

**Call for input to the report of the Special Rapporteur on minority issues to the UN General Assembly on institutional arrangements of States that enable minority rights to flourish**

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## 1. Introduction

- 1.1 The Coppieters Foundation is a think tank focusing on the management of cultural and linguistic diversity, collective and minority rights, multi-level governance, decentralization, state and constitutional reform, statehood processes, self-determination, migration, peace studies and the protection of human rights in Europe.
- 1.2 In response to the above call for input by the Special Rapporteur on minority issues, our submission presents the perspective of stateless nations in Europe. We use the term 'stateless nation' to refer to a group within a state that asserts a claim to 'nationhood'; in some cases this may be constituted on the basis of cultural distinctiveness, but often such a sense of identity also derives from the fact of living in the national territory and feeling a sense of belonging to the nation.<sup>1</sup> In these nations, there are often demands for the nation to have a state of its own, or at least for members of the nation to have the right to decide for themselves whether or not to remain part of the larger state (and if so, in what form).
- 1.3 From this perspective, our submission does not focus on specific countries or states. Rather, we take a broader approach informed by the different realities and interests of stateless nations in a range of different contexts.
- 1.4 Our submission focuses on two of the six questions in the call for input:
  - Q1 Do you consider the interests of persons belonging to minority groups appropriately taken into account in your country? If yes, how? If no, why?
  - Q6 What are the benefits and/or challenges of recognizing and granting sectoral (for example, concerning sectors like education) or territorial autonomy to minorities?
- 1.5 In order to answer these questions, we begin by considering the extent to which stateless nations can be considered 'minorities' within the UN framework for the protection of minority rights. This is necessary because it informs our responses to the two questions above. The subsequent two sections respond to questions 1 and 6 from the perspective of stateless nations in Europe.
- 1.6 Our responses reflect the challenges faced by stateless nations who – in terms of how they define themselves and their interests - do not always fit neatly into the definition of 'minorities' adopted by the UN framework for the protection of minority rights. However, we also feel that the realities we seek to reflect are helpful in terms of raising broader challenges and opportunities for ensuring the effective participation of minorities in decision-making that affects them and the places where they live.

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<sup>1</sup> This is a different meaning of the term "stateless" than is often used in the context of minority rights at the UN, where it is used to refer to the denial or removal of citizenship as a tool of excluding minorities from state structures, without the right to vote or access basic services such as healthcare or education. See, for example, A/HRC/37/66 *Report of the Special Rapporteur on minority issues*, paragraphs 36-40. Available at: <https://www.ohchr.org/en/documents/thematic-reports/ahrc3766-report-special-rapporteur-minority-issues> [accessed 12 June 2023]

## 2. Stateless nations and the UN framework for the protection of minority rights

2.1 The UN's current framework for protecting minority rights – as set out in the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities – focuses on the cultural, linguistic and religious rights of minorities. Informed by this definition, the previous Special Rapporteur, Mr. Fernand de Varennes, considered some stateless nations – such as Catalan, Basque and other linguistic groups – as 'linguistic minorities'.<sup>2</sup>

2.2 However, this definition of who constitutes a 'minority' does not easily accommodate the ways in which many stateless nations define themselves in terms of their distinctiveness from the rest of the state.

Many stateless nations assert a claim to 'nationhood' on the basis of a sense of identity that also comes from the fact of living in the national territory and feeling a sense of belonging to a nation. This is a less 'essentialist', and more inclusive, marker of difference in contrast to ethnicity, religion or language. In this sense, membership of the stateless nation is more *political* in nature, defined as belonging to a distinctive political community within a larger state.

Thus, whilst many stateless nations contain within them groups which might be identified as 'minorities' due to the presence of groups that speak a distinctive language, this does not exhaust the scope of membership of – or feelings of belonging to – a stateless nation. For example, in practice there is a difference between Catalan and Basque speakers (i.e. members of the linguistic group) and those individuals living in Catalonia and the Basque Country that do not speak the language (at all, or not as their mother-tongue) but nevertheless identify as Catalan/Basque.

