bodies to the Forum on Minority Issues and the High Commissioner for Human Rights, would help to strengthen the role of minority rights in on-going debates on integration strategies currently taking place in a number of countries, including in the light of the surge of immigration. Similarly, it could help to inject minority rights elements into the efforts to ensure that the prevention of violent extremism is pursued in a manner that is rooted in human rights principles. While these discourses have regularly focused on minorities, they have often failed to incorporate minority rights and the role of international minority rights standards in the proposed policy approaches.

UN human rights bodies have a key role to play in ensuring a consistent and coherent approach to minority rights. But in order for minority rights to have an impact, both internationally and nationally, it is crucial that the other pillars of the UN are also embracing and advocating for these standards in their work and are doing so in a manner that reflects international human rights standards, including corresponding jurisprudence. The need for more system-wide engagement has been increasingly recognized within UN; Secretary-General has set up a UN Network on Racial Discrimination and Minorities and issued a detailed Guidance Note on the topic. And yet, it is clear that the visible impact of such work remains limited, even marginal, if the thinking it represents does not penetrate into major political decision-making processes at the UN, including in the area of development, peace and security.

There is an obvious need to incorporate minority protection in the work of the Security Council given that the violation of minority rights are often at the root of conflict. In reality, however, the Security Council has only rarely mentioned minorities, let alone minority rights, in its work. Lack of references to the rights of persons belonging to minorities can be seen as part of the traditional overall reluctance of the Security Council to raise human rights as such. But even as the Council has progressively started to invoke human rights standards, consistent references to minority rights have not been included.

One important operational tool the Security Council has at its disposal to advance human rights, including minority rights, is the integration of human rights tasks into the work of UN peace operations. It has increasingly included human rights work in the relevant mandates, and today most peace operations have a specific human rights component. It is, however, extremely rare to find any specific references to minorities or their rights in the mandate resolutions, despite the fact that sectarian tensions and violation of minority rights are key concerns in many of the countries at issue. One notable exception was the 2014 mandate on the UN Support Mission in Libya, which tasked the Mission to promote "the empowerment and political participation of all parts of Libyan society, in particular...minorities". Increasing such explicit references could be a strong catalyst for targeted work related to minority rights, including in terms of allocation of resources for direct engagement and attention to these issues in monitoring and reporting. In the case of Libya, the mission has engaged with minority issues in various ways, including by supporting minority participation in the constitution-making process.

There are some recent signs of willingness of the Security Council to address minorities as such. These should be built upon and expanded, in country-specific and more general resolutions of the Council. In this context, the chosen nomenclature matters; explicit references to minorities can reaffirm the relevance of applicable minority rights standards.

The UN has repeatedly stressed the need to integrate minority rights and engage minorities in development initiatives. Up until 2015, a key context for doing so was the pursuance of the Millennium Development Goals (MDGs). The record of Member States in focussing on minorities and their rights in achieving MDGs was, however, mixed at best. A study conducted by the UN Independent Expert on Minority Issues found that ethnic or linguistic minorities were mentioned in only 19 of the 50 MDG country reports reviewed and the inequalities experienced by religious minorities in only two of the reports. She expressed the concern that “there is a genuine risk that the strategies used to achieve the MDGs will be less beneficial for minority groups, and might even increase inequalities and further harm some minority communities.”

Such concerns, backed-up by country specific data that in a number of cases indicated continued exclusion of minorities throughout MDG implementation, prompted NGOs and other actors to advocate for the inclusion of clear minority perspective in the new Sustainable Development Goals and in the overall 2030 Agenda for Sustainable Development. Despite these efforts, the Agenda was adopted in 2015 with no mention of national or ethnic, linguistic or religious minorities. There is, however, a significant overall commitment to “leaving no one behind” as well as highly pertinent language on equality and other issues, and now the focus of many minority rights advocates is on ensuring that the implementation of these commitments includes strong attention to the inclusion of minorities and their rights.

One key factor in advancing the minority perspective in the SDGs is the availability of data disaggregated by different grounds of discrimination, including ethnicity and religion. The global indicators framework agreed for SDGs in 2016 contains an overarching principle, according to which “Sustainable Development Goal indicators should be disaggregated, where relevant, by income, sex, age, race, ethnicity, migratory status, disability and geographic location, or other characteristics, in accordance with the Fundamental Principles of Official Statistics.” In respect of specific targets, however, global indicators avoid clear references to disaggregation of data on the basis of ethnicity or religion. For example, in respect of target 10.2, according to which States are to empower and promote “the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status,” the indicator refers only to the “proportion of people living below 50 per cent of median income, by age, sex and persons with disabilities,” thereby omitting race, ethnicity, and religion. This reflects the fact that a number of States remain reluctant to collect data on the basis of ethnicity, referring to their domestic legislation and concerns about data protection. The total lack of any references to minorities in the Agenda is disconcerting, but the impact of this omission can be alleviated by ensuring that minorities are given focused attention in the implementation of the overall commitment to leaving no one behind and in pursuing the goals on equality and other key issues. The impact of the Agenda on minorities will however be impossible to track without disaggregated data. UN must therefore advocate for the development of national and regional indicators disaggregated on the basis of ethnicity, filling the related gaps in the global indicator framework agreed in 2016.

It follows that much will depend on the way in which regional and national level indicators will be developed. In connection with those processes, as well as in view of the envisaged review of the global indicators, there is a need for the UN and other actors promoting minority rights to continue to demonstrate the widespread “relevance” of data disaggregated by ethnicity for obtaining SDGs and for “ensuring that no one is left behind.” Indeed, such data is not only important for the SDG implementation but also for the interlinked goal of monitoring and implementation of human rights standards concerning non-discrimination and minorities, as has been repeatedly stressed by CERD and other human rights monitoring bodies.

Interest in minority issues continue to wax and wane and so does interest in minority rights. But these fluctuations are not necessarily in sync. Current upsurge in international and national attention to minorities does not necessarily translate to a rise in interest in minority rights – indeed, some are working to achieve the opposite and erode the existing standards. While the UN standards and mechanisms cannot dictate the direction of these highly politicized debates, they can facilitate an approach that is rooted in human rights. This requires, however, dynamic interpretation of the norms, and tools that evolve with the events and reflect the present human rights risks and concerns faced by minorities.

Explicit engagement of UN political bodies on minority issues can be particularly challenging, especially since the number of Member States that are consistently and constantly raising minority issues remains limited. Broader commitment by Member States to collective engagement to champion the minority rights agenda is

needed to go beyond adhocism, and to avoid misuse and tilted interpretation of human rights standards concerning minorities. Lack of such collective engagement can lead to a de facto bilateral discourse in international fora, which in turn can hurt the credibility of minority rights work in general, and be particularly detrimental to those minorities that have no kin states or other individual “spokespersons” raising their human rights concerns.

I Introduction

Minority protection has had its ups and downs in international law and policy, to the extent that it has been described as a “story in movements.”¹ Having gained significant, albeit selective, attention in the League of Nations, the protection of minorities per se virtually disappeared from international normative texts in the immediate post-World War II period as the universal human rights framework was introduced by the United Nations. Attempts to include references to minority rights in the Universal Declaration of Human Rights failed. The General Assembly at that point merely affirmed that the United Nations “cannot remain indifferent to the fate of minorities” and requested a study on the issue.²

The gradual come-back of minority rights, now in the framework of international human rights law, included the introduction of Article 27 in the Covenant on Civil and Political Rights in 1966 and, in particular, the significant global and regional attention that minority rights gained in the early 1990s, when concerns about ethnic conflicts in the Balkans and elsewhere resulted in minority-specific regional standards and in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

Today, after some years of relatively limited attention, minority issues are again high on international and regional agendas, interest in them prompted by violent attacks and other manifestations of hatred against religious and other minorities, ranging from atrocity crimes committed against Yazidis in Iraq to manifestations of hatred towards Muslim minorities in Europe and the United States, fuelled by often-divisive discourse, on-line and off-line, on migration. This renewed attention does not necessarily imply corresponding attention to human rights of persons belonging to minorities, let alone to specific minority rights. Indeed, in a number of contexts the opposite is happening, with minority rights being portrayed by several leading electoral candidates as a threat rather than a cure for fragmentation and division in societies.

Even though minority rights are now explicitly grounded in international human rights law, such strong fluctuations in the level of attention they attract can in themselves be problematic. They reflect the concern expressed by the UN High Commissioner for Human Rights at the Security Council that the international community’s interest in the human rights of minorities is all too often partial and sporadic. ‘Partial, in the sense that States have often focused primarily on communities with whom they share specific cultural ties – overlooking abuses of other marginalized communities, and brushing away concerns regarding discriminated groups in their own countries. Sporadic, because the rights of minorities are often highlighted only after the outbreak of extreme violence – even though that eruption is virtually always preceded by years of exclusion; disregard for linguistic and religious rights; and obstacles to full participation in the political, social, cultural and economic life.’³

This paper will examine reasons and some of the recent dynamics behind the uneven traction that minority rights have gained in the international arena, notably within the UN. After examining developments related to specific minority rights as well other human rights of particular concern for minorities, in connection with the UN human rights standards and mechanisms, and their approaches to selected key conceptual issues, the paper will scrutinize efforts to integrate minority issues and rights of persons belonging to minorities in work related to the other two pillars of the United Nations - namely efforts to advance peace and security by the Security Council and others as well as UN work on development, including that connected with the 2030 Agenda for Sustainable Development – and it will refer to the interplay between UN efforts and corresponding work pursued at the regional level, including by the Council of Europe. In doing so, the paper will also consider the implications of current security and political challenges, including the rise of anti-minority violence and political rhetoric in a number of countries, may have on the UN’s work on minority rights at the global, regional and country level. The paper will conclude with selected suggestions that could help the United Nations to be a catalyst for more sustained attention to minority rights in the legal, institutional and operational contexts.

¹ Gaetano Pentassuglia, *Minority Groups and Judicial Discourse in International Law* (Martinus Nijhoff Publishers 2009) 2.

² UNGA Res 217 C (10 December 1948) UN Doc A/RES/3/217 C.

³ See UNSC Verbatim Record (27 March 2015) UN Doc S/PV.7419.

II Human Rights Pillar

i. Normative developments

In the early days of erecting a human rights pillar in the UN, there was general hesitancy towards including explicit references to minority rights. This was motivated by a range of factors, such as concerns about attracting international attention to shortcomings in minority rights protection in some key States, assimilationist policies pursued by a number of Governments, the checkered history of the League of Nations' minority rights protection system, and fears that minority rights would undermine the individualistic, universalist approach of the Universal Declaration of Human Rights. These arguments, echoes of which can still be heard in today's minority rights discourse, largely prevailed in 1948, and the drafting proposal made by the UN Secretariat's Division on Human Rights and others for minority rights provisions in Universal Declaration of Human Rights were all eventually rejected.⁴ This, however, by no means meant that the standard setting of that era was of limited importance or impact for minorities. The strong focus on non-discrimination in the UN Charter and the Universal Declaration has clearly been a central legal tool for minorities around the globe, a standard that has gained a strong global status as customary international law and as a principle embedded in a range of human rights treaties. Furthermore, the adoption of the Convention for the Prevention of Genocide in 1948 provided, even with the eventual omission of cultural genocide from the scope of the Convention and with the use of the term "groups" rather than minorities, a foundational right of existence for minorities and was seen at least by some drafters as a prolongation of the protection that inter-war treaties had accorded to minorities.⁵

However, the fact that these standards did not fully capture the range of concerns that minorities faced in areas such as language and education was recognized early on by selected countries, experts and representatives of minorities, whose work resulted in the inclusion of Article 27 in the Covenant on Civil and Political Rights, recognizing the right of persons belonging to ethnic, religious, and linguistic minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language. Despite its general language and certain features that have drawn criticism (such as language limiting its application to countries "where those minorities exist," which has been invoked by some States to escape their obligations), Article 27 has had significant global ramifications. It remains the bedrock on which the UN has built all its subsequent minority-specific standard-setting, including the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities⁶ and Article 30 of the Convention on the Rights of the Child. While grounded in Article 27, both the Declaration and the Convention on the Rights of the Child introduced important additional language, with the former elaborating on Article 27 standards in key areas such as participation in decision-making and the latter making specific reference to indigenous children.

In parallel to minority rights, normative work on distinct but interrelated rights of indigenous peoples developed from the "premise of assimilation operative among dominant political elements"⁷ reflected in the ILO Convention 107 of 1957 to a more robust recognition of specific identities and rights of indigenous peoples in ILO Convention 169 of 1989 and eventually in the UN Declaration on the Rights of Indigenous Peoples, adopted by General Assembly in 2007.

In addition to normative standards, institutional UN mechanisms devoted minority issues were also developed gradually at the UN. At present, they include the mandate of the Special Rapporteur on Minority Issues, established in 2005 to promote the implementation of minority rights through country visits, reports and other methods, and the UN Forum on Minority Issues, which meets annually to formulate recommendations on specific themes, most recently on minorities in humanitarian crisis in November 2016.

Similarly to global development, regional human rights standard-setting also evolved from its post-WWII aversion to minority rights towards explicit recognition of these rights. This shift was particularly striking at the Council of Europe where the European Convention on Human Rights, adopted in 1950 with no provisions on minorities and limited non-discrimination guarantees, was eventually complemented not only with stronger guarantees for non-discrimination but also with the first (and, as of today, the only) human rights treaty devoted

⁴ On the omission of a minority article from the Universal Declaration, see Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford University Press 1991) 133-137.

⁵ William A. Schabas, 'Developments relating to minorities in the law on genocide', in Kristin Henrard and Robert Dunbar (eds), *Synergies in Minority Protection* (Cambridge University Press 2008) 211.

⁶ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN General Assembly, 18 December 1992, A/RES/47/135

⁷ S. James Anaya, *Indigenous Peoples in International Law* (Oxford University Press 1996) 44.

to the rights of person belonging to minorities, the content of which drew from the UN Declaration and in particular from the political commitments made by participating States in OSCE.⁸

The introduction of global and regional norms related to minorities has been followed by significant treaty body jurisprudence, which has in many cases helped to clarify the scope of the rights at issue. In terms of the UN standards, the work of the Human Rights Committee has been especially noteworthy. The Committee has addressed in its views and general comment No. 23⁹ various, conceptual and other issues that the wording of Article 27 left open or addressed only partially. The robust role of the Human Rights Committee is important also in light of the fact that it has the potential to facilitate consistent and human rights-based work on minority rights. As an expert body, it has no political agenda that would make its work on “partial and sporadic” and therefore it can be a catalyst of sustained action and attention. The Committee has through its jurisprudence made a crucial contribution to modern thinking on minority rights, including by deriving positive obligation from Article 27 despite its negative formulation.

That being said, the case law under Article 27 is limited in terms of number of communications decided on merits. At the time of this writing, the Committee had issued altogether 24 views with reference to Article 27. It has found a violation of Article 27 in five cases since the submission of the first individual communications in 1977. Bearing in mind that 115 States have ratified the Optional Protocol allowing individual communications, it is clear that many of the key human rights challenges that persons belonging to minorities face have not yet been examined in depth in light of Article 27. There are various reasons behind the modest number of cases decided on merits. A number of early communications were submitted by Bretons against France, a State Party that had made a “declaration” (considered a reservation by the Human Rights Committee), stating that Article 27 is not applicable in the Republic. In a number of other cases, the Human Rights Committee did not consider it necessary to examine the case at issue under Article 27 after having found a violation under other provisions of the Covenant. The Committee’s views and concluding observations indeed illustrate the significance of freedom of expression under Article 19, non-discrimination guarantees under Article 26, and other non-minority specific provisions of the Covenant for minorities.¹⁰ In this way, the Committee has also been able to address certain minority concerns in situations where the State Party had rejected the applicability of Article 27.¹¹

The scarcity of recent cases under Article 27 may also reflect the availability of new, more detailed, regional standards and case law developed by regional human rights bodies as well as the tendency of some groups to raise their concerns in fora that have a more specific focus. But it also speaks to the need for increased awareness of the potential of Article 27 amongst NGOs and representatives of minorities. It is interesting to note that much of the jurisprudence under Article 27 has been developed on the basis of communications submitted by representatives of indigenous peoples (three out of five violations of Article 27 have concerned indigenous peoples), who have often been able to build capacity on international standards and develop international networks better than others falling within the scope of the article.

Similarly, the concluding observations of the Human Rights Committee in many cases contain limited references to Article 27 even when minority issues are addressed. Consider, for example, that the 2014 concluding observations regarding the United States invoked Article 27 only in respect of the protection of sacred areas of indigenous peoples. Article 27 was not mentioned, for example, in connection with Committee’s concerns about the impact of felon disenfranchisement laws and voter eligibility requirements on minorities, which were linked to articles 2, 10, 25 and 26 of the Covenant.¹²

⁸ Council of Europe, Framework Convention for the Protection of National Minorities, adopted on 1 February 1995, ETS 157.

⁹ General Comment No. 23, adopted by the Human Rights Committee at the 50th session, 1994

¹⁰ For an overview of such views and observations on the value of interdependence between minority specific and other human rights standards, see Martin Scheinin, ‘The United Nations International Covenant on Civil and Political Rights: Article 27 and other provisions’, in Kristin Henrard and Robert Dunbar (eds.), *Synergies in Minority Protection* (Cambridge University Press 2008) and Martin Scheinin, ‘Minority Rights : Additional Rights or Added Protection ? ’ in Morten Bergsmo (ed.) *Human Rights and Criminal Justice for the Downtrodden; Essays in Honor of Asbjørn Eide* (Marinus Nijhoff 2003) 487.

¹¹ See for, example, the concerns expressed by the Committee in 2015 in respect of treatment of Travellers in France in light of articles 7, 12, 25 and 26 in Concluding observations on the fifth periodic report of France, CCPR/C/FRA/CO/5 and the case in which the Committee found a violation of Articles 17 and 23 concerning a construction of a hotel of burial grounds of indigenous Polynesians, Francis Hopu and Tepoaitu Bessert v. France, Communication No.549/1993, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. (1997).

¹² CCPR/C/USA/CO/4, 23 April 2014.

Against this background, it is important that an analysis of jurisprudential developments under ICCPR does not focus exclusively on Article 27 but also draws on minority-related cases that the Human Rights Committee has decided under other articles.