2.3 This latter basis for group membership cannot be accommodated within the current UN framework for minority rights. As a result, 'national' communities conceived in this broader, more civic and inclusive way - including many stateless nations in Europe - fall outside the scope of the UN's definition of a 'minority'.

2.4 The Declaration's definition of 'minority' also does not fully capture the different contexts of stateless nations in practice, and specifically their position within their own national territory.

In many stateless nations, those that identify with the national community constitute the majority within the national territory. This may be on the basis of the characteristics of difference that define the group (e.g. number of people that speak the language or claim a national identity). But it is also often the case that the group may constitute a democratically elected majority, e.g. within political institutions within the territory where the group exists.

In the latter case in particular, the fact of constituting a democratically elected majority in their territory enhances the legitimacy of claims by the national community to have more of a say over the kind of society it wants for its members, and how it is governed.

2.5 This reality of stateless nations has a bearing on how political actors representing them define their interests, how appropriately they feel their interests are taken into account in the different state contexts in which they exist, and what they perceive to be the benefits and challenges of effective participation in decision-making in relation to issues that affect them. In the sections that follow, we consider the implications of these realities for some of the questions posed by the Special Rapporteur for minority issues as outlined above.

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<sup>2</sup> *Visit to Spain*, paragraph 4.

**3. Response to 'Q1 Do you consider the interests of persons belonging to minority groups appropriately taken into account in your country? If yes, how? If no, why?'**

3.1 In cases where stateless nations comprise 'linguistic minorities' within their territories, there is variation in the extent to which these groups' linguistic rights are appropriately considered in different contexts. Whilst in some cases there is strong protection for such rights, in recent years there have also been several examples of states seeking to limit the exercise of these rights.

The previous Special Rapporteur, Mr. de Varennes, has highlighted several of these examples. For example, the decision of the French Constitutional Court on 21 May 2021 prohibiting an 'immersion' approach to the teaching of regional languages was considered to be "an attack on the human rights of linguistic minorities in France".<sup>3</sup> He also raised concerns about a judicial decision in Spain which limited the 'immersion' approach pursued in the Catalan education system, and which served to "limit education in the Catalan language".<sup>4</sup>

3.2 However, many stateless nations also conceive of their 'interests' in a much broader way, and which goes beyond linguistic rights. Whilst grievances in relation to a distinctive language – and other minority rights - are certainly important in some places, they do not capture a broader set of claims to inequality, unfairness and injustice that are advanced – and often predominate – in many of Europe's stateless nations.<sup>5</sup>

3.3 A recent comparative study has shown that socio-economic and political grievances are more significant drivers of sustained political and societal mobilisation against the state in pluri-national states across Europe.<sup>6</sup> For example, Corsican political parties have long protested against the centralised and top-down approach of the French state to economic development on the island. Such an approach is considered to have caused environmental damage, contributed to high unemployment and lack of access to affordable housing, and posed a threat to the Corsican language and culture. More recently, in Galicia there has been opposition to the development of windfarms financed by Spanish and international capital, with calls instead for a different model of development informed by the needs of the territory and geared towards its social, economic and environmental sustainability.

3.4 These examples reflect the reality that in many stateless nations there are much broader – and deeper - perceptions of political unfairness and socio-economic injustice against the stateless

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<sup>3</sup> Ref.: OL FRA 3/2022, 31 May 2022. Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27307>  
[accessed 9 May 2024].

<sup>4</sup> Ref.: AL ESP 5/2023, 13 October 2023. Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28240>  
[accessed 9 May 2024].

<sup>5</sup> This is a key finding of the project 'Autonomist Parties and Territorial Inequalities', directed by Dr. Anwen Elias (Aberystwyth University) and undertaken as part of the Horizon 2020 project Integrative Mechanisms for Addressing Spatial Justice and Territorial Inequalities in Europe (grant agreement number 726950). Key findings from the project can be found here: <https://imagine-project.eu/2020/05/29/how-regionalist-actors-perceive-territorial-inequalities-and-what-they-propose-to-do-about-it/> [accessed 14 June 2023].