Furthermore, in order to gain a comprehensive picture, it is crucial to draw on the pertinent case law of other human rights treaty bodies. CERD, for example, has not only addressed discrimination faced by minorities in a range of specific situations but it has also provided minority-specific comments¹³ and some critical conceptual guidance, including on the principle of self-identification and on inter-relations and normative differences between special measures and minority rights, helping to clarify confusion that often prevails in this area. In particular, CERD has specified in its general recommendation No. 32(209) that “special measures should not be confused with specific rights pertaining to certain categories of person or community, such as, for example the rights of persons belonging to minorities to enjoy their own culture, profess and practice their own religion and use their own language [...]. Such rights are permanent rights, recognized as such in human rights instruments”.¹⁴

The findings of the Committee on the Rights of the Child, ranging from its country-specific concluding observations to the general comment on the rights of indigenous children,¹⁵ are of particular interest, bearing in mind that it covers the only other minority-specific treaty article contained in UN human rights treaties, namely Article 30 of the Convention on the Rights of the Child. There are significant prospects for important new jurisprudence in this area thanks to the entry into force of the Third Optional Protocol to the Convention on the Rights of the Child in April 2014.¹⁶ The protocol envisages individual communications from alleged victims as well as an inquiry procedure for grave or systematic violations, both of which can result in valuable further jurisprudence also on Article 30 on the rights of indigenous children and children belonging to ethnic, religious or linguistic minorities. This, in turn, can help to inform the implementation of the Convention in general, including in countries that have not yet ratified the said Optional protocol. This is consequential also in light of the fact that Article 30 of the Convention on the Rights of the Child is in some States Parties with significant minority populations, including China and Myanmar, the only minority-specific treaty standard that is currently in force, as they have not yet ratified the Covenant on Civil and Political Rights.

Furthermore, in order to explore the UN views on the scope and content of normative standards pertaining to minorities, one must review the findings of other authoritative bodies. In this respect, the commentary on the Declaration on Minorities, drafted by Professor Asbjørn Eide and endorsed by the former UN Working Group on Minorities, provides particularly valuable authoritative guidance,¹⁷ and various reports of the Independent Expert (now Special Rapporteur) on Minority Issues and recommendations of the UN Forum on Minority Issues contain important thematic and country-specific findings that are grounded in Article 27 and other minority rights standards.

ii. Key conceptual development

In examining the above normative framework and its interpretation, certain thematic and conceptual developments are particularly significant in determining to what extent minority rights are considered fit for purpose and meet the challenges in contemporary circumstances, questions that are decisive for the future traction of minority rights at both national and international levels. I will make brief observations on some of the most contested questions that affect the uptake of minority rights, including the issue of scope of application of minority rights and the interplay between integration and minority rights.

¹³ General recommendation No. 25 on Discrimination Against Roma, UN Doc A/55/18, 2000.

¹⁴ Committee on the Elimination of Racial Discrimination, General recommendation No. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination, CERD/C/GC/32, 24 September 2009.

¹⁵ General comment No. 11 (2009): Indigenous children and their rights under the Convention on the Rights of the Child, UN Committee on the Rights of the Child, 12 February 2009, CRC/C/GC/11.

¹⁶ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Resolution adopted by the General Assembly on 19 December 2011, A/RES/766/138.

¹⁷ Commentary to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of the Working Group on Minorities, Note by the Secretariat E/CN.4/Sub.2/AC.5/2005/2.

a) Scope of protection

The Human Rights Committee has been at the forefront in supporting an inclusive reading of the personal scope of application of minority rights, a reading that has gradually gained ground at both international and national levels in the absence of an agreed definition.¹⁸ The Committee's interpretation of Article 27 of the Covenant, as described in its commentary No. 23, goes further than many earlier suggestions concerning the personal scope of application of minority rights, including by rejecting a citizenship criterion that had been advocated by Capotorti and a number of others commentators.¹⁹ The Committee has consistently worked against potentially restricting impact of the opening phrase of Article 27 ("In those States in which ethnic, religious or linguistic minorities exist") by recognizing, *de facto*, that such minorities exist in virtually all State Parties. Today, even countries such as Iceland, often referred to as an example of a homogenous society, report on their linguistic and religious minorities under Article 27. This broad reading of its scope has been echoed by the Committee on the Rights of the Child in the concluding observations related to the similarly phrased Article 30. The Committee has, for example, addressed human rights issues faced by non-citizen minority children and it has urged State Parties to broaden their approach, including by recommending that Turkey withdraw its reservation to make Article 30 more widely applicable, including to Kurds.²⁰

An inclusive approach is also reflected in UN work related to soft law minority instruments. The Declaration on Minorities (which added a reference to "national" minorities to the list of ethnic, religious, and linguistic minorities contained in ICCPR) may, according to the Commentary, be assumed to have "at least as wide a scope" as Article 27 of the Covenant.²¹ Such inclusiveness not only implies relevance of minority rights beyond "historic" or "traditional" minorities, but also places an emphasis on self-identification and endorsement of the fact that the existence of minorities does not depend on the recognition of the State at issue. The UN Secretary General has also highlighted these principles in his guidance to the UN system, and they have been reflected in the reports of the UN Special Rapporteur on Minority Issues and recommendations of the UN Forum on Minority Issues from the outset of their activities.²²

Similar developments have progressively taken place at the regional level. In the run-up to the adoption of the Framework Convention for the Protection of National Minorities by the Council of Europe, some commentators were concerned that the initiatives on national minorities at the European level might lead to the narrowing down of the personal scope of application of minority rights, undercutting the broader approach pursued at the UN.²³ These concerns were however soon alleviated as key actors, notably the Advisory Committee on the Framework Convention, took from early on an approach that was, if not quite as broad as that of the Human Rights Committee, generally inclusive, as detailed in the Advisory Committee's commentary on the topic issued in 2016.²⁴

¹⁸ For a critical overview of these developments, see Hurst Hannum, 'The Concept and Definition of Minorities' in Mark Weller (ed.) *Universal Minority Rights* (Oxford University Press 2007) 49.

¹⁹ F. Capotorti, Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, UN Doc. E/CN.4/Sub.2/384/Rev. 1. 1979.

²⁰ The Committee encouraged Turkey "to consider withdrawing its reservations to articles 17, 29 and 30 of the Convention in order to provide better protection and opportunities to all groups of children, in particular children of Kurdish origin, who are not recognized as a minority under the Turkish Constitution and the Treaty of Lausanne of 1923". Committee on the Rights of the Child, Sixtieth session, 29 May - 15 June 2012, Concluding observations: Turkey, CRC/C/TUR/CO/2-3.

²¹ Commentary to the Declaration on Minorities, para 9.

²² Guidance Note of the UN Secretary General on Racial Discrimination and Protection on Minorities (March 2013) (available at: <http://www.ohchr.org/Documents/Issues/Minorities>) states that the "UN pursues an inclusive approach to the concept of minorities". The UN Independent Expert on Minority Issues affirmed an inclusive approach already in her first annual report, stressing, *inter alia*, the principle of self-identification, Report of the independent expert on minority issues, E/CN.4/2006/74, 6 January 2006. The Forum on Minority Issues stated in connection with its first recommendations that the term "minorities" should be understood as it is used in the Declaration, the commentary to the Declaration and the first annual report of the independent expert on minority issues. Recommendations of the Forum on Minority Issues, A/HRC/10/11/Add.1, 5 March 2009.

²³ See, for example, Rosalyn Higgins, 'Minority Rights: Discrepancies and Divergencies Between the International Covenant and the Council of Europe System' in Lawson & de Blois (eds.) *The Dynamics of the Protection of Human Rights in Europe—Essays in Honour of Henry G. Schermers*, Vol. III, 195 (Martinus Nijhoff 1994).

²⁴ Advisory Committee on the Framework Convention for the Protection of National Minorities,

Despite the overall alignment of human rights monitoring bodies on the broad scope of protection and the fact that some States have adapted their approach in line with recommendations made by these bodies, several States, and also a number of scholars, continue to argue that the application of minority rights - especially but not exclusively those concerning national minorities - should be limited to those groups that have long-standing presence in the country. Their arguments include the claim that the expansive reading of the scope of application leads to a watering down of the standards, eventually hurting the impact of minority rights regime as a whole. Such statements overlook, however, that sharp delineations between groups and an all-or-nothing approach to the scope of application can be not only unfeasible in practical terms but also highly problematic from the point of view of non-discrimination standards. They also overlook the fact that while Article 27 and other standards can be invoked by a variety of right holders including those who have arrived relatively recently, it does not necessarily follow that the implementation measures required by the State Party are identical. The specific context and circumstances, such as those related to the needs and the history of the minority in question in the region, can affect what is actually required to ensure that the right of persons belonging to a minority to enjoy their own culture, to profess and practice their own religion, or to use their own language is guaranteed. For example, the specific context will influence whether, or to what extent, this right implies a right to use minority language in communication with authorities or to have street signs in minority languages.²⁵ While this view is not explicitly stipulated in General Comment 23, it is reflected in the jurisprudence of the Human Rights Committee - with findings, for example, on indigenous peoples that are clearly context-specific and could not be transposed as such to apply to more recent minorities – as well as in the Commentaries on the Declaration and the Framework Convention. Additional communications (and decisions on merits) under Article 27 concerning the full spectrum of the groups covered by the article would no doubt help to clarify further such nuances in the implementation of minority rights, bearing in mind that the current jurisprudence provides only limited guidance on the legal implications of Article 27 beyond indigenous peoples and “traditional” minorities.

Furthermore, while the categories of ethnic, religious, and linguistic minorities clearly overlap in many cases, the specific implementation measures that duty bearers have to take, for example vis-à-vis linguistic minorities, are not necessarily identical with the obligations they have to protect the rights of persons belonging to religious minorities. For example, as is stated in the Commentary to the Declaration, religious minorities may require different types or contexts of participation than ethnic or national minorities.²⁶ In this respect, there is very little in the case-law of the Human Rights Committee that provides guidance on the specific implications of Article 27 for religious minorities, both in terms of what is protected and what it not protected by it.²⁷ This reflects a general tendency within the modern minority rights discourse, where, up until recently, focus has been more on ethnic and linguistic minorities than on religious minorities. While Special Rapporteurs, OHCHR and others have in recent years brought new attention to minority rights regime in this context, the concerns of persons belonging to religious minorities have in many cases been addressed merely through human rights of general applicability, notably freedom of religion and non-discrimination, whereas the potential added value of Article 27 and other minority rights standards have not been fully explored.²⁸ It is clear that the case-law of the Human Rights Committee under Article 18 and other articles of the Covenant has been extremely important for religious minorities. But minority rights could make an important contribution in areas such as participation and

The Framework Convention: a key tool to Managing diversity through minority rights; Thematic Commentary No. 4, The Scope of Application of the Framework Convention for the Protection of National Minorities. Strasbourg, 27 May 2016, ACFC/56DOC(2016)001.

²⁵ See Asbjørn Eide, An Overview of the UN Declaration and Major Issues Involved in Caruso and Hofmann (eds.), *The United Declaration on Minorities; An Academic Account on the Occasion of its 20th Anniversary* 55, 81 (Brill, Nijhoff 2015).

²⁶ Commentary to the Declaration, *supra*, para 43.

²⁷ A rare example of the Human Rights Committee’s jurisprudence under Article 27 pertaining to a religious minority is found in a case concerning the failure to provide an exemption for the use of cannabis for Rastafarians in South Africa. After agreeing that the author of the communication was a member of a religious minority and that the use of cannabis was an essential part of the practice of his religion, the Committee stated that it “cannot conclude that a general prohibition of possession and use of cannabis constitutes an unreasonable justification for the interference with the author’s rights under this article and concludes that the facts do not disclose a violation of article 27”. *Prince v South Africa, Merits, Communication No 1474/2006, UN Doc CCPR/C/91/D/1474/2006*.

²⁸ See, for example, Report of the Expert Workshop on Enhancing the effectiveness of international, regional and national human rights mechanisms in protecting and promoting the rights of religious minorities, Vienna, 22-23 May 2012, organized by OHCHR and Government in Austria, available at <http://www.ohchr.org/Documents/Events/Minority2012/ReportVienna.pdf>.

consultation of minorities in decision-making, which, while not explicitly mentioned in Article 27, has been a central factor in the Committee's jurisprudence concerning the implementation of the article, especially as regards cultural rights and indigenous peoples.²⁹

The contribution that minority rights can make in respect of religious minorities is evident also at the regional level, for example, when we look at the human rights findings concerning religious attire and compare the related case-law of the European Court of Human Rights and the corresponding findings of the Advisory Committee on the Framework Convention, with the latter placing stronger emphasis on the need to consult the minorities concerned in the decision-making in light of the provisions of the Framework Convention.³⁰ It remains to be seen whether the recent serious and widespread violations of the rights of persons belonging to religious minorities lead to additional case-law under Article 27 and thereby to further clarification of the obligations it carries in respect of religious minorities. There are already signs of the increasing visibility of the issue in other human rights mechanisms, including in connection with the Universal Periodic Review (UPR) of the Human Rights Council. Whereas the issues of religious minorities and freedom of religion and belief received only limited attention in the UPR first cycle,³¹ the number of recommendations pertaining to both themes has increased from 134 in the first cycle to 354 in the (not yet completed) second cycle, an increase that is significantly higher than the overall increase in the number of recommendations.³²

While the personal scope of application of Article 27 and other UN minority rights standards is relatively wide, it does not follow that there is an obligation at the country level to use the term "minority" in legislation and/or policies. Indeed, jurisprudence of the Human Rights Committee covers a number of the situations where the group at issue (including indigenous peoples) prefers not to use the term minority at the domestic level, even though they are invoking the standards of Article 27. This point is particularly pertinent in advancing these standards in regions and States where the minority terminology as such has often had negative connotations, including in a number of countries in Africa and in Middle East. This also helps to reconcile the use of minority rights with efforts to develop specific, targeted standards and mechanisms that go beyond general minority rights standards in order to address the specific concerns that certain groups face. Indigenous peoples and the recognition of their collective rights in the Declaration on the Rights of Indigenous Peoples and ILO Convention 169 are a case in point, as are the on-going efforts of people of African descent to raise their particular human rights problems through specific targeted standards and mechanisms, including in connection with the International Decade for People of African Descent, declared by the General Assembly for 2015-2024. While certain flexibility in terms of nomenclature employed at the national level is desirable (as long as it respects the principle of self-identification), it is crucial that human rights bodies couple this with clear pronouncements on the applicability of minority rights standards regardless of the local terminology used.

Despite its generally inclusive approach, the Human Rights Committee has also set certain clear limits to its scope of application. In particular, the Committee has insisted that for Article 27 to apply, the minority in question must be a minority in the territory of the State Party as a whole. Therefore, even though English-speakers are a minority in the Province of Quebec, the Committee did not consider them a linguistic minority for the purposes of the Article 27 because they are part of the overall majority in Canada. This stands somewhat in contrast with the approach taken by the Advisory Committee that has considered the application of the Framework Convention also to persons who do not belong to national minorities but live in a similar situation, including persons belonging to the majority population in areas that are mainly inhabited by minority communities.³³ The importance of addressing issues faced by numerical majorities has of course been a subject

²⁹ See, for example, the Committee's view in *Apirana Mahuika et al. v New Zealand*, Communication No. 547/1993, CCPR/C/70/D/547/1993, 16 November 2000 and General comment No 23, para. 7. See also Annelies Verstichel, *Participation, Representation and Identity* (Insertia 2009) 169-174.

³⁰ For a comparative analysis, see Stephanie E. Berry, "The Siren's Call? Exploring the Implications of an Additional Protocol to the European Convention on Human Rights on National Minorities" 23 *International Journal on Minority and Group Rights* (2016) 1, 13-19.

³¹ See *Minority Issues in the First Cycle of the Universal Periodic Review (UPR)* Analysis by the UN Special Rapporteur on minority issues, Rita Izsák, available at <http://www.ohchr.org/Documents/Issues/IEMinorities>. See also Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of religion or belief: an international law commentary* (Oxford University Press, 2016) 579-580, noting that the first cycle recommendations also included ones that are "not helpful", including recommendations to adopt legislation on "defamation of religions".

³² A total of 52,282 recommendations had been made in the 24 UPR sessions held by 20 October 2016. See UPR Info database at <https://www.upr-info.org/database>.

³³ Advisory Committee, *Thematic Commentary No. 4*, supra.

of concern in contexts ranging from the apartheid era South Africa to recent events in Syria and Bahrain, demonstrating that the non-dominant position can also be experienced by majorities. In this respect, approaches that combine both discrimination and minority analysis can be particularly valuable, bearing in mind that the former applies also to persons belonging to majorities. Such a combined approach can be equally suitable for addressing those groups who do not necessarily fall as a whole within the scope of minority rights, such as Dalits and other caste-affected groups, for whom the affirmation by CERD that the Convention on the Elimination of all forms of Racial Discrimination also covers caste-based discrimination (as part of discrimination based on descent) has been particularly significant.³⁴

It is also important to note that there are a number of groups, including LGBTI individuals and persons with disability, that are regularly referred to as a “minority” outside international law discourse but are nevertheless not considered, as such, minorities for the purposes of international minority rights standards in human rights jurisprudence at the regional or international level. This can in some situations cause confusion that calls for more precise use of language and the awareness on the scope of the rights at issue. Their rights have, however, received increased attention by human rights bodies, notably in light of non-discrimination guarantees, and in the case of persons with disability, a specific treaty has been introduced.³⁵ Their concerns are also progressively being raised by minority rights bodies, notably in light of the multiple and intersecting forms of discrimination faced by persons belonging to a national, ethnic, religious, or linguistic minority who are also discriminated against on other grounds such as disability or sexual orientation. This is an important development that can build on jurisprudence concerning the rights of minority and indigenous women, which was an issue already in the first-ever case in which a human rights treaty body found a violation of minority rights provision: Following a communication submitted in 1977, the Human Rights Committee concluded that an indigenous woman was denied her status as a member of an indigenous community following her marriage to a non-indigenous, in violation of Article 27.³⁶ In doing so, the Committee also stressed that Article 27 “must be construed and applied in the light of the other provisions of the Covenant,” including its “provisions against discrimination”, a principle with clear implications not only for minority women but also for other segments within minorities who are frequent targets of discrimination.

b) Interplay between integration and minority rights

One of the challenges that the advancement of minority rights has often faced has been the perceived dichotomy between integration and minority rights, at times portrayed as entailing a necessary choice between accommodation and integration.³⁷ On the one hand, it has been claimed that the promotion of minority rights increases distance between linguistic, religious, ethnic groups in societies, and, on the other hand, integration has at times been seen as a Trojan horse for forced assimilation, undercutting minority rights.