<sup>6</sup> Ibid.

nation, and at the hands of the state. These grievances inform calls not just for the protection of specific political and socio-economic rights for members of the stateless nation, but for a much more ambitious transformation of society to be more democratic, just and prosperous.

- 3.5 In particular – and in order to tackle the full range of political, socio-economic and cultural challenges they face - many stateless nations demand a ‘right to decide’ for themselves on how the national community is governed. This is a claim for a right to self-determination, based on the assumption that the stateless nation constitutes a ‘people’ with a right to self-determination under international law.
- 3.6 In practice, such a right can take different forms, ranging from self-government to sovereign statehood. It is only through the recognition of this right that stateless nations can freely and meaningfully pursue the development of the collective group that they claim to represent, and realise their ambition for more prosperous, just, sustainable and democratic future.
- 3.7 Stateless nations’ self-identification as a distinctive ‘people’ is anchored in the sense of national identity referred to in Section 2 above, and which is a defining characteristic of many stateless nations. In this sense, stateless nations are asserting their collective right, as a distinctive national group, to be in control of their destinies and to live out their identities. This, according to the Independent Expert on the promotion of a democratic and equitable international order, is the essence of the right of self-determination.<sup>7</sup>
- 3.8 However, the right of stateless nations to self-determination has often been challenged by the states within which these entities exist. They have done so by interpreting the right of stateless nations to self-determination in a limited way, based on a distinction between “external” and “internal” dimensions of self-determination: the former relates to achieving sovereign statehood (i.e. secession), the latter to self-government within the state. Whilst many states have granted stateless nations some degree of internal self-determination (see section 3 below), claims to secession have typically been rejected.

For example, whilst the UK government gave permission for a referendum to be held on Scottish independence in 2014, subsequent calls for a second referendum have been rejected by the incumbent UK Conservative government.

The Spanish state also rejected the ‘right to decide’ of the Catalan people in October 2017. In his report on a visit to Spain in 2019, the previous Special Rapporteur on minority issues, Mr. de Varennes, noted that this had contributed to “an apparent increase in hate speech, vilification, vandalism, physical threats and even assaults against members of the Catalan minority...thus indirectly contributing to an atmosphere of increasing intolerance against minorities and of nationalistic vitriol”.<sup>8</sup>

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<sup>7</sup> A/69/272 *Promotion of a democratic and equitable international order. Note by the Secretary General*, paragraph 3. Available at: <https://digitallibrary.un.org/record/779028> [accessed 15 September 2023].

<sup>8</sup> A/HRC/43/47/Add.1 ‘Visit to Spain: Report of the Special Rapporteur on minority issues’. Available at: <https://www.ohchr.org/en/documents/country-reports/ahrc4347add1-visit-spain-report-special-rapporteur-minority-issues> [accessed 7 May 2024].

3.9 From the perspective of many stateless nations, such a limited interpretation of the right to self-determination is a fundamental constraint on their ability to participate fully in decision-making that affects the economic, social and cultural wellbeing of their 'people'.

**4. Response to 'Q6 What are the benefits and/or challenges of recognizing and granting sectoral (for example, concerning sectors like education) or territorial autonomy to minorities?'**

4.1 In general, many stateless nations have a degree of territorial autonomy within the state. This grants many stateless nations some responsibilities over cultural issues; some also have autonomy over socio-economic and political issues affecting their territories. The specific configurations and degrees of territorial autonomy in these cultural, socio-economic domains also varies significantly from context to context.

Where stateless nations include distinctive linguistic groups, autonomy over cultural policy enables the development of distinctive policy frameworks that respond to the specific needs and challenges of that group. Where territorial autonomy has a broader policy scope, it enables stateless nations to develop distinctive policy approaches that respond to the socio-economic, environmental and political challenges they face.