Recently, however, minority rights bodies and scholarship have increasingly started to explore ways in which implementation of minority rights and integration efforts, instead of being opposing forces, can be mutually reinforcing processes and how integration, when properly defined and pursued, can indeed be an integral component of measures to advance minority rights.³⁸ The significance of the topic has only increased with the wider acceptance of the inclusive approach to minority rights, encompassing first- and second-generation minorities and others frequently covered by integration measures. While UN minority rights instruments (unlike the Framework Convention) do not refer explicitly to “integration” or inter-ethnic dialogue, well-designed integration efforts and measures to enhance interaction between different communities can be seen as implicit, where necessary, for example, in the commitment under Article 1 of the Declaration on Minorities to introduce

³⁴ Committee on the Elimination of Racial Discrimination, General Recommendation 29, Discrimination Based on Descent (Sixty-first session, 2002), U.N. Doc. A/57/18 at 111 (2002), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 223 (2003).

³⁵ See also Clive Baldwin, ‘Do Vulnerable Groups within Ethnic, Religious or Linguistic Minorities Need Special Standards?’ in Kristin Henrard (ed), *Double Standards Pertaining to Minority Protection* (Brill 2010).

³⁶ Sandra Lovelace v. Canada, Communication No. 24/1977: Canada 30/07/81, UN Doc. CCPR/C/13/D/24/1977.

³⁷ See e.g. Will Kymlicka, *The Internationalization of Minority Rights*, 6 *International Journal of Constitutional Law* (2008) 1.

³⁸ For an overview of the related efforts of the European human rights bodies, see Merja Pentikäinen, *Social Integration of “Old” and “New” Minorities in Europe in Views of International Expert Bodies Relying on Human Rights: Contextual Balancing and Tailoring*, 14 *Journal on Ethnopolitics and Minority Issues in Europe* (2015) 26.

legislative and other measures that “encourage conditions” for the promotion of national or ethnic, cultural, religious, and linguistic identity of minorities. The relevance of integration is also reflected in the commentary to the Declaration, which includes seven references to integration, including in connection with Article 2 on the right to participate, which the commentary sees as essential to “create an integrated but pluralist society based on tolerance and dialogue”.

The increasing emphasis on integration in today’s minority rights discourse has also raised some concerns, notably in Europe, where some scholars see integration as a “fuzzy” concept that is “currently used in international fora as a ground to restrict the precise human rights as well as minority rights standards that European states have promised to respect.”³⁹ An analysis of minority rights jurisprudence indeed indicates that laws and policies couched in integration language have in a number of cases been pursued in manner that is problematic from the point of views of human rights, including rights of persons belonging to minorities.⁴⁰ But jurisprudence also shows that correctly designed and implemented integration can be, not only compatible with, but also an element of, implementation of minority rights. As suggested by the Commentary on the UN Declaration on Minorities, “in some cases” positive measures of integration “can best serve the protection of minorities”. This, however, requires that integration be interpreted and implemented in a manner that rejects forced assimilation, involves efforts by both minorities and majorities to enhance interaction, and is grounded in respect for cultures and their manifestations in so far as they are compatible with human rights.⁴¹ Furthermore, it is crucial to ensure that integration policies do not exist in isolation and that they effectively challenge *de facto* segregationist policies that, as human rights jurisprudence demonstrates, have been pursued in areas such as health, education, and housing in respect of Roma, Afro-descendants, and other minorities, at times in parallel with declared integration policies.⁴²

Pursuing integration in line with minority rights also requires that measures are adapted for the specific contexts of the minorities concerned, and that minorities participate in their design and implementation. As discussed above, minority rights do not call for uniform measures across the range of minority groups that enjoy protection Article 27 and other minority standards. Integration policies that might work for recent migrants are rarely, if ever, appropriate for more traditional minorities, let alone for indigenous peoples, for whom different approaches, rooted in self-determination and other collective and individual rights contained in the UN Declaration on the Rights of Indigenous Peoples, are required. As Kofi Annan has stated ‘the mix of policies and institutions required, for example, to manage relations between indigenous communities and a majority of long-established incomers is not the same as that required to integrate and protect “new” minorities who have only recently arrived’.⁴³ There is a clear to unpack these nuances further.

By the same token, synergies between minority rights and integration require that minority rights are interpreted and implemented in a manner that encourages interaction and rejects excessive isolationist and segregationist tendencies. Such a “non-isolationist approach” to minority rights suggests that, for example, the linguistic rights related to education for persons belonging to minorities should be fully respected but they should not be implemented in a manner that prevents interaction between children belonging to different communities within a country.⁴⁴ This, however, should not be seen as excluding, for example, separate classes for immersion in a minority language or establishment of private educational institutions set up by minorities, both of which can be key factors in guaranteeing minority rights. But even in such situations, issues such as the design of facilities, their location, and their accessibility to pupils belonging to other linguistic groups should be addressed in a manner that enables interaction between pupils of different ethnic, linguistic, or religious backgrounds, thereby

³⁹ Alexandra Xanthaki, *Against Integration*, for Human Rights, 20:6 *The International Journal of Human Rights* (2016) 815-838.

⁴⁰ See, for example, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth and eleventh periodic reports of Estonia*, CERD/C/EST/CO/10-11, 22 September 2014, welcoming the state integration programme for 2014-2020 but expressing concerns about integration strategy’s continued “overemphasis on language”.

⁴¹ See also the Advisory Committee, *Thematic Commentary No. 4*, supra, para. 44.

⁴² See, for example, Antti Korkeakivi, *Introductory Note to the European Court of Human Rights Decision D.H. v. Czech Republic*, 47 *ILM* 35 (2008).

⁴³ Kofi Annan, ‘*Pluralism; a Key Challenge for the 21st Century*’, Address at the Global Centre for Pluralism, 23 May 2013.

⁴⁴ See OSCE High Commissioner on National Minorities, *The Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note* (The Hague 2012).

limiting the risk that “social integration and fundamental argument do not reinforce each other but point in the opposite direction.”⁴⁵

Against this background, it is important that human rights messaging, whether from human rights treaty bodies or other actors, on integration is nuanced and does not encourage new integration policies and programmes without reservations or spill over to contexts where proposed integration measures are not appropriate (cf. above comments concerning indigenous peoples). It is also important to ensure that respect for minority rights is consistently embedded in human rights messaging on integration, and that, for example, frequent use of integration terminology by human rights bodies (not always coupled with references to minority rights) vis-à-vis Roma or Muslim minorities in Europe does not, even unintentionally, reflect or reinforce negative stereotypes regarding the values of the cultures at issue. By the same token, the inclusion of the perspective of integration and interethnic dialogue in minority rights-based findings would in many cases be useful. In this respect, the relevant elements of the UN Declaration on Minorities could also inform the work by treaty bodies interpreting the succinct minority rights provisions contained in ICCPR and in the Convention on the Rights of the Child.⁴⁶ A consistent and coherent approach, facilitated by UN entities ranging from treaty bodies to the Forum on Minority Issues and the High Commissioner for Human Rights, would help to strengthen the role of minority rights in on-going debates on integration strategies currently taking place in a number of countries, including in the light of the surge of immigration. Similarly, it could help to inject minority rights elements into the efforts to ensure that the prevention of violent extremism is pursued in a manner that is rooted in human rights principles. While these discourses have regularly focused on minorities, they have often failed to incorporate minority rights and the role of international minority rights standards in the proposed policy approaches.

In terms of attitudes at the international level, it is perhaps indicative that, while minority issues are high on the political agenda, there seems to be no major momentum towards new ratifications of minority rights instruments by States or withdrawal of pertinent reservations/declarations, let alone for new standard-setting. For example, at the global level calls for a specific UN treaty on minorities have become increasingly rare and isolated, and in Europe the number of State Parties to the Framework Convention has not increased since 2005 and ratification has been pending in some signatory States for more than 20 years.⁴⁷ By the same token, the voices of both political leaders and grass root actors speaking out against minority rights have in many cases become louder, in many cases fuelling increasing hostility towards minorities.⁴⁸ This is definitely the case as regards new minorities, and, while there are different views in this respect,⁴⁹ one can witness similar tendencies in some contexts also vis-à-vis more traditionally minorities, especially where over politicization of minority rights and disputes in respect of the role of kin states dominate the discourse. Rather than using such discourses and political exploitation of minority rights as justifications for moving away from commitment to the human rights at issue, they should be countered through stronger support to multilateral mechanisms and bodies providing objective interpretation and analysis of the implementation of the standards, including through the human rights mechanisms outlined above.

⁴⁵ Kristin Henrard, *The UN Declaration on Minorities’ Vision on ‘Integration,’* in (Caruso and Hofmann eds.), *The United Declaration on Minorities; An Academic Account on the Occasion of its 20th Anniversary*, 156, 188 (Brill, Nijhoff 2015).

⁴⁶ In this connection, it is interesting to note the general reluctance of the Human Rights Committee to make explicit references to other relevant international standards, an approach that stands in clear contrast to the one pursued by certain other treaty bodies, such as CERD, which has, for example, invoked the Declaration on the Rights of Indigenous Peoples in more than 20 concluding observations since the adoption of the Declaration in 2008.

⁴⁷ The States that have signed but not ratified include Belgium (signed 31/07/2001), Greece (22/09/1997), Iceland (01/02/1995) and Luxembourg (20/07/1995).

⁴⁸ See, for example, on the increased hostility experienced by Muslims in the European Union, EU Fundamental Rights Agency, ‘Current Migration Situation in the EU: Hate Crime’, November 2016, and in the United States, FBI Hate Crime Statistics Report, 2015, available at <https://ucr.fbi.gov/hate-crime/2015>.

⁴⁹ See, for example, *National Minorities and the Crisis of Multiculturalism in Europe: Commentary by Will Kymlicka and Keith Banting* in *European Yearbook of Minority Issues Volume 12, 2016*, 42-43, (Commentary on an article by Knut Vollebaek), arguing that “there is nothing in the backlash against immigrant Others that would lead us to expect a backlash against historic minority Others”.

III System-wide approach

As discussed in the selected examples above, UN human rights bodies have a key role to play in ensuring a consistent and coherent approach to minority rights. But in order for minority rights to have an impact, both internationally and nationally, it is crucial that the other pillars of the UN are also embracing and advocating for these standards in their work and are doing so in a manner that reflects international human rights standards, including corresponding jurisprudence. The need for more system-wide engagement has been increasingly recognized within the UN Secretariat, including at the most senior level. The Secretary-General has set up a UN Network on Racial Discrimination and Minorities⁵⁰ and issued a detailed Guidance Note on the topic, stressing the following: ‘In addition to being human rights imperatives, combating racial discrimination and protection of minorities are also key factors in the prevention of conflict, in conflict and post conflict situations as well as in addressing development challenges, including poverty reduction, millennium development goals (MDGs) and environmental sustainability. The protection of minorities and combatting racial discrimination thus affect all three pillars of the UN – security, development and human rights – and require system wide, coordinated engagement’.⁵¹

The 19 recommendations and other elements of the Guidance Note, which draw heavily on the jurisprudence of treaty bodies, has resulted in some concrete follow-up. The Guidance Note has, for example, prompted coordinated UN interventions at the UN Forum on Minority Issues and development of new guidance on specific human rights issues, such as caste-based discrimination. At the country level, it has resulted in minority-specific dialogues with UN country teams in countries ranging from Myanmar to Moldova. These have complemented related work that has been done by individual UN entities, including in countries that have experienced sectarian or ethnic conflicts. For example, in Myanmar, a dialogue with UNCT on minority rights was followed by a report of the High Commissioner on Human Rights on the human rights situation of Rohingya Muslims and other minorities in Myanmar, requested by the Human Rights Council and released in June 2016, as well as OHCHR training for Government officials on international minority rights standards.⁵² And in Kyrgyzstan, OHCHR and other UN entities have, following ethnic clashes in 2010, been supported by the UN Peacebuilding Fund to pursue a range of initiatives on minorities in line with the recommendations of the Guidance Note, for example through a UNICEF/OHCHR project to support on multilingualism.⁵³

The latest internal tool to advance the centrality of human rights, including minority rights, in all aspects of UN work is the “Rights up Front” initiative launched by the Secretary General in 2013. It is rooted in a frank Internal Review Panel evaluation of the UN action in Sri Lanka, which concluded that there was a “systemic failure” at both the field and Headquarters level during the brutal final stages of the civil war in Sri Lanka.⁵⁴ The Human Rights Up Front Initiative was thereby born out of a context where serious human rights violations against persons belonging minorities were a key concern. While UN presence in Sri Lanka was devoted to development and humanitarian work, with no political or peace missions and only limited human rights presence, the scope of the initiative covers UN work in general.⁵⁵

In order to implement the panel’s recommendations on improving future UN responses, the Rights Up Front initiative sets out the following actions to embed human rights in policies, actions and culture of the organization:⁵⁶

- **Action 1:** Integrating human rights into the lifeblood of the UN so all staff understand their own and the Organization’s human rights obligations.

⁵⁰ Coordinated by OHCHR, the Network enhances dialogue and cooperation between relevant UN Departments, Agencies, Programmes and Funds. Over 20 UN entities have joined the Network.

⁵¹ Guidance Note of the Secretary General on Racial Discrimination and Protection of Minorities, *supra*, page 2.

⁵² Report of the United Nations High Commissioner for Human Rights: Situation of human rights of Rohingya Muslims and other minorities in Myanmar, 20 June 2016, A/HRC/32/18.

⁵³ For an overview of the support given by the Peacebuilding Fund, see <http://www.unpbf.org/countries/kyrgyzstan>.

⁵⁴ Report of the Secretary-General’s Internal Review Panel on United Nations Action in Sri Lanka, November 2012.

⁵⁵ OHCHR field presences fall into two categories: stand-alone presences (regional and country presences) and collaborative arrangements (human rights components of peace or political missions and human rights advisors within UN Country Teams, lead by Resident Coordinators).

⁵⁶ For an overview, see Andrew Gilmour, *The Future of Human Rights: A View from the United Nations*, in *Ethics & International Affairs*, 128, No 2 (2014) 239.

- **Action 2:** Providing Member States with candid information with respect to peoples at risk of, or subject to, serious violations of human rights or humanitarian law.
- **Action 3:** Ensuring coherent strategies of action on the ground and leveraging the UN System's capacities to respond in a concerted manner.
- **Action 4:** Clarifying and streamlining procedures at Headquarters to enhance communication with the field and facilitate early, coordinated action.
- **Action 5:** Strengthening the UN's human rights capacity, particularly through better coordination of its human rights entities.
- **Action 6:** Developing a common UN system for information management on serious violations of human rights and humanitarian law

While general in scope, all the above actions can be vehicles for improved recognition and advancement of the rights of persons belonging to minorities. For example, one can expect that situations covered by action 2 would in many cases concern national, ethnic, religious or linguistic minorities. The Rights Up Front Initiative also aims to facilitate 'courage to speak up for the values in the Charter and the Universal Declaration of Human Rights', which can be challenging notably at the national level where human rights efforts are frequently facing political and other pressures.⁵⁷ Such courage is often particularly instrumental in advocating for minority rights, which can be politically highly sensitive, often even more so than other human rights issues. In this respect, it is interesting to note the attention devoted to minority issues in the new Guidance Note on Human Rights issued to guide Resident Coordinators and Country teams following the launch of the Human Rights Up Front. These issues are prominent, for example, the section that includes seven "brief guidance notes on a catalogue of specific human rights issues, including some of the most sensitive issues that RCs and UN Country Teams might face in their day-to-day work", of which one is devoted to minorities and one to indigenous peoples.⁵⁸

In addition to being the context that demonstrated the need for actions envisaged in the Human Rights Up Front Initiative, Sri Lanka is also a demonstration of how opportunities for UN country engagement on minorities can drastically change with political developments. Whereas at the end of the conflict the then-President stated that "we have removed the word minorities from our vocabulary",⁵⁹ an in-depth dialogue with the UN on the protection of minorities has recently been pursued by the current authorities, including through a visit of the UN Special Rapporteur on Minority Issues.⁶⁰ In order to seize such opportunities, the UN field presences needs to have the capacity and expertise to carry out nuanced work on human rights issues pertaining to minorities, and in this respect the proposals to enhance OHCHR presence at the regional level can yield positive results also for minority protection.⁶¹

IV Peace and Security Pillar; Security Council

While such internal initiatives within the UN Secretariat can have a significant positive impact, comprehensive advancement of minority rights, and sustained attention to minority protection in general across the system, require that these issues penetrate also into major political decision-making processes of the UN, including those that address peace and security issues.

⁵⁷ For cases studies, see, for example, Michael Keating and Richard Bennet, 'The Contribution of Human Rights to Protecting People in Conflict' in Haidi Willmot, Ralph Mamiya, Scott Sheeran, and Marc Weller (eds), *Protection of Civilians* (Oxford 2016).

⁵⁸ Guidance Note on Human Rights for Resident Coordinators and UN Country Teams (UNDG 2016).

⁵⁹ President Rajapaksa's statement to the parliament on the defeat of the LTTE, 19 May 2009, quoted in the Report of the Secretary-General's Internal Review Panel on United Nations Actions in Sri Lanka, November 2012, page 88. He went on to say that "no longer are there Tamils, Muslims, Burghers, Malays or any other minorities. "There are only two peoples in this country. One is the people that love this country. The other comprises the small groups that have no love for the land of their birth. Those who do not love the country are now a lesser group."

⁶⁰ Statement of the United Nations Special Rapporteur on Minority Issues, Rita Izsák-Ndiaye, on the conclusion of he visit to Sri Lanka, 10-20 October 2016, 20 October 2016, available at: <http://www.ohchr.org/EN/NewsEvents>.

⁶¹ Proposed regional restructuring of the Office of the United Nations High Commissioner for Human Rights: increasing efficiency and effective in the implementation of General Assembly resolution 48/141, Report of the Secretary General, [A/71/218](#) (27 July 2016).

While there are many other UN bodies that deal with peace and security issues that relate to minority issues, such as the UN Peacebuilding Commission, I will focus on the role of the Security Council in light of its preeminent role in this area and the limited analysis available in terms of its approach to minority rights. There is an obvious need for efforts to incorporate the protection of minorities and their rights in the work of the Security Council given that ethnic tensions, in many cases involving violations of minority rights, are often at the root of conflict. For example, it has been estimated that that roughly half of all UN peacekeeping operations are directed at conflict situations in which ethnicity plays an important role.⁶²

While the first Security Council resolution referring to the “protection of minorities” dates back to 1948,⁶³ the Security Council has since then only rarely mentioned rights or protection of minorities as such in its resolutions. Lack of references to the rights of persons belonging to minorities can be seen as part of the traditional overall reluctance of the Security Council to raise human rights as such. But even as the Security Council has gradually started to invoke human rights standards more frequently,⁶⁴ references to minority rights have remained rare. The Security Council resolutions have in a number of cases condemned human rights violations against specific ethnic groups, notably in connection with conflicts that took place in the former Yugoslavia.⁶⁵ While such references are important, the explicit use of (also) minority terminology would have enlarged the coverage of the resolutions at issue to other affected, non-dominant groups (such as Roma) and also helped to signify the pertinence of minority-specific human rights standards.