4.2 Existing arrangements of territorial autonomy, however, are also often highly contested in stateless nations. Existing decision-making structures are often considered to afford the stateless nation inadequate influence over its territory; as a result, these structures are often framed by political actors in these places as being "unjust".<sup>9</sup>

4.3 Underpinning these concerns is a different understanding of who should be able to influence decisions regarding the cultural, socio-economic and political wellbeing of the stateless nations, and how those decisions should be taken. As noted above, and based on their self-definition as a distinctive national group, many stateless nations assert the right to decide for themselves how their territory is governed.

This claim often seeks to go beyond existing arrangements for territorial autonomy, to consider also whether is better served by remaining within the boundaries of the state or through independence from the state.

4.4 The reluctance of states to engage with these claims to self-determination contributes to significant political tensions and, in turn, can exacerbate economic instability and societal conflict.

In contrast, it has widely been recognised at the UN level that a stronger recognition of peoples' right to self-determination is a key "vector of peace and part of a democratic and equitable world order".<sup>10</sup> Indeed, in different UN fora the realisation of the right to self-determination has

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<sup>9</sup> Elias, Anwen and Lewis, Huw (2021) 'Summary report: Regionalist actors' perspectives on spatial justice and territorial inequalities in Europe'. Available at: <https://imagine-project.eu/wp-content/uploads/2022/06/D7.4-Summary-Report-WP7.pdf> (accessed 7 May 2024).

<sup>10</sup> *Promotion of a democratic and equitable international order*, paragraph 5.

repeatedly been linked to i) the effective guarantee and observance of human rights, and ii) the achievement of a peaceful and stable international order.<sup>11</sup>

- 4.5 Giving clearer recognition to the right of peoples to self-determination also offers an opportunity to shift the focus away from specific *outcomes* (that is, different manifestations of self-determination e.g. internal autonomy within the state, or secession) to thinking about self-determination as a *process*:

“As an ongoing democratic exercise, self-determination entails a people’s equal participation in decision-making, a continuous dialogue by virtue of which parties adjust and readjust their relationship for mutual benefit.”<sup>12</sup>

In other words, rather than focusing on specific institutional structures, there is a benefit to be derived from emphasising the importance of on-going dialogue and negotiation around the relationship between stateless nations – and minorities more broadly - and the state. This can provide a different route to the effective participation of distinctive groups – stateless nations as well as minorities – within the state.

- 4.6 In this respect, recent initiatives in different stateless nations offer a way forward for thinking differently about effective participation in decisions that affect different of relationship between distinctive groups within the state, and the state itself. These are inspired by a growing interest around the world in participatory and deliberative innovations which, when done well, can create new spaces for inclusive, respectful and consensual decision-making on difficult or controversial policy issues.
- 4.7 For example, in Wales an independent cross-party commission adopted an innovative mixed-methods approach to citizen engagement to explore different options for governing Wales in the future.<sup>13</sup> This work recognised that the political rights of stateless nations – to participate in decision-making that affects the people living in the territory - is intrinsically linked to their economic, social and cultural wellbeing. A similar process is being developed in Catalonia.
- 4.8 These examples provide a model for a different way of exploring how groups within a state that are distinctive in some way – whether they define themselves as stateless nations or minorities – can contribute more effectively to decision-making in the full range of areas that affect them and the places where they live. They prioritise inclusivity and respect for different perspectives, and aim to harness these to explore different options for achieving political consensus and more legitimate decision-making. They create an opportunity for building new kinds of relationships within – and with – states, rather than mobilising against them; they thus provide a different way of framing and promoting the effective participation of distinctive groups within states.

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<sup>11</sup> A/68/318 Right of peoples to self-determination. Report of the Secretary General. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/427/16/PDF/N1342716.pdf?OpenElement> [accessed 18 September 2023]. *Promotion of a democratic and equitable international order*

<sup>12</sup> *Promotion of a democratic and equitable international order*, paragraph 3.

<sup>13</sup> Independent Commission on the Constitutional Future of Wales (2024) *Final Report: January 2024*. Cardiff: Welsh Government. Available at: <https://www.gov.wales/sites/default/files/publications/2024-01/independent-commission-on-the-constitutional-future-of-wales-final-report.pdf> [accessed 8 March 2024].