There are some recent signs of growing willingness to address minority protection, including minority rights, more explicitly in the work of the Security Council. In March 2015, France convened, during its presidency, a ministerial meeting of the Security Council “on the question of minorities in the Middle East being persecuted on ethnic or religious grounds.”⁶⁶ While the concept note did not refer to minority rights *per se*, it was a unique example of the Security Council devoting a meeting, explicitly, to the issue of minorities. In the course of the meeting, Member States referred *inter alia*, to the principles of the Declaration on Minorities and to the need to recognize that “minorities are not asking for favours, but rather they are demanding their rights.”⁶⁷ And while the Security Council’s increased interaction with human rights experts and officials have so far not included direct dialogue with actors such as the Special Rapporteur on Minority Issues or the Special Rapporteur on the Rights of Indigenous Peoples, key questions related to the rights of persons belonging to minorities issues have been raised by others briefing the Security Council, including by the High Commissioner for Human Rights, the Assistant Secretary General for Human Rights and the Special Advisor on the Prevention of Genocide as well as various Special Representatives and Envoys of the Secretary General.⁶⁸

One important operational tool the Security Council has at its disposal is the integration of human rights tasks into the work of UN peace operations. It has increasingly included human rights work in the relevant mandates, and today human rights related tasks are featured in the mandates of nearly all peace operations, and in most cases these operations have a specific human rights component. It is, however, extremely rare to find any

⁶² Jane Boulden, ‘The United Nations Security Council, Ethnicity, and Ethnic Conflict’ in Jane Boulden and Will Kymlicka (eds.) *International Approaches to Governing Ethnic Diversity* (Oxford University Press 2016).

⁶³ See SC Res 47 (1948) on the India-Pakistan Question, which concerned the dispute over the State of Jammu and Kashmir and envisaged that at a certain ‘personnel recruited locally in each district should so far as possible be utilised for the re-establishment and maintenance of law and order with due regard to protection of minorities’.

⁶⁴ For a recent overview, see *Human Rights and the Security Council—An Evolving Role*, Security Council Report, Research report 1/2016, concluding that “after seeing human rights almost as a taboo for a number of decades, the Council now considers human rights as a part of the reality with which it needs to deal in its effort to maintain international peace and security”.

⁶⁵ See for, example, SC Res 1019 (1995) on the Serb population in Croatia and SC Res 688 (1991) on the Iraqi civilian population, in particular in in Kurdish populated areas.

⁶⁶ Annex to the letter dated 12 March 2015 from the Chargé d’affaires a.i. of the Permanent Mission of France to the United Nations addressed to the Secretary-General, Concept note for the Security Council open debate on the victims of attacks and abuses on ethnic or religious grounds in the Middle East, 27 March 2015, S/2015/176.

⁶⁷ S/PV.7419 (including statements by France and Portugal).

⁶⁸ See for example, Meeting of the Security Council in Arria format on Inter-communities Dialogue and prevention of crimes in Central African Republic, Statement of Under Secretary-General/Special Adviser on the Prevention of Genocide, Adama Dieng, and more recently, Security Council Briefing on the Situation in Yemen, Special Envoy Ismail Ould Cheikh Ahmed, 31 August 2016, and Briefing to the Security Council by SRSF for Iraq Ján Kubiš, New York, 9 November 2016.

specific references to minorities or their rights in the mandate resolutions, despite the fact that sectarian tensions and violation of minority rights are key concerns in many of the countries at issue. One notable exception was the 2014 mandate on the UN Support Mission in Libya, which tasked the Mission to promote “the empowerment and political participation of all parts of Libyan society, in particular...minorities” and to “monitor and protect human rights, in accordance with Libya’s international legal obligations, particularly those of women, children and people belonging to vulnerable groups, such as minorities.”⁶⁹ Increasing such explicit references could be a strong catalyst for targeted work related to minorities and their rights, including in terms of allocation of resources for direct engagement and attention to these issues in monitoring and reporting. In the case of Libya, the mission has engaged with minority issues in various ways, including by supporting minority participation in the constitution-making process.⁷⁰ This is not to say that a lack of references in the mandate makes it impossible to pursue work on minorities. For example, the United Nations Assistance Mission for Iraq (UNAMI) has pursued a range of initiatives in respect of small ethnic and religious groups in the country despite the absence of any language on them in its mandate,⁷¹ and UN Secretariat has provided some important guidance for example in terms of addressing minority issues in UN police in peacekeeping operations and political missions.⁷²

In terms of embedding minority issues more firmly in the work of the Security Council, there are lessons to be learned from advocacy on other human rights issues. SC Resolution 1325 (2000) on women, peace and security (coupled with subsequent resolutions on the topic) has demonstrated how the Security Council can build policies and more sustained action on specific human rights related issues. While there are serious gaps in its implementation, this critical resolution has enhanced international and national efforts to promote and protect of the rights of women in conflict and post-conflict situations, in areas ranging from prevention of violence against women to their participation in peace-building.⁷³ Similarly, resolutions on the protection of civilians in armed conflict have put this issue firmly on the agenda of the Security Council since 2009. They have been followed by more targeted resolutions, including on the protection of journalists, and also by a regularly updated aide mémoire, the latest version of which contains some guidance also on countering targeting of civilians based on ethnicity or religion and cites language contained in earlier SC resolutions referring to the protection of minorities and their rights related to property, displacement and non-discrimination.⁷⁴ In order to secure more focused thematic attention for the protection of minorities through new resolutions (either independently or in connection with the follow-up to the above resolutions) would, however, require significant efforts and advocacy by both States and civil society actors, a challenge to which I will return later in this paper.

V. Agenda 2030 for Sustainable Development

The UN has asserted that all programmes of development co-operation, policies and technical assistance should further the realization of human rights, including non-discrimination standards and minority rights. With this in mind, it has provided detailed guidance for development practitioners on how to integrate minority rights and engage minorities in development initiatives.⁷⁵ Up until 2015, a key context for doing so was the pursuance of

⁶⁹ See Resolution 2144, article 6, (S/RES/2144 (2014)).

⁷⁰ See Rights of persons belonging to national or ethnic, religious and linguistic minorities, Report of the United Nations High Commissioner for Human Rights, A/HRC/25/30 (2014).

⁷¹ In its resolution extending the mandate of UNAMIS in 2016, the Security Council did refer, in the preambular paragraphs, to minorities, “expressing grave concern that the violent extremism and terrorism perpetrated by ISIL (Da’esh) in Iraq has systematically targeted women and children, especially those from minority communities” and calling for “all feasible steps to ensure the protection of affected civilians, including children, women and members of religious and ethnic minority group” [S/RES/2299 \(2016\)](#).

⁷² United Nations Department of Peacekeeping Operations Department of Field Support Ref. 2014.01 Policy United Nations Police in Peacekeeping Operations and Special Political Missions, which provides that United Nations police shall pay special attention to group-specific considerations, including ethnic, religious and linguistic minorities, when defining and implementing support activities and when identifying security needs.

⁷³ See, e.g., [Global Study on the Implementation of UN Security Council Resolution 1325](#); Preventing Conflict, Transforming Justice, Securing Peace (UN Women 2015).

⁷⁴ Aide mémoire for the consideration of issues pertaining to the protection of civilians in armed conflict, annexed to the Statement by the President of the Security Council made in connection with the Council’s consideration of the item entitled “Protection of civilians in armed conflict” on 25 November 2015, S/PRST/2015/23.

⁷⁵ See, for example, *Marginalised Minorities in Development Programming: A UNDP Resource Guide and Toolkit*, 2010.

the Millennium Development Goals (MDG). The record of Member States in focussing on minorities and their rights in achieving MDGs was, however, mixed at best. A study conducted by the UN Independent Expert on Minority Issues found that ethnic or linguistic minorities were mentioned in only 19 of the 50 MDG country reports reviewed and the inequalities experienced by religious minorities in only two of the reports. She expressed the concern that “there is a genuine risk that the strategies used to achieve the MDGs will be less beneficial for minority groups, and might even increase inequalities and further harm some minority communities.”⁷⁶

Such concerns, backed-up by country specific data that in a number of cases indicated continued exclusion of minorities throughout MDG implementation, prompted NGOs and other actors to advocate for the inclusion of clear minority perspective in the new Sustainable Development Goals and in the overall 2030 Agenda for Sustainable Development.⁷⁷ Despite these efforts, the Agenda was adopted in 2015 with no mention of national or ethnic, linguistic or religious minorities (there are some important, albeit limited, references to indigenous peoples), which has been seen as “indicating that the issue of minorities needs more political support from states at the UN”.⁷⁸ There is, however, a significant overall commitment in the 2030 Agenda to human rights, a pledge that “no one will be left behind” and highly pertinent language in goals and targets, including on reducing equality. All these elements are instrumental to the focus of many minority rights advocates is turning to ensuring that the implementation of the 2030 Agenda includes minorities and advances their rights.

One of the first indicators of the States’ commitment to include minorities and their concerns in the implementation process is the extent to which this issue is reflected in the first SDG voluntary national reviews, submitted by pilot countries to the High Level Political Forum, devoted to “ensuring that no is left behind” in July 2016.⁷⁹ According to the 2030 Agenda, these reviews should be “inclusive” and they should “draw on contributions from indigenous peoples, civil society, the private sector and other stakeholders”.⁷⁹ While the Ministerial Declaration of the Forum again failed to include any reference to minorities,⁸⁰ some of the national reviews did refer to minorities and/or indigenous peoples.⁸¹ More detailed analysis of the national reviews is, however, required to make any conclusions as to how extensively minority perspective were incorporated in them and what lessons could be learned in this respect for future reviews and the SDG process more generally.

One key factor in advancing the minority perspective in the SDGs is the availability of data disaggregated by different grounds of discrimination, including ethnicity and religion. In this respect, the Secretary General has stressed that the “disaggregated information needed to address all vulnerable groups, as specified in the 2030 Agenda, remains scarce.”⁸² The global indicators framework agreed in 2016 contains an overarching principle, according to which “Sustainable Development Goal indicators should be disaggregated, where relevant, by income, sex, age, race, ethnicity, migratory status, disability and geographic location, or other characteristics, in accordance with the Fundamental Principles of Official Statistics.”⁸³ In respect of specific targets, however, global indicators avoid clear references to disaggregation of data on the basis of ethnicity or religion, including under Goal 10 (reduce inequality within and among countries). For example, in respect of target 10.2, according to which States are to empower and promote “the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status,” the indicator refers only to the “proportion of people living below 50 per cent of median income, by age, sex and persons with disabilities,” thereby omitting race, ethnicity, and religion. This reflects the fact that a number of States remain reluctant to

⁷⁶ A/HRC/4/9/Add.1 and Corr.1.

⁷⁷ See, for example, Briefing: Minorities, indigenous peoples and the post-2015 framework (Minority Rights Group 2015).

⁷⁸ Protecting the rights of ethnic and religious minorities: addressing contemporary global challenges, Wilton Park Report, January 2016.

⁷⁹ Transforming our world: the 2030 Agenda for Sustainable Development, Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1, para. 79.

⁸⁰ Ministerial declaration of the 2016 high-level political forum on sustainable development, convened under the auspices of the Economic and Social Council, on the theme “Ensuring that no one is left behind”,

⁸¹ For example, Finland and Norway made reference to indigenous peoples (Sami) and Bolivia to indigenous peoples and people of African descent, see Executive summaries of the voluntary national reviews, E/HLPF/2016/7 (13 July 2016).

⁸² Progress towards the Sustainable Development Goals, Report of the Secretary-General, 3 June 2016, E/2016/75

⁸³ Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, 19 February 2016, E/CN.3/2016/2/Rev.1.

collect data on the basis of ethnicity, in many cases referring to their domestic legislation and concerns about data protection.

It follows that much will depend on the way in which regional and national level indicators will be developed. In connection with those processes, as well as in view of the envisaged review of the global indicators, there is a need for the UN and other actors promoting minority rights to continue to demonstrate the widespread “relevance” of data disaggregated by ethnicity for obtaining SDGs and for “ensuring that no one is left behind.” Indeed, such data is not only important for the SDG implementation but also for the interlinked goal of monitoring and implementation of human rights standards concerning non-discrimination and minorities, as has been repeatedly stressed by CERD and other human rights monitoring bodies. Without such data, one risks repeating a shortcoming of the MDG framework, where “a reliance on aggregate results and a continuing lack of disaggregated data collection resulted in very few measurements being made of the progress of minority groups towards the goals”.⁸⁴

But as in most other minority-related area, simplistic recommendations related to disaggregation of data carry their own risks. While advocacy for disaggregated data collection is important, it is equally important to ensure that such collection is done in a manner that fully respect human rights and is based on voluntary self-identification. In this respect, again, minority rights advocacy must be nuanced and reject any imposition ethnicity or a minority status, which has a concern in number of contexts, most recently in Burundi.⁸⁵ In order to build coherent recommendations in the SDG contexts and beyond, further cooperation between statisticians and other experts on data and experts on human rights, including minority rights, are crucial.

VI Conclusions and recommendations

Interest in minority issues continue to wax and wane and so does interest in minority rights. But these fluctuations are not necessarily in sync. Current upsurge in international and national attention to minorities does not necessarily translate to a rise in interest in minority rights – indeed, some are working to achieve the opposite and erode the existing standards. While the UN standards and mechanisms cannot dictate the direction of these highly politicized debates, they can facilitate an approach that is rooted in human rights. This requires, however, dynamic interpretation of the norms, and tools that evolve with the events and reflect the present human rights risks and concerns faced by minorities.

Jurisprudence on UN treaty law on minority rights *per se* remains limited, especially beyond indigenous peoples. The gap in normative guidance as to what minority rights entails and what they do not entail, is particularly striking vis-à-vis newer minorities that have been included within the reach of minority rights through an inclusive reading of the personal scope of application. Against this background, it is important, first, to support efforts to bring to treaty bodies more communications that could lead to richer jurisprudence under minority specific articles (building on work that has been done on related soft law standards) and, at the same time, to expand and raise awareness of minority-friendly readings of other human rights treaty provisions. In this vein, UN minority rights mechanisms need to (continue to) work to increase attention to *human rights* issues faced by minorities, including, but not limited to minority rights issues.

A more holistic approach to the rights of persons belonging to minorities, which instead of focusing exclusively on specific minority rights, is grounded in a range of human rights, can also help to bridge the gap, and perceived conflicts, between the integration discourse and minority rights discourse, notably as regards newer minorities. Such bridge-building is positive in so far as it, on one hand, reinforces integration approaches that have minority rights as a core principle and, on the other hand, takes minority rights towards a non-isolationist and dialogue-friendly interpretation, while recognizing that securing minority rights in respect of differently situated minorities requires different implementation measures and nuance.

⁸⁴ Report of the Independent Expert on Minority Issues, Rita Izsák, to the 25th session of the Human Rights Council, A/HRC/25/56, para. 36.

⁸⁵ In December 2016, the UN High Commissioner for Human Rights criticized the plan of the Government of Burundi to launch a review of the “ethnic balance” in all public and semi-public institutions, requiring all staff to declare their ethnic identity, see <https://goo.gl/0d3vmB>.

In a number of contexts, there is also a need to bring minority rights and non-discrimination discourses closer together. This can facilitate pragmatic human rights work even where definitional disagreements persist and help to ensure that, for example, the numerical criterion attached to minority definition does not have the effect of silencing legitimate human rights concerns faced by others in non-dominant position.

Even though proliferation of minority-specific mechanisms bring with them a risk of undue fragmentation, it will continue to be called for to the extent that the general minority rights framework is not seen as equipped to address the main human rights concerns of rights holders. And to ensure that the framework increasingly match those concerns, more is needed to support minority engagement and participation in UN mechanisms, drawing on the example set by the indigenous peoples' movement. There is also a need to broaden the network of states that champion human rights of minorities and to create a true collective energy to advance this agenda objectively across ethnic and religious lines in minority rights bodies or other UN mechanisms. Efforts to abuse of minority rights – at times blamed on the rights rather than their abuse - thrive in the absence of such collective engagement, as it leaves space for selective, skewed and overly-politicized debate on by individual actors on “minority issues” not necessarily grounded in international human rights law.

Human rights specific mechanisms can do only do so much in advancing right of persons belonging to minorities. System-wide engagement on minority issues has received strong backing in UN policy documents both as a specific issue (as in the Secretary General's Guidance Note on Racial Discrimination and Protection of Minorities), and as part of the Human Rights Up Front and other general human rights initiatives. And yet, minority rights are not in practice always perceived as an integral part of human rights discourse. At the country level in particular, raising minority rights – with their politically sensitive nature - often requires not only specialized expertise on standards and context but also exceptional courage. Therefore minority rights work at the country level merits, in addition to increased resources, particular support and attention from headquarters, including in connection with the Human Rights Up Front initiative.

Explicit engagement of UN political bodies on minority issues can be particularly challenging, especially since the number of Member States that are consistently and constantly raising minority issues remains limited. Broader commitment by Member States to collective engagement to champion the minority rights agenda is needed to go beyond *ad hocism*, and to avoid misuse and tilted interpretation of human rights standards concerning minorities. Lack of such collective engagement can lead to a *de facto* bilateral discourse in international fora, which in turn can hurt the credibility of minority rights work in general, and be particularly detrimental to those minorities that have no kin states or other individual “spokespersons” raising their human rights concerns.

The contribution that the protection of minorities can make to peace and security has been rarely reflected in the language of resolutions of the Security Council. There are some recent signs of willingness of the Security Council to address minorities as such, including in mandate resolutions for UN peace mission. These should be built upon and expanded, in country-specific and more general resolutions of the Council. In this context, the chosen nomenclature matters; explicit references to minorities can reaffirm the relevance of applicable minority rights standards.

The 2030 Sustainable Development Agenda offers an important opportunity to instill minority perspective into development work. The total lack of any references to minorities in the Agenda is disconcerting, but the impact of this omission can be alleviated by ensuring that minorities are given focused attention in the implementation of the overall commitment to leaving no one behind and in pursuing the goals on equality and other key issues. The impact of the Agenda on minorities will however be impossible to track without disaggregated data. UN must therefore advocate for the development of national and regional indicators disaggregated on the basis of ethnicity, filling the related gaps in the global indicator framework agreed in 2016.